



MONASH University
Castan Centre for Human Rights Law

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**Submission to the Victorian Law Reform Commission concerning
Birth registration and Birth Certificates**

November 2012

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1. Introduction

The Castan Centre for Human Rights Law thanks the Commission for the opportunity to comment on matters relating to birth registration and certification in Victoria. The focus of this submission relates specifically to issues facing Victorian Indigenous communities. We do not seek to address issues that may be faced by other sectors of society, such as, other culturally and linguistically diverse (CALD) communities.

The Centre has a long-standing interest in the birth registration and certification problems faced by Indigenous communities. In 2009, the Castan Centre organised a Symposium on Indigenous Birth Registration and Birth Certificates which brought together members of the Victorian Indigenous community, legal profession, academics and NGOs to discuss the extent of the problem, and possible solutions.¹

Castan Centre directors have published a number of papers looking at the legal issues surrounding the birth registration problems faced by Indigenous Australians,² and are currently undertaking a substantial three-year study, funded by the Australian Research Council, looking at the issues on a national level, in conjunction with the following seven Linkage partners:

- (i) Clayton Utz, Solicitors
- (ii) Plan International
- (iii) Victorian Aboriginal Legal Service
- (iv) Western Australian Equal Opportunity Commission
- (v) Hills Community Group
- (vi) Tangentyere Council (Alice Springs)
- (vii) Queensland Government, Department of Communities.

This submission considers both the international and domestic legal frameworks governing birth registration and birth certificates before turning to the practical implementation of these laws and the problems that arise for Indigenous Victorians from that implementation.

2. International Legal Framework

The importance of universal birth registration is reflected in the provisions of a number of human rights treaties and other international documents. For example, Article 7 of the UN Convention on the Rights of the Child (CRC) provides that: 'The child shall be registered immediately after birth' and Article 24(2) of the International Covenant on Civil and

¹ Castan Centre Symposium on Indigenous Birth Registration and Birth Certificates (2009), accessed at: www.law.monash.edu.au/castancentre/events/2009/indigenous-birth-registration-symposium.html.

² See, for example, Paula Gerber, 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52, Paula Gerber, 'Making Indigenous Australians "Disappear"' (2009) 34(3) *Alternative Law Journal* 158, Andrew Gargett, Paula Gerber & Melissa Castan, 'A Right to Birth Registration in the Victorian Charter? Seek and You Shall Not Find!' (2011) 36(3) *Monash University Law Review* 1, Melissa Castan, Paula Gerber & Andrew Gargett, 'Indigenous Australians' access to birth registration systems: a breach of international human rights law?' (2011) 17(1) *Australian Journal of Human Rights* 55 and Paula Gerber, Andy Gargett and Melissa Castan 'Does the right to birth registration include a right to a birth certificate?' (2011) 29(4) *Netherlands Quarterly of Human Rights* 429.

Political Rights (ICCPR) requires that 'Every child shall be registered immediately after birth and shall have a name.'

While these two provisions are silent about the right to a birth certificate, it is apparent from the jurisprudence of the two treaty bodies empowered to monitor compliance with the CRC and the ICCPR that the right to a birth certificate is implicit in the right to birth registration, and integral to meaningful realisation of these norms.³ For example, in General Comment 10, the Committee on the Rights of the Child stated that:

the Committee 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 free of charge whenever he/she needs it to prove his/her age.**⁴ (Emphasis added)

In June 2012, in its *Concluding Observations: Australia* the CRC specifically noted the birth registration and certification problems faced by Indigenous Australians, and urged the adoption of steps to overcome them:

35. The Committee is concerned about the difficulties faced by Aboriginal persons in relation to birth registration. In particular, the Committee is concerned that obstacles to birth registration arising from poor literacy levels, the lack of understanding of the requirements and advantages of a birth registration as well as inadequacies in the support provided by authorities have not been resolved. **The Committee further notes with concern that a birth certificate is subject to administrative costs, posing an additional hindrance for persons in economically disadvantaged situations.**

