



**Submission to The Office of the United Nations
High Commissioner for Human Rights
on examples of best practices
to ensure the registration of children,
namely those in situation of risk and
marginalized:
Human Rights Council resolution 34/15**

**Submitted by Dr Paula Gerber and Melissa Castan for the
Castan Centre for Human Rights Law with the assistance
of DLA Piper¹**

31 October 2017

¹ Courtney Adamson, Pro Bono Associate at DLA Piper, assisted with the preparation of this submission.

² Further resources resulting from the project can be found in the publications set out on the project's website: www.indigenousbirthreg.org.

³ A J Lanyon and David John, 'Australia's Civil Registration and Vital Statistics System', Ch 4 in Melissa Castan and Paula Gerber (eds), 1

1. INTRODUCTION

The [Castan Centre for Human Rights Law](#) (**Castan Centre**) welcomes the opportunity to provide information to The Office of the United Nations High Commissioner for Human Rights (**OHCHR**) for its report on best practices and specific measures to ensure access to birth registration (Human Rights Council resolution 34/15).

In 2012, the Castan Centre and its partners received an Australian Research Council Linkage Project Grant for a project entitled 'Closing the gap on Indigenous birth registration' (**ARC Linkage Project**). This project investigated the nature of some problems faced by Indigenous Australians trying to access birth registration in Australia through extensive consultation with Indigenous communities and other key stakeholders.² The project led to the *Symposium on Australia Achieving Universal Birth Registration* in Melbourne in December 2014, as well as publication of the book [Proof of Birth](#), in 2015.

In line with the work of the ARC Linkage Project, this submission focuses on best practices and specific measures to ensure birth registration for Indigenous children in Australia. The **Castan Centre** has prepared this submission with assistance from global law firm, **DLA Piper Australia**.

2. BIRTH REGISTRATIONS IN AUSTRALIA

The majority of Australians do not experience significant difficulty registering a birth and obtaining a birth certificate, with around 96 per cent of all births successfully registered.³ However, it is of concern that the vast majority of unregistered births come from vulnerable populations, such as Indigenous and culturally and linguistically diverse (**CALD**) communities in Australia. Further, while the problem of non-registration is being acknowledged and addressed in developing countries, Castan and Gerber point out that '...there is an ongoing reluctance to recognise that a wealthy, OECD country such as Australia has similar problems with under-registration of births within several of its minority groups.'⁴

The failures of Australia's birth registration system in relation to minority groups need to be addressed through 'the development and resourcing of targeted strategies to address the sub-groups of the population more likely to be at risk of not registering the birth of a child.'⁵ Examples of best practice and specific measures which should or already have been implemented in Australia in line with this aim are outlined for the OHCHR below.

3. BEST PRACTICES AND SPECIFIC MEASURES TO ENSURE INDIGENOUS BIRTH REGISTRATIONS

It is important to recognise that any reforms or proposed changes to birth registration systems should only be considered after proper consultation with, and the participation of, indigenous communities and representative organisations. This approach is consistent with best practice for law reform regarding Indigenous Australians, and adheres to the Free Prior and Informed Consent standard in Article 19 of the Declaration of the Rights of Indigenous Peoples. Between 2012-2014, the ARC Linkage Project undertook over 60 interviews; including Indigenous communities and relevant Indigenous organisations and other key stakeholders.

Education - birth registration as a right rather than a responsibility

² Further resources resulting from the project can be found in the publications set out on the project's website: www.indigenousbirthreg.org.

³ A J Lanyon and David John, 'Australia's Civil Registration and Vital Statistics System', Ch 4 in Melissa Castan and Paula Gerber (eds), *Proof of Birth*, (Future Leaders, 2015), pp. 53-54 (hereafter *Proof of Birth*).

⁴ Melissa Castan and Paula Gerber, 'The Need for Reform of Australia's Birth Registration Systems, Part V in *New Directions for Law in Australia: essays in contemporary law reform*, p. 441.

⁵ Above n. 3, *Proof of Birth*, p. 55.

