

THE DIFFICULTIES FACED BY ABORIGINAL VICTORIANS IN OBTAINING IDENTIFICATION

by Joel Orenstein

Adequate primary evidence of identification is vital for functioning on every level of civil society in Australia. Without such documentation, it is impossible to exercise basic rights of citizenship: it is impossible to obtain a driver's license, apply for a tax file number, enroll to vote, obtain a passport, visit a prison, open a bank account or collect social security benefits.

In the Victorian Aboriginal community, the lack of identity documentation appears widespread. The process for obtaining identification is extremely complicated, time-consuming and disempowering for Aboriginal people. This is particularly so when no form of supplementary identity documentation exists. The impediments to obtaining formal identification documents create significant barriers for Aboriginal people when attempting to access services taken for granted by the broader community. This inevitably leads to further marginalisation.

Section 8 of the new *Victorian Charter of Human Rights and Responsibilities* ('the Charter') provides that 'every person has the right to recognition as a person before the law' and 'has the right to enjoy his or her human rights without discrimination.' The current difficulties faced in obtaining identity documentation directly impinge on these rights.

At the moment, there are no specific government policies in place to address the particular difficulties experienced by members of the Indigenous community in obtaining and proving identity in Victoria. On the contrary, current policies only exacerbate the problem. This is particularly evident in respect to the Victorian Registry of Births, Deaths and Marriages ('the Registry').

BIRTH CERTIFICATES

Obtaining a birth certificate is vital to attaining official evidence of identification. Without a birth certificate, it is virtually impossible to obtain other forms of identification such as a driver's license or passport.

When a child is born in Victoria, either the maternity hospital or an attending midwife must notify the Registry

and provide the new parents with a Birth Registration Statement (BRS) for them to complete.¹ Registration is only effected after the BRS containing the required particulars is signed by the parents and returned to the Registry.²

However, many Aboriginal births have never been registered. This is despite the fact that the law requires registration within 60 days of birth³ and provides penalties for failing to register. In Gippsland, for instance, a recent audit of community members at the Lake Tyers Aboriginal Trust identified four people who had not been registered at the time of their birth. Similarly, one in six of the participants in the Gippsland East Aboriginal Driver Education Project had an unregistered birth.⁴

The lower rate of birth registrations in Aboriginal communities is attributable to:

- a lack of confidence in dealing with bureaucracy;
- marginalisation from mainstream services;
- inadequate information regarding the requirements and benefits of registration;
- poor literacy; and
- low priority accorded to the registration of birth.

The rate of registration may have increased somewhat with the introduction of the Commonwealth Baby Bonus Scheme in 2004, which requires birth registration, coupled with a greater policy focus by Government on early childhood programs for Aboriginal children. However, there remains a significant number of community members whose births remain unregistered.

OBTAINING A CERTIFICATE

Importantly, current Registry policy dictates that birth certificates will not be issued automatically; this is so even where registration has been effected. The Registry will only issue a certificate if an applicant fills out a separate application form and pays a fee (currently \$25.80).

Applicants seeking a copy of their birth certificate after the time of initial registration must also provide three separate documents establishing identity. All three documents must

be formally certified by a police officer. At least one of these documents must contain a residential address. These are then sent with the application form and fee to the Registry. For a certificate to be issued, all details recorded in the supplementary identification must be consistent with Registry records of birth.

IDENTIFICATION FOR ABORIGINAL COMMUNITY MEMBERS

The current requirements of the Registry to obtain a birth certificate are particularly problematic for Aboriginal people. This is because:

- Some Aboriginal people have never had their births registered;
- Supplementary proof of identity is often unavailable; this is usually the case where an applicant has never had a birth certificate;
- For those over the age of 18, at least one proof of identity document must nominate a current residential address. This can be particularly difficult for homeless people, or for those who live with friends or extended family;⁵
- For those under the age of 18, it can be difficult to produce any form of supplementary identification at all;
- Aboriginal people often have complex family histories. It is not unusual for names to change depending on where in the extended community a child has lived, or with whom. Many are unaware of their 'true' histories due to conflicting versions of family history and displacement of communities. Consequently, the details on the birth record held by the Registry may vary or may even be unknown to the applicant;
- Many Aboriginal people live in remote and/or regional areas with fewer services and no access to Registry offices;
- The relationship between Aboriginal people and the police has traditionally been, and often continues to be, one of mutual conflict and mistrust. Requiring that only a police officer is able to certify supplementary identity documents can therefore be problematic and stressful;
- Registry forms and requirements are complex. Often Aboriginal people have literacy problems or lack confidence when dealing with bureaucracy;
- The application fee is prohibitive. There are no concession rates and, despite the fact that the Registrar has discretion to waive the fee,⁶ this rarely occurs in practice.

