



PROOF OF BIRTH

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CHAPTER 3

Registering the births of Indigenous Australians in Victoria

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When the Closing the Gap on Indigenous Birth Registration project was first conceived in 2009, there were many barriers to Indigenous Australians accessing the Victorian birth registration system. In 2015, some of these barriers have been removed, but there is still room for improvement. Victoria stands out as having undertaken some innovative steps, both within the Registry of Births Deaths and Marriages (BDM), and outside of it. This chapter examines the recommendations of the Victorian Law Reform Commission, and the work of the Victorian BDM Registry to address issues of access to birth registration and certificates.¹

In 2013, the Victorian Law Reform Commission (VLRC) produced a comprehensive 162-page report, containing 26 specific recommendations that was based

on extensive community consultation with Indigenous Victorians, as well as members of culturally and linguistically diverse communities across Victoria. This chapter considers whether implementing the VLRC's reforms would make the Victorian birth registration systems more accessible to Indigenous Australians.

Selected VLRC Recommendations

The VLRC made recommendations in relation to the following aspects of birth registration: birth notification (one recommendation); birth registration (seven recommendations); birth certificates (four recommendations); fees (six recommendations); vulnerable groups (two recommendations); awareness and access (six recommendations).

These recommendations demonstrate which areas the VLRC consider to be in greatest need of improvement, namely, birth registration, fees, and awareness and access. A selection of the the recommendations are analysed below.

1. Birth notification

In Victoria, every birth must be notified to the Registrar of Births, Deaths and Marriages (BDM) within 21 days of the birth. This is an obligation on the hospital where a child is born, with a doctor or midwife or any other person in attendance at the birth. This birth notification process is distinct from the birth registration process, which must be completed by the parent or the child's guardian within 60 days of the birth. Once a birth registration application is submitted by the parent/guardian,

the BDM matches it with the birth notification. This notification process is common to all jurisdictions across Australia.

Currently, Victorian practice is that only basic information is included in a birth notification, such as the date of birth, mother's name and address, and sex of the baby, whether it was a multiple birth and whether the child was live or stillborn. The VLRC recommended that it would be useful to require additional information be provided as part of the birth notification process, including: details of the father, the Indigenous status of the mother and father, details of the next of kin (if known), and a contact telephone number.²

It is suggested that the provision of this additional information may help to improve rates of birth registration, by facilitating the ability for BDM to follow up unregistered births. For example, having a contact phone number and details of the father or next of kin should facilitate the BDM following up on late registrations. This sort of data is collected by hospitals upon admission, so can be readily accessed by hospital officials and included in a birth notification form. This additional data may also help to identify particular groups (and specifically people identifying as being of Indigenous origin) who are not registering the birth of their children, and who may benefit from additional assistance or targeted programs. It would also be useful to ask mothers 'Is your baby of Aboriginal or Torres Strait (or 'Australian Indigenous') origin?'

2. Birth registration

A key VLRC recommendation for improving current Victorian birth registration processes was that the birth registration documentation should make it clear that if a person other than the mother wishes to register a birth, where they believe the mother will not, or cannot register the birth, that person should contact the Registrar to find out how this can be done, and what information they will need to provide.

Where a child needs to be registered, but the mother is not available or able to complete the forms, the father, grandparent, or other guardian who has responsibility for the child, may be in a position to do so. The VLRC recommendation is designed to encourage the person responsible for the child to contact the registry and facilitate completion of the registration process. The report noted that:

the way the birth registration statement is currently set out is appropriate for the vast majority of applications that will be completed by the mother. On its face, however, it does not appear to allow for a father to register a birth if the mother cannot or will not.³

We note that the BDM website now includes the following statement: 'If you are not the parent and wish to register a birth, please contact the Registry for advice.'⁴

There is one particular issue relating to birth registration where the VLRC remained silent when a recommendation was, in our view, warranted. The *Births, Deaths and Marriages Registration Act 1996 (Vic)*, under

section 18, provides that a fine of approximately \$1,400 may be imposed if a parent fails to register a birth within 60 days of the birth. Similar penalty provisions appear in the birth registration legislation of most state and territories. It is understood that this is intended to provide an incentive for people to register the births of their children in a timely manner. However, anecdotal evidence suggests that the information regarding such a steep penalty may, in fact, act as a disincentive for people to register the birth of their children after 60 days. Why would someone lodge late birth registration papers if there is a risk they may have to pay a hefty fine for doing so?

