Legislation toward Allowing All Donor-Conceived Offspring the Right to Know Their Origin

The Cases of Japan and Victoria, Australia

Takako MINAMI

Wakayama Medical University
E-mail: tminami@wakayama-med.ac.jp

ABSTRACT

The number of jurisdictions that legislate third-party assisted reproduction (donor conception) and abolish donor anonymity to recognize the right of offspring to know their origin has been increasing around the world. However, even in those jurisdictions, many issues are unresolved concerning the rights of donor-conceived offspring who were born prior to the introduction of the legislation abolishing donor anonymity.

In Victoria, Australia, the *Assisted Reproductive Treatment Amendment Act 2016* (the 2016 Amendment Act), which allows the retrospective right of offspring to know their origin, passed the parliament in February 2016. The 2016 Amendment Act gives all donor-conceived offspring the right to access their donor's identifying information without donor consent, regardless of when they were born. The Victorian legislation may offer new guidelines for other jurisdictions, including Japan, in regulating assisted reproductive technology (ART).

In Japan, there is no legislation regulating ART; in fact, many offspring have been born by donor insemination under donor anonymity since 1949, and the rights of offspring relevant to donor conception have not been guaranteed. By analyzing the features of the Victorian 2016 Amendment Act, the issues, which need to be considered in legislating ART in Japan, will be discussed.

Keywords: assisted reproductive technology (ART), offspring's right to know, legislation of ART in Japan, the state of Victoria in Australia

1. Introduction

In recent years, with the advancement of assisted reproductive technology (ART), the number of people born using ART has been increasing.[1] Treatments using only the couple's gametes (egg, sperm), and treatments using gametes donated by a third party (a donor) are both included in ART. Among ART, third-party assisted reproduction (donor conception) has had a tremendous impact on the lives of families.

Since the 1980s, with the spread of the use of donor insemination and in vitro fertilization (IVF), there has been an increase in the number of overseas jurisdictions abolishing donor anonymity and allowing offspring's right to know their origin from the viewpoint of the welfare of offspring born by donor conception (donor-conceived offspring) (Minami, 2011). Specifically, the state of Victoria in Australia[2] has drastically revised its legislation almost every decade to ensure offspring's right to know their origin since the introduction of the *Infertility (Medical Procedures) Act 1984* (Minami, 2012).

In the case of Japan, however, there is no legislation regulating ART. The practice is under the control of the Japan Society of Obstetrics and Gynecology (JSOG), and it is solely regulated by its practitioners. In Japan, donor insemination (DI) has been the only donor conception recognized by JSOG guidelines. Since the first birth of a DI baby at Keio University Hospital in 1949, it is estimated that more than 10,000 offspring[3] have been born by DI (ART Committee, 2003). However, donors have been kept anonymous, and offspring have no right to access information concerning their DI origin (JSOG, 2015).[4]

In 2003, the Assisted Reproductive Technology Committee of the Health Sciences Council of Japan Ministry of Health, Labour and Welfare (ART Committee) published the *Report on Development of the System for Assisted Reproductive Technology Treatment Using Donor Sperm, Eggs, and Embryos* (the ART Committee report). The ART Committee report recognized the use of donor gametes, including donor eggs, and recommended that offspring born should be given the right to know their origin. However, the recommendation has not yet been put into the legislation, and the studies which should be the basis of social debate and discussion concerning the legislation of ART have not been sufficient. According to the report's recommendations, identification of the donor should be disclosed to offspring concerned, once they become 15 years of age. However, the right of the offspring born before the enactment of the legislation, which is the right of people who are now actually calling for their own right to know their origin, has been left out.

How can the offspring born under donor anonymity be granted their right to know their origin? This should be one of the critical issues in regulating ART in Japan, but so far, the topic has been avoided.

In jurisdictions outside Japan that allow donor-conceived offspring their right to know, offspring who reach the age of eligibility, which varies depending on the jurisdiction, are given the right to access information identifying their donor (Minami, 2011). However, the legislation applies only to the offspring born after the introduction of the legislation. Thus, more work needs to be done to clarify factors involved in the rights of those offspring born before the legislation was introduced.

