



Welfare of the Child

PARAMOUNTCY OF THE WELFARE OF THE CHILD IN ASSISTED REPRODUCTIVE TREATMENT

Paramountcy of the Welfare of the Child in Assisted Reproductive Treatment

Section 4A of the *Assisted Reproductive Treatment Act 1988* (SA) (the Act) provides that:

'The welfare of any child to be born as a consequence of the provision of assisted reproductive treatment in accordance with this Act must be treated as being of paramount importance, and accepted as a fundamental principle, in respect of the operation of this Act.'

The principle is found at the beginning of the Act, and has overarching effect – having been retained and strengthened, as part of changes made to the Act in 2010 (see Fact Sheet 1).

Background to Current Welfare Principle

Much emphasis was given to the welfare provision during the parliamentary debates concerning the proposed 2010 amendments to the then legislation.

In particular, there was pointed consideration in the South Australian Parliament of the retention and strengthening of the 'welfare principle' in the amended Act, emphasising its paramountcy and that clinics must ensure that the welfare of the person receiving treatment and the best interests of the child to be born are fundamental when providing assisted reproductive treatment (A.R.T.).

Parliament acknowledged that the welfare (and/or 'best interests') of children is recognised as paramount internationally and domestically. Reference was made to

- > the UN Convention on the Rights of the Child (to which Australia is a signatory),
- > Australia's family law system and
- > agencies such as Families SA.

It was therefore seen as consistent with both international and domestic laws and practice to uphold the welfare of the child born as a result of A.R.T. as paramount within the *Assisted Reproductive Treatment Act 1988*.

The principle that places the child's welfare as being paramount was acknowledged in parliament as clearly meaning that such interests are placed above all others –including would-be-parents or medical practitioners.

It was also acknowledged that the provision enshrines the welfare of the child as the *fundamental principle* of the Act and the guiding principle for the provision of A.R.T. generally.

Considerations

Regarding the Welfare of the Child Provision

The law in South Australia creates an obligation to treat the welfare of any child to be born as a result of A.R.T. as paramount, and provides that it is accepted as a fundamental principle within the Act. The question then becomes what sorts of things may be considered in order to uphold the principle, and ensure it is operationalised in practice. Most people would agree that health professionals have a responsibility to protect a child from any significant medical risks associated with a particular procedure. However what other considerations might be had?

'Screening' people who wish to access A.R.T. and/or donors

Some people would agree that screening for risks of hereditary disease or illness in people seeking A.R.T. or donors is acceptable—although this may depend upon the type of disease or illness and the reasoning behind such screening.

Other considerations might include (but are not limited to) assessment of the applicants in relation to whether a child born as a result of the use of A.R.T. might be at risk of:

- > **Physical Harms** – for example if a person (or their partner) has a history, or there are ongoing issues, of physical and/or sexual abuse of others, neglect of children in their care, family violence, and/or drug or alcohol problems that may impact upon the child;
- > **Psychological Harms** – for example if a child is at risk of being exposed to any of the above forms of violence, neglect or abuse, or where there are other family factors that may affect a child's well-being (for example, untreated mental illness of a parent).

In addition consideration may be given to whether a person, or couple, who wishes to use donated gametes or embryos intend to tell the resulting child about its donor conception, and/or whether a donor agrees to release of information.

Consideration of what is or should be done if a potential risk is identified may also be important. For example, is the person able to seek A.R.T. treatment at another clinic, and/or are they referred to relevant support services?

On the other hand, some people have raised the question of whether 'screening' of people seeking A.R.T. and/or donors can ever be said to serve the welfare principle. For example, prohibiting access to A.R.T. by a particular person may result in no child being born at all. Such existential questions may lead either to rejection of the welfare principle, or to arguments that the focus should be on having laws in place to protect the person born as a result of A.R.T. after they are born.

Donor-conceived people and access to information

The welfare principle also raises specific questions regarding the welfare of people born as a result of donor conception. These questions relate not only to decisions made prior to a child being born, but also to laws in place once people exist. These may include:

- > whether a person born as a result of donor-conception will be told about the circumstances of their conception;
- > whether there are laws and systems in place that support donor-conceived people seeking access to information about their donors and/or genetic relatives (such as siblings); and
- > whether there are laws and systems in place to support contact between donors, donor-conceived people, siblings and/or other genetic relatives who wish to have such contact (and whether it is necessary to have provision to protect people from unwanted contact).



