Australian Government
Attorney-General's Department

Secretary

10/19106

19 November 2010

Senator Guy Barnett
Senate Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator

Inquiry into donor conception in Australia

Thank you for your letters to the Secretary dated 30 September 2010 and 29 October 2010 requesting assistance from the Attorney-General's Department with the Committee's inquiry into donor conception in Australia. I apologise for the delay in responding.

This letter will respond to the issues raised in your letters and to the questions on notice outlined in the hearing on 29 October 2010 and provided by the Committee to Ms Toni Pirani and Ms Annemarie Devereux by email on 3 November 2010.

Constitutional and international human rights law

It has been the longstanding position of the Attorney-General's Department, under successive governments, that it does not provide legal or constitutional advice to parliamentary committees. That does not mean, of course, that the Department is never in a position to discuss a public policy position of the Government of the day. However, as indicated at the hearing on 29 October 2010, the Department has not in this case been involved in any substantive consideration of constitutional and international human rights laws issues. I note that no other Department has asked the Attorney-General's Department for advice on these issues. The Department was therefore not in a position to assist the Committee on these aspects of the Committee's inquiry.

Standing Committee of Attorneys-General (SCAG) consideration

In your letter, you stated that SCAG would be considering the donor registration project in its meeting of December 2010. This was based on a statement made at the hearing on 29 October 2010 by officers of the Department. Following the hearing, officers from the Department reviewed the proof copy of Hansard.

In an exchange between Senator Trood and Ms Toni Pirani, Ms Pirani states on page 31 "We are very keen to progress this issue. I am confident that it is a matter that will be receiving consideration by SCAG in December to determine a clear way forward with it". I wish to clarify that Department is seeking the Attorney-General's views on the involvement of Health and

Community Services Ministers before the matter is placed on the SCAG agenda for any further consideration.

You also sought any evidence or papers that have been developed in the context of SCAG consideration of this issue.

In January 2009, SCAG released the discussion paper *A proposal for a national model to harmonise regulation of surrogacy*, which is available on the SCAG website. One of the items in the paper discussed the possibility of developing a paper outlining proposals for a national donor register.

On 16 March 2009, the Attorney-General wrote to the SCAG Ministers to raise the issue of a national register and a possible discussion paper. At the SCAG meeting of 16-17 April 2009, Ministers discussed the importance of all persons born as a result of assisted conception procedures having the means to access information concerning their genetic heritage. SCAG Ministers also agreed to an officer-level working group developing a discussion paper on a national model for registration of donors in consultation with Health and Community Services Ministers.

No formal terms of reference were developed for the work of the officers' level working group. Broad guidance was provided in the SCAG paper that accompanied the April 2009 decision. The content of the paper itself is confidential to SCAG, and cannot be released without the consent of the Minister from each jurisdiction.

The substance of what the working group is considering is also confidential. However, it is clear that in undertaking its work, the working group would need to consider the existing regulatory framework and legal issues relating to donor registration. In the Department's view, there is currently no consistency in the regulatory framework for the registration and record-keeping practices relating to information about conception donors or the manner and form in which information is made available to donor conceived individuals.

Due to the subject matter and issues involved, it has become apparent that significant involvement will be required from Health and Community Services Ministers to progress the national donor register initiative.

Comparison of laws applying to adoption and donor conception

Adoption, and the rights of adopted persons, is primarily the responsibility of the States and Territories. Each State and Territory has laws in place that grant certain information rights to adopted people and to their adoptive and birth families, which also includes provisions for vetoes on the release of information. A summary of the relevant State and Territory laws governing access to information is provided in the annual Adoptions Australia Report published by the Australian Institute of Health and Welfare (AIHW). An excerpt from the report is attached and the full version is available on the AIHW website.

The Department's role in adoption is limited to intercountry adoption matters. The Department has overall responsibility for managing Australia's intercountry adoption programs in accordance with the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*. Intercountry adoption work is undertaken in close consultation with the States and Territories who remain responsible for processing individual cases in accordance with their respective laws.

The Hague Convention requires available information about children's origins, including their parents' identity, to be preserved by each country and to be accessible pursuant to any applicable laws in effect in that country. The ability of a person adopted under Australia's intercountry adoption arrangements to access identifying information about their biological parents will therefore primarily be governed by the laws in place in the overseas country of origin. Where that information has been provided by the overseas country directly to the State and Territory authority that facilitated the adoption, access to that information will be governed by State and Territory laws.

The Department does not have a document that compares the rights of adopted persons to those of donor conceived individuals. However, the Department is able to provide a table of State and Territory legislation governing assisted reproductive technology and donor registration and, as referred to above, an excerpt of the comparative information on adoption laws as published in the Adoptions Australia report. These documents are attached.