The state of Victoria, Australia, made a breakthrough in tackling this issue (Minami, 2014). In February 2016, Victoria passed the world's first legislation, the *Assisted Reproductive Treatment Amendment Act 2016* (the 2016 Amendment Act), which allows the retrospective right of offspring to know their origin. The novel feature of the Act is that donor-conceived offspring will be given the right to access identifying information of their donors "regardless of when they were born," or "regardless of whether the donor wants to remain anonymous" (The Age, 2016 Feb. 24).

In this paper, by analyzing the Victorian 2016 Amendment Act, issues surrounding legislation that allows all donor-conceived offspring their rights to know their origin will be clarified. Further, the issues to be resolved in legislating ART in Japan will be discussed based on the preceding case in Victoria.

2. Legislation abolishing donor anonymity and the retrospective right of offspring to know their origin

In Australia, ART is regulated by each state legislature.[5] The state of Victoria was the first jurisdiction in the world to comprehensively regulate ART, and has led the world by legislating the *Infertility (Medical Procedures) Act 1984* (the 1984 Act) in 1984, which allowed donor-conceived offspring the right to know their origin with the consent of their donor, once they turned 18 years of age. However, until the enforcement of the 1984 Act, donor conception was practiced under the system of donor anonymity, and offspring who had already been born were not covered by the 1984 Act. The law reform in 1995 enacted the *Infertility Treatment Act 1995* (the 1995 Act), and from January 1, 1998, gamete donations have only been allowed with the donors' consent permitting their identifying information to be released to the donor-conceived offspring, once they reach 18 years of age. By the enactment of the *Assisted Reproductive Treatment Act 2008* (the 2008 Act) in 2008, donor-conceived offspring, under 18 years of age, were also allowed to access donor information if they have the consent of their parent or a statement from a designated counsellor (the 2008 Act s. 59). Thus, Victoria has constantly made an effort to revise the legislation to further ensure the offspring's right to know his or her origin. However, even with the enforcement of the 2008 Act, it could not solve the issue of allowing the right of offspring who had been born with gametes donated by anonymous donors before the introduction of the 1984 Act. In Victoria, several thousand donor-conceived offspring are said to have been born before the enforcement of the 1984 Act in 1988 (Victorian Law Reform Committee, 2012).

Under the circumstances, the Victorian Law Reform Committee's report, the *Inquiry into Access by Donor-Conceived People to Information about Donors: Final Report*, recommending the state's legislation to be changed to allow the retrospective right of donor-conceived offspring to know their origin, was released in 2012 (Victorian Law Reform Committee, 2012 Mar. 28). The aim of the recommendation was to ensure all donor-conceived offspring their right to know their origin, and the reform was reported to be a "world first" (The Age, 2012 Mar. 28).

Responding to the recommendation by the Victorian Law Reform Committee, the state government passed the *Assisted Reproductive Treatment Further Amendment Bill 2013* in 2014, thereafter, "the *Assisted Reproductive Treatment Further Amendment Act 2014*" (the 2014 Amendment Act), effective as of June 29, 2015. The principal Act, the 2008 Act, was revised according to the 2014 Amendment Act.

However, the 2014 Amendment Act was strongly influenced by the argument against the forced identity release of past donors who donated gametes under the guarantee of anonymity and who have resisted to be identified to the resultant offspring (Minami, 2014). The Victorian Government's response "falls short" of the recommendation by the committee which tried to protect the right of "all donor-conceived people" equally (The Age, 2013 Aug. 21) by setting the condition of "donor consent" to access the donor's identifying information for offspring conceived by gametes donated prior to 1998. As a result, there remained a disparity between the donor-conceived offspring who need the consent of the donor to access donor's identifying information (pre-1998 offspring) and those who do not need donor consent (post-1998 offspring).

