

**Submission on Birth Registration**  
**to**  
**the Office of the High Commissioner for Human Rights**

**By the Castan Centre for Human Rights Law**  
**and**  
**Plan International Australia**

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## 1. Introduction

In Australia, despite high registration rates in the general population, marginalised groups experience difficulty registering births and obtaining birth certificates. This is particularly true for Indigenous Australians. In 2005, of the 9,900 children born to Indigenous mothers in Australia, 13% (1,300 children) were not registered.<sup>1</sup> These numbers suggest that the lack of birth registration in Indigenous communities is a significant problem.

The Concluding Observations for Australia issued by the United Nation's Committee on the Rights of the Child in August 2012, criticised Australia for failing to ensure that all Indigenous children are registered at birth and issued with a birth certificate. It noted that:

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.<sup>2</sup>

This submission focuses on the barriers faced by one of the most marginalised communities in Australia in both registering births and obtaining a birth certificate.

## 2. Birth registration and certification

The term 'birth registration' is commonly used as an umbrella for both the process of registering a birth and the process of applying for a birth certificate. Birth registration benefits the state, by providing valuable demographic data that enables governments to accurately plan for the infrastructure and services needed for populations in different regions. However, birth registration is of little benefit to an individual *unless* it culminates in the issue of a birth certificate. To use the term 'birth registration' to refer to both processes is vague and ambiguous, and obfuscates the issues facing many Indigenous Australians. It has been observed that:

Registration itself can be challenging for many people in the Aboriginal community to achieve, however, certification of a birth appears to be a particularly pressing concern.<sup>3</sup>

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; birth registration alone provides an individual with little benefit.

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

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<sup>1</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>2</sup> [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_AUS\\_CO\\_4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf)

<sup>3</sup> Victorian Equal Opportunity and Human Rights Commission. 'Submission to the Victorian Law Reform Commission review of birth registration and birth certificates.' 1 November 2012:4.

registration includes a right to a birth certificate. In particular, in General Comment 10 the CRC stated that it wished to emphasise that:

the fact that it is crucial for the full implementation of article 7... that every child shall be registered immediately after birth...*Every child must be provided with a birth certificate free of charge* whenever he/she needs it to prove his/her age.<sup>4</sup>

This submission emphasises the distinction between the two processes and the barriers associated with each and urges the OHCHR to do the same in its future work on this issue.

### **3. Barriers to Birth Registration in Australia**

The Committee on the Rights of the Child recommended that Australia review its birth registration system and to issue all children with a birth certificate for free. However, as the UN Committee on the Rights of the Child noted, there is more to ensuring universal birth registration and certification than just the fees. Preliminary investigations attribute the non-registration of births by Indigenous Australians to a range of barriers, including:

- i. A lack of confidence in dealing with authorities;
- ii. Marginalisation from mainstream services;
- iii. Lack of understanding of the requirements and benefits of birth registration;
- iv. Poor literacy levels and the low priority afforded to birth registration;<sup>5</sup>
- v. Remoteness – when births take place in rural or regional locations, and birth registration offices are only located in capital cities; and
- vi. Mistrust of official record-keeping.

It 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>6</sup>

### **4. Barriers to obtaining a Birth Certificate in Australia**

Anecdotal evidence suggests that Indigenous Australians are encountering difficulties obtaining a birth certificate.<sup>7</sup> There appear to be two principle causes of this inability to obtain a birth certificate, namely that:

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<sup>4</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]. Emphasis added.

<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!’ (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.

<sup>6</sup> Cox D ‘Working with Indigenous survivors of sexual assault’ (2008) 5 *ACSSA Wrap* 1, 3.

<sup>7</sup> Gargett, A. Gerber, P. and Castan, M. ‘A Right to Birth Registration in the Victorian Charter? Seek and You Shall *Not* Find!’, (2011) 36(2) *Monash University Law Review*; Gerber, Making Indigenous Australians “Disappear”, Problems arising from our birth registration system’ (2009) 34(3) *Alternative Law Journal* 158; Gerber P ‘Making Visible the

- (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.

Some of these bureaucratic requirements include:

*i. Fees*

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. For someone with limited financial means, the cost of obtaining a birth certificate may be one of the reasons why a birth certificate is not purchased at the time of birth registration.

*ii. Requirement of identity documents that themselves require a birth certificate*

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>8</sup> This requirement 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' 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>9</sup>

*iii. Requirement that identity documents include a current address*

Persons seeking a copy of their birth certificate may also be 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>10</sup> as proof of identity, yet these documents are the most readily available form of identification for many Indigenous Australians.

