

Donor information and registers

Whether you created your family with assistance from a clinic-recruited or known sperm donor, egg donor or surrogate; whether you did so at a registered fertility clinic or at home, there are requirements for registering information about your child's donor origins with Births, Deaths and Marriages.

Victorian law protects the right of donor-conceived people to information about their origins at age 18 (or earlier under some circumstances), and also gives other people involved the right to apply for this information under certain conditions.

It's all about the kids

A key principle of Victorian Assisted Reproductive Treatment Act 2008 (ART Act) is that children conceived through donation in Victoria have the right to know their biological origins when, or if appropriate before, they reach the age of 18.

There is strong evidence that children benefit from their parents and other adults in their lives being open about their donor origins, and if possible doing so from when they are very young, whether or not they have contact or a relationship with their donor or surrogate. Historically, parents in rainbow families have tended to be much more open about their children's donor origins than heterosexual parents. After all, same-sex couples and sole parents clearly require some assistance to conceive their children!

Children in rainbow families are often in contact with other families like theirs. There are also many other children in the broader community conceived through fertility services, and being raised in a constellation of family formations including same-sex parents, sole parents, separated parents, step-parents, grandparents, adoptive parents, foster parents and others. It is not unusual for children of same-sex and sole parents to be told their own special story from an early age about the wonderful person or people who helped to bring them into their loving family.



Donor registers: a complex history

The Victorian Registry of Births, Deaths and Marriages (BDM) is responsible for registering information about children's births and their donor information. Where a child is conceived through a clinic, the information is held in the Central Donor Register. Where a child is conceived via home insemination, the information is in their birth record, but not on their birth certificate.

On 1 July 1988 the Central Register commenced operation, recording information about people associated with births resulting from donor conception from that time onwards, including donors, parents and donor-conceived people. Information about anyone on the Central Register from that time could be released with that person's written consent.

Prior to 1 July 1988, donor information about children conceived in Victoria (through clinics) was essentially anonymous. Children conceived prior to then have no automatic right to access information about their donor origins, and indeed such information is often not available, as men donated under condition of anonymity. Children conceived between 1988 and 1998 can request their donor information, but are not automatically entitled to it – the donor must consent for it to be released.

Early on, a register (now called the Voluntary Register) was set up to allow people to voluntarily lodge information about themselves, and their consent to release this information to other parties (such as the

donor and donor-conceived people, including half biological siblings). At the time this was only available to people involved in treatment procedures that took place after 1 July 1998. In 2002, the capacity of the Voluntary Register was expanded to include people associated with births resulting from donor conception prior to 1 July 1988.

At the same time, the conditions of donation through a fertility clinic changed, requiring donors to consent to release of their identifying information to an adult (over 18) conceived using their egg or sperm, if that person applied. Information from this point was required to be released to the (adult) donor-conceived person without permission.

A donor or the donor-conceived person's parents could also apply for information about other people associated with the birth (for example, a donor could apply for information about the child/ren created from his or her gametes) but this information could only be released with that person's permission – in the case of donor conceived people, after they had turned 18 or beforehand with their parent/s' permission.

In 2010, the ART Act transferred responsibility for the registers from the Infertility Treatment Authority (or ITA, the statutory body then responsible for them) to the Victorian Registry of Births, Deaths and Marriages. The ITA became VARTA, the Victorian Assisted Reproductive Treatment Authority, and its role now focusses on education for people associated with births resulting from donor conception.

The ART Act also extended the rights of donor-conceived children by allowing them to apply for identifying information about their donor before 18. There is evidence that many children are most interested in this information in adolescence or earlier. To receive the information, the donor-conceived person must have the consent of their parents or a written assessment from a counsellor (as defined in the ART Act) stating that they are sufficiently mature to understand the consequences of receiving this information. Parents of a donor-conceived person can also apply for identifying information, but it cannot be released without the donor's permission.