Council of Australian Governments (COAG) consideration of assisted reproductive technology

At the hearing on 29 October 2010, the Committee also asked about the status of a COAG item relating to assisted reproductive technology (ART).

As indicated at the hearing on 29 October 2010, COAG has already dealt with this matter.

At the COAG meeting of 5 April 2002, COAG agreed to work towards a nationally consistent approach to ART. In particular, COAG agreed that Accreditation by the Reproductive Technology Accreditation Committee (RTAC) of the Fertility Society of Australia should provide the basis for a nationally consistent approach to the oversight of ART clinical practice in Australia.

I note that Fertility Society of Australia is responsible for monitoring the effectiveness of the RTAC Scheme and it is currently conducting a review of the RTAC Code of Conduct and RTAC Scheme.

Yours sincerely

Renee Leon
Acting Secretary

Australian Government
Australian Institute of
Health and Welfare

Better information and statistics
for better health and wellbeing

CHILD WELFARE SERIES
Number 48

Adoptions Australia 2008–09

February 2010

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Canberra
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3.6 Access to information

Adoption law in Australia has undergone significant change since the 1980s in relation to access to information, starting with Victoria's *Adoption Act 1984*. Currently, all states and territories have legislation that grants certain information rights to adopted people who are aged 18 years and over, and to their adoptive and birth families. However, the extent of these rights and of the protection of the privacy of parties to the adoption varies among the jurisdictions (*Appendix B.2* and *B.3*).

Information applications

All states and territories have established adoption information services or information and contact registers (or other similar systems). The requirements for accessing information about a past adoption differ for each jurisdiction (*Appendix B.3*). For example, in Victoria, Tasmania and the Northern Territory, people requesting information must attend an interview with an approved counsellor before the information can be released.

In NSW, adopted persons and birth parents have the right to information without mandatory counselling, except when the information to be released will be distressing (such as the death of the other party). An interview is required, however, when one of the parties wishes to lodge a contact veto. In Western Australia, where a contact veto is in place, a person who wishes to gain access to information is required to be interviewed by an approved counsellor and sign an undertaking not to contact the vetoer. There are penalties of $10,000 and 12 months imprisonment for breaching an undertaking.

The purpose of counselling is to ensure that the rights of all involved parties are fully understood and that people are made aware of some of the issues which may arise in the search and reunion process.

Parties to an adoption may apply for access to identifying or non-identifying information. 'Identifying information' is information, such as the original birth certificate (adopted persons) or the amended birth certificate (birth parents), which identifies the actual person about whom the information is being sought. 'Non-identifying information' does not identify the person about whom the information is sought; this can include age of birth parent(s) and place of birth.

In 2008–09:

- There were 3,607 information applications made—83% for identifying information and 17% for non-identifying information (Table 3.13). This was the highest number recorded since 2002–03 (Table A23).
- The majority of the information applications (both identifying and non-identifying) were made by the adopted person (73% in total); 15% were made by the birth parents and 8% by other birth relatives (Table 3.13).
- Over three-quarters (78%) of adopted persons seeking identifying information were aged 35 years and over (Table 3.14).
- A higher proportion of female than male adopted persons sought identifying information (57% compared with 43%) (Table 3.14).

Table 3.13: Number of information applications lodged, by person lodging application, 2008–09

Person lodging the application	NSW	Vic[a]	Qld	WA[b]	SA	Tas	ACT	NT[b]	Australia
Identifying information									
Adopted person	676	494	532	220	272	69	28	39	2,330
Adoptive mother	—	—	—	6[c]	2	1	2	—	11
Adoptive father	—	—	2	1	—	1	—	—	4
Birth mother	142	—	103	42[d]	49	10	7	7	360
Birth father	15	—	2	17	10	3	3	—	50
Other birth relative(s)	43	—	30	39	16	14	—	3	145
Other adoptive relative(s)	5	—	—	2	—	—	—	—	7
Child of adopted person	19	37	—	15	17	1	—	—	89
Unknown	—	—	15	—	—	—	—	—	15
Total	**900**	**531**	**684**	**342**	**366**	**99**	**40**	**49**	**3,011**
Non-identifying information									
Adopted person	—	—	100	176	2	—	—	39	317
Adoptive mother	—	2	—	5[e]	—	1	—	—	8
Adoptive father	—	1	—	1	—	—	—	—	2
Birth mother	—	46	14	32[f]	—	1	—	7	100
Birth father	—	8	—	15	—	—	—	—	23
Other birth relative(s)	—	85	3	38	—	1	—	3	130
Other adoptive relative(s)	—	—	—	1	—	—	—	—	1
Child of adopted person	—	—	—	12	—	—	—	—	12
Unknown	—	—	2	1	—	—	—	—	3
Total	**—**	**142**	**119**	**281**	**2**	**3**	**—**	**49**	**596**

(a) Victoria's data includes 75 adopted persons who may have received information services in previous years.