36. The Committee urges the State party to review its birth registration process in detail to ensure that all children born in Australia are registered at birth, and that no child is disadvantaged due to procedural barriers to registration, including by raising awareness among the Aboriginal population on the importance of birth registration and providing special support to facilitate birth registration for illiterate persons. **It further urges the State party to issue birth certificates upon the birth of a child and for free.**⁵ (Emphasis added)

These statements make it clear that international human rights law requires not only that the birth of every child is registered, but also that a birth certificate is issued to the person registering the child's birth.

³ Paula Gerber, Andrew Gargett & Melissa Castan, 'Does the Right to Birth Registration Include a Right to a Birth Certificate?' (2011) 29(4) *Netherlands Quarterly of Human Rights* 434.

⁴ 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] - <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

⁵ Concluding Observations of the Committee on the Rights of the Child regarding Australia, 28 August 2012, CRC/C/AUS/CO4, at [35]-[36] - http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf.

3. Victorian Legal Framework

There are two pieces of legislation that impact on birth registration in Victoria, namely the *Births, Deaths And Marriages Registration Act 1996* and the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Charter). The operation and effect of the *Births, Deaths and Marriages Registration Act 1996* is discussed throughout this submission. The role of the Charter is discussed in this section.

The Charter was intended to give domestic effect to the rights set out in the ICCPR, but due to an erroneous assumption made at the time of its drafting, a key provision of the ICCPR was excluded. Those seeking to find a replication of the ICCPR right to birth registration (Art 24(2)) in the Charter, will be disappointed.⁶

The drafting of the Charter was largely guided by the model bill recommended in the Community Consultation Committee's Report.⁷ In that report, the Committee made the following observation:

The Committee has not included ... the right to birth registration and to a name. While these rights were more relevant in the post-World War II context in which the ICCPR was drafted, they are less relevant for inclusion in a modern Victorian Charter.⁸

As a consequence of this recommendation the right to birth registration was omitted from the Charter.⁹

Recommendation: That the Charter be amended to include a provision mirroring Art 24(2) of the ICCPR, that is, that all Victorians have a right to birth registration.

4. Victorian Birth Registration Practices

Rather than any single factor being the cause of comparatively low rates of Indigenous birth registration, it appears that a number of issues operate together to reduce the level of completion of birth registration and certification processes by members of the Victorian Indigenous community. Good socio-legal policy requires that these be dealt with together. This section highlights three factors likely to contribute to low rates of birth registration by Indigenous Victorians.

It is in the state's interest to maximise birth registration and certification. Non-registration can lead to incorrect assumptions about the demographic make-up of the Victorian community, and deny the Government demographic data which is essential for good planning and may be of value in determining state/federal funding arrangements. Non-registration at birth and certification problems can also increase the workload and time

⁶ Andrew Gargett, Paula Gerber & Melissa Castan, 'A Right to Birth Registration in the Victorian Charter? Seek and You Shall Not Find! (2011) 36(3) *Monash University Law Review* 1.

⁷ Kracke [2009] VCAT 646 (23 April 2009) (Bell J).

⁸ Victorian Department of Justice, *Rights, Responsibilities and Respect: the Report of the Human Rights Consultation Committee* (2005) 45.

⁹ For discussion on the omission of other rights from the Charter that are particularly relevant to Indigenous Victorians see: Melissa Castan and David Yarrow, 'A Charter of (Some) Rights ... For Some?' (2006) 31 *Alternative Law Journal* 132.

spent by public servants in unraveling problems in subsequent years. In some cases it may even lead to issues of public safety and an increase in criminal behavior, if, for example, those whose birth was not registered find that they are unable to obtain fundamental essentials of contemporary life, such as a drivers' license because of difficulty in obtaining certification of their birth or identity.