On November 29, 2014, the Australian Labor Party, which had clarified their stance that "all donor-conceived offspring should be recognized of their rights," won election in Victoria. They moved further to remove the "existing inequalities" among donor-conceived people (The Age, 2015 Feb. 8). The newly introduced bill, the *Assisted Reproductive Treatment Amendment Bill 2015* (the 2015 Amendment Bill), was passed by the Labor Government on February 23, 2016, thereafter, "the *Assisted Reproductive Treatment Amendment Act 2016*" (the 2016 Amendment Act), which will be enforced by March 1, 2017 (Victorian Government, Minister for Health, 2016 Feb. 23). The current 2008 Act will be revised according to the 2016 Amendment Act. How does the 2016 Amendment Act try to reconcile the conflict between the past anonymous donor's rights and the retrospective rights of offspring to know? In the following chapter, the characteristics of the 2016 Amendment Act will be analyzed.

3. The characteristics of the *Assisted Reproductive Treatment Amendment Act 2016*

The Labor Government of Victoria, which took office in December 2014, released the discussion paper, "A right to know your identity," which called for further changes concerning donor-conceived offspring's rights, made by the 2014 Amendment Act (Department of Health & Human Services, State of Victoria, 2015 Jun. 29). The paper outlined the proposed changes and was intended to help inform the public about the amendments they were going to make by introducing the bill.

To this movement, ABC News (Australian Broadcasting Corporation) reported, "The Victorian Government is considering a world-first move to allow donor-conceived people to know the identity of their egg or sperm donor, even if that person requested anonymity" (ABC News, 2015 Jun. 29). The Victorian newspaper, *The Age*, also reported on the release of the paper saying, "The Andrews' Government's proposed changes bring the rights of thousands of donor children into line with the current law, which only allows donor children born after 1998 absolute access to their donor's identifying information, including name, date of birth and ethnic background" (The Age, 2015 Jun. 29).

In the discussion paper, the government states that the amendments made by the 2014 Amendment Act "still limit some donor-conceived people's access to information about their identity depending on when their gametes were donated," and goes on to assert that "The

Andrews Labor Government will legislate so that all donor-conceived people will have the same rights to access donor information regardless of when their gametes were donated" (Department of Health & Human Services, State of Victoria, 2015 Jun. 29; p.5).

According to the paper, the following principles and consideration had underpinned the approach toward drafting the 2015 Amendment Bill by the Labor Government (ibid; p.9):

Principle 1: "The law should, as far as possible, treat all donor-conceived people consistently and equally, regardless of when the donations that led to their conception were made."

Principle 2: "It is critical to the welfare and interests of donor-conceived people that they have the opportunity to know their genetic identity."

Principle 3: "Consideration should be given to the impact of releasing donors' identifying information on donors and their wider families, as well as the impact (on) donor recipient parents."

Principle 4: "The rights conferred by the law on donor-conceived people should be meaningful and, as far as practicable, should be able to be exercised."

Principle 5: "As far as practicable, legislation should not place undue regulatory burden on medical practitioners and health services."

How were these principles reflected in the 2016 Amendment Act? The characteristics of the 2016 Amendment Act will be analyzed based on its principles.

3.1 Guaranteeing the right of offspring born under donor anonymity

Featuring the 2016 Amendment Act, the first point to be mentioned is the removal of the condition of "donor consent," which has been required for pre-1998 offspring when they apply to access the donor's identifying information.

As it was mentioned in principles 1 and 2, the 2016 Amendment Act allowed all donor-conceived offspring the right to know their origin without the donor's consent, regardless of when the gamete was donated.

The 2016 Amendment Act clearly states that one of the main purposes of this Act is "to amend the Assisted Reproductive Treatment Act 2008 to enable persons born as a result of a donor treatment procedure carried out using gametes that were donated before 1 January 1998 to obtain identifying information about the donor from the Central Register without obtaining the donor's consent" (the 2016 Amendment Act s. 1 (a) (i)).

By incorporating the 2016 Amendment Act, section 59 of the current 2008 Act, which provides for the "disclosure of information to persons born as a result of donor treatment procedure," will omit the phrase requiring the person "conceived using gametes donated before 31 December 1997" the donor consent for the disclosure of the donor's identifying information.