(b) In Western Australia and the Northern Territory, clients can apply for both identifying and non-identifying information in the same application. In these cases, the application is counted twice—once under 'identifying information' and once under 'non-identifying information'.

(c) Includes 5 applications lodged by both adoptive parents.

(d) Includes 2 applications lodged by both birth parents.

(e) Includes 4 applications lodged by both adoptive parents.

(f) Includes 1 application lodged by both birth parents.

Notes

1. Data predominantly relate to applicants who are party to a local adoption. Very few applicants are party to an intercountry adoption.
2. 'Identifying information' is information, such as the original birth certificate (adopted persons) or the amended birth certificate (birth parents), which identifies the actual person about whom the information is being sought. 'Non-identifying information' does not identify the person about whom the information is sought; this can include age of birth parent(s) and place of birth.

Source: AIHW Adoptions Australia data collection.

Table 3.14: Adult adopted persons who lodged information applications, by Indigenous status, age and sex of applicant, 2008–09

Age group (years)	Indigenous Australians			Other Australians			Total		
	Males	Females	Persons	Males	Females	Persons[(a)]	Males	Females	Persons[(a)]
18–19	—	—	—	21	24	45	21	24	45
20–24	—	1	1	21	44	65	21	45	66
25–34	—	4	4	90	102	204	90	106	208
35–44	9	3	12	222	271	515	231	274	527
45+	7	6	13	238	349	626	245	355	639
Total	**16**	**14**	**30**	**592**	**792[(a)]**	**1,457**	**608**	**806[(a)]**	**1,487[(b)]**
Total (%)	**53.3**	**46.7**	**100.0**	**40.6**	**54.4**	**100.0**	**43.0**	**57.0**	**100.0**

(a) Total includes 2 females whose age was unknown.

(b) 'Persons' column includes 73 persons from Queensland whose sex was unknown.

Notes

1. NSW and South Australia were unable to provide data for this table.
2. If Indigenous status was unknown, the person was included in the 'Other Australians' category. Victoria's data included 177 people with unknown Indigenous status.

Source: AIHW Adoptions Australia data collection.

Contact and identifying information vetoes

In some cases, a party to an adoption may wish to block contact or access to information by another party to the adoption. In the case of an identifying information veto (or, in Queensland, an objection), a party to an adoption may, in some states and territories, make an application requesting that identifying information not be released to any other party to the adoption (see *Appendix B.3*). A contact veto can also be lodged when a person does not wish to be contacted by another party to the adoption. These vetoes are legally binding and if a person receives identifying information and goes on to contact the other party when a contact veto is in place, legal action can be taken. Contact and information vetoes can, however, be lifted by the person who lodged them. In some states and territories, vetoes have a limited life and new applications need to be lodged for vetoes to continue.

There is no provision for vetoes in Victoria. In NSW a contact veto cannot be lodged in respect of adoption orders made after 26 October 1990, and in South Australia information vetoes cannot be lodged on adoption orders made after 17 August 1989. In Western Australia, as a result of changes made in 2003, no new contact or information vetoes are permitted to be lodged.

It is not necessary for information applications to be lodged before lodging a contact veto. For instance, contact vetoes may be lodged in relation to adoptions for which information may never be requested.

In 2008–09:

- There were 52 contact and identifying information vetoes lodged (Table 3.15).
- There were 8,633 contact and identifying information vetoes in place at 30 June 2009 (Table 3.16).
- For both vetoes lodged in 2008–09 and vetoes in place at 30 June 2009, the large majority of vetoes were lodged by the adopted person (60% and 55% respectively) and the birth parents (35% and 41% respectively) (Tables 3.15 and 3.16).
- The number of vetoes lodged each year has fluctuated, but generally declined over time from a peak of 584 in 1994–95 (Table A23).
- As in previous years, in 2008–09 the number of applications for information far exceeded the number of vetoes lodged against contact or the release of identifying information – 3,607 compared with 52 (Table A23).