Fees

Various authors have pointed to the difficulties which poverty poses for some Indigenous people attempting to obtain birth certificates.¹⁰ It seems probable that poverty may also increase the likelihood that an Indigenous child will not have their birth registered at all.

Pursuant to the *Birth, Deaths and Marriages Registration Act 1996*, birth registration in Victoria is the legal responsibility of parents and is free. However, it does not come with the automatic provision of a birth certificate in return. Rather, a fee (currently \$28.60) must be paid to obtain a birth certificate.

Given that the provision of a certificate is perhaps the only obvious benefit of registration to a new parent, for people with limited means the cost of obtaining one may have an impact on the extent of compliance with the registration process itself, especially if other factors make the registration process difficult or worrying. Conversely, providing a birth certificate without charge at the time of registration provides an incentive for parents to comply with registration requirements.

For those living below the poverty line the sum concerned is significant, and other, more immediate and pressing, demands may be given precedence. According to the Australian Bureau of Statistics, in 2008, 31% of Aboriginal children aged from 0 to 14 lived in households that had run out of money for basic living expenses (food, clothing, medical bills and housing costs) in the previous 12 months.¹¹ Indigenous Australians are accordingly more likely than most to face difficulties as a result of costs associated with birth certification.

As noted above, the UN Committee on the Rights of the Child in its Concluding Observations regarding Australia urged that: 'the State party to issue birth certificates upon the birth of a child and *for free*'¹² [Emphasis added]

Recommendation: A free standard birth certificate is issued for all Victorian children on registration of their birth.

Complexity of Application Form

The guiding principle for good registration policy and practice should be to maximise the likelihood of registration occurring. Complexity in forms and processes, the provision of

¹⁰ See, for example, Joel Orenstein, 'The Difficulties Faced by Aboriginal Victorians in Obtaining Identification' (2008) 7(8) *Indigenous Law Bulletin* 14, Paula Gerber, 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52 and Melissa Castan, Paula Gerber & Andrew Gargett, 'Indigenous Australians' access to birth registration systems: a breach of international human rights law?' (2011) 17(1) *Australian Journal of Human Rights* 55.

¹¹ ABS - 4704.0 - The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, Oct 2010 - www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter230Oct+2010#EN4.

¹² Concluding Observations of the Committee on the Rights of the Child regarding Australia, 28 August 2012, CRC/C/AUS/CO4, at [36] - http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf

supplementary documentation, which may not be available and onerous requirements for the provision and witnessing of documents, are all likely to decrease compliance with registration processes. Making processes as straightforward and non-intimidating as possible provide an obvious benefit and may assist in overcoming problems which disadvantaged groups may have in obtaining documents and information and thereby lead to substantial increases in birth registration.

The Victorian birth registration and certification form is not simple. The form is of substantial size, and may therefore be daunting to a person of limited literacy. It is notably more complex than the forms used in Queensland and the Australian Capital Territory, and seeks more detailed information that may not be readily available to the person registering the child.

It does not focus only on the identification of the new born child, but requests extensive additional material for statistical and other purposes. While there may be value in recording such information, consideration needs to be given to whether such information can be obtained independently of the registration process itself.

Requests for information that the person undertaking the registration may not have readily available to them (such as the baby's head circumference and details of the address and phone number of a doctor or midwife present at the birth) increase the likelihood that the registration process will be delayed and possibly abandoned. The Australian Capital Territory form, while requesting some of the same information, makes it clear that this information should be completed by the relevant hospital or medical attendant.

The identity documentation for parents, requested in 'Step 8' of the birth registration component of the Victorian form may not be available to either or both of the parents, and may again deter parents from submitting an application for birth registration. This requirement should either be removed or a much wider range of alternative documents should be accepted, and a clearly outlined process introduced for those unable to comply. It is worth noting that such documentation is not requested, for example, in the Australian Capital Territory or Queensland when registering a birth.