The Donor Conception Support Group (DCSG) in Australia, which has supported the rights of offspring born by donor conception, has welcomed the passage of the 2015 Amendment Bill (legislation of the 2016 Amendment Act), saying, "The Victorian upper house just passed the ART Bill which will give ALL donor-conceived people (conceived in Victoria) the right to know the identity of their donor no matter when they were born." "The DCSG has worked for many decades to bring changes like this about and we would like to thank the many parents, donor-conceived people and donors who have supported us and worked towards this change" (DCSG, 2016 Feb. 23).

The Victorian 2016 Amendment Act gave hope to offspring whose rights to know had not been recognized because they were born out of the past practice of anonymous gamete donation.

3.2 Consideration of the influence on pre-1998 donors and their families

How can the rights and welfare of the donor who had donated their gametes under the guarantee of anonymity be protected by the 2016 Amendment Act? As it can be seen in principle 3 of the discussion paper, consideration toward the impact of the release of donors' identifying information on donors and their families, can be pointed out as the second feature of the 2016 Amendment Act. Instead of removing the condition of "donor consent" in releasing their identifying information, donors will be given the right to put forward a "contact preference,"[6] concerning the contact between donor-conceived offspring and children of the donor's families (donor's children) as well as donor-conceived offspring and donors themselves.

The interview survey by the Victorian Assisted Reproductive Treatment Authority (VARTA) in 2013 targeting pre-1998 donors (donors who donated their gametes before the enforcement of the 1995 Act) revealed that some donors were afraid of being contacted by donor-conceived offspring, once their anonymity was removed (VARTA, 2013 May). This fact indicated that the contact from the donor-conceived offspring was recognized as a threat to some donors and their families, where the donation of their gametes in the past had been kept a secret (Minami, 2014). Reference to donors' children in the 2016 Amendment Act can be read as to reflect the Labor Government's consideration toward those children and other family members.

With the implementation of the 2016 Amendment Act, the 2008 Act will be amended. Section 63C "Contact preference for pre-1998 donors" of the 2008 Act will give the donor the right to lodge "a written statement setting out the donor's wishes about the donor's child being contacted by the applicant for the disclosure of the donor's information (revised 2008 Act s. 63C (1) (b))." Additionally, the donor can specify whether or not their child could be contacted by the applicant or the contact to be allowed only in a specified way (revised 2008 Act s. 63C (5)). Compliance with these donor's contact preferences would be one of the conditions for the disclosure of identifying information relating to a pre-1998 donor (revised 2008 Act s. 63G (1) (a)).

As the 2016 Amendment Act says in its preliminary, to amend the 2008 Act "to provide for contact preferences to be lodged by persons who donated gametes before 1 January 1998, on behalf of their children," was one of its main purposes (the 2016 Amendment Act s. 1 (ii) (B)).

By extending the coverage of the contact preference to the donor's own child, the 2016 Amendment Act tried to relieve the donors' anxiety that their family life could be interfered with by the sudden appearance of the donor-conceived offspring. In the discussion paper, by indicating that the current arrangements do not offer supportive counselling to pre-1998 donors, the Labor Government states that they will ensure the provision of counselling and support to all donors (Department of Health & Human Services, State of Victoria, 2015 Jun. 29) and it naturally follows that the provision has to inevitably consider the donors' family members, especially their children.

3.3 Creating the environment to make the 2016 Amendment Act function

The Victorian Assisted Reproductive Treatment Authority (VARTA) is an independent statutory authority funded by the Victorian Department of Health and Human Services, established under the 2008 Act. The third feature of the 2016 Amendment Act is the revision of the 2008 Act to strengthen the legislative power of VARTA to collect and manage information concerning donor conception and improve its support for people concerned.

In Victoria, information about donor treatment procedures is managed by the statutory body via the Central Register. However, before the enforcement of the 1984 Act in 1988, donors were anonymous and the record on donor conception had not been put in the registry, which makes access to donor information very difficult. Destroying records relating to pre-1988 donor treatment procedures is prohibited, and the records have to be kept for at least 99 years under the 2008 Act (s. 121, s. 121A), but there is no guarantee that the information is whole and correct. In some cases, donors might have already deceased.

