

Birth Registration – A Human Rights Issue

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Project Genesis

The unbearable heaviness of being no one

January 23, 2009

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After years of running in circles, 31-year-old Bradley Hayes has finally had his identity recognised by Victorian authorities, who gave him a birth certificate this week. *Photo: Wayne Taylor*

AS FAR as the authorities were concerned, Bradley Hayes did not exist.

The 31-year-old fisherman from Lakes Entrance grew up a ward of the state and did not know his real birth date. His birth was never registered.

Mr Hayes never really worried until he was 16 and realised he did not have any ID when he tried to sign up for the dole.

"The best I could come up with was paperwork from the Aboriginal co-operative which stated I was Aboriginal," Mr Hayes said. "I had to get my sister to come in and verify."

He was unable to drink at the pub until his 20s because he could not prove he was 18.

For the past nine years Mr Hayes has been battling to register his birth so he can participate in everyday activities others take for granted.

Without a birth certificate he has been unable to register his fishing boat in his own name, obtain a passport or get a driver's licence so he can take his children to school.

"I wouldn't be able to leave the country or nothing, not because I've done anything wrong, I just didn't have a birth certificate," he said.

Case Study 1



- Two 15-year-old Aboriginal girls obtained employment,
- No birth certificates, so unable to apply for TFN.
- No ID documents to satisfy BDM to get certificates
 - No photo ID
 - Nothing with residential address.
- Employer forced to tax wages at highest rate.
 - Minimal take home pay despite hours of work.
- Birth certificate and TFN not obtained until after placement finished.
- Both withdrew employment program with very negative sentiments.

Case Study 2

- 53-year-old elder at Lake Tyers Aboriginal Trust produce birth certificate to receive estate payment.
- No ID documents:
 - No birth certificate (unregistered)
 - Never voted
 - Never had TFN
 - No drivers license
- Told by BDM need to produce evidence of circumstances of birth
 - Stolen generation – little info available about family history;
 - Unsure of place or details of birth.
- After 18 months by chance record found that born at Orbost hospital – enough to register birth.
- BUT, he died prior to being able to register birth.



Case Study 3

- Gippsland, Victoria: Partnership created between government and local community groups to assist Indigenous youth obtain drivers licences, in order to:
 - Reduce isolation from living in remote communities;
 - Facilitate them taking advantage of employment opportunities;
 - Reduce number of youths getting into trouble with the law for unlicensed driving; and
 - Improve road safety.
- 120 individuals enrolled for driver training.
- **BUT**, 50% of participants had no birth certificate, and 12% births had never been registered. So these individual couldn't satisfy ID requirements for obtaining a drivers licence.

The Human Right to Birth Registration

THE INTERNATIONAL
COVENANT ON CIVIL
AND POLITICAL
RIGHTS
CASES, MATERIALS,
AND COMMENTARY

SECOND EDITION

SARAH JOSEPH,
JENNY SCHULTZ,
AND MELISSA CASTAN

- Article 24(2) of the *International Covenant of Civil and Political Rights* and Article 7 of the *Convention on the Rights of the Child* say “every child shall be registered immediately after birth”.
- BUT, no explicit mention of a right to a birth certificate.
- However, commentary and jurisprudence from the relevant UN treaty committees, suggest right to a birth certificate is implicit in right to birth registration.



International Attention

- Birth registration and birth certificates very much on the radar of the United Nations
- In 2012, Committee on Rights of the Child urged Australia 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."

International Attention cont.



Report of OHCHR in June 2014 made several recommendations for increasing rates of birth registration, including:

1. Raising awareness across communities about importance of birth registration, and that it is a child's right;
2. Make registration accessible – physically as well as through forms being available in different languages and simple enough to be understood by those with low literacy levels;
3. Birth “registration should be completely free of charge”; and
4. Ensure penalties for late registration don't discourage registration.

Right to a Birth Certificate in Australian Law?

- Governed by state and territory law, not federal.
- *Birth, Deaths and Marriages Act 1996* (Vic) is framed in terms of parents having a responsibility and obligation to register the births of their children, rather than children having the right to have their birth registered and a birth certificate provided (s 15).
- Victoria is one of the few states in Australia to have human rights legislation (*Charter of Human Rights*), BUT it contains no mention of a right to birth registration or a birth certificate. However, government has committed to rectifying this.

Project Details

We obtained ARC Linkage Grant to undertake research into causes and extent of the problem in:

- **Victoria;**
- **Western Australia;**
- **Northern Territory; and**
- **Queensland.**



Australian Government

Australian Research Council

Project Researchers

- Paula Gerber



- Melissa Castan



- Lynette Russell



- Jane Freemantle



- Rod Hagen



Preliminary Research

We identified 2 distinct, but related issues:

- 1. Births are not being registered so no certificate is available; and**
- 2. Births are registered, but birth certificate not obtained at the time, and cannot now be obtained because of:**
 - (i) inability to satisfy ID requirements; and/or**
 - (ii) inability to pay fees.**

Regulatory Framework



Several steps involved in registering a birth & getting a birth certificate:

1. Hospital or midwife notifies BDM of a birth;
2. Hospital or midwife provides birth registration form to parent(s) [moving to online later this year];
3. Both parents must complete and sign the Birth Registration Form. If only one parent has signed, s/he must explain to the Registrar why the other parent has not signed.

Regulatory Framework cont.

- Registration form must be submitted within 60 days of the birth;
- *Potential* penalty for late registration is **\$1,400!**
- Apply for a birth certificate on the same form as registration.
- Registration is free, BUT have to pay \$32.40 for a birth certificate.



