

Fact Sheet

Frequently Asked Questions (FAQ)

An amendment to the *Assisted Reproductive Treatment Act 1988* (“the ART Act”) passed by the South Australian parliament in 2019 will commence operation on 7 November 2021 to mandate the establishment of the donor-conception register (DCR). This fact sheet provides information about proposed further changes to the Act to ensure the effective operation of the DCR.

What impact does direct-to-consumer genetic testing have on donor anonymity?

Multiple online companies offer direct-to-consumer genetic testing for the purpose of genealogy and family history research. Popular DNA testing websites include Ancestry.com, 23andMe, MyHeritage, and FamilyTreeDNA.com.

These websites offer services to identify genetic relatedness between other users by matching them with users in their database.

Donor-conceived people are increasingly turning to DNA matching websites to match with genetic relatives and identify their biological parents. Moreover the increasing prevalence of these services means that there is greater likelihood than ever of people accidentally discovering that they are donor-conceived.

Sites allow users who have ‘matched’ to contact each other directly within their systems. Users are then able to deduce further family relationships. In this way donors and donor-conceived people who are not registered on the genetic testing sites can potentially be identified.

These services and their rapid growth raise fundamental questions in the context of the presumption of anonymity for donors that currently exists in SA legislation and practice.

They raise issues in relation to consent for those who have not registered to be matched through the sites but are identified through the process. The impact on these parties and those who discover unexpected information about their close genetic relationships could potentially be significant.

How will donor’s privacy be protected after these changes are made?

The South Australian Government recognises that it is crucial to balance the rights of those who wish to find out about their genetic relatives and the rights to privacy for those who may have their anonymity lifted.

South Australia is proposing to adopt a model similar to that which is in place for adoptions which will ensure that all parties have access to comprehensive support services. If information about a donor is requested the support service will attempt to make contact in the first instance to inform the donor that their information is being sought by their donor-offspring and to assist the donor in navigating this information with their family.

In line with time periods that have been adopted in Victoria, the donor will have a four month period before a disclosure is made to the donor-offspring to allow for time for searching to be undertaken and for the donor to tell their families and to seek support if needed.





Donors and donor-conceived people will have the right to lodge a Statement of Wishes which will contain information about the persons contact preferences and reasons for wanting (or being open to) contact or not wanting contact. The support service will be able to facilitate the exchange of the Statement of Wishes.

What is a Statement of Wishes?

It is proposed that a Statement of Wishes can be lodged with the DCR.

It will contain nominated contact preferences for parties engaging with the DCR. This would include preferences about whether the person wants to be contacted via email or telephone, mediated meeting, or for no contact.

The Statement of Wishes can also contain information about the reasons a person is seeking to make contact with another party and their expectations. This is intended to provide introductory information to assist with the linking process and help the other person form a greater understanding of the person seeking information. This part of the statement of wishes is intended to assist people to adjust to the situation.

What happens if someone breaches the contact preferences in the Statement of Wishes?

The Bill does not propose to impose a penalty on those who would breach a contact preference. The ART Act provides that the welfare of the person born as result of the provision of assisted reproductive treatment is to be of paramount importance and a fundamental principle in the operation of the Act. The Act is not considered to be the appropriate place to criminalise or make it an offence to make contact with another through the DCR when there is existing legislation available to control or restrain contact between individuals should it become harassment.

One of the intentions in the establishment of the DCR and a principle underpinning the proposed changes is to normalise donor conception, to validate a person's donor conception story and to encourage openness about the practice. Penalties for breaches of contact preferences and contact vetos are not aligned with these principles.

What is a 'contact veto' and why hasn't it been included in the Bill?

A contact veto allows a donor or donor conceived person to nominate that they do not want contact from their offspring or donor and imposes penalties for any breaches. It is intended to assist in protecting a person's privacy. Victoria currently has a contact veto system in place for their donor conception register which means a person may be fined up to \$8,000 for breaches.

The South Australian Government considered the issue of contact vetos in the context of adoptions in 2017. At that time changes to the *Adoptions Act 1988* were being considered and the decision was made that no adoption veto system of any kind would be adopted in South Australia.

On this basis and for the reasons discussed above, it is not proposed to adopt contact vetos for donor conception either.

In addition the Victorian experience, and the experience through adoptions, has shown that people are generally respectful of others wishes and that people's privacy is generally respected. Support services will play a critical role in assisting donors and their families to navigate their fears about contact and issues arising because of it.

In addition any contact veto would be of limited utility in assisting to protect a person's privacy in today's environment. It will not be applicable in situations where a person is found through a

direct-to-consumer genetic testing service. It will not prohibit a person from finding out about another through social media sites.

Will a donor ever be recognised as a legal parent of the donor-conceived child?

No. Donors are not legal parents under the law. Part 2A of the *Family Relationships Act 1975* clearly outlines this. Donors have no parental rights. Donors are not liable to pay child support. Donor-offspring are not eligible to contest the will of the donor.

Will the register be housed at BDM?

The DCR will be housed within the Department for Health and Wellbeing as the responsible agency. However the DCR will have linkages with the Births, Deaths, and Marriages Register where needed to verify births, identities, and provide donor information.

What is the role of support services?

The support services will provide searching, donor linking/intermediary services (assistance and facilitation of information exchange and contact between parties where needed) and counselling to those who need it. The support service will also be able to provide counselling to partners or family members of donors or donor-conceived people affected by the proposed legislative change.

Will there be a charge for support services?

No. The support services will be provided free of charge.

Who will be able to access the DCR and what information will they be able to get?

A table detailing who can access the DCR and the information that will be available is [here](#).

For more information

Legal and Legislative Policy
healthpolicylegislation@sa.gov.au

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