Similarly, in Victoria a formal statutory declaration is required if one parent does not sign the registration application. In Queensland a signed letter from the applicant, setting out the reasons for this, is sufficient. In our view the latter should be adequate for such purposes and is less likely to be a disincentive to people registering the birth of their children.

Recommendation: The form used for birth registration in Victoria, should be simplified, bringing it into line with the simpler offerings used in the Australian Capital Territory and Queensland, and avoiding the need for supplementary documentation as far as possible.

Commemorative Documents

Part Two of the current Victorian birth registration form, although entitled 'Birth Certificate Application' is heavily focused on the sale of commemorative birth 'certificates'. This, in our view, is very unfortunate and needs to be changed.

It provides little information about the critical importance of possession of a standard birth certificate in a child's future life. It appears to prioritise the marketing of various forms of commemorative 'certificates' (of no practical use) over the only certificate that really matters in practical terms – the standard birth certificate.

It provides no information indicating that if you do not buy a standard birth certificate or, at greater cost, a commemorative 'certificate' (with a standard certificate as an adjunct), your child may face serious problems in obtaining one at a later date, even if their birth has been registered.

A far better approach, if one's primary aim is to ensure that births in Victoria are registered and that new born Victorian children possess documents of critical importance in their subsequent life, would be to prioritise the acquisition of the one document that really matters – a standard birth certificate. The sale of commemorative 'certificates', while no doubt of financial benefit to the operation of the Registry, is far less important than the fulfillment of its fundamental role – the registration and certification of children born in Victoria

The birth registration and certification form should clearly differentiate between the sale of commemorative 'certificates' and the provision of the most fundamental document of identification for Victorians, i.e. the standard birth certificate.

We have already noted that the UN Committee on the Rights of the Child has recommended that a standard birth certificate should be provided free of charge at the time of registration of the birth. If this recommendation is not adopted, then the form needs to place far greater emphasis on the importance of obtaining a standard birth certificate, and the potential consequences of not doing so. The marketing of higher cost, legally irrelevant, commemorative 'certificates' should be clearly separated from this process, and might be more appropriately dealt with through use of a separate marketing flier, rather than forming a part of the Birth Certificate Application form itself.

The current form also provides an option for the provision of an 'abridged' birth certificate. It is not made sufficiently clear that these days this 'abridged' certificate is likely to be of little, or no, use in official situations, despite the fact that its price is identical to that of a full certificate. In such circumstances it is unclear why the 'abridged' option is still provided.

Recommendation: Part Two of the Victorian form for registration and certification of births in Victoria should provide more substantial information about the consequences of not registering one's child's birth and obtaining a standard birth certificate. Marketing material for commemorative or abridged 'certificates' which are of little or no practical relevance, should be clearly separated from the critically important processes of registration and acquisition of a standard birth certificate.

5. Use of Birth Certificates in Victoria

For persons who do not have a birth certificate, the frequent demands for one in order to satisfy ID or other requirements, can be overwhelming. In this section we look at one situation where a birth certificate is demanded without any apparent valid basis.

Although it is not mandatory in Victoria for a birth certificate to be provided when a child enters school,¹³ a de-facto situation has arisen where many schools are adopting a publicly stated position of requiring a birth certificate at time of enrolment in order to establish matters such as proof of age, citizenship status, and name.¹⁴ In a situation where Indigenous birth registration rates are lower than those found in the general community this can result in a form of de facto discriminatory practice with the potential to impede access to education – one of the key problem areas which the “Closing the Gap” strategy seeks to overcome.

While demands for birth certificates to enter school may prompt some people to obtain them, it may deter others from placing their children in school, or cause delays in entry, with consequent disruption to the education of Indigenous children.

