



PROOF OF BIRTH

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CHAPTER 2

Registering the births of Indigenous Australians in New South Wales

Alainnah Calabrò

It has only recently been widely recognised that many Indigenous Australians are unable to obtain primary evidence of their identity. This issue is identified by its absence, with most Australians taking for granted the benefits of legal recognition. A birth certificate is the most important evidentiary document establishing legal identity and a gateway to the enjoyment of citizenship and many human rights. It can be required to participate in the workforce, commence education, access government services, open a bank account, and obtain a driver's licence. This chapter¹ examines the legislative framework of birth registration and certification in New South Wales (NSW) and the need to take into account access issues that some Indigenous Australians face.

The *Births, Deaths and Marriages Registration Act 1995* (NSW) (the *BDM Act*) and the *Births, Deaths and Marriages Registration Regulation 2011* (NSW) (the *BDM Regulation*) govern the registration of births and issuing of birth certificates in NSW. The Registry of Births, Deaths and Marriages website describes the importance of birth registration, stating that it is a ‘simple process creating an official public record of your child’s identity’ and ‘one of the few officially accepted ways to identify your child to most government and private organisations’.² However, an analysis of the *BDM Act*, *BDM Regulation* and registry policies shows that engaging with these processes can be long and complex, and may operate as an indirect barrier for Indigenous Australians.

Birth registration

Births in NSW are registered according to two sources of information:

- within seven days after the birth of a child in NSW, a ‘responsible person’³ must give notice of the birth to the Registrar; and
- parents of a child are jointly responsible for completing a Birth Registration Statement (BRS)⁴ within 60 days after the date of the birth.

The maximum penalty for non-compliance is \$1,100.⁵ However, the Registrar must accept a birth registration statement even after the expiration of the 60-day period.

In 2014, the Registry introduced a proof of identity requirements for all birth registrations.⁶ When registering

the birth of a child, each parent is now required to produce three identity documents from the same three categories that are required if a person applies for a copy of their birth certificate at a later time.⁷ This would appear to be a significant change in policy, as proof of identity documentation was previously only required when an individual sought to obtain a birth certificate after the time of registration. Inability to comply with ID requirements is known to be a barrier to obtaining a birth certificate (see Chapter 1). These new reforms are said to 'strengthen privacy protection, better secure your child's identity and reduce errors'.⁸ It is too early to say, but these changes certainly have the potential to place a greater burden on parents and create further hurdles to registering a child's birth.

The procedure for late registration (more than 60 days after the birth of a child) is more complex, involving 'strict verification of the child's details and more proofs of identification required'.⁹ This process was in existence prior to the 2014 reforms described above, and requires parents to present proof of their own identity, including a Social Security Benefits Card or a Certificate of Aboriginality.¹⁰ Additionally, one of the following forms of identification must be shown to prove the identity of their child:

- Medicare card;
- pre-school/school report;
- medical certificate;
- Centrelink letter; or
- immunisation certificate.

The documents required to prove the identity of the child may often not exist in the first place, because to obtain them one needs a birth certificate. For example, a child cannot be enrolled in school without a birth certificate. This creates a catch-22 situation, and with no room for discretion on the part of the Registry, appears to be another barrier to registration.

Birth certificates

The Registrar may issue a birth certificate to an individual or their parent. As with the new identity requirements for birth registration, parents or individuals must provide at least three forms of identification from various categories. As discussed above, this is problematic as many of the forms of identification required by the Registrar can only be obtained with a birth certificate.

A fee of \$51 must be paid in order to receive a certificate.¹¹ The *BDM Act* contains a provision to waive all or part of a fee, but there is little available information as to how the discretion to waive fees is exercised and under what circumstances.

Policies and practices of the Registry

The Registry has an Indigenous Access Program that holds information days to increase birth registration and assist Indigenous people to apply for certificates. However, there is little readily available information regarding the dates and location of such information days.