CASE STUDIES⁷

As part of an Indigenous employment program run by Mission Australia, two 15-year-old girls, AH and TH, were placed into mainstream employment traineeships.

Once they started work, as they did not have birth certificates, the girls were unable to apply for Tax File Numbers ('TFN'). Consequently their employer taxed their wages at the highest rate, leaving them with a significantly reduced take-home pay, despite their hours of work.

Because neither girl was able to provide proof of her residential address, nor a bill that had been issued in her name, the process for obtaining birth certificates was substantially delayed. Both girls reported that they found the process daunting. Further, the delay caused by the application process, both for a birth certificate and then for a TFN, was so protracted that it extended beyond the expiration of their traineeships.

Consequently, both girls withdrew from the employment program, leaving with a very negative experience of mainstream work.

VE, an elder of the Lake Tyers Aboriginal Trust, requested that Trust staff assist her in obtaining a copy of her birth certificate. Despite being in her 50s, she had minimal evidence of identity; she had never had a birth certificate, never voted, never held a TFN or driver's license.

Inquiries with the Registry in Victoria and NSW produced no record of her birth. A member of the Stolen Generations, she possessed little information about her family history. Over a period of 18 months, a birth record was finally located in a local hospital which would be sufficient to register her birth some 50 years after the fact.

Unfortunately she died before a certificate could be issued.

AH was successful in obtaining an Indigenous traineeship position with the Victorian Department of Sustainability and Environment for which a driver's license was required.

To obtain his Learner's Permit, he first needed a copy of his birth certificate. The first step was to have certified copies of documents signed by police, which could only be done in person. This was difficult to coordinate because of the distance to the nearest police station (approximately 56kms with no accessible public transport).

Once these documents were certified, AH submitted them to Registry, along with the application form, and requested that the application fee be waived on grounds of financial hardship. The Registry refused this request, causing further delays while AH saved enough money.

Once the fee was finally paid, the internal Registry processes caused a further delay of three months before a certificate was issued to AH. However, the certificate finally issued was that of another community member who had the same name as AH, and was therefore useless for licensing purposes.

AH then had to reapply to the Registry, repeating all the steps, including payment of a *second* application fee.

In total, it took 18 months for AH to obtain his birth certificate. Again, this process extended beyond the period of his traineeship.

JW is a single mother of six children under the age of 12. Her only income is through the pension. Despite the fact that all her children's births have been registered, only the two eldest have birth certificates, as the Registry does not automatically issue certificates upon registration of birth.

JW has recently been notified that she must supply copies of birth certificates to enrol her two younger children in school. Further, the Child Support Agency has also requested copies to verify

paternity; this is necessary to collect child support from her ex-partner.

With six children to support on a very limited income, JW does not have the \$103.20 application fee required by the Registry; she has been attempting to borrow the money from relatives.

In the meantime, her children are unable to attend school and she has been unable to collect child support.

* * *

CONCLUSION

Aboriginal people face particular impediments when attempting to obtain proof of identify documentation. This directly impacts their ability to engage in everyday activities such as holding down a job, securing a driver's license, enrolling children in school or collecting child support.

These problems are often compounded by Registry policies. Aside from revenue raising, there appears no reason why concession rates should not apply nor why a certificate should not be issued automatically once a birth is registered.

Identity in the Aboriginal community is important. It is about kinship, connection to country and culture, and being recognised by one's community. Confirmation of an individual's identity by his or her community is accepted as sufficient for the purposes of obtaining Aboriginal health and legal services. This is usually a signed document bearing the seal of an Aboriginal organisation. There seems no reason why this should not also be acceptable to the Registry where no other form of documentation is available.

Of course, it is important to ensure the accuracy of identification documents. However, there must be flexibility in respect of Aboriginal people. Aboriginal disadvantage is widely documented; the obstacles faced in obtaining a birth certificate only exacerbate this situation.

