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Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
East Melbourne Vic 3002

**Inquiry into access by donor-conceived people to information
about donors**

1. This submission is directed at the injustice which is part of Victorian law, which has the effect of preventing a Victorian who was born as a result of donor conception procedures from obtaining access to identifying information about his/her genealogical (donor) father.
2. The Assisted Reproductive Treatment Act 2008 (ART Act) has the effect that donor offspring born prior to 1 July 1988 (all of whom are self evidently now adult) have no right to access such critical information about themselves.
3. I know a number of donor conceived people who are denied access to this important personal information and who, as a result, feel a deep sense of deprivation, as well as justifiable anger. Some of them will make submissions to your Committee about the impact of this denial on them personally; members of the Committee could not fail to be moved by their stories.
4. How could it be, as a matter of justice, that our law has the effect of preventing a person having access to existing information as fundamental as:
 - a. the identity of his/her father;
 - b. one half of his/her genetic makeup, family medical history, cultural heritage, family tree;
 - c. the identity or existence of half-siblings?
5. At the time the ART Act was passed, there were many submissions made against this aspect of it
6. The manifest injustice of the law in this regard was acknowledged by many Victorian politicians on all sides (as can be seen in Hansard reports of the debates), but despite this, the ART Act was passed, partly because of assurances by the then government that this aspect would be "reviewed" in the very near future.
7. "Reviewed" it certainly has been, but "reformed" it has not.
8. Since 2007, the issue of the rights of offspring to have access to whatever information exists about the identity of

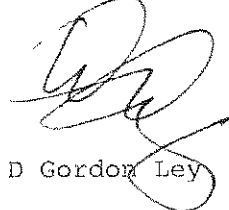
his/her natural father and siblings has been extensively canvassed, as follows:

- a. 2007 Victorian Law Reform Commission Inquiry Into ART and Adoption final report;
 - b. debate on this issue in both Houses on the ART Act (culminating in refusal by government to implement widely requested reform on this issue because of promised referral to Vic Parliament Law Reform Committee);
 - c. reference by Victoria to Standing Committee of Attorneys General, leading to;
 - d. Senate Legal and Constitutional Affairs Committee enquiry and report;
 - e. Vic Parliament Law Reform Committee (interim report, September 2010);
 - f. the present Vic Parliament Law Reform Committee, (which is not due to provide its report for almost another 12 months).
9. The irony, for those whose lives are so deeply impacted by this bureaucratic dance around their continued denial of rights, is that it seems that each of the enquiries has in essence reached similar conclusions, which could be summarised as follows:
- a. Recognition of the manifest injustice to the donor offspring who are denied access to such fundamental information about themselves.
 - b. References to donors' "legal", "contractual" "guaranteed privacy" rights, but concluding with expressions of regret that the inquiry had been unable to obtain any firm understanding or evidence about these matters and suggesting the need for a further enquiry (The Senate report is typical; see for example clauses 7.24 to 7.26).
 - c. Recognition of the importance of the need for "urgent" action to preserve the records of the donor procedures, which remain legally unprotected and many of which are thought to have been lost in recent years. To date no such action has been taken, so far as I am aware.
10. It must surely be significant that none of the enquiries has uncovered evidence sufficient to justify the continued denial to significant numbers of Victorians of access to records containing fundamental personal information. Surely, by now, whoever is opposed to this reform has had adequate opportunity to make their case.
11. When viewed against the weight of the fundamental rights which are clearly denied to donor offspring, the arguments in favour of the denial are, it is submitted, flimsy indeed.
12. Donor conceived persons find it hard to accept that the right of a sperm donor to keep private the fact that his actions resulted in the birth of a child should prevail over

- the right of the child (when he/she is an adult) to have access to available information about the identity of his/her father, and therefore his/her ancestry, racial origin and genetic makeup. The rights of the offspring which are denied are disproportionately much more important than those of the donor which are being protected.
13. Nobody is seeking to invade someone's "privacy": these Victorians simply want to know the identity of close members of their genetic family. This surely is their information.
 14. If a donor father who is identified does not wish to meet, that is their right. It is a matter for a donor who is identified and contacted by his child to decide what, if any, ongoing contact he wishes to have with the child.
 15. "Privacy rights" are routinely weighed against the rights of others and sometimes overridden where they conflict. It is submitted that it is hard to sustain an argument that the "right to privacy" of a donor should prevail against the right of the person fathered as a result of his actions to have access to knowledge as to the identity of his/her parent.
 16. It is appreciated that in some cases information about donors does not exist. Presumably nothing can be done about this. However, many offspring have been told that some identifying information about them does exist; but that they will be denied access to that information.....imagine how that must feel.
 17. In relation to the "breach of agreement" argument, the following questions are relevant, namely who are the parties and what is the form of this "agreement" which is given such weight? So far as I am aware, there was no particular form of agreement, which typically consisted of a brief application and consent form. Whatever its formality, how could it in any way be said to be "binding" on the person conceived?
 18. In adoption, in respect of which Victoria was world leader in 1984, it is no longer controversial to allow any adoptee (whenever born) access to birth information. This is despite the fact that opening of adoption records may reveal truly tragic situations (of a type which do not occur with donor conception). The adoption experience in this regard has been a true success and has been widely copied. In all enlightened jurisdictions adult adoptees have for the last 20 years or so had access to existing identifying information (subject to first participating in appropriate counselling), whatever assurances may have been given at the time to the parent who gave up the child for adoption.
 19. The fact that the "secrecy provisions" of donor conception may still apply forever to some children being born now, and indefinitely into the future (if pre-1988 gametes are used) is an embarrassing anomaly which illustrates the urgent need for reform on this issue. See for example page xv of interim report of Vic Parliament Law Reform Committee (September 2010).

20. It is submitted that the ART Act is not compatible with Charter of Human Rights and Responsibilities Act (the Charter) in a number of respects, namely section 8 of the Charter (Recognition and equality before the law), section 17 (Protection of families and children) and in particular section 19 (Cultural rights). The ART Act has the effect of denying access to knowledge of a person's "racial background". By virtue of that denial, such person, as a person "with a particular... racial...background" is "denied the right in community with other persons of that background, to enjoy... his/her culture...".
21. Finally, there remains the fact that it is, I suggest, impossible to reconcile the effect of the ART Act in relation to denial of information to donor conceived persons with the guiding principles set out in section 5 of the ART Act itself. These guiding principles are stated to include:
"*(a) the welfare and interests of persons born or to be born as a result of treatment procedures are paramount;*"
"*(c) children born as the result of the use of donated gametes have a right to information about their genetic parents;*"
22. It is my submission that this issue represents a glaring injustice, which now requires urgent redress. It is hoped that that the Committee will see this issue in the same light and will recommend accordingly.

Yours faithfully



D Gordon Ley