



Submission No. 6



Law  
Institute  
Victoria

1 November 2012

Victorian Law Reform Commission  
Level 3, 333 Queen Street  
Melbourne Victoria 3000 Australia

By email: [law.reform@lawreform.vic.gov.au](mailto:law.reform@lawreform.vic.gov.au)

Dear Commission,

### **Birth registration and birth certificates - community law reform project**

The Law Institute of Victoria (LIV) welcomes the opportunity to provide this submission in response to the Victorian Law Reform Commission's (the Commission) community law reform project on birth registrations and birth certificates.

Birth registration is a fundamental human right, recognised at international law, and supports the right of everyone to recognition as a person before the law, protected in Victoria under s8(1) of the *Charter of Human Rights and Responsibilities 2006*.<sup>i</sup> Under their obligations to respect, protect and fulfill human rights, Australian governments (including the Victorian government), have a responsibility to ensure that birth registration systems are accessible and that procedural barriers do not disadvantage any child.<sup>ii</sup>

Birth registration and access to a birth certificate evidencing registration are fundamental to engaging with all aspects of our society and underpins a person's ability, for example, to access government services and benefits, to obtain employment and pay taxes, to obtain a driver licence, to open a bank account, to marry and to apply for a passport. They can also impact native title rights.

Preliminary research undertaken by the Castan Centre for Human Rights and the Commission<sup>iii</sup> highlights that each year, a number of births are not registered in Victoria, although the extent of the problem is not fully known. The LIV is concerned by preliminary research that suggests that Indigenous people, and people from culturally and linguistically diverse communities, are more likely to be unregistered or to not have a birth certificate.

### **Role of the Registry of Births, Deaths and Marriages**

The LIV welcomes the significant progress that has been made by the Registry of Births, Deaths and Marriages (the Registry) since 2009 in working with Indigenous communities to facilitate birth registration for people who have not been previously registered, to raise awareness of the importance of birth registration and certificates and the establishment of the Indigenous Access Fund within the Koori Justice Unit, which we understand meets the cost of standard certificates for Aboriginal and Torres Strait Islander people who currently hold a Centrelink Health Care Card or Pension Concession Card.

### Indigenous Access Fund

The Indigenous Access Fund is an important initiative. In 2009 it became apparent that many Indigenous people had not applied for a birth certificate because they are unable to pay the fee. The LIV is concerned about the lack of publicity about the Indigenous Access Fund and whether it is in practice providing assistance to eligible people.

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We understand that the Indigenous Access Fund has been promoted by the Registry to date through informal networks in the Indigenous community, in particular through a dedicated Koori staff member. We believe, however, that the Registry should provide open access to information about rights and entitlements and we have recommended to the Registry that they take measures to publish information about eligibility and how people can access their entitlements.

Lawyers, including through community legal centres and organisations such as the Victorian Aboriginal Legal Service, play an important role in the community by providing advice to clients, including Aboriginal and Torres Strait Islander people, about their rights and entitlements when dealing with government. It is important that our members are made aware of initiatives such as the Indigenous Access Fund, so that they can properly advise clients. We recommend that the Registry include information on its website to which lawyers can refer.

#### Fee waivers

The LIV notes that the *Births, Deaths and Marriages Registration Act 1996* (Vic) provides that the 'Registrar may, in appropriate cases, remit the whole or part of a fee' but that in practice, fee waiver is rarely granted.

In many contexts, including court and tribunal fees, fee waiver is available in cases of financial hardship. Waiver of fees is important to ensure that socially and economically disadvantaged people are not precluded from accessing what they otherwise have a right to access as a citizen or resident.

Fulfilment of the right to recognition before the law relies on evidence of birth registration and we therefore submit that people who are not able to pay for a birth certificate should not be precluded from obtaining a birth certificate.

The LIV recommends that the fee waiver power in the *Births, Deaths and Marriages Registration Act* should be elaborated in the *Births, Deaths and Marriages Registration Regulations 2008* to establish explicit criteria for access to fee waiver. In line with our recommendations for reforms to waiver of court and tribunal fee provisions,<sup>iv</sup> we recommend that there should be specified fee exemption categories (for example where a person holds a Health Care Card, is in receipt of Youth Allowance or is receiving a benefit under ABSTUDY) in addition to financial hardship criteria. Financial hardship criteria should be outlined in a policy document which should be available on the Registry's website.