The BDM website mentions the availability of Indigenous staff to deal with enquiries. It also has a

Memorandum of Understanding with Link-Up to assist members of the Stolen Generations, allow the use of alternate forms of identification and waive fees. This would be of assistance to a proportion of the community, but would be of greater use if it were available to the Indigenous community more broadly.

The NSW legislative framework does not provide education about the importance of birth registration as the process by which a person becomes legally visible within society. Evidence of significant numbers of unregistered births in parts of NSW demonstrates the procedural barriers to registering a birth and the need for education about the importance of birth registration.

Program innovation

Lack of proof of identity in the form of a birth certificate can have serious flow-on effects on an individual, limiting their capacity to participate in economic, cultural and social activities, including playing sport, where a birth certificate may be required to prove, for example, that an individual is eligible to play in an under-17s team. There is a need for culturally appropriate processes for the Indigenous community to overcome this inequity. The projects discussed below illustrate innovative systems of administering and issuing birth certificates to Indigenous people.

Community birth certificate projects

In 2014, the Western NSW Medicare Local Closing the Gap team ran a two-day birth registration catch-up

program in Bathurst, in conjunction with the Registry. The aim of the event was to address the high rates of Indigenous community members who could not obtain a birth certificate. During this time, the Registry had an amnesty for all applications (that is, no fines for late registrations), and birth certificates were offered at a reduced rate of \$38.

The Dubbo Aboriginal Birth Certificate Pilot (Dubbo Pilot) in 2006 was developed after NSW Sport and Recreation (NSWSR), a division of the NSW government's Office of Sport, recognised the lack of definitive identification among Indigenous residents of Dubbo, Brewarrina, Walgett and Bourke was a significant barrier to participation in community activities.¹² At the end of the 12-month pilot, 750 birth registrations were processed and 500 families were assisted by the project.¹³

The NSWSR team identified a number of cultural and economic factors that made gaining identification a challenge. These included collective family child-raising, individuals being known by different names dependent on location and situation, being intimidated by the courthouse, transient lifestyles impacting on safekeeping of paperwork, distance and lack of transport to Registry locations, and poor literacy and numeracy among certain communities.¹⁴

Innovation was required to work around the barriers in the birth registration and certification system. The labour and time-intensive model of doorknocking homes by the NSWSR team enabled direct interaction with

families and occurred in a neutral location. As part of the project, the Registry accepted alternative documentation to establish identity from other agencies, such as the Aboriginal Lands Council and Aboriginal Health Service. A \$20,000 grant from the Department of Attorney General and Justice enabled birth certificates to be issued for free, overcoming the most significant obstacle experienced by individuals. These changes to procedure, documentation and communication processes were crucial to the success of the Dubbo Pilot.

Driver education programs

In 2013, the NSW Auditor-General found that a major barrier relating to licensing and vehicle registration was the lack of birth certificates as proof of identity.¹⁵ The *Improving Legal and Safe Driving Among Aboriginal People Report* found that Indigenous people may not have a birth certificate because:

- they were unable to afford a copy;
- they were born in another state or territory and have difficulty liaising with cross-border agencies;
- their birth was never registered with the Registry of Births, Deaths and Marriages; and/or
- their identity on the birth certificate is incorrect.

A key recommendation of the report was that the NSW government should support Indigenous people to get a driver's licence by improving access to birth certificates.

Driver education programs have been developed as another way to overcome barriers to obtaining a driver's

licence, and include providing assistance to participants to help them obtain a birth certificate. The George Institute for Global Health runs *Driving Change*, a community-led licensing support program. One of the aims of the program is to assist young Indigenous people with accessing birth certificates.