Fundamental to the Charter right to be recognised as a 'person before the law' is the ability to produce evidence of one's identity. By failing to provide for the particularities of the Aboriginal community, current

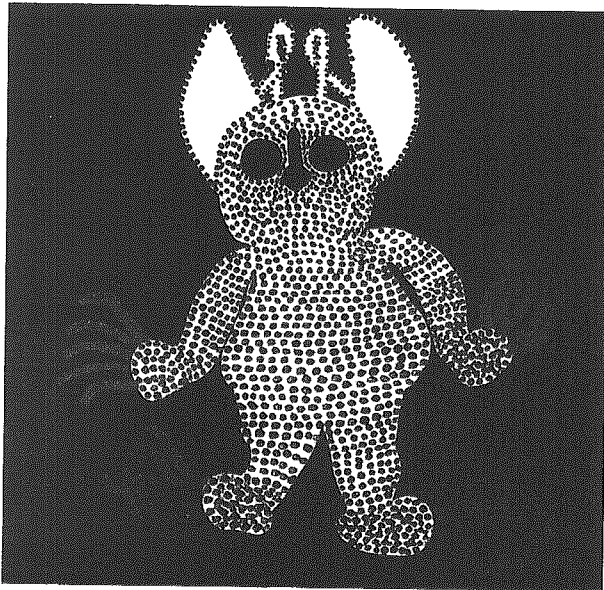
policies are also discriminatory under section 8 of the Charter. Such policies impose unreasonable requirements with which Indigenous people in particular have difficulty complying. This issue has wide ranging ramifications and its importance cannot be understated.

Section 38(1) of the Charter provides that public authorities must act in accordance with human rights obligations; authorities must give proper consideration to human rights in any decision-making process. Arguably, current practices and policies are incompatible with such obligations.

Joel Orenstein is Acting Principal Solicitor at Gippsland Community Legal Service. In his role as community lawyer, Joel has been working with the Aboriginal community in Gippsland over the past two and a half years.

For further information about the Koori ID Project please contact joel.orenstein@anglicarevic.org.au or (03) 51 503 727.

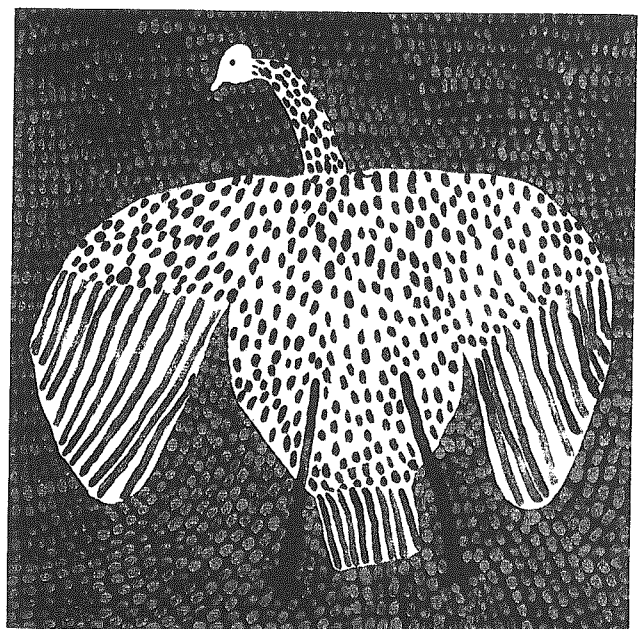
- 1 *Births, Deaths and Marriages Registration Act 1996 (Vic) s 12.*
- 2 *Ibid s 14.*
- 3 *Ibid s 18.*
- 4 *Let's GET Connected Project Briefing Paper, Problems of Identity: Difficulties Faced by Indigenous Victorians in Obtaining Identification, October 2007, 2.*
- 5 *Utility bills, rental agreements, Centrelink statements are usually in the name of the principle occupier of a property.*
- 6 *Births, Deaths and Marriages Registration Act, above n 1, s 49.*
- 7 *Case studies are from Aboriginal community members in Gippsland, Victoria, taken as part of the Koori ID Project, a partnership between the Let's GET Connected Transport Project and the Gippsland Community Legal Service.*



Amalan

Omborin

Acrylic on linen
610mm x 610mm



Wonggarlu

Omborin

Acrylic on linen
610mm x 610mm