Further, we suggest that a fee waiver application form should be developed and published on the Registry's website. The form should be simple and easy to use and available in community languages.

#### Identity document certification

The LIV is concerned that the vast majority of Victorians continue to be required to attend a police station to have copies of identity documents certified by police officers prior to applying for a certificate. The requirement to attend a police station is problematic, because often disadvantaged communities mistrust authorities based on their past experiences and interactions. In our view the Registry's certification requirements are overly narrow and unnecessary and create a barrier for access to some vulnerable groups in Victoria, including Aboriginal and Torres Strait Islander people.

We are aware that the Registry has recently undertaken a program of training for justices of the peace, to allow justices of the peace to certify copies of identity documents. We understand, however, that justices of the peace under this program will be located at police stations so that Victorians will continue to be required to attend a police station and further, that the program may not be widely available.

We also note that in regional and suburban areas, applicants can attend one of nine Justice Service Centres for identity certification. While we welcome the Registry's initiatives in this area, they are limited in scope and do not go far enough.

The Victorian Registry has the most restricted Access Policy in Australia and no other state or territory limits certification to police officers and Justice Service Centres. For example:

- New South Wales permits certification by Justice of the Peace; notary public; a legal practitioner with a current practising certificate; and/or a person authorised to administer an oath under Section 26 of the *Oaths Act 1900*;
- ACT permits certification by Solicitor, Police Officer, or Justice of the Peace;
- Queensland permits certification by Notary Public, barrister or solicitor, Commissioner for Declarations, Justice of the Peace;
- Northern Territory permits certification by Justice of the Peace, Commissioner for Oaths or other qualified person.

South Australia, Western Australia and Tasmania do not require certified copies.

Therefore, while we acknowledge the Registry's concern to prevent identity fraud, and the need for stringent measures to confirm the identity of persons seeking access to certificates, we submit that risks can be adequately mitigated by broadening the class of persons authorised to certify documents to appropriately qualified persons. The class of persons might include those authorised to certify documents by other state and territory Registries, including legal practitioners.

As officers of the Court, legal practitioners are subject to strict professional obligations, including under the *Legal Profession Act 2004 (Vic)* and the *Professional Conduct and Practice Rules 2005*, which are enforced through disciplinary procedures. In recognition of their professional duties, legal practitioners are authorised to certify identity in a number of contexts, including by the Land Titles Office.

People from disadvantaged communities might feel more comfortable approaching legal practitioners to certify documents, for example in community legal centres, where lawyers are part of and have built relationships with communities. Consideration could also be given to Commonwealth agencies, or Australia Post.

Broadening the class of persons authorised to certify documents to appropriately qualified persons, including legal practitioners, will improve access to a crucial government service for Victorians, while maintaining adequate safeguards.

Please contact Laura Helm, Lawyer for the Administrative Law and Human Rights Section, on (03) 9607 9380 relation with this matter.

Yours sincerely,

**Michael Holcroft**  
President  
Law Institute of Victoria

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<sup>i</sup> Article 24 (2), *International Covenant on Civil and Political Rights*.

<sup>ii</sup> UN Committee on the Rights of the Child, as per Victorian Law Reform Commission Birth registration and birth certificates consultation paper, fn48.

<sup>iii</sup> E.g. Victorian Law Reform Commission Birth registration and birth certificates consultation paper (August 2012); Orenstien, J, 'The difficulties faced by Aboriginal Victorians in obtaining identification', *Indigenous Law Bulletin* 7:8 2008, p14; Gerber, P. 'Making Indigenous Australians 'Disappear': Problems arising from our birth registration systems', *Alternative Law Journal* 34:3 2009, p158.

<sup>iv</sup> LIV submission to the Attorney General, *Streamlining of waiver of court and tribunal fees processes in pro bono matters in Victoria*, 4 March 2011 available at <http://www.liv.asn.au/Membership/Practice-Sections/Submissions>.