Reasons for Non-registration

- Complex forms/bureaucracy;
- Low literacy;
- Isolation from mainstream services;
- **Low priority afforded to birth registration;**
- Fees (perception rather than reality); and
- Cultural mistrust of bureaucracy.

Victoria today



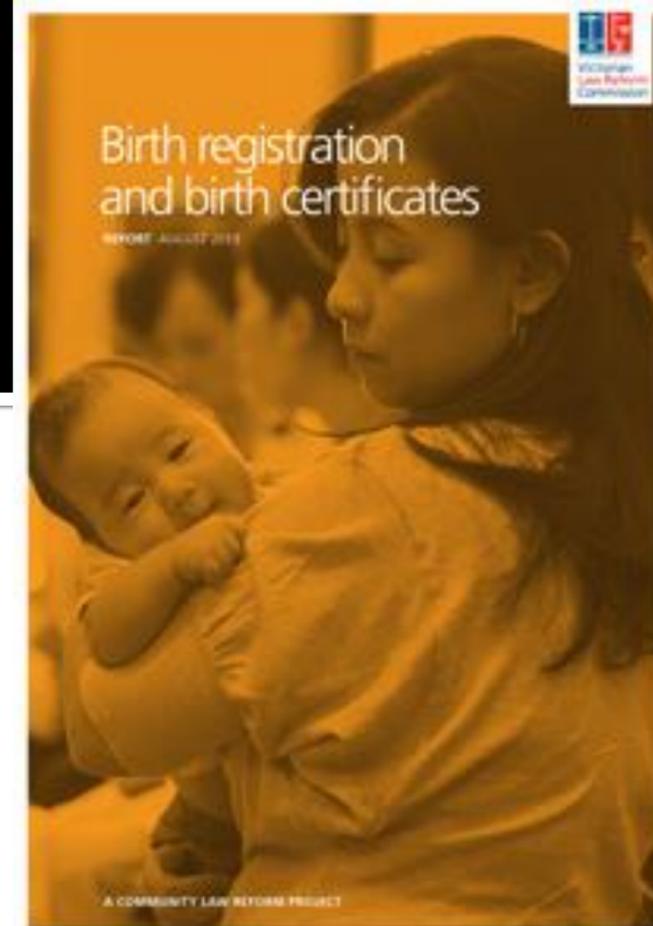
Things on the improve in Victoria with:

- Justice Service Centres;
- Indigenous Access Fund; and
- Koori Access Team within BDM.
- Coolamon Strategy – BDM’s commitment to working towards Koori community access <https://www.bdm.vic.gov.au/koori-services/coolamon-strategy-2017-18>.

BUT, still room for improvement – expanded outreach work to Indigenous communities to achieve tangible improvements .

Victorian Law Reform Commission Report

- VLRC published a report in late 2013.
- It included 7 recommendations relating to birth registration.
- It recognised special needs of Indigenous mothers and children, as well as single mothers who have reasons for not including father's details.



Conclusions



- Current system throws up impediments to Indigenous Australians and other vulnerable persons registering the births of their children.
- This directly impacts upon the ability of Indigenous Australians to participate meaningfully in society.
- Inhibits social inclusion and further marginalises Indigenous community.
- Need to balance concerns of ensuring accuracy of registry and protecting against fraud, with need for flexibility so everyone can have their birth registered and obtain a copy of their birth certificate.

What does this mean for you?

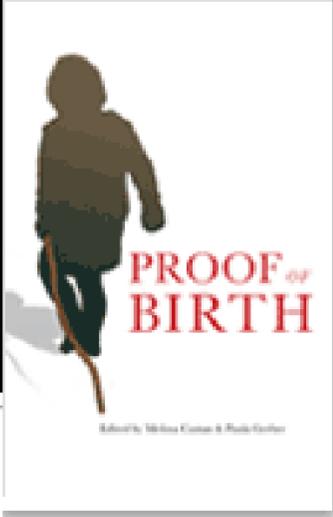
1. What could you do to help facilitate birth registration?
2. How can you help to improve understanding that birth registration is a child's right?
3. What changes could be made in your work processes to increase birth registration rates within Indigenous and other communities?



Final Thought

- Every child has a right to have their birth registered and to have a birth certificate.
- Facilitating birth registration and access to birth certificates generates positive outcomes for peoples' health, education, economic wellbeing and social justice.

Want to find out more?



- Castan & Gerber Proof of Birth (2014) open access book:

http://www.futureleaders.com.au/book_chapters/search/chapters_book_5.php

- Chapters include:
 - 'The right to universal birth registration in Australia',
 - 'Improving identification of Indigenous babies in maternity services' and
 - 'The way forward'

Publications



1. Gerber, Paula & Castan Melissa 'Achieving universal birth registration for Indigenous Australians: Recommendations from the Victorian Law Reform Commission' (2014) 8(14) *Indigenous Law Bulletin*
2. Gerber, Paula, Gargett, Andy & Castan, Melissa 'Does the right to birth registration include a right to a birth certificate?' (2011) 29(4) *Netherlands Quarterly of Human Rights* 429-454.
3. Castan, Melissa, Gerber, Paula & Gargett, Andy 'Indigenous Australians' Access to Birth Registration Systems: A Breach of International Human Rights Law?' (2011) 17(1) *Australian Journal of Human Rights* 55-89.
4. Gargett, Andy, Gerber, Paula & Castan, Melissa 'A Right to Birth Registration in the Victorian Charter? Seek and you shall *NOT* Find!' (2010) 36(3) *Monash University Law Review* 1-32.
5. Gerber, Paula 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52.
6. Gerber, Paula 'Making Indigenous Australians 'Disappear': Problems arising from our Birth Registration Systems' (2009) 34(3) *Alternative Law Journal* 157.

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