Table 3.15: Number of vetoes lodged in 2008–09, by person lodging veto, for selected states and territories[a]

Person lodging the veto[b]	NSW[b,c]	Qld[b]	SA[c,d,e]	Tas[c]	ACT[c]	NT[b,d]	Total
				Contact vetoes			
Adopted person	3	11	—	4	1	—	19
Adoptive mother	..	..	—	—	—	..	—
Adoptive father	..	..	—	—	—	..	—
Birth mother	—	1	—	2	—	3	6
Birth father	—	—	—	—	—	—	—
Other birth relative(s)	..	..	—	—	—	..	—
Other adoptive relative(s)	..	..	—	—	—	..	—
Total	**3**	**12**	—	**6**	**1**	**3**	**25**
				Identifying information vetoes			
Adopted person	..	4	8	..	..	..	12
Adoptive mother	..	—	2	..	..	..	2
Adoptive father	..	—	1	..	..	..	1
Birth mother	..	8	3	..	..	..	11
Birth father	..	—	1	..	..	..	1
Other birth relative(s)	..	—	—	..	..	..	—
Other adoptive relative(s)	..	—	—	..	..	..	—
Total	**..**	**12**	**15**	**..**	**..**	**..**	**27**

.. not applicable

— nil or rounded to zero

(a) Victoria is not included in the total. In Victoria, no veto system operates. In Western Australia, amendments to the *Adoption Act 1994* gazetted in 2003 prohibit the placement of any new information or contact vetoes on adoptions after 1 June 2003. However, adopted persons turning 18, where adoptive parent(s) have existing contact vetoes, have 12 months in which to request the continuation of the current veto — in 2008–09 there was one such continuation granted. All existing information vetoes became ineffective on 1 June 2005.

(b) In some jurisdictions, only certain people may lodge a veto. In NSW, only adopted persons and birth parents may lodge a contact veto. In Queensland, contact and identifying information can be vetoed only by birth parents who signed an adoption consent before June 1991 and persons who were adopted before June 1991. In the Northern Territory, only the adopted person and birth parent(s) are able to lodge vetoes with respect to adoptions finalised before 1994.

(c) The release of identifying information cannot be vetoed in NSW, Tasmania and the ACT. In Tasmania, contact veto applications were not implemented until 18 June 1999. In South Australia, people who were involved in an adoption from 17 August 1989 cannot veto access to contact or identifying information.

(d) Both contact and identifying information are vetoed in the same veto lodgement in the Northern Territory.

(e) A veto in South Australia is valid for only 5 years—a veto must be renewed if the applicant wants it to continue for a further 5 years.

Source: AIHW Adoptions Australia data collection.

Table 3.16: Number of vetoes in place at 30 June 2009, by person lodging veto, for selected states and territories[a]

Person lodging the veto[b]	NSW[b,c]	Qld[b]	WA[d]	SA[c,e]	Tas[c]	ACT[c]	NT[b,e]	Total
				Contact vetoes				
Adopted person	2,359	179	281	—	91	48	8	2,966
Adoptive mother	..	..	233[f]	—	1	15	..	249
Adoptive father	..	..	10	—	3	14	..	27
Birth mother	1,803	75	189[g]	—	22	21	3	2,113
Birth father	53	—	8	—	1	4	..	66
Other birth relative(s)	..	..	3	—	2	3	..	8
Other adoptive relative(s)	..	..	1	—	1	..	..	2
Total	**4,215**	**254**	**725**	—	**121**	**105**	**11**	**5,431**
				Identifying information vetoes				
Adopted person	..	1,563	..	253	..	..	..	1,816
Adoptive mother	..	—	..	18	..	..	..	18
Adoptive father	..	—	..	12	..	..	..	12
Birth mother	..	1,175	..	168	..	..	..	1,343
Birth father	..	5	..	6	..	..	..	11
Other birth relative(s)	..	—	..	—	..	..	..	—
Other adoptive relative(s)	..	—	..	—	..	..	..	—
Unknown	..	2	..	..	..	..	..	2
Total	**..**	**2,745**	**..**	**457**	**..**	**..**	**..**	**3,202**

.. not applicable

— nil or rounded to zero

(a) Victoria is not included in the total, as no veto system operates in that state.

(b) In some jurisdictions, only certain people may lodge a veto. In NSW, only adopted persons and birth parents may lodge a contact veto. In Queensland, contact and identifying information can be vetoed only by birth parents who signed an adoption consent before June 1991 and persons who were adopted before June 1991. In the Northern Territory, only the adopted person and birth parent(s) are able to lodge vetoes with respect to adoptions finalised before 1994.

(c) The release of identifying information cannot be vetoed in NSW, Tasmania and the ACT. In Tasmania, contact veto applications were not implemented until 18 June 1999. In South Australia, people who were involved in an adoption from 17 August 1989 cannot veto access to contact or identifying information.

(d) In Western Australia, amendments to the *Adoption Act 1994* gazetted in 2003 prohibit the placement of any new information or contact vetoes on adoptions after 1 June 2003. However, adopted persons turning 18, where adoptive parent(s) have existing contact vetoes, have 12 months in which to request the continuation of the current veto. All existing information vetoes became ineffective on 1 June 2005.

(e) Both contact and identifying information are vetoed in the same veto lodgement in the Northern Territory.