Governments are generally happy to receive birth registration papers, whenever they come in, and there is no evidence that people are being prosecuted for late registrations. However, while the registry staff and those working to assist people with birth registrations may be aware that the penalty is rarely, if ever, applied, a parent who is late registering the birth of their child has no way of knowing in advance that they are unlikely to be prosecuted, and may only note that there is the possibility of a penalty. So, the provision of a penalty could be deterring people from registering a birth after the 60-day post-birth period. If fines are not actually being imposed for late registration, we suggest that the penalty provisions should be repealed from the legislation, and as a minimum, all references to penalties should be removed from the birth registration form.

3. Birth certificates

There are currently onerous proof of identity requirements when a person seeks a copy of their birth certificate. There are, of course, proper concerns about identity theft, fraud and security underlying these stringent requirements. However, these tough ID requirements can present a significant barrier to people who do not have photo ID, such as a driver's licence or passport, or additional documentation with their name and current address on it, such as a utility bill or tenancy agreement. Some members of Indigenous, marginalised or disadvantaged communities find it very difficult to produce the requisite ID to access their birth certificate. It is for this reason, that the VLRC recommended that:

The Registrar should consider improving the presentation of the proof of identity section of its application for a birth certificate. In particular, the application *should make it clear to applicants that other options are available if they do not possess a list 1 [photo ID] identity document.* [emphasis added]⁵

The legitimate aim of addressing identity fraud must be balanced with the need for people to have a birth certificate in order to access the full range of economic, social and political rights in Australian society. Lack of a birth certificate may increase the likelihood of an Indigenous youth coming into contact with the criminal system, for example, through unlicensed driving.⁶ Indeed, it has been observed that in Western Australia unlicensed driving greatly contributes to the over representation of

Indigenous Australians in jail.⁷ Furthermore, in Queensland recent amendments to voting laws⁸ mean that individuals are required to present ID as a prerequisite to voting in elections, although systems have been put in place to allow people who are unable to produce the required ID to vote by completing a 'declaration envelope' in addition to their ballot paper.⁹ We are pleased to note the recent announcement of the new Palaszczuk government that it intends to repeal these voter ID provisions.

The VLRC recommended that the BDM Registrar consider Medicare's *No ID — No Worries* initiative as a model. Medicare (a Commonwealth agency) adopts a fairly flexible approach to proving identity, including accepting a statutory declaration that verifies a person's identity from an approved referee. However, the VLRC also acknowledged that because a birth certificate is a primary identification document, some higher standards of proof of identity are appropriate.

It is essential that BDM Registrars assist disadvantaged and vulnerable members of the community to obtain a birth certificate by having flexible ID requirements, and that the existence of alternative means of proving ID are widely publicised.

4. Fees

There is no fee to register a birth, but there are fees charged for obtaining a birth certificate that range from \$30.20 in the Victoria to \$51 in New South Wales. There are also additional fees for changes of name, expedited

applications, and to change details (such as adding the father's name), which can add considerably to the costs.

Fees have consistently been identified as a barrier to Indigenous Australians obtaining this important document. It is therefore not surprising that the VLRC made several recommendations regarding fees. However, the VLRC stopped short of recommending that all children be issued with a free birth certificate upon registration, as the UN Committee on the Rights of the Child recommended.¹⁰ The VLRC report resisted calling for universal free birth certificates on the basis that the vast majority of people are able to pay the fee without apparent difficulty, and there is significant revenue generated from birth certificate fees (approximately \$2 million a year in Victoria), which actually funds the operation of the BDM registry.

