

**Shadow Report to the UN Committee on the  
Rights of the Child Regarding Australia's  
compliance with Article 7 of the *Convention on  
the Rights of the Child***

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## 1. Executive Summary

It appears that Australia is failing to fully comply with Article 7 of the Convention on the Rights of the child. The problem is twofold, namely:

- i. there are a significant number of Indigenous births that are not registered; and
- ii. Indigenous Australians experience difficulties obtaining a copy of their birth certificate, even if their birth was registered.

The purpose of this report is to highlight those two problems and make recommendations regarding how they can be overcome.

## 2. The Right to Birth Registration

Article 7 is a very short but important part of the Convention on the Rights of the Child. The relevant part of Article 7 provides that: “*The child shall be registered immediately after birth*”. Birth registration is the process whereby a child’s birth is officially recorded on a civil register. As Archbishop Desmond Tutu noted:

Birth registration is much more than an administrative procedure. It is a key event in a child’s life. This is because birth registration acts as the starting point for engagement between the state and the individual. Registering a child at birth signifies the state’s recognition of the child’s existence and acceptance of its responsibility to ensure the child enjoys the rights and privileges that he or she is entitled to throughout life.<sup>1</sup>

It has recently come to light that there are a significant number of Indigenous Australians whose births are not being registered and who are experiencing difficulties obtaining a birth certificate; a piece of paper that is essential for obtaining important documentation such as a driver’s license and passport.

In 2005, of the 9,900 children born to Indigenous mothers in Australia, 13% (1,300 children) were not registered.<sup>2</sup> These numbers suggest that the lack of birth registration in Indigenous communities is a significant problem.

Preliminary investigations attribute the non-registration of births by Indigenous Australians to a lack of confidence in dealing with authorities, marginalisation from mainstream services, lack of understanding of the requirements and benefits of birth registration, poor literacy levels and the low priority afforded to birth registration.<sup>3</sup> It

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<sup>1</sup> Sharp N (2005) *Universal Birth Registration – A Universal Responsibility*, Plan International, London, 7.

<sup>2</sup> Orenstein J ‘Being Nobody – The Difficulties Faced by Aboriginal Victorians in Obtaining Identification’, Speech delivered at National Association of Community Legal Centres Conference, 14-17 September 2009.

<sup>3</sup> Gargett A, Gerber P, Castan M ‘A Right to Birth Registration in the Victorian Charter? Seek and You Shall Not Find!’ (2010) 36(3) *Monash University Law Journal* forthcoming; Gerber P ‘Making Indigenous Australians “Disappear”: Problems arising from our birth registration system’ (2009) 34(3) *Alternative Law Journal* 158; Gerber P ‘Making Visible the Problem of Invisibility’ (2009) 83(10) *Law Institute Journal* 52; and Orenstein J ‘The Difficulties Faced by Aboriginal Victorians in Obtaining Identification’ (2008) 7(8) *Indigenous Law Bulletin* 14.

may also be that the now discredited government policies of removing Indigenous children from their parents, which created what has become known as the 'Stolen Generations', is a reason behind Indigenous Australians not registering the birth of their children. These policies may have left Indigenous Australians with a residual fear of government record keeping, particularly when it comes to their children. In this regard, birth registration could operate as an undiscovered site of inter-generational trauma. Intergenerational trauma being the 'trauma that is multigenerational and cumulative over time; it extends beyond the life span'.<sup>4</sup>

Regardless of the underlying cause of non-registration of births within the Indigenous community, it is clear that there is not universal birth registration when it comes to Indigenous Australians. It is recommended that the Australian Government consult with Indigenous communities and undertake research to identify the underlying causes of under-registration of Indigenous births and develop culturally appropriate solutions

### 3. The Right to a Birth Certificate

Anecdotal evidence suggests that Indigenous Australians are encountering difficulties obtaining a birth certificate.<sup>5</sup> There appear to be two principle causes of this inability to obtain a birth certificate, namely that:

- (a) the birth was never registered (discussed above), or
- (b) although the birth was registered, the person is unable to subsequently satisfy the bureaucratic requirements that are imposed on applicants seeking to obtain a copy of their birth certificate.

In Australia, a birth certificate is not automatically issued when a birth is registered. The person registering the birth must apply for a certificate and pay the prescribed fee. The cost of obtaining a birth certificate may be one of the reasons why an Indigenous parent may not obtain a certificate at the time of birth registration.

If a person seeks to obtain a birth certificate after the time of registration, the Births, Deaths and Marriages Registrars generally require that three separate documents establishing identity must be produced.<sup>6</sup> This requirement similarly impedes Indigenous Australians from obtaining a birth certificate. Many of the required identification documents (e.g. a driver's licence and passport) can only be obtained by a person who already has a birth certificate. This creates a 'vicious circle'

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<sup>4</sup> Cox D 'Working with Indigenous survivors of sexual assault' (2008) 5 *ACSSA Wrap* 1, 3.