The importance of birth registration and the benefits that flow to children who are registered must be communicated to members of Australia's Indigenous communities. The importance of registration should not only be emphasised in relation to the practical outcomes that are achieved but also in relation to the fact that every person has the right to a nationality and the benefits of citizenship under international human rights law.⁶

The timing of education about birth registration should also align with important life events of parents and children. For example, the benefits of birth registration should be emphasised 'at birth, at baby health check-ups, at school enrolment, and when youths are contemplating accessing drivers' licences', bank accounts and passports.⁷ In addition to this, government welfare and health agencies, such as Centrelink and Medicare, can increase birth registration rates by inquiring if parents have registered a child's birth when they are accessing their services.⁸

3.0 *Decentralised birth registration service delivery*

The geographical spread of Australia's towns and populations creates significant barriers and hurdles to the delivery of government services.⁹ State and territory Births Deaths and Marriages (**BDM**) Registries are commonly located in capital cities and people who live in rural or remote locations experience significant difficulty accessing these facilities. In order to address this issue, the state of Victoria has established 25 regional 'Justice Centres' with trained staff who are able to process applications for birth registration.¹⁰ Other state and territory BDMs should follow Victoria's approach to decentralised service delivery.

In Australia, outreach programs and community-led 'registration drives' have also been established to improve access to birth registration processes. One example of this is the Minimbah Project, which focusses on delivering services to Indigenous communities in culturally safe community spaces through 'Signup Days'. Projects such as this are developed and run with the cooperation and support of BDM staff and volunteers who are trained to assist in these particular settings.¹¹

3.1 *Interdisciplinary responses to birth registration*

Interdisciplinary service delivery also helps to improve the rate of Indigenous birth registrations in Australia's rural and regional communities. Pilot programmes such as the NSW Dubbo Aboriginal Birth Certificate Pilot (**Dubbo Pilot**), have secured the successful registration of a number of Indigenous people in regional NSW.¹² The Dubbo Pilot was developed in 2006 after NSW Sport and Recreation (**NSWSR**) recognised the lack of definitive identification among Indigenous residents of Dubbo and its surrounding areas. NSWSR identified and sought to address a number of cultural and economic factors that made gaining identification a challenge, including collective family child-raising; individuals being known by different names depending on location and situation; individuals being intimidated by the government

⁶ See Article 14 of the International Covenant on Civil and Political Rights and Article 7 of the Convention on the Rights of the Child.

⁷ Above n. 4, p. 443.

⁸ *Ibid.*

⁹ The Centre for Rural Regional Law and Justice, *Postcode Justice, Rural and Regional Disadvantage in the Administration of the Law in Victoria*, (2013), available at: <http://www.civiljustice.info/cgi/viewcontent.cgi?article=1000&context=access> (accessed 16 October 2017).

¹⁰ Above n. 4. Such initiatives have also proven successful in Argentina, which uses mobile units to service the region of Patagonia, and Chile, which has three state-of-the-art vans fitted out with computers and satellite connections to the central registry. See UNICEF, 'Birth Registration: Rights from the Start' (2002) 9 *Innocenti Digest* 19, available at www.childinfo.org/files/birthregistration_Digestenglish.pdf.

¹¹ The Minimbah Project website is available at: <http://www.minimbahproject.org/about-the-minimbah-project/> (access 23 October 2017).

¹² Over a 12-month pilot period, 750 births registrations were processed. See Alannah Calabro, 'Registering the births of Indigenous Australians in New South Wales', Ch 2 in *Proof of Birth*, p. 26.

buildings; transient lifestyles; distance and lack of transport to BDM locations and poor literacy and numeracy.¹³

In Western Australia, 'Open Licensing Days' were also established in 2008 as a part of the WA Department of Transport's Remote Areas Licensing Program. This initiative involved the Department working in collaboration with WA BDM and Centrelink to provide a 'one stop shop' for Indigenous communities in remote parts of WA.¹⁴

The government and NGO programs mentioned above recognise the value of interdisciplinary service delivery in rural and regional areas. Australia needs to continue developing a more integrated model for birth registration. It has previously been suggested that the Australian system should reflect the approach taken in countries such as Nepal, where birth registration is linked to vital maternal and child health services provided by government and nurses are empowered to register a birth and provide a birth certificate.¹⁵

3.2 *Alternative arrangements for identity documentation requirements for parents*

Another significant barrier to the registration of Indigenous children in Australia is the requirement for parents to provide formal identification documents. It is generally required that *both* parents fill out a birth registration form and provide copies of their formal identification documents to complete the registration process.¹⁶ In order to avoid the situation where parents do not complete a birth registration form because they cannot provide the necessary documentation, state and territory BDM Registries should accept alternative proof of identity documentation. The NSW BDM previously entered into a Memorandum of Understanding with Link-Up NSW¹⁷ to assist members of the Stolen Generations to register their births and access birth certificates by allowing the use of alternative forms of identification.¹⁸ The same approach should be taken to assist all members of Australia's Indigenous communities.