(f) Includes 197 vetoes lodged by both adoptive parents.

(g) Includes 9 vetoes lodged by both birth parents.

Source: AIHW Adoptions Australia data collection.

B.2 Provisions for 'open' adoptions

New South Wales

NSW practice recognises that a variety of relationships may exist between a child's adoptive and birth families but strongly supports openness in adoption attitudes and actions between birth and adoptive families. An adoption plan, which may include the regular exchange of information and/or contact, is usually presented to the court at the time an adoption order is sought. Increasingly, birth parents are participating in the choice of the adoptive family for their child. Community Services, NSW Department of Human Services or agency which arranged the adoption will help with mediating ongoing contact after the adoption order, if necessary.

Victoria

The *Adoption Act 1984* provides that an adoption order can include conditions regarding information exchange and/or access between the parties. After signing the consent, birth parents are given the opportunity to express wishes concerning contact and information exchange, which are considered when placement decisions are made. At the time of signing the adoption consent, birth parents are asked whether they wish to be actively involved in selecting an adoptive family. Birth parents are encouraged to consider profile information on approved adoption applicants who have been assessed as suitable for the child, and to indicate the couple with whom they would prefer the child to be placed. After placement, there may be direct contact between the parties, or an exchange of information. When the arrangements form part of the adoption order, there is a legally binding way to resolve any disputes that may arise.

Queensland

Under the provisions of the *Adoption of Children Act 1964*, identifying information remains confidential until an adopted person reaches 18 years of age.

It is possible for adoptive parents and members of a child's birth family to exchange correspondence via Adoption Services before a child turns 18 years of age, where both parties agree to the exchange of correspondence. Families participating in the exchange of correspondence have no direct contact with each other and only non-identifying information can be communicated.

Western Australia

Since the *Adoption Act 1994*, all adoptions are considered open. All parties to an adoption have access to information, which is either 'identifying' or 'non-identifying'. The level of information depends on when the adoption took place. The 2003 amendments to the Act meant that no new information vetoes can be placed and existing information vetoes became ineffective. Contact vetoes could no longer be placed after 1 June 2003.

Adoption plans, which are a requirement for an adoption, specify whether contact will occur between the parties to an adoption and what level this will take. The contact details can be varied at a later stage through agreement and by approval of the Family Court of Western Australia.

South Australia

Under the *Adoption Act 1988*, 'open' arrangements are possible between parties to the adoption. This can involve access to information or contact between the parties. The arrangements are not legally binding and are to be facilitated and mediated by the Department for Families and Communities.

Tasmania

In general, Tasmania promotes openness. 'Open' adoptions are arranged if it is the wish of the birth and adoptive parents.

Australian Capital Territory

Legislation allows for conditional orders (that is, where contact frequency and other arrangements can be specified). Since the new legislation in 1993, all adoptions are regarded as 'open—that is, some form of contact or information exchange is encouraged. Conditional orders are now routinely recommended to the court.

Northern Territory

'Open' adoptions have been available since the *Adoption of Children Act 1994* was introduced. It is an option for relinquishing parents.

B.3 Access to information and veto systems

New South Wales

Access to information

In NSW, the *Adoption Act 2000* enables an adopted person aged 18 years or over to have access to his or her original birth certificate and to information about his or her origins. It also enables birth parents to have access to details of their child's adopted identity when that child reaches 18 years of age. Birth parents can access information about their child's life after adoption, such as their health and welfare, while the child is under the age of 18 years. With the permission of the adoptive parents, identifying information may be released.

Adoptive parents receive non-identifying information about their child's family of origin when the child is under 18 years old. With the permission of the birth parent, identifying information may be released.

Adult adopted persons, birth parents and adoptive parents are able to lodge a request for advanced notice of an application for identifying information about themselves. This will delay the release of the information for a period of 2 months to allow everyone time to prepare for its release.

Veto system

Contact veto provisions do not apply to adoptions made after 26 October 1990. Where an order of adoption was made before that date, birth parents and adult adopted persons are able to lodge a contact veto. On the lodgement of a contact veto it becomes an offence for the information recipient to try to make contact with the person who imposed the contact veto. Information about that person can be released if the applicant for the information gives a written undertaking not to use the information to seek contact.

Victoria

Access to information

In Victoria, an adopted person aged 18 years or over may apply for a copy of his or her original birth certificate and adoption records. An adopted person under the age of 18 years requires his or her adoptive parents' written agreement before information can be given, and the written consent of the birth parent(s) is required before identifying information can be given.

Birth parents and birth relatives may obtain non-identifying information from records about the adopted person. Identifying information can be given with the written consent of the adopted person if he or she is aged 18 years or over, or of the adoptive parents if the adopted person is under 18 years old.

