



**Submission to Victorian Law Reform Commission Community Law Reform Project:  
Birth Registration and Birth Certificates  
Public Submission: Carolyn Woodley**

**Introduction**

While the VLRC's 'Birth registration and birth certificates' Consultation Paper tends to focus on both birth registration, especially for vulnerable groups, and concerns that birth certificates should be accessible, there is another whole area involving birth certificates that the paper does not appear to address. This is, admittedly, a complex area and perhaps beyond the immediate area of review. The birth certificate, as such, is usually a relatively straightforward artefact that for most people can be created and retrieved through the Registry of Birth, Deaths and Marriages (RBDM). But the problems – now well documented – about adopted people trying to access their original birth certificates are not referred to in the paper at all. I believe this area fits well within the scope of the review.

The consultation paper's focus on vulnerable groups may well be relevant here, too, as research has consistently identified adopted people as having 'lower levels of wellbeing and higher levels of psychological distress'<sup>1</sup> compared to the general Australian population.

The adoption process in Australia in effect resulted in a legal sleight of hand as far as birth certificates were concerned. *If* the adoption was legal and if it was closed, it resulted in the new legal identity being superimposed over the biological birth identity: 'Closed adoption was where an adopted child's original birth certificate was sealed forever and an amended birth certificate was issued that established the child's new identity and relationship with their adoptive family'.<sup>2</sup> Beyond the open bureaucracy of RBDM, then, there exists another more murky realm, an underbelly of Other birth certificates that has been legally and administratively relegated to less public, less transparent and less accessible processes as well as additional fees: no doubt a legacy of the secrecy that dominated adoption in the past and which, to some extent, persists.

During the 1950s and beyond, it was the opinion of many professionals in the child welfare industry that privacy in relation to information was vital. Birth parents would remain unaware of adopting parents and adopting parents 'should be able to change the Christian names of the child (surname automatically changed)'.<sup>3</sup> The child need never know that they had another birth certificate, might never know they were adopted and would make do with a purported full Birth Certificate (not the extract) called a "SIXTH SCHEDULE". Unbeknown to many adopted people, a SIXTH SCHEDULE birth certificate actually means a person was legally adopted. Many adoptees, myself included, had no idea that these were special birth certificates with deeper significance and only realized their error upon seeing someone else's birth certificate.

The so-called 'clean break' approach to adoption has been devastating in regards to record keeping, ability to access medical and biological information and the capacity to connect with birth family. In the adoption process, a new birth certificate was issued with only the adopted parents' details as parents. The record of the court's adoption order and the original birth certificate were kept secret. The area of

<sup>1</sup> Pauline Kenny, Daryl Higgins, Carol Soloff and Reem Sweid, *Past Adoption Experience: national research study on the service response to past adoption practices* 2012 Australian Institute of Legal Studies. [www.aifs.gov.au/institute/pubs/resreport21/rr21.pdf](http://www.aifs.gov.au/institute/pubs/resreport21/rr21.pdf) xiv

<sup>2</sup> Kenny as above 1

<sup>3</sup> Senate Community Affairs References Committee report *Commonwealth Contribution to Former Forced Adoption Policies & Practices* [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=dac\\_ctte/comm\\_contrib\\_former\\_forced\\_adoption/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=dac_ctte/comm_contrib_former_forced_adoption/report/index.htm) 184

the Department of Human Services responsible for searching for these documents, FIND, admits that it does not know where all of these documents are.<sup>4</sup>

It is generally the case, then, that adopted people have two birth certificates. The original birth certificate is often secret and only rarely in possession of adoptive parents or the adopted person themselves. The legally current birth certificate is the one that names adopting parents as parents. Unlike 'real' birth certificates, it does not name siblings. A range of problems regarding the production and subsequent access conditions for birth certificates were raised repeatedly by adopted people in the recent senate inquiry.<sup>5</sup> It is generally accepted that the truthful recording of a birth is fundamental to a person's identity and certainly the United Nations Declaration of the Rights of the Child states in principle 3: 'The child shall be entitled from his birth to a name and a nationality' – a point echoed in the VLRC Consultation Paper (p.10).

