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Executive Officer
Victorian Parliament Law Reform Committee
Parliament House
Spring Street
East Melbourne
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Submission to the Inquiry into Access by Donor Conceived People to Information About Donors

Who is VANISH?

VANISH is a search and support organisation providing desperately needed assistance to relieve the suffering of people who have experienced separation from family of origin through adoption or donor-conception.

Following the introduction of the Adoption Act (1984), Community Services Victoria was authorised to process applications from adult adoptees wanting to obtain identifying information about their birth families. Due to overwhelming demand as a result of the estimated 62,000 adopted people this legislation affected, the Victorian Government, in conjunction with JIGSAW, the Association of Relinquishing Mothers (ARMS) and the Adoptive Parents Association of Victoria (APAV) established VANISH (Victorian Adoption Network Information & Self-Help) in 1989 to take over this role. VANISH is funded by the Victorian State Government through the Department of Human Services, supplemented by fundraising and private donations.

Originally the board of VANISH comprised an equal number of representatives from each of these groups plus two independents, charged with managing a specialised search and

support service for anyone separated from their family of origin under the provisions of the Adoption Act (1984). Recently VANISH has extended its services to include donor-conceived people, and has members across Australia.

The core services of VANISH are to provide information regarding people's legal rights to seek biological family, support people in their dealing with government agencies and outreach to other members of their original families, conduct searches to locate biological family, run regular support groups for offspring, biological and non-biological parents and to empower individuals to address the issues in their lives related to their experience of adoption or donor conception.

The following are the matters before the Inquiry that VANISH has chosen to address:

- a. the legal, practical and other issues that would arise if all donor-conceived people were given access to identifying information about their donors and their donor-conceived siblings, regardless of the date that the donation was made;**

27 years ago Victoria faced almost this exact same law reform scenario. Adoptees were beginning to speak out about the physical, psychological and emotional damage caused by the secrecy provisions in closed adoptions and the harm caused by their inability to find out the identity of their biological parents. They were faced by opposition, mainly relating to previous promises of anonymity given to relinquishing parents at the time of the adoption and concern for the privacy of relinquishing parents who did not wish to be contacted.

Victoria was the first Australian state to introduce what has become accepted as ground-breaking legislation, allowing all adoptees access to information about their biological parents, regardless of when they were born. In due course it was copied by other state governments and replicated in New Zealand and the United Kingdom. In recent years some states in the U.S. and Canada have followed suit.

Fortunately in 2011 the Victorian Law Reform Committee has available to them the legislative model and 27 years of experience providing evidence as to the success of the adoption model in discarding secrecy provisions and allowing people access to information concerning their identity.

Knowledge about identity is a basic human right (see for example UN Convention on the Rights of the Child Sections 7, 8 & 9) and should not be compromised by the wishes of either

party, if they do not want to be contacted. All those involved are adults and those not wanting contact can simply make their wishes known, as do adults in other spheres of life. Not wanting contact is insufficient reason for either party to be denied information about the other.

Establishing reciprocal information access rights for donor conceived people and donors will confirm Victoria's place as a socially progressive world leader in a legislative setting that treats adults as adults.

b. the relevance of a donor's consent or otherwise to the release of identifying information and the National Health and Medical Research Council's ethical guidelines on the use of assisted reproductive technology in clinical practice and research;

VANISH notes that that in the interim report released in September 2010 the VLRC did not uncover any evidence regarding the existence of statement and consent forms or 'contracts' prohibiting the release of information about the donor's identity to either the donor-conceived person or a third party (e.g. a central donor register). In fact, the one donor statement and consent form the committee received only stipulates the identity of the donor shall not be released to the recipient parents. VANISH notes that a contract between donor and child would have been impossible, due to the child not yet being in existence, and therefore unable to be bound to a contract.