<sup>5</sup> Gargett, A. Gerber, P. and Castan, M. 'A Right to Birth Registration in the Victorian Charter? Seek and You Shall Not Find!', *Monash University Law Review*, Vol. 36, No 2, 2011 (forthcoming); Gerber, Making Indigenous Australians "Disappear", Problems arising from our birth registration system' (2009) 34(3) *Alternative Law Journal* 158; Gerber P 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52; Orenstein J 'The Difficulties Faced by Aboriginal Victorians in Obtaining Identification' (2008) 7(8) *Indigenous Law Bulletin* 14.

<sup>6</sup> *Births, Deaths and Marriages Registration Act 1996* (Vic) s 47 confers power on Victorian Registry to maintain written policies for the access of the register including the issue of certificates. It is this policy that prescribes the identification requirements. For the proof identity policy for a birth certificate application see Victorian Registry of Birth Deaths and Marriages, Application for Birth Certificate, [www.bdm.vic.gov.au/](http://www.bdm.vic.gov.au/), 24 January 2011.

whereby a birth certificate will not be provided because a person cannot produce the requisite identity documents, documents that require a birth certificate to obtain!<sup>7</sup> Applicants are also required to produce identity documents which include a current address. This can be problematic for persons who do not have a fixed address, which includes some Indigenous Australians. As it currently stands, Births, Deaths and Marriages Registries refuse to accept 'Proof of Aboriginality' documents<sup>8</sup> as proof of identity, yet these documents are the most readily available form of identification for many Indigenous Australians.

In each Australian state and territory, the principal office of Births, Deaths and Marriages Registries are located in the capital cities of each state and territory. In Victoria, until recently, people living outside of the state capital had to either travel to the capital city or apply for a certificate by mail or online. Additional requirements are imposed on people who do not apply in person at the registry office. In particular, if the application is submitted via mail or online, the identity documents that accompany the application must be certified by a police officer. This requirement negatively impacts on Indigenous Australians, many of whom do not live in capital cities. The relationship between Indigenous Australians and the police is widely recognised as dysfunctional.<sup>9</sup> There is no obvious reason why lawyers, or others who are recognised as being fit and proper persons to witness affidavits and other legal instruments, could not also certify the identity documents.<sup>10</sup>

The following two case studies illustrate the problems faced by Indigenous Australians who don't have, or can't obtain a birth certificate:

- (i) JW is an Indigenous mother of six children all under the age of 12 living in the Gippsland region of Victoria. The children's births were registered however no certificates were issued. JW's sole income is child support payments. She was notified by the school her children attend that she must supply birth certificates to continue their attendance. The Child Support Agency<sup>11</sup> also required JW to provide copies of her children's birth certificates to verify paternity in order to continue to receive child support payments. JW couldn't afford the money required to pay for the six certificates. While waiting to save or borrow the money, her children couldn't enrol at school and the child support payments were suspended, making it even more difficult to save enough money to pay for the certificates.<sup>12</sup> Thus, JW's children's education

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<sup>7</sup> Gerber P 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52.

<sup>8</sup> Proof of Aboriginality documentation is a signed document bearing the seal of an Aboriginal organisation: Orenstein, *Being Nobody*, *loc.cit.* note 5.

<sup>9</sup> Cunneen, C. *Conflict, Politics and Crime: Aboriginal Communities and the Police*, Allen & Unwin, Crows Nest, 2001.

<sup>10</sup> Gargett, A. Gerber, P. and Castan, M. 'A Right to Birth Registration in the Victorian Charter? Seek and You Shall Not Find!', *Monash University Law Review*, Vol. 36, No 2, 2011 (forthcoming).

<sup>11</sup> This is the government body in Australia that is responsible for administering the child support scheme, whereby separated parents make payments for the benefit of their children.

<sup>12</sup> Orenstein, *The Difficulties Faced by Aboriginal Victorians in Obtaining Identification*, *loc. cit.* note 5; Orenstein, J. 'Being Nobody: Difficulties faced by Koori Victorians in obtaining ID' (Paper presented at the Castan Centre for Human Rights Law Symposium on Indigenous Birth Registration and Birth Certificates, 1 December 2009), <http://law.monash.edu/castancentre/events/2009/indigenous-birth-registration-symposium.html>.

was negatively impacted as a direct consequence of her inability to access copies of her children's birth certificates.