Another program assisting Indigenous residents in the Far North Coast of NSW developed a ‘systematic approach to assisting people to obtain a birth certificate ... as the first steps in the process of becoming a licensed driver.’¹⁶ Many reports comment on the difficulties of not having appropriate personal identification for driver licensing¹⁷ and the process and cost of applying for certificates in order to satisfy proof of identity requirements.¹⁸

High rates of unlicensed drivers, particularly young people, suggests that lack of birth certificates may be a major issue in Indigenous communities in NSW. Indigenous people are over-represented in traffic-related offending and in prisons, with nearly a quarter of all Indigenous appearances in the NSW Local Court for road traffic and motor vehicle regulatory offences. The flow-on effects from a lack of formal identification can result in limiting access to employment opportunities and increasing the likelihood of coming into contact with the criminal justice system.

Proposed reforms

As noted above, barriers to obtaining a birth certificate include:

- the Registry's service delivery model, which places the onus on parents to complete a BRS and submit it to the Registry;
- difficulties with satisfying proof of identity requirements; and
- difficulties in paying for a certificate once all other barriers are overcome.

To alleviate these problems, a number of reforms are suggested, including the introduction of a detailed policy regarding fee waivers and the availability of concession rates or ideally a free birth certificate issued upon registration. These reforms would work to ensure that the processes for birth registration and certification are clear and accessible to all.

The difficulties of access for Indigenous Australians must be acknowledged. Ideally, this would be in the form of a fee waiver accompanied by eligibility criteria, as it exists in other jurisdictions such as Victoria. Healthcare, pension and concession cardholders or others receiving Centrelink (such as Youth Allowance or ABSTUDY) should be eligible for a fee waiver. There should also be residual discretion on the part of the Registrar to assess on a case-by-case basis if an individual does not fit within the above categories, such as in situations of hardship.

Alternatively, the Registry could automatically issue a birth certificate upon registration of Indigenous births. This would also reduce the administrative costs of the Registry in handling and processing money transactions and would be less time consuming and costly than assess-

ing applications for a fee waiver. Indigenous births account for roughly five per cent of all births in NSW each year.¹⁹ Issuing free certificates to this proportion of the population would not create a large deficit in the Registry's annual income.

Strict identification procedures were implemented to address the risk of identity fraud. However, there are still ways to assist those who struggle to comply with the strict ID requirements, while ensuring the Register remains secure. It is recommended that the Registry relax its proof of identity requirements by accepting a wider range of alternative documentation. Flexibility in accepting proof of identity documents could be extended to include certificates of Aboriginality.²⁰

Another possible model is to enable authorised referees to verify the identity of the applicant. The Department of Transport in Western Australia introduced a Verification of Identity form to assist participants living in remote areas to apply for a driver's licence where they are genuinely unable to meet the standard proof of identity requirements. Similarly, Medicare Australia enables an authorised referee to fill in the proof of identity section on behalf of the applicant if they are unable to produce the required proof of identity documents.²¹ Both options would work to break the vicious cycle that currently exists.²² This reform seeks to balance the Registry's competing interests of keeping the Register secure and ensuring everyone in the community has access to its services.

There is a history of government policies and laws failing to consider an Indigenous perspective, which has contributed to contemporary disadvantage. It is imperative that any reforms include a consideration of how policy and service delivery can be improved to make the system more accessible to Indigenous Australians. Innovative community programs have demonstrated the need for outreach services and the importance of developing a relationship of trust. Changes to service delivery in the form of outreach would be a positive development and recognition that traditional service models are not always appropriate for Indigenous communities.

It is clear that in NSW, individuals whose birth was not registered, or if registered, do not have a birth certificate, do not have equal access to health care, education and other social services. The procedural barriers that prevent individuals from accessing these entitlements are a form of indirect discrimination. The reforms suggested above would eliminate or significantly reduce the barriers that prevent many Indigenous people from registering births or obtaining a birth certificate. As a key government service, the Registry has the responsibility to ensure access and equity to all NSW residents.