Without information on the donor, offspring cannot exercise their rights to know, and the legislation would not work practically. The Victorian Government, as implied in principle 4 of the discussion paper, recognizes the need for the legislative authority to be actively involved in collecting information from various sources concerning past donors, so that donor-conceived offspring can be guaranteed their rights.

Under the current 2008 Act, VARTA has limited information concerning donor conception, since the donor register is managed by the Registrar of Births, Deaths and Marriages (Registrar). By the introduction of the 2016 Amendment Act, the register will be transferred to VARTA, and it will be able to provide "one door in" service for any person seeking information and support concerning donor conception.

The notable functions added to VARTA are as follows:

(1) A birth concerning donor conception will be reported to VARTA (revised 2008 Act ss. 51, 52, 52A, 52B) and VARTA will give the information to the Registrar (revised 2008 Act s. 52AA) so that it will be recorded on the donor-conceived offspring's birth registration. The Central Register will be kept by VARTA (revised 2008 Act s. 53) and VARTA will mediate the contact (based on the contact preference) using the information on the Register.

(2) VARTA will be able to request information on donor treatment other than from registered ART providers. A person who receives a request must make all reasonable efforts to locate the requested records and if the person is in possession of the requested records, the person must give the records or copies of the records to VARTA. (revised 2008 Act s. 56B)

(3) VARTA can request genetic test results of people who are suspected to be donors or their relatives for the purposes of establishing a genetic link between the person whose name is entered on the Register and the applicant (revised 2008 Act s. 56L, s. 56M).

Victoria, for the first time, will begin using genetic tests to ensure the genetic link between the donor and donor-conceived offspring. But here, too, careful consideration is given to donors' children, especially for those who do not know their parent is a donor. Even to collect information concerning past donor conception, VARTA is severely restricted from contacting a donor's child (revised 2008 Act s. 56B (3), s. 56J (4)).

3.4 Concern to relieve legislative burden on medical practitioners

In order to perform medically assisted donor conception, trust between medical practitioners and donors is indispensable. Medical practitioners, who had promised to keep anonymity, argued that allowing offspring born under donor anonymity the retrospective right to know their origin could "seriously undermine the public's trust in the medical profession (Australian Medical Association Victoria president Harry Hemley; The Age, 2012 Mar. 29)." They claim that "the young men who were recruited were promised anonymity forever (Melbourne IVF medical director John McBain; The Age, 2012 Apr. 11)" and although "doctors would have to abide by any law change," they worry about "the potential impact on people who had donated 30 years ago and not told their families" (Monash IVF medical director Gab Kovacs; The Age, 2012 Mar. 29).

On the release of the discussion paper by the government, *The Age* (2015 Jun. 28) reported the proposed amendment to the law by introducing Health Minister Jill Hennessy's comment: "Whether it's to know more about their heritage, to learn their medical history, or so that they can try to connect with the generous individuals who donated to give them life, all donor-conceived Victorians should have the same rights to access information about where they came from," which shows the desperate intention of the government toward the amendment. On the other hand, it predicted the amendment's potential impact, saying, "the legislation – to be introduced later this year – is likely to polarise the community. Doctors, for instance, have previously warned that retrospectively changing the law would breach assurances granted to men who donated on the condition of anonymity, some of whom provided their sperm simply for money or altruistic purposes."

The 2016 Amendment Act was passed despite the strong objections from medical practitioners. However, as the government stated in principle 5 of the discussion paper, it has given consideration so as not to "place undue regulatory burden on medical practitioners and health services." The understanding of medical practitioners would be indispensable in collecting the donor treatment information.

In the new section 56I of the 2008 Act, it provides that the medical professional privilege or the contravention of ethics would not be reasonable excuses for declining the request to provide information. In other words, the 2016 Amendment Act protects medical practitioners from constituting unprofessional conduct or breaching of professional ethics by providing the information of past anonymous donors.