My principal concern in this submission is about the difficulties adopted people face when trying to locate and access their original birth certificates. I daresay it is a principal concern because it is a traumatic process that I am currently undertaking – so far without success. Not only are the processes and personnel involved problematic, the cost (including the amount of time and mental energy) involved in accessing personal information is not simply about affordability. Rather, the fact that adopted people have to pay is moreover about rights and addressing past wrongs. Adopted people, like 'normal' people, already pay to have their public birth certificate – the one they need for passports and the like. Even then, we get the weird SIXTH SCHEDULE birth certificate with minimal information – a fiction, really. We then need to pay for the secretive and possibly illegal practices of the past – and even then, as I was told by my all-powerful FIND case-worker without actual reference to the *Adoption Act 1984*, "I can refuse to release information...". I daresay she can. Access to information, including birth certificates, is a dominant theme of the recent study by the Australian Institute of Family Studies, *Past Adoption Experience: national research study on the service response to past adoption practices*.<sup>6</sup> Access to information, original birth certificates and counselling services was also a focus for many adopted people in the 2012 report *Commonwealth Contribution to Former Forced Adoption Policies and Practices*.<sup>7</sup>

Of course the VLRC review is partly about improving registration and access in the future but there remains the very current (and sometimes pressing given time's wingèd chariot) matter of assisting adopted people to access birth certificates now which is a legacy of the past but still a current concern.

For adopted people seeking information about original birth certificates, Victoria's RBDM website simply states: 'If you know or believe you have been adopted and wish to find out more information about your birth family, please contact the Family Information Networks and Discovery (FIND) for further assistance.' And so a humiliating and discriminatory process begins.

#### **FIND**

A recent Victorian Ombudsman's investigation serves to highlight some of the problems with the FIND unit's ability and capacity to locate documentation – including original birth certificates. Less intentionally, the report also highlights the discrimination that adopted people suffer in the Victorian

<sup>4</sup> G E Brouwer *Investigation into the storage and management of ward records by the Department of Human Services* (March 2012) [www.ombudsman.vic.gov.au/resources/documents/REPORT\\_Investigation\\_into\\_the\\_storage\\_and\\_management\\_of\\_ward\\_records\\_by\\_DHS\\_-\\_Mar\\_2012.pdf](http://www.ombudsman.vic.gov.au/resources/documents/REPORT_Investigation_into_the_storage_and_management_of_ward_records_by_DHS_-_Mar_2012.pdf)

<sup>5</sup> Senate Community Affairs References Committee report as above 262

<sup>6</sup> Pauline Kenny, Daryl Higgins, Carol Soloff and Reem Sweid, *Past Adoption Experience: national research study on the service response to past adoption practices* 2012 Australian Institute of Legal Studies. [www.aifs.gov.au/institute/pubs/resreport21/rr21.pdf](http://www.aifs.gov.au/institute/pubs/resreport21/rr21.pdf)

<sup>7</sup> Senate Community Affairs References Committee report as above.

bureaucracy and because of the *Adoption Act 1984*. The Ombudsman's *Investigation into the storage and management of ward records by the Department of Human Services* (March 2012)<sup>8</sup> is highly critical of DHS's record keeping. It notes that the department has 'around 80 linear kilometres of historical records' in boxes at numerous locations, that only 26 of the 150 plus years worth of records has in fact been indexed and catalogued and that approximately 21% of requests for information by adopted and people and former wards of state result in no documentation being found.<sup>9</sup> The Ombudsman goes on to say: 'Freedom of Information legislation is...relevant to my investigation. The purpose of the *Freedom of Information Act 1982* is to increase the transparency and openness of government by providing effective and prompt means by which documents held by public agencies may be accessed by citizens. Former wards seeking to access their records generally do so through the Freedom on Information process'.