Endnotes

- 1 This chapter is based on an article originally published as Alannah Calabrò, 'Registering the Births of Indigenous Australians: Has New South Wales got it right?' (2013) 36(3) *UNSW Law Journal*, 809.
- 2 NSW Registry of Births, Deaths and Marriages, *Registering a Birth*, retrieved 11 February 2015 from http://www.bdm.nsw.gov.au/bdm_bth.html

- 3 A 'responsible person' is the chief executive officer of the hospital or, if the child was not born in a hospital, a doctor or midwife responsible for the professional care of the birth mother at birth: *BDM Act s 12(5)*.
- 4 *BDM Act s 15(1)*.
- 5 *BDM Act s 16(1)*.
- 6 NSW Registry of Births, Deaths and Marriages, *New identity requirements for birth registration*, retrieved 11 February 2015 from http://www.bdm.nsw.gov.au/bdm_bth.html
- 7 NSW Registry of Births, Deaths and Marriages, *Birth Certificates: Proof of Identification*, retrieved 11 February 2015 from http://www.bdm.nsw.gov.au/bdm_bth/bdm_bct.html
- 8 NSW Registry of Births, Deaths and Marriages, *New identity requirements for birth registration*, retrieved 11 February 2015 from http://www.bdm.nsw.gov.au/bdm_bth.html
- 9 NSW Registry of Births, Deaths and Marriages, *Late Registration of a Birth*, retrieved 11 February 2015 from http://www.bdm.nsw.gov.au/bdm_bth.html
- 10 *Ibid*. A Certificate of Aboriginality is issued by a Land Council or Aboriginal organisation and is commonly used when applying for Aboriginal specific services and programs.
- 11 The fee for a birth certificate in NSW is currently the highest in Australia.
- 12 A birth certificate was necessary to participate in sporting activities and to be covered by insurance: House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* (2011) 73 [3.116]. See also 'Birth Certificate Scheme Targets Dubbo Indigenous Population', *ABC News* (online), retrieved 12 March 2008 from <http://www.abc.net.au/news/stories/2008/03/12/2187060.htm>; Standing Committee on Aboriginal and Torres Strait Islander Affairs, House of Representatives Reference: *Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System* (Brisbane), 4 May 2010.
- 13 Mark Horton, Submission No 85 to House of Representatives, *Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System* (8 March 2010) 9.
- 14 *Ibid*, 7.
- 15 NSW Auditor-General's Report to Parliament, *Improving legal and safe driving among Aboriginal people*, December 2013.
- 16 *Executive Summary: On the Road: Evaluation of a NSW Aboriginal Community Based Driver Licensing Program*, retrieved from [http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwFiles/On%20the%20Road%20Executive%20Summary.pdf/\\$file/On%20the%20Road%20Executive%20Summary.pdf](http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwFiles/On%20the%20Road%20Executive%20Summary.pdf/$file/On%20the%20Road%20Executive%20Summary.pdf)

- 17 Yvonne L M Helps and Jerry Moller, *Aboriginal People Travelling Well Literature Review: Driver Licensing Issues, Seat Restraint Non-Compliance, Aboriginal Health, Aboriginal Disability* (Research and Analysis Report, Australian Transport Safety Bureau, November 2007) 3.1.1.
- 18 Elliott & Shanahan Research, *An Investigation of Aboriginal Driver Licencing Issues* (Research Report, December 2008) 30.
- 19 Australian Bureau of Statistics, *Births, Australia, 2013: Table 11.1 Births of Aboriginal and Torres Strait Islander Peoples, Summary – New South Wales – 2003–2013*, retrieved 29 January 2015 from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3301.02013?OpenDocument>
- 20 Other than for situations of late registration, as is currently the case: NSW Registry of Births, Deaths and Marriages, *Late Registration of a Birth*, retrieved 11 February 2015 from http://www.bdm.nsw.gov.au/bdm_bth.html
- 21 Medicare Australia, *Aboriginal and Torres Strait Islander Medicare enrolment and amendment form*, retrieved 11 February 2015 from <http://www.humanservices.gov.au/spw/customer/forms/resources/095-1208en.pdf>
- 22 This occurs when the categories of acceptable identification can only be obtained with a birth certificate.