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Submission No. 4

NORTH MELBOURNE LEGAL SERVICE

SUBMISSION TO THE VICTORIAN LAW REFORM COMMISSION

Birth registration and birth certificates: A community law reform project

We write this submission in response to the consultation paper prepared by the Victorian Law Reform Commission relating to birth registration and birth certificates.

North Melbourne Legal Service (**NMLS**) is a not-for-profit community legal centre that provides legal assistance to disadvantaged and marginalised people in the City of Melbourne area. North Melbourne Legal Service provides a weekly legal outreach assistance service each Tuesday afternoon at the Royal Women's Hospital where questions relating to birth registration and birth certificates often arise. NMLS regularly advises and assists women experiencing family violence through this outreach service.

Further, North Melbourne Legal Service and the Royal Women's Hospital have also established a health-advocacy alliance entitled Acting on the Warning Signs which involves building the capacity and willingness of health professionals to identify family violence and to provide basic information to patients on family violence complemented by a range of health, legal and social welfare assistance available at the hospital site.

It is in this context that we provide this submission to the Victorian Law Reform Commission.

Recommendations

1. The birth registration and birth certificate process include information and referrals for women who suffer from or are at risk of family violence and require the registrar to take into consideration indicators of family violence when assessing an incomplete form.
2. Birth registration and birth certificates should be available through one process and the guidelines for fee waiver clearly stated and made widely available.
3. Copies of the birth registration form should be available online.
4. All forms and guides should be printed in several community languages.
5. The birth registration statement should include an option for de facto partners, list standard birth certificates first (above commemorative birth certificates) and make it clear that standard birth certificates are considered official documents and provide clearer information about who is authorised to be a witness.
6. The application for a Victorian birth certificate should indicate that the standard birth certificate is the official document required and provide a phone number for people to find their nearest Justice Service Centre.
7. The birth registration process should provide women with more information about their rights and entitlements and further clarity about the process.

1. Family violence

- 1.1 A significant number of Victorian women suffer from or are at risk of family violence. Studies show that family violence often increases or commences during pregnancy. A survey conducted by the Australian Bureau of Statistics has found that since the age of fifteen, over one-third of women had experienced physical and/or sexual violence.¹ Further, in a study conducted of 399 pregnant women at the Royal Women's Hospital, it was found that 80 women or 20% of the study did experience and continued to experience violence during their pregnancy.² Accordingly, we submit that certain measures should be introduced on the birth registration form to assist in addressing this serious problem.
- 1.2 We note that in the consultation paper prepared by the Victorian Law Reform Commission at paragraph 3.13, it states that upon the birth of a child, the attending midwife or nurse provides the mother with a child health and development record, birth registration statement form, information on the baby bonus or paid parental leave as well as other Centrelink forms where appropriate. We submit that in addition to these documents, all mothers should also be provided with a list of relevant telephone numbers. This list of telephone numbers should include the number for the police. Further, it should include the contact details for the Law Institute of Victoria, Victoria Legal Aid and the Federation of Community Legal Centres to ensure that new mothers are able to seek advice in relation to their rights and entitlements at law. Further, contact details for other relevant and appropriate services should also be provided such as the Women's Domestic Violence Crisis Service and the Domestic Violence Resource Centre Victoria.
- 1.3 When suffering from family violence or at risk of family violence, mothers may be hesitant to list the name of the father of the child on the birth certificate for fear of harm to herself or to her child/children. Accordingly, we submit that the birth registration form as well as the birth certificate form should state that if a mother feels that she or her children are at risk of harm by completing the form, she should seek legal assistance prior to completing the form. The contact details for the Law Institute of Victoria, Victoria Legal Aid and the Federation of Community Legal Centres should be provided on the form.
- 1.4 At present, where one parent's details are missing from a birth registration form, the registrar of Births Deaths and Marriages is required to conduct an investigation and seek further information from the parent who submitted the birth registration³. For many women who access our services, there can be confusion and anxiety regarding whether they are required to provide details of their child's father in situations where they may have fears for their safety or that of their children due to family violence. Although registration can proceed on the basis of incomplete particulars,⁴ NMLS is of the view that many vulnerable individuals would benefit from more certainty regarding

¹ Australian Bureau of Statistics, Personal safety survey (Australian Bureau of Statistics, 2006).

