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“Third Party Assisted Reproduction and the Right of Donor-Conceived Offspring to Know Their Origin in Australia”

Key words

assisted reproductive technology, donor conception, donor anonymity

Abstract

With the recent rapid increase in families created through assisted reproductive technologies (ART), the right of offspring to know their origin is becoming a worldwide issue. Jurisdictions that have abolished the anonymity of gamete donors are gradually increasing, and for many others, how to incorporate the resultant offspring's perspective into the practice of ART has been a controversial topic. Recently in Japan, approximately two percent of babies are being born using ART, and more than 10,000 offspring are said to have been born by donor insemination so far.

In Australia, including the use of donor insemination by single and lesbian women, some estimates suggest that more than 60,000 people have been born by donor conception, and each state takes a different approach regarding offspring's right to know their donor's identity. This presentation will focus on the states of Victoria and New South Wales. Victoria has one of the world's most progressive legislative systems for admitting offspring's rights, and New South Wales is following suit. Both states already have legislation regulating the right of offspring to know their origin, namely Assisted Reproductive Treatment Act 2008 (Vic), and Assisted Reproductive Technology Act 2007 (NSW), respectively, but are facing a new emerging issue concerning the right of donor-conceived offspring. The point is that both Acts are prospective, not retrospective, which means that people born before the enforcement of the legislation will not be given the right to access information concerning the identity of their donors. In Victoria, offspring conceived from gametes donated between 1988 and 1997 need the consent of their donors to access information identifying them, and offspring conceived from gametes donated prior to 1988 do not have the legislative right to know about their donors. In NSW, offspring conceived before 1 January 2010 are not given access to the information that identifies their donors.

In both states, a parliamentary committee has submitted a report on the retrospection issue following public consultation. In Victoria, the Victorian Parliament Law Reform Committee tabled its final report, the “Inquiry into Access by Donor-Conceived People to Information about Donors” on 28 March 2012, and the Government response was tabled in Parliament on 20 August 2013. In New South Wales, the Legislative Assembly Committee on Law and Safety tabled its final report, the “Report on the Inquiry into managing information related to donor conception,” on 17 October 2013, and the Government response was received on 16 April 2014.

This presentation analyzes, from the perspectives of donor-conceived offspring, donors, their families, and other concerned professionals, the Committees' reports and each government's response to the reports as well as the arguments for and against allowing past gamete donors the right to maintain their anonymity, and discusses the limitations on protecting the rights of donor-conceived offspring at the present stage.

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Takako MINAMI holds the post of Lecturer at Ehime Prefectural University of Health Sciences. She received her doctorate in Applied Social Sciences from Ochanomizu University. Her doctoral thesis was published by Kazama Shobo in 2010, entitled "What changes will be brought to families by abolishing donor anonymity in artificial insemination?: A case study of Victoria, Australia" with the help of a grant awarded by the Australia-Japan Foundation's Sir Neil Currie Publication Award. This book was also given an award by the Japan Association of Gender and Law in 2011. Dr. Minami is currently continuing her study of public policy and legislation surrounding third party assisted reproduction, especially donor insemination and the rights of offspring, donors, and their families.