Castan, Gerber and Gargett maintain that ‘there is a strong argument that a failure to legally recognise a person because of a lack of birth registration, and/or the inability to obtain a birth certificate, constitutes a violation of Art 16 [of the ICCPR]’.¹⁵

A failure to allow a child to enter school because they are unable to provide a birth certificate would seem to involve an example of such a breach. Orenstein cites an example of “JW”, an Indigenous woman whose children’s entry to school was significantly delayed because birth certificates were demanded at enrollment.¹⁶ It is likely that problems of this kind may impact upon other segments of the Victorian community, especially those from CALD communities.

The discrepancy between the Department of Education’s stated policy in this area (which does not mandate provision of a birth certificate), and that of a significant number of schools (which do) indicates the need for the provision of clear directives by the Department to principals and school councils clarifying official policy, and prohibiting the mandatory provision of a birth certificate prior to enrolment of a child in school.

The link between birth certificates and access to education has been identified by the UN. In the UN 2012 Status of the Convention on the Rights of the Child Report of the UN Secretary-General, it is noted that:

¹³ Departmental school admissions policy, for example, does not include a birth certificate in the documents required for admission to Victorian schools – see www.education.vic.gov.au/school/principals/spag/participation/Pages/admission.aspx and suggests less formal alternatives for the proof of age and allows for other “equivalent” documents for proof of identity.

¹⁴ See, for example, www.orbostps.vic.edu.au/enrol.html, www.hbridgeps.vic.edu.au/about-us/how-to-enrol, <http://portlandnorth.global2.vic.edu.au/files/2011/09/PNPS-Info-Booklet-web1.pdf>

¹⁵ Castan, Gerber, and Gargett, ‘Indigenous Australians’ access to birth registration systems: a breach of international human rights law?’, above n 10.

¹⁶ Joel Orenstein, ‘The Difficulties Faced by Aboriginal Victorians in Obtaining Identification’ (2008) 7(8) *Indigenous Law Bulletin* 14.

Indigenous children suffer extreme forms of exclusion and discrimination, which result in a denial or curtailment of their access to, inter alia, education, health, birth registration and protection.¹⁷

The Report points to the specific vulnerability of Indigenous children when access to education is tied to possession of a birth certificate:

The Special Rapporteur on the right to education has expressed concerns about the impact of lack of birth registration on the realization of indigenous children's right to education, particularly in cases where a birth certificate is required for admission to school¹⁸

Recommendation: That the Victorian Department of Education bring to the attention of all schools, that there are alternatives to birth certificates for establishing identity and age when enrolling students, as outlined in current Department policies.

Recommendation: That the Victorian Department of Education require schools who currently mandate a birth certificate for enrolment to modify their practices and promotional materials to bring them in line with Departmental policy and international human rights law.

Matters such as this give rise to the broader question of the extent to which birth certificates should be required in the course of identity establishment in public administration generally. Proof of identity is demanded increasingly frequently in contemporary Australian society.¹⁹ While birth certificates obviously provide one generally effective means of satisfying such needs, in many bureaucratic situations other forms of documentation may be equally appropriate. Government administrative policies and practices should require no greater "proof" than the situation demands, and, where possible, a wide range of alternatives should be accepted, particularly where Indigenous or other CALD groups are concerned. Onerous requirements of proof of identity may, as in the education example cited above, do more public harm than public good, impeding more important public aims.

Recommendation: That all government departments and agencies which require 'proof of identity' in the course of their operations develop policies to ensure that requirements for personal identification are appropriate to the actual demands of the situation, and that where possible, a wide range of alternative forms of identification as well as birth certificates be accepted.

6. Obtaining a Birth Certificate Subsequent to Birth Registration

If a person is not issued with a birth certificate at the time of birth registration and needs to obtain one subsequently, they may face several obstacles. The first is satisfying the proof of identity requirements of the Registrar of Births, Deaths and Marriages.

¹⁷ Status of the Convention on the Rights of the Child - Report of the Secretary-General, 3 August 2012, A/67/225 at [9].

¹⁸ Status of the Convention on the Rights of the Child - Report of the Secretary-General, 3 August 2012, A/67/225.