² Walsh, D & Weeks, W, *What a smile can hide*, Royal Women's Hospital, 2004, p.95.

³ *Births, Deaths and Marriages Registration Act 1996* (Vic).

⁴ *Births, Deaths and Marriages Registration Act 1996* (Vic) s 19(2).

what constitutes an 'other reason'⁵ which may be sufficient for the registrar to proceed with a birth registration in this circumstance.

- 1.5 When investigating an incomplete form, the registrar should be required to consider indicators of family violence, including the existence of intervention orders, evidence of criminal convictions, police reports and statutory declarations by witnesses (including social workers and other support workers).
- 1.6 North Melbourne Legal Service supports the right of a child to know both of their parents. However, in our work, we are aware of many situations in which to simply list the father on the birth certificate without further support and information provided to the mother would place women and/or their children at serious risk of harm. Accordingly, we submit that the birth registration process should provide women with more information about their rights and entitlements and provide women with further clarity about the process.

2. One process-one price

- 2.1 We note that there is currently a fee for a birth certificate and that pursuant to section 49 of the *Births, Deaths and Marriages Registration Act 1996*, the registrar may remit the whole or part of a fee "in appropriate cases". We submit that there should be publicly available guidelines available to individuals to clearly describe what constitutes an "appropriate" case for the purposes of this section. We submit that for marginalised and disadvantaged individuals, this fee should be waived. Individuals that are holders of Health Care Cards or Commonwealth Pension Cards should be automatically granted a waiver.
- 2.2 We note that currently, individuals must apply separately to register a birth and then for a birth certificate. We submit that this should be one process and that there should be one cost for this process. Further, as discussed above, pursuant to appropriate guidelines in certain cases, marginalised, disadvantaged and impoverished individuals should be eligible to have this fee waived.

3. Accessibility

- 3.1 We note that presently copies of the birth registration form can be obtained from the Registry of Births, Deaths and Marriages by phone or in person. We submit that they should also be available for download online.

4. Culturally and linguistically diverse (CALD) communities

- 4.1 Through our experience working with clients from a CALD background, we are aware of many barriers for individuals, particularly from a refugee background, in navigating government agencies and processes. Accordingly, we encourage all forms and guides to be printed in several community languages to remove linguistic barriers.

⁵ *Births, Deaths and Marriages Registration Act 1996* (Vic) s 16(1)(b)(iii).

5. Amendments to the birth registration statement

- 5.1 Section 35 of the birth registration statement asks for the relationship status of parents. We submit that this section should include an option for de facto partners.
- 5.2 Step 9 of the birth registration statement asks for the type of birth certificate required. Commemorative birth certificates are listed prior to the standard birth certificate. Commemorative birth certificates are more expensive than standard birth certificates. Standard birth certificates are considered official documents. We submit that the standard birth certificate should be listed first and the form should make it clear that this is the official document required for the purposes of applying for a passport, etc. For example, the list could state "standard birth certificate (required as an official document/proof of identity document)".
- 5.3 In the checklist at the end of the birth registration statement, there is a requirement that the declaration be witnessed. We submit that the form should be clearer as to who is required to witness the declaration and the checklist should state that the declaration must be witnessed by an adult.

6. Application for a Victorian birth certificate

- 6.1 At part one of the application for a Victorian birth certificate, it asks individuals to complete what certificate they require. We submit that in addition to providing "standard birth certificate" as an option, the form should state in brackets thereafter that this is the official document so that all individuals are aware that this is the document required for official purposes.
- 6.2 Further, we submit that on this form where it states that people can find their nearest Justice Service Centre by accessing the website, a phone number should also be provided for those individuals who are computer illiterate.

7. Other

- 7.1 NMLS supports the right of a child to know both of their parents. However, in our work, we are aware of many situations in which to do so would place women and/or their children at risk. Accordingly, we submit that the birth registration process should provide women with more information about their rights and entitlements and provide women with further clarity about the process.

We thank you for considering the above submission.

Please do not hesitate to contact our office on 9328 1885 to further discuss the above.