- (ii) In 2007, a coalition of community groups established the Gippsland East Aboriginal Driver Education Project in the state of Victoria. This project was created in an attempt to reduce the contact that Indigenous peoples were having with the criminal justice system. Driver education was ear-marked as a way of reducing some of the driving related factors that resulted in Indigenous youths coming into contact with the police e.g. through unlicensed driving.<sup>13</sup> One hundred and twenty Indigenous participants enrolled in the program, but it turned out that half did not have, or could not obtain, a birth certificate. The program included the completion of all necessary merit and skill requirements to obtain a driver's licence. However, the 60 participants without birth certificates could not produce the requisite identification, and were thus unable to obtain a driver's licence upon completion of the program.<sup>14</sup>

The above examples of disadvantage suffered by Indigenous Australians who are unable to produce a birth certificate, demonstrates the pivotal role that such a certificate plays in the enjoyment of human rights. Even individuals whose births were registered find that they still cannot obtain a passport that enables them to travel, or a license to drive a car, if they cannot produce the piece of paper that proves their birth was registered. From the perspective of the individual it is the birth *certificate* that is crucial to their full participation in society; birth registration alone achieves little.

Although Article 7 does not expressly refer to birth certificates, the Committee on the Rights of the Child (CRC) has recognised that a right to a birth certificate is an implicit part of the right to birth registration. It is the birth certificate that is the key to an individual enjoying all human rights and privileges associated with citizenship, and birth registration without a birth certificate has little relevance for an individual.

Although the CRC has not published a General Comment on the meaning of Article 7, it has published other General Comments which shed light on whether the right to birth registration includes a right to a birth certificate. In particular, in General Comment 10 the CRC stated that it wished to emphasise that:

wishes to emphasize the fact that it is crucial for the full implementation of article 7... that every child shall be registered immediately after birth to set age-limits one way or another, which is the case for all States parties. A child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice regarding the family, work, education and labour, particularly within the juvenile justice system. *Every child must be provided with a birth certificate*

<sup>13</sup> Orenstein, J. 'Being Nobody: Difficulties faced by Koori Victorians in obtaining ID' (Paper presented at the Castan Centre for Human Rights Law Symposium on Indigenous Birth Registration and Birth Certificates, 1 December 2009), <http://law.monash.edu/castancentre/events/2009/indigenous-birth-registration-symposium.html>.

<sup>14</sup> Ibid.

*free of charge* whenever he/she needs it to prove his/her age.<sup>15</sup>  
(Emphasis added)

In addition to this explicit statement regarding a state's obligation to provide a birth certificate free of charge, the CRC has acknowledged the right to a birth certificate in various Concluding Observations, including, for example:

*Bolivia* (2009) 'The Committee welcomes that article 97 of the Child Code establishes that all children should be inscribed in the civil register, and that the first birth certificate is free... The Committee recommends that the State Party continue to take all necessary measures to ensure registration of all children, especially in rural areas, and that it take steps to identify all children who have not been registered or obtained an identity document'.<sup>16</sup>

*Romania* (2009) 'The Committee is in particular concerned that despite legislation requiring the registration of children within 30 days from ascertaining their abandonment, a very high proportion of abandoned children leave maternity hospitals without a birth certificate... The Committee recommends that the State party raise awareness among hospital staff, administrators and other health professionals, about their responsibilities to register births and to facilitate the issuing of birth certificates'.<sup>17</sup>

Many Indigenous Australians struggle to enjoy their human rights because they are unable to produce a birth certificate. Australia is in breach of its obligations under Article 7 of the Convention on the Rights of the Child by failing to ensure that all Australians are able to readily obtain a birth certificate.

#### **4. Conclusion**

Indigenous Australians are facing social exclusion and an inability to enjoy all the rights and privileges that flow from a birth having been registered and a birth certificate issued.

The CRC is urged to include in its Concluding Observations a recommendation that Australia fully comply with Article 7 of the Convention on the Rights of the Child by:

1. consulting with Indigenous Australians to develop culturally appropriate solutions to the under-registration of Indigenous births, for example, by the use of mobile birth registration units to reach Indigenous communities in rural and remote areas;

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<sup>15</sup> Committee on the Rights of the Child General Comment No 10: Children's rights in juvenile justice, 25 April 2007, CRC/C/GC/10, at [39].

<sup>16</sup> Concluding Observations of the Committee on the Rights of the Child regarding Bolivia, 16 October 2009, CRC/C/BOL/CO/4, at [34]-[35].

<sup>17</sup> Concluding Observations of the Committee on the Rights of the Child regarding Romania, 12 June 2009, CRC/C/ROM/CO/4, at [35]-[36].

2. ensuring that every parent/guardian is provided with a birth certificate free of charge upon birth registration; and
3. mandating that Registrars of Births Deaths and Marriages accept 'proof of aboriginality' documents in satisfaction of ID requirements, relax the bureaucratic requirements for obtaining a copy of a birth certificate and waive fees whenever a birth certificate is needed by an Indigenous person to prove his/her age..

To further elaborate on this problem, and support the above recommendations, we attach a copy of a forthcoming article on this issue, namely: Castan, Melissa, Gerber, Paula and Gargett, Andy 'Indigenous Australians' Access to Birth Registration Systems: A Breach of International Human Rights Law?' (2011) 17(1) *Australian Journal of Human Rights*



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