The government states that "The Government recognises that implementing these proposed changes may have a significant effect on many people's lives and so great care is being taken to ensure it is being done with extensive support and sensitivity" (Department of Health & Human Services, State of Victoria, 2015 Jun. 29, p.12). The statement can be read as to include care toward medical practitioners as well.

4. The issues toward guaranteeing all donor-conceived offspring the right to know their origin: what can we learn from Victoria?

Up to this point, the case of Victoria has been analyzed by focusing on the issues surrounding the recent reform by the 2016 Amendment Act. In this chapter, based on the case study of Victoria, the unresolved issues for legislating ART in Japan will be examined.

In Japan, the issues concerning ART originate from these points:

(1) Although the number of families using ART is increasing, there is no overall legislation regulating ART in Japan.
(2) Offspring have continued to be born by donor insemination (DI) under conditions of donor anonymity for more than half a century without legal regulation concerning ART. (DI is the only donor conception allowed to practice in accordance with JSOG guidelines.)

As a result, the following problems have occurred: 1) Many Japanese women are going abroad to acquire egg donations (The Asahi Shimbun, 2011 Jul. 27). 2) Status concerning parenthood related to offspring born by donor conception is not made clear by the legal provision, and there have been some court cases concerning the legal status of the children (The Asahi Shimbun, 2013 Dec. 12). 3) DI offspring are calling for their rights to know their origin in Japan as in other jurisdictions (DI Offspring Group & Nagaoki, 2014). 4) Donor records have not been required to be kept under law, and some have already been destroyed (The Yomiuri Shimbun, 2012 Jul. 13).

Problems 1) and 2) are expected to be resolved by legislating donor conception and guaranteeing the legal status of donor-conceived offspring and parents. Problems 3) and 4), on the other hand, are deeply related to guaranteeing the right of donor-conceived offspring to know their origin, especially the retrospective right of offspring to know their origin, purporting the disclosure of the identity of past donors who donated their gametes under the condition of anonymity, previously discussed in this paper.

In Japan, the ART Committee report in 2003 recommended that the use of donor gametes including eggs for infertile married couples and the right of donor-conceived offspring to know their origin should be recognized, but it was not submitted to the parliament (The Chugoku Shimbun, 2004 Jan. 25). Although the need for the legislative system concerning ART has been recognized and reported in the media, more than a decade has passed without specific legislative action. In October 2013, a project team concerning ART was set up in the Liberal Democratic Party of Japan. It was reported that they would aim to submit the ART bill to the parliament by House members, and it seems that the movement toward the legislation has been gradually rising (The Asahi Shimbun, 2013 Nov. 3). However, the issue surrounding the retrospective right of donor-conceived offspring to know their origin has not been brought into focus. Problem 3) indicates the importance of discussion about this issue.

Recently, there was a case of a DI offspring, on recognizing he has no biological relationship with his father by a blood test, requested the responsible hospital which practiced DI to his mother, to disclose the information on his donor. The hospital was reported to have answered as follows, "To specify the sperm donor is difficult. Even if the donor is specified, he donated his sperm under the condition of anonymity, so his identity cannot be disclosed." (The Mainichi Shimbun, 2014 Mar. 25, 2014 Mar. 26)

To retrospectively guarantee donor-conceived offspring's right to know their origin, the understanding of donors and their families is crucial. The case of Victoria provides us with the information to overcome this problem. Especially for donors who donated their gametes anonymously in the past, the unexpected contact with the offspring followed by the disclosure of their identity has been revealed to be one of their biggest concerns. The "contact preference" system introduced by the 2016 Amendment Act, aimed at confirming the wishes of both donor and offspring regarding the contact, is one of the challenges in overcoming this issue.

Concerning problem 4), as it was reported in the newspaper article that records of donors are being destroyed, there is a demand for the establishment of a public regulatory body that collects and manages the information on donor conception in Japan. Even if offspring were guaranteed their right to know the origin, without the record properly kept and managed, it would be extremely hard to identify the donor. In Victoria, the 2016 Amendment Act strengthens the role of VARTA to collect and manage the information, but in Japan, there is no independent statutory authority that specializes in ART issues, such as VARTA in Victoria, and the concerns of sperm donors and DI families are seldom heard.

