To Whom it May Concern,

I am writing this submission in the hopes that when the Human Reproductive Technology Act 1991 (HRTA) is reviewed, that the Artificial Conception Act 1985 (ACA) is also reviewed, and that there is consideration taken for women in the same situation as my daughter, Annette Hilda Gelok, so that the HRTA/ACA includes the provision for deceased fathers to be listed on a birth certificate even if the child is conceived through artificial reproduction methods after the father has died.

My granddaughter Frankie Margaret White was born just over two years after my son-in-law Benjamin Rhys White passed away from Metastatic Ewing's Sarcoma. He was diagnosed in late October 2014 and passed away 01 May 2015. The cancer was very aggressive.

Annette and Ben had begun IVF while Ben was having cancer treatment, and were due for their next cycle 3 days after Ben died. Ben had become infertile due to prior cancer treatment in his teens, but had, following medical advice, arranged for the storage of frozen gametes. My daughter called the clinic to let them know that Ben had died and that she wanted to continue with the IVF. They informed her that under Western Australian law, she was unable to continue with IVF and that someone would call her later in the day to discuss the situation.

The lady from the fertility clinic told my daughter that the law in WA did not allow for the posthumous use of frozen gametes and that she may be able to continue IVF in Qld. She was advised to contact the Reproductive Technology Council for confirmation, which she did.

The lady my daughter spoke to at the RTC initially said that she could not use the frozen gametes or take them out of the state to use elsewhere. Annette said that she thought it was inappropriate for them to deny her moving them to a place where it was allowed, and that if they belonged to her, they shouldn't be able to stop her taking them. She said that they were looking into changing the law, but my daughter didn't have the luxury of waiting. Annette was asked to supply any documentation stating that she was the legal owner of the frozen gametes, so that her case could be discussed when the council next sat.

My daughter provided copies of the documents she had including, the consent forms from the fertility clinic and the Power of Attorney form from the storage facility in which the gametes were stored prior to use. She was also the primary beneficiary of Ben's Will.

After reviewing all of the information supplied, the council confirmed that my daughter was able to move the gametes to another state, but could not use them in WA.

This whole process added a significant amount of time and caused my daughter a lot of distress. It also added a much bigger gap between Ben's death and the birth of his daughter, which I believe could have been avoided had the above delays not occurred.

My daughter found a clinic in Qld and started the process to confirm legality of transporting and using the frozen gametes there, and then began treatment. She had additional costs that included registering with the new clinic, legal costs, transport costs for the frozen gametes (close to $2500), and on top of all that, flights, accommodation and treatment fees on more than one occasion.

On completing the registration form for the birth of my granddaughter Frankie for the Department of Births, Deaths and Marriages she had to explain why he was not signing the registration. To confirm the details, I also submitted a letter explaining the circumstances with a request for Ben's name to be on the birth certificate.

My daughter received the birth certificate without Ben's name and a letter from the Department that informed her that her baby's birth could not be registered with her father's name because the current law in Western Australia does not allow the Registrar to record him as a parent to her daughter, which was heartbreaking news. It was apparently because she was conceived through fertility treatment and that the legal parentage is determined by the Artificial Conception Act 1985 (ACA), and not the Births, Deaths and Marriages Registration Act.

On reading the ACA, it states –

6. Rule relating to paternity

(1) Where a married woman undergoes, with the consent of her husband, an artificial fertilisation procedure in consequence of which she becomes pregnant, then for the purposes of the law of the State, the husband –

(a) Shall be conclusively presumed to have caused the pregnancy; and
(b) Is the father of any child born as a result of the pregnancy.

Nowhere in the act does it mention that late my son-in-law is not the parent of my granddaughter because he is deceased, yet the Department of BDM quoted the ACA as the determining factor in not stating his name on my granddaughter's birth certificate.

On reading the Human Reproductive Technology Act 1991 (HRTA), information that prohibits the use of my late son-in-law's name on my granddaughter's birth certificate could not be found.

In the letter received by my daughter, it was recommended that she contact the Executive Officer of the Reproductive Technology Council of WA, who could explain the issue relating to the conception and paternity as it relates to the ACA. Yet, the information she received from the RTC was that the RTC does not control birth registration, and that her only course of action was to write a letter to the Minister of Health in the hopes that a review of the ACA and the HRTA would take place in the near future. Hence this submission.

I can't understand why my daughter can't have her husband's name on her daughter's birth certificate, even though he is the biological father, yet others can refuse to name a father at all for a variety of reasons, and in the case of a same sex female couple, the de-facto of the pregnant woman is considered the parent of the unborn baby. I am not opposed to this (for the child's sake), but biologically that is not possible.

I believe the request to have my late son-in-law's name on my granddaughter's birth certificate is fair and reasonable even if it has to be noted that he was deceased at the time of birth. He is after all her biological father and he and my daughter had commenced the IVF program prior to his death, and under the circumstances his name should be on the birth certificate.

I sincerely trust that you will review the abovementioned anomalies when the Human Reproductive Technology Act 1991 (HRTA) is reviewed.

Gaye W Gelok

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Gaye Gelok.

8 March 2018