Former wards, then, are entitled to go through FOI. Information for Victoria State Wards or Forgotten Australians is clear: FIND helps these people to access records and documents and assists with reunions. As you would expect, former wards can access documents under the *Freedom on Information Act 1982*. The FIND website highlights the discrimination here by describing the search of one former state ward for information who found out he had two siblings, 'one of whom may have been adopted'. The same people in the same DHS unit search the same archives – and sometimes the Wards of the State and Adopted People fit both categories. But note: the Freedom of Information website is clear in its page on 'Fostering and Adoption': 'If you were fostered through, or a client of, the former children's welfare departments, you can apply for access to your State Ward records. You can apply for this through the Department of Human Services. Access to records about legally adopted people is covered by the Adoption Act 1984. Contact the Adoption and Family Records Service for further information'.<sup>10</sup>

Firstly, the Ombudsman notes that processes within the FIND area are similar to the FOI process except that 'FIND waives the standard application fee of \$23.40 in relation to former wards' (23). The ombudsman then quotes a senior staff member from FIND at length:

...we prioritise elderly clients. I think our cut off is...65 or 70 – because it's different between adoption and former wards. So we'll prioritise those you know, anyone where there's a disability, you know, we'll basically push those ones through. Or, if ...someone's...terminally ill...they'll be the cases that we'll prioritise over and above general ones (23).

I was asked no health questions as part of my application – so I am not sure how this system of prioritising on the basis of health works – nor why the process is different between former wards and adopted people. Nor do I understand what the waiver process entails despite asking for a waiver.<sup>11</sup> What I do know is that, adopted people cannot apply for records under the *Freedom of Information Act*

<sup>8</sup> G E Brouwer *Investigation into the storage and management of ward records by the Department of Human Services* (March 2012) [www.ombudsman.vic.gov.au/resources/documents/REPORT\\_Investigation\\_into\\_the\\_storage\\_and\\_management\\_of\\_ward\\_records\\_by\\_DHS\\_-\\_Mar\\_2012.pdf](http://www.ombudsman.vic.gov.au/resources/documents/REPORT_Investigation_into_the_storage_and_management_of_ward_records_by_DHS_-_Mar_2012.pdf)

<sup>9</sup> Brouwer as above at 5

<sup>10</sup> Freedom of Information, Victorian State Government

[www.foi.vic.gov.au/home/foi/what+you+cannot+access/what+you+cannot+access+-+fostering+and+adoption](http://www.foi.vic.gov.au/home/foi/what+you+cannot+access/what+you+cannot+access+-+fostering+and+adoption)

<sup>11</sup> I did not ask for a waiver on financial grounds but rather on the grounds that, in the 1970s, people responsible for my records (possibly Community Services Victoria) sold information to a private detective who then contacted my birth parents who then contacted me and my parents. Given the breach of privacy, the damage caused and the fact that in applying for my records, I was, in effect, confirming knowledge I had already had thrust upon me, I believe a waiver is appropriate. More appropriate still: I do not believe any adopted people should have to pay anything to retrieve their own records. Furthermore, if a waiver request is denied, applicants should be entitled to a response that is more respectful than the current 'Computer says no' approach.

1982 and are required to pay while Wards of State do not have to pay – despite completing the same form. Below is from the application form:

**Former Wards of State Fee**

If you are a Victorian Former Ward of State or an Aboriginal or Torres Strait Islander applying for information – **no fee is required.**

**Adoption Information Fee**

A fee of \$91.50 is required for all adoption information applications.

Unlike the *Freedom of Information Act 1982*, the *Adoption Act 1984* requires that adopted persons applying for information about themselves - including birth certificates - are required to attend counselling services. So, in order to obtain an original birth certificate one of the staff at FIND tell you that you need counselling. While some people might welcome this support, to render it mandatory is simply insulting. The Act is outdated and the staff at FIND seem oblivious to its offence:

- (1) A relevant authority shall not supply a document or information to an applicant under this Part unless the applicant has attended an interview with an approved counsellor.
- (2) Where a relevant authority receives an application under this Part, the relevant authority shall inform the applicant in writing of the place or places at which counselling services are available and that information cannot be supplied under this Part unless the applicant has attended an interview with an approved counsellor.
- (3) This section does not apply if the relevant authority is satisfied that the adopted person and another person referred to in the original birth certificate relating to the adopted person have already exchanged information which may identify that natural parent or a relative of the adopted person.<sup>12</sup>