Adult children of adopted persons have the same rights to information as the adopted person, providing the adopted person is first informed in writing or, where the adopted person is dead, a copy of the death certificate is provided.

Adoptive parents may apply for information about the birth family's background. The written permission of the birth parent is required before identifying information may be released. Also, where the adopted person is aged 18 years or over, the adopted person must be notified in writing of the intention to release identifying information about the birth family.

Veto system

There is no veto system in Victoria. Instead, a register operates on which people can record their wishes in relation to giving or receiving information and making contact. Although adopted persons can make contact with birth relatives themselves, an authorised agency makes contact with adopted persons on behalf of birth parents and relatives or with birth parents on behalf of adoptive parents. The agency will ask the parties what their wishes are and mediate between them.

Queensland

Access to information

The *Adoption of Children Act 1964* makes different provisions for the release of information depending on whether an adoption order was made before or after June 1991.

Under the provisions of the Act, birth parents who sign an adoption consent after June 1991 and persons who were adopted after June 1991 have an unqualified entitlement to receive identifying information about each other, once the adopted person reaches 18 years of age. When this happens, identifying information will be provided on request to the person who was adopted or to the birth parent or parents who signed an adoption consent in relation to the person who was adopted.

Under the provisions of the Act, identifying information can be provided to birth parents who signed an adoption consent before June 1991 and persons who were adopted before June 1991 if an objection to the disclosure of identifying information has not been lodged by one of the parties to the adoption.

In certain circumstances, eligible relatives of an adopted person or of a birth parent who signed an adoption consent can obtain identifying information.

The adopted person and the birth parent who signed the adoption consent can lodge an objection to contact only or an objection to contact and the disclosure of identifying information for adoptions before June 1991.

Veto (objection) system

In Queensland, vetoes are referred to as objections. The *Adoption of Children Act 1964* makes provision for birth parents who signed an adoption consent before June 1991 and persons who were adopted before June 1991 to lodge an objection to contact only or an objection to the disclosure of identifying information and contact.

An objection to contact or an objection to the disclosure of identifying information and contact remains in force unless it is revoked by the person who lodged the objection.

The Act makes no provision for birth parents who sign or have signed an adoption consent after June 1991 and persons who were adopted after June 1991 to lodge an objection to contact or an objection to the disclosure of identifying information and contact.

Western Australia

Access to information

At the time of placement of a child, an adoption plan must be negotiated between the birth parents and adoptive parents to facilitate the sharing of information about the child. This requirement may be dispensed with by application to the Family Court of Western Australia. Under the *Adoption Act 1994* birth parents, adoptive parents and adopted persons may obtain identifying and non-identifying information about the adoption from departmental records at the discretionary authority of the departmental CEO. For adoption orders made under the repealed Act, there are additional requirements where the adoptee is aged under 18 years. Amendments to the *Adoption Act 1994* gazetted in 2003 prohibit the placement of any new information vetoes or contact vetoes on adoptions since that date.

Veto system

In Western Australia, a 'message box system' operates which allows anonymous contact between the parties.

Under the *Adoption Act 1994*, where the adoption occurred before 1 January 1995 an adopted person aged 18 years or over, birth parents and adoptive parents can have access to birth records and adoption court records (that is, identifying information); an adopted person less than 18 years of age can have access to birth records and adoption court records subject to consent from the adoption parties. Since the 2003 changes to the legislation, no new information vetoes are permitted to be lodged. All existing information vetoes were removed in June 2005.

Less restrictive access to identifying information applies for adopted people, adoptive parents and birth parents where the adoption occurred after 1 January 1995. The 2003 legislative amendments have ensured that adoption is open and all parties will have access to identifying information.

Furthermore, as a result of these amendments, contact vetoes can no longer be lodged. The adoption plan agreed to by parties to the adoption can, however, include provisions for no contact between parties. Adoption plans are registered with the Family Court of Western Australia and can be varied by the Family Court.

South Australia

Access to information

In South Australia, adopted people aged 18 years or over can have access to information contained in their original birth certificate, as well as details about their natural parents (if known) such as occupation, date of birth, physical attributes and personal interests. Adopted people are also entitled to know the names of any biological siblings who were adopted. Once the adopted person reaches 18 years of age, the birth parents can have access to the adoptive name of their relinquished child and the names of the adoptive parents. Adoptive parents can now apply for certain information under certain circumstances. Descendents of an adopted person and certain birth relatives of the adopted person can apply for information under certain circumstances.

Veto system

Both adopted persons and birth parents can veto the release of identifying information, thus making contact more difficult, although a specific contact veto is not available. The veto provision is available only for adoptions that occurred before the state's *Adoption Act 1988* came into force.

