

BEING NOBODY



Difficulties faced by Koori Victorians in obtaining ID

Legal Invisibility

- Impossible to exercise basic rights of citizenship including:
 - Obtaining drivers license;
 - Enrolling to vote;
 - Opening bank account;
 - Enrolling in school;
 - Obtaining tax file number;
 - Receiving social security benefits;
 - Obtain passport;
 - Visit prison;
 - Prove ID to police.

Birth Registration

- Birth registration “gateway” event – 1st official recognition of existence of individual by the state
- First vital piece of documentation to establish individual’s ID portfolio;
- Without certificate impossible to obtain other forms of ID

Two distinct issues

- Birth registration never effected
- Birth registered, but no certificate obtained at time of birth – no supplementary ID available to obtain certificate

Numbers?

- Not registered:
 - Nationwide: 2005 - 9,900 birth to Indigenous mothers, 1300 not registered (13%)
 - Victoria 2008 - 1,841 of 72,570 (2.5%) births unregistered (no indigenous identifiers)
- Registered but no certificate:
 - No empirical data
 - In recent audit, 38% residents at Lake Tyers Aboriginal Trust required assistance to obtain birth certificates
 - Gippsland East Aboriginal Driver Ed Project 120 participants - 50% no birth certificate, 12% never registered

Registering a birth

- Each state/territory has different rules/regs re birth registration
- In Victoria:
 - BRS statement issued to mother
 - 60 days to complete details and submit to registry;
 - Must include parentage details and parents signatures
 - Registration doesn't get you a certificate
 - Fill in separate form and pay prescribed fee (\$28 approx)

Obtaining a certificate

- If certificate not obtained at time of birth then:
 - Onerous proof of ID requirements mandated by BDM
 - 3 forms of ID must be supplied:
 - Photo ID
 - Residential address
 - ID certified by member of Victoria Police
 - Pay fee (\$28)
 - Complete form and send to BDM

Causes of invisibility

- Births never registered
 - Complex forms/bureaucracy
 - Literacy
 - Until recently, no cross checking between BDM and Centrelink
 - Isolation from mainstream services
 - Low priority afforded to registration
 - Stolen generation
 - Mistrust of bureaucracy

Registered birth, no certificate

- Inflexible registry POI policy. Not accepted:
 - Proof of aboriginality documents
 - Health care card
- ID with residential address difficult to produce
 - Homeless
 - Living with extended family or friends
 - Under 18
- Distance disadvantage
 - No public transport
 - No license/vehicle
 - Getting to police station
 - Getting to post office to complete money order etc
- Complex forms/bureaucracy
 - Literacy
 - No dedicated Koori liaison officer at BDM;
 - No outreach locations

No certificate contd

- Fees
 - No concession rates
 - Fee waiver available under BDM Act but:
 - Not advertised nor promoted by BDM
 - rarely applied or given (wide discretion/untested)
- Conflictive relationship with police
 - anxiety over entering police station
- Complex family histories
 - Names change depending upon who living with
 - Name registered either different to or unknown to individual
 - Displacement of communities
- Cross jurisdictional issues

Case study 1

- 2 x 15 yr old girls obtained mainstream employment at local café in Bairnsdale
- No certificates – unable to apply for TFN
- No POI documents to satisfy BDM to get certificates
 - No photo ID
 - Nothing with residential address
- Employer forced to tax wages at highest rate
 - Minimal take home pay despite hours of work
- Delay in obtaining certificate and TFN extended past placements
- Both withdrew employment program with very negative experience of mainstream work

Case Study 2

- BH 31 yr old fisherman in Lakes Entrance with 2 children
- Entire life no ID
- Attempting to obtain birth certificate for 9 years
 - Told by BDM no record of his birth (unregistered) and must produce details to register
- Grew up in group home
 - Details of circumstances of birth unknown to BH
 - Unable to register birth b/c no details/documents
 - Mother in nursing home unable to assist
- As result of no ID
 - Unable to drink in pub
 - Unable to register his boat
 - Travel overseas
 - Obtain driver's license
- With assistance of GCLS birth registered at age of 31 after 9 years of trying

Case Study 3

- 53 yr old elder at Lake Tyers Aboriginal Trust needed to produce birth certificate to receive estate payment
- No ID documents
 - No birth certificate (unregistered)
 - Never voted
 - Never had TFN
 - No license
- Told by BDM need to produce evidence of circumstances of birth
 - Stolen gen member – little info available about family history
 - Unsure of place or details of birth
- After 18 months by chance record found that born at Orbost hospital – enough to register birth
- Died prior to being able to register birth

Case Study 4

- JH 30 yr old resident at LTAT
- Obtained traineeship at DSE, but needed license for position
- Unable to obtain license b/c no birth certificate
- Delay as first needed police to certify copies of supplementary ID
 - 56 kms no accessible public transport
- Submitted forms to BDM but no money for certificate
 - Waiver applied for and refused by Registrar
 - Delay to save money for application
- Once money saved, another trip to town to get money order (56kms and \$5), certificate issued by BDM after further 3 month delay
- Certificate issued was over another community member with same name
 - Useless for licensing
- Repeat all steps and pay second application fee
- 18months to obtain birth certificate – beyond period of traineeship

Case Study 5

- 50 yr old woman in Bairnsdale one of 5 children
 - Told by BDM birth never registered
 - Not mentioned on siblings certificates
- Never had any ID
 - Recently become primary carer for grandchildren
 - Parenting payment withheld from Centrelink as unable to produce ID
 - Volunteering at community health centre – offered paid position
 - Requirement of position that complete working with children check
 - Needs ID to do check
 - With assistance of GCLS birth registered at age of 50 and certificate issued

Case Study 6

- JW single mother 6 children under age of 12
- Only income parenting payment
- Notified by children's school that must produce birth certificates to enrol children
- CSA needs certificates to verify paternity to collect child support
- JW does not have \$103.20 for 6 certificates (no concession rates available)
- Applied to BDM for waiver of fees – Registrar will only waiver for 2 children
- Attempting to borrow money from relatives to pay outstanding amount of fees
- In meantime, unable to receive child support or enrol children

A right to ID?