Interestingly, the Senate report comments on this paternalistic approach to providing information: 'The committee notes that Victoria maintains a relatively high level of support for parties to adoptions seeking to reconnect with their families. It recognises that Victoria was the first jurisdiction to reform adoption laws, and is to be commended for its early work in this area. However now, a quarter of a century on, it may be time for them to be further reformed'.<sup>13</sup> It's more than a quarter of a century and those of us who were adopted in the bad old days simply seek the information which is our right. Just supply the birth certificate, really, is the message and make counselling optional. The *Adoption Act 1984* needs some work in respect to costs and counselling.

One submission from The Benevolent Society, Submission 191, to the Senate Inquiry into forced adoptions recommended: 'That the Commonwealth encourage all state government Registries to consider removing the additional costs associated with applications for birth certificates for those affected by past adoption practices'.<sup>14</sup> The Senate committee, too, 'recommends that non-government organisations with responsibility for former adoption service providers (such as private hospitals or maternity homes) establish projects to identify all records still in their possession, make information

<sup>12</sup> *Adoption Act 1984* - Sect 87

<sup>13</sup> Senate Community Affairs References Committee report as above 270

<sup>14</sup> Senate report 274

about those institutions and records available to state and territory Find and Connect services, and provide free access to individuals seeking their own records'.<sup>15</sup>

### **Conclusion**

The Victorian Law Reform Commission's final report into *Assisted Reproductive Technology and Adoption (2007)* is worth mentioning at this point. The report makes the rather clinical observation that 'Adoption of children is also a means of family formation'<sup>16</sup> and goes on to mention some of the negative consequences of adoption including issues with birth certificates and the fact that the *Adoption Act 1984* entitles the adoptive parent to be registered as parents on the child's birth certificate. As a part of that review, the Victorian Law Reform Commission had many submissions objecting 'to the transfer of parental status from the genetic or biological parent of a child to a person who is not biologically related to the child' (VLRC 117) on the basis that 'to declare that a person with no genetic connection is a child's parent is to perpetuate a legal fiction' (ibid). Of course, these concerns do not just relate to an adopted person's birth certificates and the business of what information should be included in a birth certificate so that the document functions in the interests of the person whose certificate it is a massive area of concern that will persist.

That same VLRC report *Assisted Reproductive Technology and Adoption (2007)* noted the legal significance of birth certificates and stated that, 'Although birth certificates do have symbolic value for many people, that is not their primary purpose'.<sup>17</sup> In order to make birth certificates useful *and* symbolic, they need to include information for multiple purposes and people need to be able to access them effortlessly.

The symbolic value of getting my original birth certificate is huge. Yet it will wait until I have sorted through my issues with FIND and DHS. Earlier this year, I was a participant in a focus group for the Australian Institute of Family Studies research into "past" adoption practices. One of the consistent concerns from adoptees in the focus group and many of the submissions was adoptees' woeful treatment by bureaucrats when they begin to search for or indeed find information. I do wonder if the Human Rights Charter has made any difference to how adoptees are treated in this regard.

When I started my search for my original birth certificate – naïve optimist that I was – I thought I'd just "swing past" DHS to drop my forms off – but no. It does not happen like that. Without any warning, they make you chat with a very nice young woman who doesn't tell you anything about herself but who has every right to ask most personal details of you. A box of tissues sits ominously as a centrepiece in the room – clearly, there are some expectations about how you should behave. The administrative act of accessing information becomes a psychological test, an Oprah-style confessional to be explained to strangers with overly sympathetic expressions. It is beyond condescending. It is offensive.

I urge the Commission to consider access to original birth certificates for adopted people as a matter of urgency. In light of both the Senate inquiry and the AFIS research (both reports out this year) into 'past' adoption practices, being able to access our birth certificates without any additional expense would be a practical response to the overblown rhetoric of actual or proposed apologies.

---

<sup>15</sup> As above

<sup>16</sup> VLRC 2007 104

<sup>17</sup> As above at 145