The NHMRC ethical guidelines on the use of assisted reproductive technology in clinical practice and research are GUIDELINES and therefore not enforceable by law. The fact that they would be superseded by a change in the law means they are not relevant.

c. any practical difficulties in releasing information about donors who provided their gametes before 1 July 1988, because in many cases records are not available either because the procedure was carried out privately or records were not stored centrally;

Donor conception that occurred in a clinical setting in Victoria prior to 1988 occurred at Prince Henry's Hospital, the Royal Women's Hospital and the Queen Victoria (now Monash) Hospital. Through individual requests from donor-conceived people to each of these institutions, it is believed that most of the records from these hospitals are intact. In cases

where records have been destroyed this is very unfortunate and the affected people should be given the option of DNA testing to establish matches with biological relatives. However the fact that some records are missing should not affect the right of people whose records do exist to have access to the information contained within those records.

d. the options for implementing any changes to the current arrangements, including nonlegislative options;

VANISH believes that the best option for changes to the current arrangements is legislative change as this will remove ambiguous 'grey areas' regarding what is or isn't permissible for clinics, doctors and the Registrar in possession of the donor registers. The 'grey area' is a constant theme to the current confusion, leading to the grossly unfair situation of different rights for donor-conceived people conceived at different clinics prior to 1988. VANISH recommends that legislative change should include

- a. immediate implementation of Recommendation 1 of the interim report from the Victorian Parliament Law Reform Committee (Sept 2010) which calls for urgent protection of donor conception records;
- b. amending the ART act to explicitly allow all donor-conceived people to apply for information about their genetic relatives using the model introduced for changes to the adoption law in Victoria in 1984.

e. the impact that any such changes may have on the donor, the donor-conceived person and future donor programs;

Changes to the secrecy provisions in donor conception will redress the balance of rights and allow donor-conceived people access to vital information regarding their identity. Some donor-conceived people may be satisfied knowing medical information, or having some questions answered. Others will wish to exchange photographs with family members. Some may wish to meet their biological family, or pursue an ongoing relationship. It depends on the individual. Similarly, some donors have a keen interest in knowing their donor children are happy, healthy and loved, while others may be happy to answer specific questions, and others may prefer to choose not to pursue a relationship. The main impact will be empowerment and choice, as opposed to the government currently restricting all flow of information, both from donor-conceived person to donor, and vice-versa.

Victoria does not currently accept new donors who do not agree to for their biological children to have an unqualified right to access their identity, once the child turns 18. Therefore it is unlikely that addressing the anomaly that prevents older donor conceived people having equal rights to information will impact future donor programs.

f. the impacts of the transfer of the donor registers currently held by the Infertility Treatment Authority to the registrar of births, deaths and marriages; and

The transfer of the donor registers from the Infertility Treatment Authority to the registrar of Births, Deaths and Marriages was unfortunately a retrograde step. Many vital services, including availability of counselling to all donor-conceived people, their families, donors and their families, and the existence of the 'mailbox system' allowing people to communicate via letter without releasing their contact details, were lost.

Removing secrecy provisions must go hand-in-hand with reinstating the services previously provided by the ITA. In particular donor-conceived people and donors need access to an expert counsellor who can help them work through their own feelings and questions, and where necessary act as an intermediary to facilitate contact. This could be done either by resourcing the current service provider (FIND) or reinstating authority over the donor registers to the ITA (now known as the Victorian Assisted Reproductive Treatment Authority or VARTA). Considering the very high levels of satisfaction with previous service users who dealt with the ITA, the second is considered the better option.

Counselling is vital. There are a number of Australian and overseas research findings on the impact of adoption on birth parents and adopted persons. The life-long impact resulting from the separation at birth has been referred to by Nancy Verrier as "the primal wound." While Verrier's book of this name focuses on the experiences of adopted people, many donor conceived adults also experience the same feelings of grief and loss associated with being separated from one or both biological parents. Yet many donor-conceived adults continue to be denied access to identifying information and grief counselling, because of the present day Assisted Reproductive Treatment legislation.

VANISH is happy to appear at any future public hearings to provide more detailed information to the Law Reform Committee on this issue.