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## **Birth Registration**

Submission to the OHCHR

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## 1. Introduction

UNICEF Australia welcomes the opportunity to make a submission to the OHCHR on the subject of birth registration. Birth registration is a necessary step for all children in order to access their rights to an identity and nationality, as well as access to health, education and community services.

Article 7 of the Convention of the Rights of the Child provides that all governments must ensure under law that all children must be registered immediately after birth and have the right to a name, nationality and to be cared for by their parents as far as that is possible.

## 2. Main barriers to access universal birth registration

As a developed country, Australia enjoys high rates of birth registration across its population. However, some people may be disadvantaged by the birth registration process as a result of poor literacy levels, lack of understanding of procedures and lack of support from authorities.

### (a) Complex forms and requirements

Birth registration and certification forms and requirements are complex. Literacy problems or a lack of confidence can make it difficult for some Aboriginal people to navigate the bureaucracy.<sup>1</sup> Some people do not understand the requirements of a birth registration. Forms may be confusing particularly for illiterate persons or people speaking English as their second language. In its concluding observations, the Committee on the Rights of the Child (CRC) recommended that Australia should provide special support to illiterate persons to register their children.<sup>2</sup> Many states do not publish forms or guidance about birth registration in other languages.<sup>3</sup>

Geographical distance to registration facilities can make it difficult for people to register births. Although all states and territories allow applications to be made by post, many states do not allow applications to be submitted online.<sup>45</sup>

People must register births and apply for birth certificates in the state in which the child was born. This adds to the costs and administrative obstacles of both registering births and applying for birth certificates.

Indigenous people and people from non-English speaking backgrounds are often marginalised from mainstream services. The Victorian Aboriginal Legal Service has stated that many

clients mistrust authority to the extent that they do not want their details to be recorded on any formal system.<sup>6</sup>

**(b) Cost**

The administrative costs associated with birth certificates poses a hindrance for people in economically disadvantaged situations. In all Australian states, a birth certificate is not automatically issued to a person registering a birth. At the time of registration, a separate application form must be completed and the prescribed fee paid.

All jurisdictions in Australia charge a fee for a birth certificate that ranges from \$29 to \$51. Queensland charges \$4 to register a birth if the registration is submitted after the 60 day limit.<sup>7</sup> Mistakes made on registration forms can be costly to rectify. For example, amending birth details in Tasmania can cost \$48.18.

All states and territories (with the exception of Queensland) have provision for the registrar to waive fees for birth certificates in appropriate circumstances.<sup>8</sup> However, the Victorian Law Reform Commission (VLRC) recently found that “in all jurisdictions fee waivers are seldom granted” and are not widely advertised.<sup>9</sup>

In its concluding observations, the CRC recommended that Australia should issue birth certificates free of charge in all states in order to prevent additional barriers for economically disadvantaged persons.<sup>10</sup>

**(c) Difficulties obtaining a birth certificate**

Even when a birth is registered, many people still face problems getting a birth certificate later in life if their parents did not apply for a certificate at birth. This is because there are onerous identity requirements to obtain a birth certificate. Many of identity documents required, such as passports and driver's licences, can only be obtained if the person already has a birth certificate. It is impossible for homeless people or people living with friends and family to obtain documents evidencing a current residential address, a common requirement for applicants aged over 18.

Many state registries do not accept health care cards or proof of aboriginality documents as valid proof of identity document. These documents are the most common forms of identification available for Aboriginal people.<sup>11</sup> The strict identity requirements prevent many Aboriginals from obtaining birth certificates. In 2007, the Koori ID Project assisted the Aboriginal community in Gippsland East to obtain driver's licenses. Of the 120 initial

participants, 50% were unable to satisfy the identity requirement to obtain a licence because they did not have birth certificates.<sup>12</sup>

These identity documents are required to be certified if applying online or by post which places a further administrative burden on applicants. In Victoria, the registry advises applicants to take their documents to the police station for certification. This may be the only option for people living in rural areas and can be problematic and stressful for members of the Indigenous community who distrust the police.