The ART Act also said that eligible people can only obtain information about a donor-conceived person, or his/her parent, or the donor/s, and no-one else. It also made it mandatory that people receive approved counselling prior to the release of identifying information from the Voluntary Register, the same as applicants to the Central Register.

Lodging information

The Central Register records information about the people who are connected to births resulting from donation, including:

- the donor/s
- the woman who underwent treatment using donated gametes (egg or sperm) or a donated embryo, and her partner (if any), and
- the donor-conceived person.

Information held about these people is specified in the ART Act regulations, and may include details such as their full name, date of birth and medical history,

The Voluntary Register records a wide range of information that eligible people wish to lodge about themselves, including information like that held on the Central Register. Eligible people include the above parties, along with other people associated with a birth resulting from donation, such as half biological siblings of donor-conceived people and descendants of donor-conceived people. The application form for lodging information on the Voluntary Register includes questions, but the law does not prescribe the nature of information required. Each person who lodges details on the Voluntary Register decides what information to include and what information they want released.

Who lodges the information?

For children conceived using Victorian fertility services, BDM receives their donor information from the treating doctor or clinic, and stores it on the Central Register. Those who conceive via home insemination (without involving a clinic, for example to provide screened, stored sperm from their known donor) must give BDM this information themselves. It is then recorded as part of the child's birth record in the Registry, but not listed on their birth certificate.

When your child is born, you as their parent/s must register their birth with the Birth Registration Statement (BRS), which the hospital or midwife gives you. If you are a lesbian couple together at the time of conception – and thus both the child's legal parents – you list both of you on the BRS. You will both be listed on the child's birth certificate, the birth mother as 'mother' and the non-birth mother as 'parent'. Prior children of the relationship can also be listed as siblings.

You send the BRS to the Registry of Births, Deaths and Marriages, along with a letter from the child's donor/s addressed to the Registrar of Births Deaths and Marriages. This letter must give the following details for the donor/s: full name, date of birth, place of birth, postal address, daytime phone number and email address. The donor/s must sign the letter and supply one proof of identity document (as listed in the BRS). Their details will not appear on the birth certificate. It is also up to donors to ensure their contact details remain up to date at the Registry.

Anyone associated with a birth resulting from donation can lodge information with the Voluntary Register, including donors, parents of donor-conceived people, donor-conceived people, half biological siblings and descendants of donor-conceived people.

Registering surrogate births

Following the birth of a child to a surrogate in Victoria, the surrogate and her partner, if any, must register the child's birth with the Victorian Registry of Births, Deaths and Marriages. As outlined in the information sheet 'Options for prospective gay male parents', at the child's birth the surrogate and her partner (if she has one) are the legal parents. Legal parentage must be transferred through a substitute parentage order: the commissioning parent/s apply to the County Court of Victoria at least 28 days, and no more than 6 months, after the birth of the child. If the Court approves the application it will issue a substitute parentage order to the Registry. The Registry will cancel the existing birth record showing the surrogate and create a new record showing the commissioning parent/s as the child's parent/s, in accordance with the substitute parentage order.

For children conceived before the ART Act

If your children were conceived through a clinic before the ART Act came into effect in January 2010, their donor information is on the Central Register. The Register was then managed by the ITA, and is now managed by BDM. Thus, BDM are now responsible for managing your child's donor information.

If your child was conceived outside a clinic (via home insemination) before the *Victorian Assisted Reproductive Treatment (ART) Act 2008* came into effect in January 2010, you should now provide information about their donor origins to BDM, even you have not previously done so.

If you listed your donor as 'father' on the certificate, he is currently assumed to be the legal parent. However, Victorian law, through the Status of Children Act, and federal law are clear that a donor is not a parent. Legally, the birth certificate should reflect the reality that you are the legal parent/s (and have parental responsibility) and the donor (however much contact he has with your family) is not a legal parent or father.