The VLRC did, however, recommend that some applicants should have the BDM fees waived, and suggested that holders of a health card should be exempt from paying a fee for a birth certificate, provided one has not been previously been issued to the applicant.

It is noted that even before the VLRC report was completed, the Victorian Registrar arranged for a fee support scheme: Aboriginal or Torres Strait Islander people, who hold a pension concession card or a health card, can obtain their Victorian birth certificate without charge. The fee is met by the Indigenous Access Fund, established by the Department of Justice for this purpose. In 2012–2013, the Access Fund paid the fees for approxi-

mately 660 certificates (births, deaths and marriages). This is a considerable number (recalling there were approximately 78,000 births in 2012¹¹), and it suggests that fee support is helping Indigenous Victorians to overcome financial barriers when trying to obtain a birth certificate.

Other states and territories do not yet appear to have equivalent schemes to redress financial disadvantage faced by some Indigenous Australians; perhaps BDM registries are reluctant to adopt such initiatives out of a concern for the potential negative budgetary implications if a significant number of people seek free birth certificates. The Victorian fee relief system addresses the budgetary issues, as the costs are covered by another agency (equally a philanthropic or public interest fund could cover the costs). Additionally, failing to provide birth certificates to people who cannot afford them is likely to be a breach of their human right to a birth certificate,¹² and certainly constitutes indirect discrimination. All BDM offices should have policies and practices in place to ensure that vulnerable persons suffering financial hardship are not denied their right to a birth certificate.

5. Awareness and access

It has been established already that birth registration and birth certificates are fundamental human rights.¹³ Yet these rights are not reflected in the Australian legislative regimes. The statutory regimes in the states and territories are framed around the obligation of the parent to complete registration of the birth, or risk being fined,

rather than focusing on the rights of children to have their birth registered and a birth certificate issued. This approach to birth registration means that the message being sent to parents is ‘register your child, or else’, rather than ‘your child has a right to a birth certificate and getting one will benefit them later in life’. For vulnerable communities this does not facilitate greater compliance. And for BDM registries, it serves little purpose as it does not appear to encourage compliance for those who in the past have struggled to comply.

Several constructive recommendations emerged from the VLRC, regarding the need for the BDM Registrar to promote the benefits of obtaining a birth certificate, including that a birth certificate is needed in order to obtain identity documents later in life. The Victorian BDM webpage now includes the following statement:

A standard birth certificate is a proof of identity document. It is the first step in establishing identity and is often required for official purposes such as claiming government benefits, and enrolling a child in childcare and school.¹⁴

This is an important recognition of the important role that a birth certificate plays in a child’s life, and will hopefully encourage more parents to obtain this document for their children.

The VLRC also recommended that the legislation be ‘amended to include the promotion of public awareness of the importance of birth registration through the

conduct of education and information programs'.¹⁵ These recommendations are just as applicable to BDM Registrars in other states and territories.

In order to increase accessibility to birth registration systems, the VLRC recommended that 'The Registrar should consider expanding the range of venues where registry applications may be lodged.'¹⁶ In Victoria, BDM services now are provided at 25 regional Justice Centres. Existing Justice Centre staff receive training in BDM procedures, avoiding the need to employ additional BDM staff. The Justice Centres facilitate the lodgement of applications, assist in the witnessing of documents, and make it easier for applicants to pay fees and obtain information, thereby reducing the need for people to travel to the capital city or make long distance phone calls. This approach to the decentralisation of birth registration and certification processes is appropriate in Australia, with its dispersed population and limited bureaucratic centres. While states such as Western Australia and Queensland have established outreach programs that see BDM staff travelling to remote communities on an intermittent basis, the permanent provision of BDM services (if not actual BDM personnel) in regional centres is preferred.