The alternative forms of identification that could be accepted for birth registration purposes, while still upholding formal identification procedures to address the risk of identity fraud, include certificates of Aboriginality¹⁹ and Proof of Identity forms, which can be completed by referees. For example, the WA Department of Transport has introduced a Verification of Identity form to assist individuals in remote areas to apply for a driver's licence where they are genuinely unable to meet the standard proof of identity requirements.²⁰ Medicare Australia also enables an authorised referee to fill in the proof of identity section on behalf of an applicant if they are unable to provide the required proof of identity documents.²¹

3.3 *Remove fines for late registrations*

¹³ Ibid.

¹⁴ Alice Barter, 'Indigenous Driving Issues in the Pilbara Region', Ch 5 in *Proof of Birth*.

¹⁵ Sophie Shugg, Ch 9 in *Proof of Birth*, p. 121.

¹⁶ Some state/territory registration systems do also provide for the registration of a birth to be completed by a single parent, or another person, in certain circumstances.

¹⁷ Link-Up (NSW) Aboriginal Corporation assists all Aboriginal people to reconnect with their own identity, families and culture. See <https://linkupnsw.org.au/about/whoweare/> for further information.

¹⁸ *Proof of Birth*, p. 30.

¹⁹ Australian Institute of Aboriginal and Torres Strait Islander Studies, *Proof of Aboriginality*, available at: <http://aiatsis.gov.au/research/finding-your-family/before-you-start/proof-aboriginality> (accessed 16 October 2017).

²⁰ WA Department of Transport, 'Verification of Identity for Driver's Licence or Photo Card Application,' form available at http://www.transport.wa.gov.au/mediaFiles/licensing/LBU_F_DL_E46_Verification_Identity_DL_PC_App.pdf (accessed 16 October 2017).

²¹ Medicare Australia, 'Aboriginal and Torres Strait Islander Medicare enrolment and amendment form', available at: <https://www.humanservices.gov.au/sites/default/files/2017/08/0905.1606-medicare-enrolment-form-faweb.pdf> (access 16 October 2017). Also see *Proof of Birth*, p. 30.

In Australia, state and territory birth registration laws allow for a fine to be imposed on parents for late birth registrations.²² This penalty is said to provide an incentive for parents to register the birth of their child in a timely manner. However, the existence of a fine can often act as a disincentive for parents to register a child where the prescribed registration period has passed. As Australian BDM Registries are generally happy to accept birth registration papers whenever they arrive and penalties are rarely if ever enforced, the existence of a statutory fine is unnecessary and unhelpful. In line with best practice, the Centre recommends that penalty provisions should be repealed from state and territory legislation and all references to penalties on BDM forms should be removed from the documentation and forms.²³

3.4 *Technology*

Digital technologies can facilitate birth registration by increasing the accessibility of the system, as well as enhancing the exchange of information between government departments and agencies in different jurisdictions. In Australia, where there are eight independent state and territory birth registration systems, the sharing of information between government entities is of critical importance to improving rates of registration for Indigenous people. There is also an urgent need to move towards online processes and away from purely paper application forms and certificates. Australia should follow the approach of countries such as Uganda, where a birth is registered at the relevant hospital and records are then transferred to a web-based application linked to a government database. After verification by a hospital administrative officer, an official birth certificate is printed within minutes. Even in remote villages in Uganda, a birth notification can be communicated via mobile phone to the central birth registration database and there is no need for paper registration or application forms and records.²⁴

4. CONCLUSION

Given the nature of the issues with birth registration in Australia and their significance for minority populations, the Centre recommends that the above examples of best practice and specific measures to ensure registration are further developed and implemented in Australia and other similar contexts.

Dr Paula Gerber and Melissa Castan
Castan Centre for Human Rights Law
Faculty of Law, Monash University
Clayton, Vic, 3800

Ph: +61 3 9905 5085

Mob: +61 410 596 494

Email: paula.gerber@monash.edu

²² For examples, section 18 of the *Births, Deaths and Marriages Registration Act 1996* (Vic) provides for a maximum penalty of approximately \$1,500 for late registrations and section 16 the *Births, Deaths and Marriages Registration Act 1996* (SA) provides for a maximum penalty of \$1,250.

²³ *Proof of Birth*, p. 38.

²⁴ *Proof of Birth*, p. 129. Also see, Kun Li, 'In Uganda, seeking to improve birth registration across Africa', UNICEF, 2013, available at http://unicef.org/infobycountry/uganda_70674.html (access 23 October 2017).