Adoptive parents are able to lodge a veto to restrict identifying information about themselves being released to the birth parents with a provision that this does not prevent the adopted person and the birth parent from making contact with each other. Certain information is also available to adoptive parents.

Tasmania

Access to information

In Tasmania, an adopted person aged 18 years or over may apply for access to his or her pre-adoption birth record and information from the adoption record. An adopted person

aged less than 18 years may apply for this information with the written consent of his or her adoptive parents. Birth parents, birth relatives and lineal descendants of an adopted person may apply for non-identifying information at any time or for identifying information when the adopted person is aged 18 years or over. Adoptive parents may apply for non-identifying information at any time but may receive information which includes the name of a birth parent only with the written permission of the birth parent concerned.

All applicants who are resident in Tasmania must attend an interview with an approved counsellor before receiving information.

Veto system

The right to information is unqualified, but a contact veto may be registered. Any adopted person, birth parent, birth relative, lineal descendant of an adopted person or adoptive parent may register a contact veto. Where a veto has been registered, identifying information is released only after an undertaking not to attempt any form of contact has been signed. An attempt to make contact where a veto is in force is an offence. A contact veto may be lifted at any time by the person who lodged it.

Australian Capital Territory

Access to information

Under the ACT's *Adoption Act 1993*, an adopted person aged 18 years or over, birth parents, adoptive parents and birth relatives may apply for identifying information in relation to the adoption. Identifying information consists of a copy of, or extract from, an entry in a register of births relating to the adopted child, or information from which a birth parent, birth relative or adopted child may be identified (excluding the address of a place of residence).

Before the *Adoption Act 1993*, no provision for adoption information existed. However, as the Act is retrospective, information is now available for adoptions that occurred under the old Act.

Veto system

Under the ACT's *Adoption Act 1993*, only contact vetoes may be registered. The veto has to refer to a specified person or a specified class of persons.

The Act provides for an unqualified right to information, but also gives the adopted person aged over 17 years 6 months, an adoptive parent, birth parent, adult birth relatives, adoptive relatives and adult children or other descendants of the adopted person the right to lodge a contact veto. On the lodgement of such a veto, it becomes an offence for the information recipient to try to make contact with the person who imposed the contact veto.

Where information is requested and a contact veto is in force, no information is given unless the person requesting information has attended a counselling service and has signed a declaration that he or she will not attempt contact in any form.

The Act also makes provision for greater accountability in obtaining consents to adoptions, augments the rights of the birth parents and promotes a more open system of adoption.

Northern Territory

Access to information

In the Northern Territory, legislation before the *Adoption of Children Act 1994* did not provide for the release of information to any parties to an adoption. Since the introduction of the new Act there is provision for a more open process, with identifying information being available unless a veto has been lodged. Indigenous child care agencies are authorised to counsel for the purpose of supplying identifying information.

Veto system

A 3-year renewable veto may be lodged by the adopted person or birth parents with respect to adoptions finalised before 1994. There is no veto provision with respect to adoptions finalised under the new Act.

Existing regulatory frameworks for the registration of human reproductive material used for assisted reproductive technology

This table outlines the current legislative and non-legislative material in each jurisdiction that dictate what types of information donor conceived individuals (DCI) can access about their donor.

- New South Wales, South Australia, Victoria and Western Australia have legislative regimes in place.
- Clinics providing ART services must comply with the National Health and Medical Research Council's *Ethical guidelines on the use of assisted reproductive technology in clinical practice and research*.
- The NHMRC guidelines ensure compliance with the *Prohibition of Human Cloning for Reproduction Act 2002* (Cth).
- Clinics providing ART services are subject to the Reproductive Technology Accreditation Committee (RTAC) certification scheme, as set out in the *RTAC Code of Practice*.

Jurisdiction	**Legislative provisions:** **- record keeping**	**Legislative provisions:** **- access to donor information by DCIs** **- access to information about DCIs by donors**	**Type of Register** **- Mandatory?** **- Voluntary?** **- Central?** **- Govt?** **- Clinic based?**	**Non-legislative requirements governing access to donor information**
ACT	No legislation	No legislation	No register - information can be sought through the clinic where treatment is provided.	Clinics must comply with the NHMRC guidelines and RTAC certification.
Northern Territory	No legislation	No legislation	No register - information can be sought through the clinic where treatment is provided.	Clinics must comply with the NHMRC guidelines and RTAC certification.
Tasmania	No legislation	No legislation	No register	Clinics must comply with the NHMRC guidelines and RTAC certification.
Queensland	No legislation	No legislation	No register	Clinics must comply with the NHMRC guidelines and RTAC certification.