¹⁹ Office of the Privacy Commissioner, 'Proof of ID required? Getting Identity Management Right' [2004] 1-30.

Proof of identity

If people do not obtain a birth certificate at birth, or it requires later replacement, more onerous requirements for the proof of the identity of the person concerned arise. The nature of materials needed to establish proof of identity are expressed in a somewhat contradictory fashion on the form.

The "Application for a Victorian Birth Certificate Form" indicates in large print that the applicant "must supply three identity documents", one from each of three lists. Items included in the first list all ultimately require that the person concerned has previously possessed a birth certificate. Items in the second list generally, though not always, also require that the person concerned has previously been issued with a birth certificate. Items in the third list require that the person concerned possess a fixed place of abode.

In small print, below this section, the form indicates, in contradiction of the earlier large print imprimatur, that two items from the second list may be acceptable if no item from List 1 is available, and at its conclusion, suggests that if these requirements cannot be met, then the person concerned should contact the Registry. However, some people may be deterred well before reaching the suggestion of alternative approaches. A better approach would be to redesign the form to make the possibility of other options evident at the commencement of this section.

We also note that in Indigenous communities some people of long standing in the community, well known to all members of the community, may not be able to satisfy the standard of documentation requested. While we recognise that the Registry is prepared to assist people in such situations, consideration should be given to the development of a specific published protocol, clearly outlining alternative means of identification (such as a statutory declaration from a senior member of the community).

Recommendation: That the current 'Application for a Victorian Birth Certificate Form' be modified to clarify the documentation actually required, and to more clearly point to alternative avenues that are available to applicants unable to satisfy the preferred options.

Witnessing of proof of identity documents.

Victoria places more stringent constraints on the witnessing of identity documents for the purpose of obtaining a birth certificate than do other Australian jurisdictions. If a Victorian resident applies for a copy of their birth certificate by mail, identity documents can only be certified by a sworn member of police or a Justice of the Peace (JP) located in a police station, or at one of a limited number of Justice Service Centres.

Somewhat paradoxically, those applying for a Victorian birth certificate from Queensland, the Northern Territory, Western Australia or from overseas have a wider set of options, including any Justice of the Peace, Commissioner of Oaths, Notary Public, or Australian Consulate Official.

It is noteworthy that even this list is far more restrictive than the requirements of the Australian Department of Immigration and Citizenship when applying for proof of citizenship. That Department allows identity documents to be witnessed by holders of a

wide range of offices, and members of professions including teachers, pharmacists, legal practitioners, medical practitioners, and the like.²⁰

In other Australian states or territories, identity documents used in applications for a birth certificate can generally be certified by barristers and solicitors, commissioners for oaths for declarations, Justices of the Peace, or others recognised by the *Oaths Acts* of the jurisdiction concerned.

As Gargett, Gerber and Castan have noted, the requirement that documents be witnessed by police²¹:

... is problematic given the widely recognised dysfunctional relationship between some Indigenous people and the police. There seems to be no reasonable explanation why lawyers and others who are recognised as being fit and proper persons to witness affidavits and other legal instruments could not also be authorised to certify copies of identification documents for the BDM Registrar's purposes.

Extending the range of accepted witnesses for the certification of identity documents when seeking a birth certificate would be of benefit to Victorians generally, bring the Victorian process into line with that adopted in other jurisdictions, and also into accord with the normal process for witnessing documents of legal import in the state.

Recommendation: That the list of those empowered to certify identification documents when seeking a Victorian Birth Certificate be extended to include those authorised in Victoria to witness Statutory Declarations. If this listing is seen as too liberal, then it be at least extended to those able to witness affidavits pursuant to s 186 of the *Evidence Act 1995* (Cth).²²

7. Conclusion and Recommendations

Modern life increasingly brings to the fore demands for the proof of personal identity. Life without a birth certificate is much harder today than it was in the past, and is a necessary adjunct to participation in many important aspects of life – education, participation in the financial system, personal mobility, participation in the work force, and access to a wide range of government services. Without a birth certificate a person's life and horizons today are severely limited.