Conclusion

Although the VLRC's recommendations were specific to birth registration processes in Victoria, all state and territory BDM Registrars and Attorneys-General will have carefully considered the report, given the similarity

between regulatory frameworks in all Australian jurisdictions. Implementation of these recommendations, and many of the additional recommendations in this chapter and throughout this book should assist Indigenous Australians and other communities to readily obtain a birth certificate, the key document to unlocking all the rights and privileges of citizenship.

Civil society, community groups and statutory authorities all have a role to play in facilitating Indigenous peoples' access to birth registration and certificates, and facilitating easier access to certification. Australia needs to achieve genuinely universal birth registration; only then can we achieve social justice for Indigenous Australians and accurately measure the success of government initiatives such as Closing the Gap.

Endnotes

- 1 This chapter is based on research published in P Gerber & M Castan, 'Achieving Universal Birth Registration for Indigenous Australians: Recommendations from the Victorian Law Reform Commission', *Indigenous Law Bulletin*, vol. 8, no. 14, 2014, pp. 11–14.
- 2 *VLRC Birth Registration and Birth Certificates Report*, August 2013, para 2.50 (Recommendation No. 1), retrieved from www.lawreform.vic.gov.au/all-projects/birth-registration-and-birth-certificates, .
- 3 *VLRC Birth Registration and Birth Certificates Report*, para 3.94.
- 4 See www.bdm.vic.gov.au/home/births/register+a+birth
- 5 *VLRC Birth Registration and Birth Certificates Report*, above n. 3, Recommendation No. 9.
- 6 See Chapter 2, A Calabro, 'Registering the births of Indigenous Australians: Has New South Wales got it right?'
- 7 B Wyatt, *Indigenous Licensing and Fine Default: A Clean Slate*, Report of the Committee to Explore the Effect of Motor Driver's Licence and Driving Laws on Remote Communities, Perth, 2007.
- 8 *Electoral Reform Amendment Act 2013 (Qld)* — it is noted that under section 121, a 'Declaration' vote may be made if an elector has insufficient ID.

- 9 See G Orr & E Howie, 'New ID laws threaten to leave voters behind' 21 May 2014, *Brisbane Times*, retrieved from www.brisbanetimes.com.au/queensland/new-id-laws-threaten-to-leave-voters-behind-20140522-zrjr1.html#ixzz33obazmyh; and A Green, 'Do electors need proof of ID to vote at the Queensland election?', retrieved from <http://blogs.abc.net.au/antonygreen/2015/01/do-electors-need-id-to-vote-at-the-queensland-election.html>.
- 10 Committee on the Rights of the Child, *Concluding Observations on Australia*, CRC/C/AUS/CO/4, 28 August 2012, para 36.
- 11 Australian Bureau of Statistics (ABS), 3301.0-Births, Australia 2012.
- 12 In particular, Article 24 of the *International Covenant on Civil and Political Rights* and Article 7 of the *Convention on the Rights of the Child*. See M Castan, P Gerber & A Gargett, 'Indigenous Australians' access to birth registration systems: a breach of International Human Rights Law?', *Australian Journal of Human Rights*, vol. 17, no. 1, 2011, pp. 55–89. More recently, see United Nations High Commissioner for Human Rights report, *Birth registration and the right of everyone to recognition everywhere as a person before the law*, A/HRC/27/22, 2014.
- 13 See P Gerber, A Gargett & M Castan, 'Does the right to birth registration include a right to a birth certificate?', *Netherlands Quarterly of Human Rights*, vol. 29, no. 4, 2011, 434–459.
- 14 See www.bdm.vic.gov.au/home/births/register+a+birth
- 15 *VLRC Birth Registration and Birth Certificates Report*, above n. 3, Recommendation No. 26.
- 16 *VLRC Birth Registration and Birth Certificates Report*, above n. 3, Recommendation No. 5.