- Victorian Charter of HR and Responsibilities (the Charter)
 - BDM public authority – must perform duties in way compatible with human rights (s 38)
- No specific right to registration of birth under Charter
- Art 24(2) ICCPR and Art 7 CROC “every child shall be registered immediately after birth”
- Deliberately left out of Charter “less relevant for inclusion in modern Victorian Charter”

Right to ID continued

- Argued decision not to include patently wrong at expense of Koori community
- Review process under s44 Charter should include right.
- Other Charter rights may assist:
 - right to recognition as a person before the law (s 8(1))
 - Child has right without discrimination to such protection as in best interests by reason of being child (s17 (2))

Koori ID (KID) Project

- Initiated from Gippsland East Aboriginal Driver Ed Project (GEADEP) in 2007
- GEADEP partnership between government and local community groups and support agencies in Gippsland East
- Funded to assist community obtain drivers license
 - Isolated communities;
 - Unable to take advantage of employment opportunities;
 - Driving offences
 - Unlicensed driving/unroadworthy vehicles
 - Road safety
- 50% participants no ID to satisfy VicRoads

KID Contd

- Working Group formed with other agencies
 - Gippsland Community Legal Service
 - Koori employment programs
 - Boorai nurses
 - Mentoring
 - Centrelink Koori social worker
 - Health service
- Huge problem across agencies
 - Huge portion of time spent on chasing ID at expense of core responsibility
 - Coordinated approach to tackle issue

KID Contd

- Casestudies and Report to minister May 2008 with recommendations:
 - Birth certificate be automatically issued upon birth registration
 - Concession rate on fees and for fees to be waived in situations of hardship
 - BDM to travel to communities to facilitate registration of births and distribution of certificates
 - BDM develop policy for Indigenous Victorians that recognises problems in current system with in built flexibility to recognise alternate forms of supplementary ID
 - Allow certification of supplementary ID docs from JP or other notary publics and not limit to members of police
 - Establish consultative committee between government and key stakeholders through RAJAC or LINs
- Dialogue initiated with BDM

KID Contd

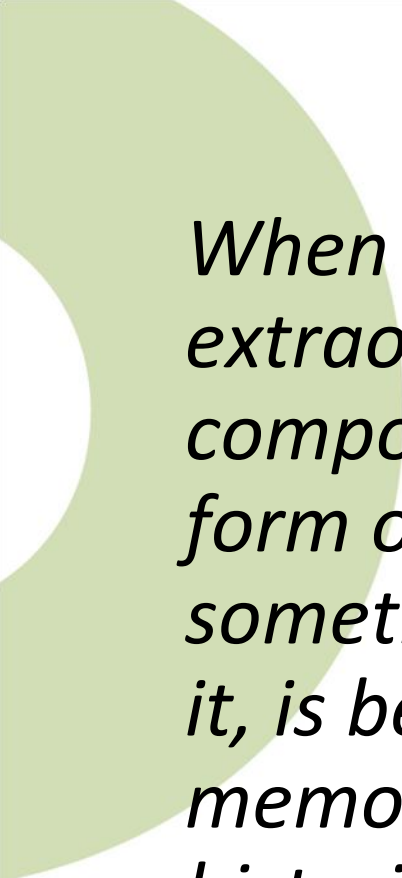
- Publicity and media campaign launched
- March 2009 Registrar travelled to Gippsland to meet working group and address RAJAC on the issue
- June visits to regions throughout state
 - Bairnsdale alone 83 registrations
 - Dedicated Koori liaison position at BDM
 - Coordination between Centrelink and BDM
 - Further regional visits planned

Conclusions

- Particular impediments to obtaining POI docs for Kooris
- Directly impacts ability to meaningfully to be recognised by the legal system and participate in civil society
- Inhibits social inclusion and further marginalises community
- History of colonial legal system failing to recognise Indigenous people
 - Fiction of terra nullius
 - Stolen generations
 - Not counting in census until 1967
- BDM policy indirect discrimination because Indig community more difficult to comply
- Contrary to Charter

Conclusions contd

- Balance between concerns of ensuring accuracy of registry and protecting against fraud with need for flexibility
- Bushfire victims?



When you meet personally the victims of this extraordinary disaster, the desperation is compounded for those who have lost every form of establishing who they are. It is something which, unless you have experienced it, is beyond imagining. It is not just the loss of memories and photos and entire family histories; it is the loss of certification of who you are and your legal personality.

Prime Minister Kevin Rudd, 10 February 2009

KID – what's next

- Coordinated national campaign
- Empirical study of extent of problem
- Lobbying Government:
 - BDM fees
 - Supplementary ID
 - Dedication of resources for issue
- Test case re Registrar's discretion and Charter



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