**(d) Lack of awareness**

There is a lack of knowledge of the importance and advantages of birth registration, particularly in Indigenous communities. The CRC recommends that State Parties should ensure that, 'Indigenous communities are informed about the importance of birth registration and of the negative implications of its absence on the enjoyment of other rights for non-registered children.'<sup>13</sup>

Despite this lack of awareness, the VLRC found that no state or territory has a specific function within legislation that provides for the registrar to undertake educational or promotional work about the need to register and obtain a birth certificate for children.<sup>14</sup>

**(e) Inadequate support**

The authorities do not provide adequate support to disadvantaged people to register births and obtain birth certificates. Registries often lack the flexibility to reduce the strict fee and identity requirements to tackle the barriers faced by Indigenous and marginalised communities. Although some Registries are involved in programs to assist Indigenous communities,<sup>15</sup> the number of Aboriginal children not registered at birth is still high, especially in rural and regional Australia.<sup>16</sup> In 2005, 13 per cent of children born in Australia from Aboriginal mothers were not registered. In 2009, 2.5 per cent of births went unregistered in Victoria, and it is believed that most of these unregistered children are Aboriginal.<sup>17</sup>

The CRC recommends that State Parties use special measures agreed to following consultations with the community concerned to ensure that Indigenous children are duly registered.<sup>18</sup> These special measures may include mobile units, birth registration campaigns or the designation of birth registration offices within Indigenous communities.<sup>19</sup> Special

measures to assist disadvantaged people have not been widely implemented and advertised throughout Australia.

**3. Examples of good practices undertaken to improve the rates of birth registration and to ensure awareness of the importance of birth registration**

Good practice initiatives which have been undertaken to improve the rates of birth registration in Australia have largely been propelled by the not-for-profit and academic sector in recent years. Initiatives such as the Minimbah Project, operated by the University of New England's Enactus team, and university research projects to assess the reasons behind poor levels of birth registration in certain communities, are positive developments in addressing barriers to birth registration. However, further government initiatives must act on the impetus provided by these initiatives, and seek to remove inequalities in the current domestic system by removing fees and complicated forms from the procedure. Best practice policy to improve the rates of birth registration in Australia will occur where birth certificates are issued free of charge and automatically to all children.

**(a) Minimbah Project, University of New England, NSW**

The Minimbah Project was established by a group of university students at the University of New England, Armidale, after difficulties faced by local Indigenous youths in opening a bank account, due to their births not having been registered in the past. As a result, the Minimbah Project was created, and volunteer team members now hold birth registration days in local primary schools in order to raise community awareness of the importance of birth registration. Children whose births have not been registered are given the opportunity at these registration days to register for a birth certificate. Assistance is provided in completing the complex forms and the fee for the issuing of the birth certificate is covered by corporate and individual donations.

Since its inception in 2011, the Minimbah Project has organised and funded an estimated 1400 birth certificates for Indigenous children as well as other disadvantaged children and adults. However, the NSW government indexed the birth certificate fee in 2013 to \$51.00<sup>20</sup> and is no longer offering discounted rates to the Minimbah Project of \$35.00 per certificate in its sign up days. This is because not all children being registered are of Aboriginal or Torres Strait Islander descent, but are also of other socio-economically disadvantaged groups.<sup>21</sup>

Currently in NSW, birth certificates are issued on a full fee recovery basis, which is not conducive to supporting disadvantaged persons in registering their children's births.

The Minimbah Project plans to continue its birth registration days in the Armidale region, targeting 1600 new sign ups by December 2014. Team members have also initiated a national campaign for free and automatic birth certificates for every Australian child, which they hope to table before the Coalition of Australian Governments (COAG) within the next year. The aim of this campaign is to promote a Partnership Agreement between States and Territories to standardise the birth registration process and remove all fees.

**(b) Monash University research into ‘Closing the gap on indigenous birth registration’**

Monash University has been funded by the Australian Research Council to undertake research into the problems faced by the Indigenous population in particular in relation to birth registration.<sup>22</sup> Researchers at the Castan Centre for Human Rights Law, which operates through the University, has also published a series of journal articles<sup>23</sup> with the aim of raising awareness of the barriers and issues for Indigenous people and birth registration. It is good practice for universities and organisations to build academic as well as community awareness on the issues relating to birth registration in order to provoke discussion and change.

**(c) Victoria Law Reform Commission Community Project**

The Victorian Law Reform Commission is also currently reviewing the barriers inherent in the process for birth registration and obtaining a birth certificate in Victoria. Through its research, the Commission has launched a community consultation program for public submissions. Community consultation is an effective way of raising awareness on the importance of birth registration, and should be repeated across all States and Territories.