A further issue to be indicated is that DI still remains a family secret in Japan (Kuji et al., 2000), and sperm donations continue to be practiced under the condition of donor anonymity, lacking public understanding of and sensitivity to the needs of donor-conceived offspring and their families. This problem seems to be one of the reasons that bring about the delay in legislating ART.

In Victoria, as well, the rights of offspring who were already born under donor anonymity had not been recognized.

The following is a quote from a DI offspring who was told of her DI origin from her parents at the age of 12: "Choices were made before I was born that mean I am not able to access information that most of the population is able to access." "It's horrible to think there's a huge chunk of my identity that is a secret." (Hayley Smith; The Age, 2015 Jun. 29)

To resolve this situation, the Victorian Law Reform Committee tabled a report recommending donor-conceived offspring to be retrospectively allowed the right to know their origin. The move by the Committee toward guaranteeing the offspring's right has shed light on the social argument as well as providing a way to tackle the issues under the lead of the state government by amending the current 2008 Act. Finally, the enactment of the 2016 Amendment Act will give all donor-conceived offspring the right to know their origin, regardless of when they were born.

In Japan, more than sixty years have passed since the first DI baby was born in 1949 under the guarantee of donor anonymity. In order to ensure DI offspring's right to know their origin, legislative support toward donors and their families and the public statutory body operating within a strong public accountability to collect and manage the information would be essential. Medical practitioners should also be protected by the legislation. The precedent case of Victoria clearly shows the importance of further advancing the argument to legislate the right of donor-conceived offspring to know their origin in Japan. The principles for the 2016 Amendment Act, which are the outcome of the 30-year experience of Victoria, can provide a pathway toward legislation that reflects the rights of all offspring born from ART.

Notes

1 The Japan Society of Obstetrics and Gynecology (JSOG) set up a registration system for in vitro fertilization (IVF) and embryo transfer in March 1986. According to the society reports, the number of offspring born from IVF and embryo transfer using couple's gametes in 2014 is 47,322, and the total number reported for children born so far totals 431,626 (JSOG, 2016). Across the world, the number of the IVF babies born has reportedly reached five million in 2012 (ESHRE, 2012 Jul.).

2 In Victoria, the number of reported births resulting from donor conception in the fiscal year of July 1, 2014 to June 30, 2015 is 426 (278 from sperm donation, 118 from egg donation, 30 from both sperm & egg donation), and the total number of donor-conceived births registered on the Central Register is 6,715 as at June 30, 2015 (VARTA, 2015). In Australia, the exact number of the donor-conceived offspring born so far is unknown, and estimates range from around 20,000 to 60,000 (Senate Legal and Constitutional Affairs References Committee, 2011).

3 The exact number of births from DI in Japan is unknown. JSOG says that the total number of offspring born through DI from 1998 to 2014 is 2,049, but the number of offspring born before 1998 is not reported.

4 JSOG says in its *Report on Artificial Insemination Utilizing Donor Sperm* (revised in June 2015) that "In order to protect the privacy of the sperm donors, anonymity of the sperm donors should be

maintained." As a result, offspring born from DI have no access to donor information in Japan.

5 In Australia, there is no federal law regulating ART, but the National Health and Medical Research Council (NHMRC) publishes the *Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research* (revised in 2007), the ethical guidelines on medicine and research concerning ART. It is not legally binding, but the registration system in Victoria requires medical practitioners to meet with the NHMRC guidelines.

6 The "contact preference" system allows donors and donor-conceived offspring the right to designate preference on how the contact with whom they are linked will occur. For example, they can limit the contact only through email or phone. No contact will also be a choice. The 2016 Amendment Act provides that after the person concerned is informed that their identifying information has been required to be released to the applicant, the person (donor) would be given four months to lodge the "contact preference" before their information would be released to the applicant. In the discussion paper, the period given was "two months," but in the 2016 Amendment Act, it was postponed to "four months."

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