You can remove the donor's name (and insert the non-birth mother's name, if there is one), but will need a court order to do so. Your donor's permission is not required. You cannot list all three of you, as children cannot have more than two legal parents. We strongly advise that you speak with BDM before taking action. See our information sheet 'Recognising pre-existing families' for information. Once the certificate is corrected, donor's details will be held by the Victorian

Registry of Births, Deaths and Marriage, but will not appear on the child's birth certificate.

Who can access information?

The Assisted Reproductive Treatment Act 2008 (ART Act) outlines conditions for access to information held in the Central and Voluntary registers. This includes outlining who can apply for access to information held in the registers and what information may be released to applicants.

You are eligible to apply for access to information held on the Central Register if you are:

- a donor conceived person
- a parent of a donor conceived person
- a descendant of a donor conceived person
- a donor.

In Victoria all current clinic-recruited sperm donors are 'identity release', meaning that once the child born from the donation turns 18, the child will have an automatic access to identifying information about the donor. Your child has the right to apply before 18, but must have your permission or that of a counsellor (see above). You, as the parent may also apply for information, as may the donor, but the person who that information relates to must give their written permission before the information is released. All parties may apply for non-identifying information at any time.

Prior to the commencement of the ART Act on 1 January 1 2010, many lesbian couples and single women had accessed reproductive services interstate to conceive their children. All states and territories have different regulations governing the right to apply to information; contact your interstate clinic for details, as well as BDM, to discuss your situation.

For children born from donations made in Victoria between 1988 and 1998, and before 1988, access to information is more complex. Please see the Births Deaths and Marriages website for more information (see below under 'Find out more about').

The same kinds of people who can apply for information from the Central Register can apply for information from the Voluntary Register, along with relatives of a donor-conceived person (such as half-biological siblings). Information is only released if it is available (that is, if it has been lodged by the relevant person), and the person it concerns has consented to its release to you.

Why people apply for information

VARTA publishes resources and information sheets designed to assist donors and donor-conceived people and their families. We recommend you read both the *Time to Tell?* and the *Time to Apply?* brochures.

The reason behind why donor registers are useful can best be summed up in the introduction to the *Time to apply?* brochure:

'For many years, donor practice throughout the world was dominated by the belief that secrecy was paramount to protect all parties to the arrangement - donors, parents and the person born. This belief was based on myths: that donors would not want to be contacted and that people conceived from them would not want information about their donors if they really loved their parents.'

'It is now understood that it is very normal for donor-conceived people to want to know more about their donors. They are often interested to learn more about their medical history, cultural background, personality and appearance.'

'Donors do not forget they have donated and often wonder about the people they helped to create. Who are they? Are they healthy? Are they happy? Are they loved? Parents may also want more information about the person who helped create their child. They may wish to thank them for helping them to become a family and may wonder what they are like and what characteristics their child has inherited from them.'

Counselling

BDM staff can tell you what is involved with making an application for release of information from the donor registers. Counselling is offered through BDM for anyone making an application to the donor registers. Counselling is mandatory if the person is seeking identifying information about another party.

In addition, VARTA lists counselors who may assist a person to think through the issues in considering whether and when to apply for the release of information from the donor registers, see the section 'Find out more about' for details.

Disclaimer

Rainbow Families Council produced this information kit in October 2010. We have made every effort to ensure the kit is correct, but accept no liability for information given. Information will be regularly updated on our website. We strongly advise that you seek medical and legal advice and specialist counselling relevant to your specific situation.

Find out more about:

- registration of births, and lodging, management and release of donor information from Births, Death and Marriages. Phone 1300 369 367 or visit their website: google 'Victoria births deaths and marriages', click on 'Births', and then 'Donor treatment registers'.
- The Victorian Assisted Reproductive Treatment Authority, for information and advice about telling a child about their donor origins at www.varta.org.au.

What else is in this information kit?

- Introduction and definitions
- Recognising pre-existing families
- Options for prospective lesbian parents
- Options for prospective gay male parents
- Options for prospective sperm donors, egg donors and surrogates
- Resources and links