*iv. Geographic centralisation of registries*

In each Australian state and territory, the principal office of Births, Deaths and Marriages Registries are located in the capital cities. This means people have 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, for example that ID documents be certified by a police officer. Many Indigenous Australians do not live in capital cities, and the relationship between Indigenous Australians and the police is widely recognised as dysfunctional.<sup>11</sup> There is no obvious reason why lawyers, or others who are recognised as

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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>8</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.

<sup>9</sup> Gerber P 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52.

<sup>10</sup> Proof of Aboriginality documentation is a signed document bearing the seal of an Aboriginal organisation: Orenstein, *Being Nobody*, *loc.cit.* note 5.

<sup>11</sup> Cunneen, C. *Conflict, Politics and Crime: Aboriginal Communities and the Police*, Allen & Unwin, Crows Nest, 2001.

being fit and proper persons to witness affidavits and other legal instruments, could not also certify identity documents.<sup>12</sup>

## **5. Global Solutions applicable to the Australian context**

Although the problems that Indigenous Australians face in engaging with the birth registration/certification system have only started to receive attention in relatively recent times, many countries that have been tackling this issue for some time have identified barriers similar to those facing Indigenous Australians – lack of awareness of the benefits of registration, centralised systems that are not accessible to remote communities, fees for obtaining a birth certificate and mistrust of the government authorities responsible for birth registration. We highlight below three examples of best practice that could be usefully in other countries, including Australia.

### *i. Education and awareness raising*

Involving the community and children in awareness raising is critical. Many families are not aware of the short- and long-term benefits of registering a birth and obtaining a birth certificate, and in some cases mistrust the authorities responsible for these processes. Raising awareness of the benefits of birth registration increases demand. Furthermore, involving communities and children in the design of birth registration policies and programs ensures they are compatible with local realities. This in turn helps build trust in the system.

Low levels of awareness of the benefits of birth registration and birth certificates in Uganda was found to contribute to low rates of registration. In 2006, a six-month awareness raising campaign was launched, which used multiple media to spread the word about the benefits of birth registration. These included advertisements, role plays, jingles, posters and brochures. Local radio stations were involved and were one of the most popular elements of the campaign. The success of this strategy is evidenced in the increase in birth registrations: in November 2006 only 45% of births were registered, but by June 2007, 69% were registered, including retrospective registrations of older children.<sup>13</sup>

### *ii. De-centralisation of birth registration*

Costs associated with transport and time away from work or family commitments can be eliminated if birth registration comes to local communities. Mobile birth registration units target areas with low rates of registration, and was piloted in Cambodia in 2004.<sup>14</sup> The mobile units were supported by trained volunteers and staff, public information campaigns and reviews of relevant civil registration laws. A key aspect of the pilot campaign was that birth certificates were issued free of charge. After 10 months of the mobile registration program, more than 7 million Cambodians – close to 50% of the population – had received birth certificates. The scheme was so successful it has been replicated in many other countries including Bolivia, Ghana, The Philippines and Timor-Leste.

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<sup>12</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>13</sup> <http://plan-international.org/birthregistration/files/count-every-child-2009> pg 33

<sup>14</sup> <http://plan-international.org/birthregistration/files/count-every-child-2009> pg 45

*iii. Tailored approaches for vulnerable communities*

Even in countries, like Australia, with overall high levels of birth registration, marginalised populations often go unregistered. These pockets of vulnerability often require a tailored approach. In Honduras, fourteen satellite registration offices were established in municipalities consisting of mostly Indigenous populations living in remote areas. This resulted in communities being able to more easily register their children. Satellite birth registration offices and mobile registration units can help address issues of mistrust of government authorities, as they are often staffed by local volunteers and mobile registrars who have had specialised training. The use of community focal points, such as elders and leaders, who can facilitate registration and certification process also breaks down mistrust and promotes registration.

Another way of bringing birth registration closer to marginalised communities is to base registration and certification units within hospitals. In Australia new parents are provided with birth registration forms in hospital but are given no assistance in completing or submitting such forms. More hospital based support for the birth registration process, including overcoming language and literacy obstacles would likely lead to increased rates of birth registration.

## **Conclusion**

Indigenous Australians face social exclusion and an inability to enjoy all the rights and privileges that flow from their birth being registered and a birth certificate issued.

We urge the OHCHR to acknowledge in its report that birth registration and the issuing of birth certificates are two distinct problems and are not confined to developing states. Developed states with marginalised minorities also experience obstacles to universal birth registration and certification. To address these issues, the OHCHR should recommend that states:

1. Consult with Indigenous people to develop culturally appropriate solutions to the under-registration of Indigenous births, including awareness raising and education;
2. Ensure that every parent/guardian is provided with a birth certificate free of charge upon birth registration;
3. Require Registrars of Births Deaths and Marriages to waive fees and relax the bureaucratic requirements to obtain a birth certificate; and
4. Employ alternative systems, tailored to specific communities, such as mobile and hospital based registration.