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## References

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- <sup>1</sup> Joel Orenstein 'Being Nobody—The Difficulties Faced by Aboriginal Victorian in Obtaining Identification' (Paper presented at National Association of Community Legal Centres National Conference, Perth, 18 September 2009) <http://orenstein.com.au/NACLCLC%20conf%20paper.pdf>.
- <sup>2</sup> Concluding Observations, Sixtieth session, 28 August 2012, CRC/C/AUS/CO/4, p.9.
- <sup>3</sup> In 2010, 31% of people aged 18 years or over living in Australia were born in another country. Of these 5.1 million people, two thirds were born in a country where English was not the main language (Australian Bureau of Statistics, *General Social Survey: Summary Results, Australia, 2010*, Cat. no. 4159.0).
- <sup>4</sup> QLD, TAS, NSW and WA do not allow online applications.
- <sup>5</sup> As at June 2012, 34% of Australia's population (7.7 million people) resided outside greater capital city areas and 30% lived outside major cities (Australian Bureau of Statistics, *Population by age and sex, regions of Australia, 2012*, Cat. no. 3235.0).
- <sup>6</sup> Victorian Aboriginal Legal Service Co-operative Ltd, Presentation by Frank Guivarra at Castan Centre for Human Rights Law Symposium on Indigenous Birth Registration and Birth Certificates - Potential Legal Solutions, 2009, page 1: <http://www.law.monash.edu.au/castancentre/events/2009/guivarra-paper.pdf>
- <sup>7</sup> See the Schedule of Fees available online at Registry of Births, Deaths and Marriages (Queensland), *Births* <http://www.justice.qld.gov.au>
- <sup>8</sup> *Births, Deaths and Marriages Registration Act 1995* (NSW) s 55; *Births, Deaths and Marriages Registration Act 1996* (SA) s 49; *Births, Deaths and Marriages Registration Act 1996* (Vic) s 49; *Births, Deaths and Marriages Registration Act 1997* (ACT) s 68; *Births, Deaths and Marriages Registration Act 1998* (WA) s 70; *Births, Deaths and Marriages Registration Act 1999* (Tas) s 49; *Births, Deaths and Marriages Registration Act* (NT) s 47.
- <sup>9</sup> Victorian Law Reform Commission, *Birth registration and birth certificates* (Community Consultation Paper) (2012) p.19.
- <sup>10</sup> Concluding Observations, Sixtieth session, 28 August 2012, CRC/C/AUS/CO/4, p.9.
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- <sup>13</sup> General Comment No 11, CRC/C/GC/11. January 2009.
- <sup>14</sup> Victorian Law Reform Commission, *Birth registration and birth certificates* (Community Consultation Paper) (2012) p.18.
- <sup>15</sup> For example, the Indigenous Access Program in NSW and the Aboriginal Justice Program in WA.
- <sup>16</sup> Paula Gerber, 'Making Indigenous Australians Disappear - Problems Arising from our Birth Registration System' (2009) 34(3), *Alternative Law Journal* 157.
- <sup>17</sup> Joel Orenstein 'Being Nobody—The Difficulties Faced by Aboriginal Victorian in Obtaining Identification' (Paper presented at National Association of Community Legal Centres National Conference, Perth, 18 September 2009) <http://orenstein.com.au/NACLCLC%20conf%20paper.pdf>.
- <sup>18</sup> General Comment No 11, CRC/C/GC, January 2009.
- <sup>19</sup> Ibid.
- <sup>20</sup> *Births, Deaths and Marriages Registration Amendment (Fees) Regulation 2013* Schedule 1
- <sup>21</sup> Winter, Will, Minimbah Project Convener, 2013, pers.comm., 31 October

<sup>22</sup> Monash University, 'Closing the gap on Indigenous birth registration', available <http://www.law.monash.edu.au/research/achievements/research-grants/arc-linkage-projects/closing-gap-on-indigenous-birth-registration.html> (accessed 29 August 2013)

<sup>23</sup> See, e.g. Joel Orienstein, 'The Difficulties Faced by Aboriginal Victorians in Obtaining Identification' (2008) 7(8) *Indigenous Law Bulletin* 14.; Gerber, Paula 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52; Gerber, Paula 'Making Indigenous Australians 'Disappear': Problems arising from our Birth Registration Systems' (2009) 34(3) *Alternative Law Journal* 157.