New South Wales *Assisted Reproductive Technology Act 2007* commenced on 1 January 2010.	*Assisted Reproductive Technology Act 2007* (NSW) *Assisted Reproductive Technology Regulation 2009*	ART Act sections 37 – 39, as specified in Regulation 16, provide: (a) DCI can obtain identifying and medical information about donor (b) Adult DCI can obtain year and sex of birth of sibling offspring (c) Parent of DCI can obtain donor's medical information (d) Donor can obtain year and sex of birth of offspring	Legislation provides for a central registry (Part 3 – Sections 33-41). All clinics must be registered and all registered clinics must maintain records.	Clinics must comply with the NHMRC guidelines and RTAC certification.
South Australia	The *Assisted Reproductive Treatment Act 1988* provides for a donor register. The amendment legislation enacting the register commenced on 1 September 2010.	ART Act section 18 prohibits identifying information being disclosed except – (a) in administration of the Act (b) in order to carry out an artificial fertilisation procedure (c) with the consent (given in the prescribed manner) of the donor of the material	The *Assisted Reproductive Treatment Act 1988* provides that the Minister may keep a donor conception register.	Clinics must comply with the NHMRC guidelines and RTAC certification.
Western Australia	*Human Reproductive Technology Act 1991 (WA)* *Human Reproductive Technology (Licences and*	Act allows restricted access to non-identifying information about donors, participants to the procedure and DCI. Different right to	CEO of Department of Health keeps and administers the RT Registers. Registers under section 45 of the Act require mandatory collection	Clinics must comply with the NHMRC ethical guidelines, RTAC accreditation and the RTAC Code of Practice.

	Registers) Regulations 1993 *Directions* given by the Commissioner of Health under the Act (gazetted 30 November 2004).	information provisions apply according to when the donation was made – see endnote.[1] HRT Act section 49(2) prohibits disclosure of identifying information except – (a) where necessary to carry out a procedure or conduct research, (b) to administer Act or at the request of the Minister for certain purposes, (d) with the consent of each donor, participant or DCI in question or other person whose identity may be disclosed, in so far as it does not identify a person who has not given consent, (c & e) as authorised under the Code, regulations or another written law.	of ART data since 1993. The Act requires licensed fertility clinics and exempt practitioners to provide patient, donor and treatment data to RT Registers. A Voluntary Register has also been set up for DCI, parents of DCI or donors to seek non-identifying information (such as siblings). With mutual consent & approved counselling, parties can access identifying information about other parties (including donor siblings). Both clinic and RT Registers information is used for this. No outreach service is provided. This register was established and is managed by the Department of Health.	
Victoria	*Assisted Reproductive Treatment Act 2008*, which	Different right to information provisions apply according to	Central Register contains information about: each	Clinics must comply with the NHMRC guidelines and

[1] WA provisions

For donations made on or after 1 December 2004, a DCI who has reached the age of 16 years and has completed approved counselling will be allowed access to identifying information about the donor. A person who has parental responsibility for a DCI aged under 16 years and has completed approved counselling may consent for this purpose on behalf of the DCI. Information that would identify a DCI under16 years cannot be disclosed unless each person whose consent is required has completed approved counselling.

For donations made prior to 1 December 2004, identifying information about the donor cannot be disclosed unless –

*the donation was used with the effective consent of the donor on or after 1 December 2004, or

*the CEO of the Department of Health (WA) is satisfied that, before the donation, the donor was adequately informed that future legislative changes might enable the information to be disclosed to the child without the donor's consent

	commenced on 1 January 2010. The 2008 ART Act mirrors the current provisions of the *Infertility Treatment Act 1995*, and prescribes who may (and under what conditions) obtain access to the information contained in the registers.	when the donation was made – see endnote.[2] Those conceived after 1 January 1998, and over 18 can access to identifying information about the donor. Access varies for information regarding conceptions prior to 1998.	woman who receives treatment and her partner, if she has one; donors; treatment procedures; and the outcomes, including the particulars of a person born as a result of a treatment procedure. Voluntary Register will be maintained by the Registrar of Births Deaths and Marriages once the ART Act commences operation. It contains information voluntarily provided by persons involved in donor treatment procedures and their relatives.	RTAC certification.

[2] Victorian provisions
1995 central register for donations made on or after 1 Jan 1998: DCI aged 18 years and over can automatically obtain identifying information about the donor. Donor can only obtain identifying information about the DCI with the consent of the parents, or the DCI when aged 18 or over.
1984 central register for donations made between 1 July 1988 – 31 December 1997: requires consent of the person to whom the information relates before releasing identifying information.
Voluntary register (1) for donations made prior to 1 July 1988: information provided voluntarily and exchanged in accordance with the person's wishes.
Voluntary register (2) for donations made post 1 July 1988: information additional to that contained in the 1984 and 1995 central registers may be lodged and exchanged with contributor's wishes.