The problems associated with birth registration and certification today are multi-faceted.

First, there is a need to ensure that all new births in Victoria are promptly registered. Further assistance needs to be provided to those who have difficulty with the process, who may not understand its importance for their children, or who for other reasons are tardy in complying with registration requirements

²⁰ See www.citizenship.gov.au/applying/documents/pid_docs/occupations_list/.

²¹ Gargett, Gerber, and Castan, 'A Right to Birth Registration in the Victorian Charter? Seek and You Shall Not Find!', above n 2.

²² see www.justice.vic.gov.au/resources/11b080c1-916f-49bc-82f9-b12728bf64af/list_of_victorian_authorised_witnesses.pdf.

Second, there is a need to facilitate the registration of those already born whose births were not registered. This is a problem of some historical depth and may require the Registry to adopt innovative strategies that go beyond normal processes of identity proof.

Third, the need for a birth certificate today for full participation in society is so great that it should no longer be something left to a parent to determine the need for at the time of a child's birth. As a requirement of modern life its provision should be automatically tied to the birth registration process. A birth certificate should therefore be provided free of charge and without the need for a specific request at the time of registration.

Fourth, there is the problem of those who are already adolescents or adults but lack proof of identity. In some cases these people will suffer from the added problem that their births have not been registered. In many cases they will be people of Indigenous or CALD background. If we are to ensure that these people are able to participate fully in Australian society then an incorporative, proactive, approach must be taken to retrospectively providing them with an official identity.

We have been heartened by the positive response made by the Victorian Registry of Births, Deaths and Marriages to dealing with Indigenous communities, especially in East Gippsland where the problems faced by such groups was first publicised. The success of programs to increase registration and certification there is to be applauded.

The nine recommendations contained in this report are intended to deal with some of the obstacles that currently exist. We hope they assist you in your deliberations.

Recommendations

For ease of reference, the nine recommendations made throughout this submission are collectively set out below:

1. The Charter of Human Rights be amended to include a provision mirroring Art 24(2) of the ICCPR, that is, that all Victorians have a right to birth registration.
2. A *free* standard birth certificate is issued for all Victorian children on registration of their birth.
3. The form used for birth registration in Victoria be simplified so that it does not ask for more information or documentation than is actually necessary for the birth registration and birth certificate.
4. Part Two of the Victorian form for registration and certification of births in Victoria should provide more substantial information about the consequences of not registering one's child's birth and obtaining a standard birth certificate. Marketing material for commemorative or abridged 'certificates' which are of little or no practical relevance, should be clearly separated from the critically important processes of registration and acquisition of a standard birth certificate.

5. The Victorian Department of Education bring to the attention of all schools, that there are alternatives to birth certificates in order to establish identity and age when enrolling students, as outlined in current Department policies.
6. The Victorian Department of Education to require schools who currently mandate a birth certificate for enrolment to modify their practices and promotional materials to bring them in line with Departmental policy and international human rights law.
7. All government departments and agencies which require "proof of identity" in the course of their operations to develop policies to ensure that requirements for personal identification are appropriate to the actual demands of the situation, and that where possible, a wide range of alternative forms of identification be accepted, in addition to a birth certificate.
8. The current 'Application for a Victorian Birth Certificate Form' be modified to clarify the documentation actually required, and to more clearly point to alternative avenues that are available to applicants unable to satisfy the preferred options.
9. The list of those empowered to certify identification documents when seeking a Victorian Birth Certificate be extended to include those authorised in Victoria to witness Statutory Declarations. If this listing is seen as too liberal, then it be at least extended to those able to witness affidavits pursuant to s 186 of the *Evidence Act* 1995 (Cth).

Please do not hesitate to contact us if you require additional information or would like to interview us regarding anything in this submission.

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