Research on the impact of A.R.T.

Consideration of the welfare of children born as a result of A.R.T. may also include laws and practices that address whether there is long term follow up and research on such things as the social, emotional, and health outcomes for those conceived using A.R.T. This may include focused research upon different techniques used to achieve pregnancy, the use of donated gametes or embryos, birth outcomes, and long-term physical and psycho-social outcomes for such people.

Note some 'screening' provisions were removed when the Code of Ethical Clinical Practice was repealed. The welfare of the child provision is however said to 'allow for consideration of the suitability of a client wanting to undertake A.R.T.' (SA Health, 2015). The legislation also provides that there is no legal obligation upon a registered provider (or anyone else) to provide A.R.T.

The 2010 legislation made provision for the Minister to be able to set up a donor register.

See further Fact Sheets 5 (access) and 6 (donor conception register).

Questions

The review would like to hear your views about whether, and if so the extent to which, the welfare of any child born as a result of A.R.T. is treated as paramount and accepted as a fundamental principle in respect of the operation of the Act.

The following questions may help you to inform the review:

1. Is the paramountcy of the welfare of the child provision being upheld in practice?
2. How is it being used, and to what effect?
3. What sorts of considerations are being made and/or systems put in place?
4. What guidance is needed, if any, as to the sorts of considerations that should/should not be made?
5. Does more need to be done to ensure the paramountcy of the welfare of the child principle is met?
If so, what?

Please feel free to provide any other comments that are relevant.

The Review of the Act

The *Assisted Reproductive Treatment Act 1988* provides that a review must take place of the operation and effectiveness of the Act as soon as possible after the fifth anniversary of the changes that came into effect on or after 1st September 2010. The review will particularly focus upon the operation and effectiveness of the Act in relation to:

- > the requirement that the welfare of any child born as a consequence of A.R.T. is to be treated as being of paramount importance, and accepted as a fundamental principle, in respect of the operation of the Act, as well as in the provision of assisted reproductive treatment;
- > the replacement of the previous licensing scheme with a registration scheme for A.R.T. clinics;
- > the dissolution of the SA Council on Reproductive Technology and its Code of Ethical Clinical Practice;
- > amending eligibility for access to A.R.T. services—noting that such conditions relate to the circumstances in which, and to whom, A.R.T. may be provided;
- > allowing for the establishment of a donor conception register; and
- > provisions for record keeping and confidentiality.

The review will include examination of research and practice, and invite public submissions relevant to the above matters. It will lead to a report, which will include recommendations regarding the regulation of assisted reproductive treatment in South Australia. The report will be tabled in Parliament and made publically available. The recommendations will be considered by the Minister.



Welfare of the Child Fact Sheet 2

Review of the
*Assisted Reproductive
Treatment Act
1988 (SA)*

We Invite You To Make a Submission



Complete the online submission form on the [YourSA](#) website to provide your views in relation to the issues under review.

Email a submission to Associate Professor Sonia Allan at HealthPolicyLegislation@sa.gov.au with subject heading 'A.R.T. Act Review'



Post a submission to

A/Professor Sonia Allan
A.R.T. Act Review,
C/- Policy and Intergovernment Relations Unit,
SA Health, PO Box 287, Rundle Mall,
ADELAIDE SA 5000



Join the discussion on the [YourSA](#) website.

Please note that all submissions are public unless marked 'confidential'. Public submissions will be posted on the [YourSA](#) website, and the author may be cited in the final report. Authors of 'confidential' submissions will not be referred to by name. We cannot accept anonymous submissions.

Submissions close on Friday 15 April 2016.

More Information

For general information on topics relevant to the review of the *Assisted Reproductive Treatment Act 1988 (SA)* see the following Fact Sheets:

[Fact Sheet 1: Introduction to the Review](#)

[Fact Sheet 2: Paramourcy of the Welfare of the Child](#)

[Fact Sheet 3: Registration Scheme for A.R.T. Clinics](#)

[Fact Sheet 4: Dissolution of SA Council on Reproductive Technology, and its Code of Ethical Clinical Practice](#)

[Fact Sheet 5: Access to Assisted Reproductive Treatment](#)

[Fact Sheet 6: Establishment of a Donor Register](#)

[Fact Sheet 7: Record Keeping and Confidentiality](#)

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