

Submission to the Queensland Legal Affairs and
Community Safety Committee on the Electoral
Reform Amendment Bill 2013

16 January 2014

1. Executive Summary

We urge the Queensland Government not to enact the Electoral Reform Amendment Bill 2013, and in particular the provisions requiring that individuals produce proof of identity documents before being allowed to vote. We urge this course of action because imposing such a requirement would likely be a significant barrier to Indigenous Queenslanders exercising their democratic right to vote. This is because many Indigenous Queenslanders do not have a birth certificate, and without this foundational document are unable to obtain forms of ID such as a driver's license or passport.

The purpose of this submission is to highlight this problem and recommend that proof of ID not be made a prerequisite to participating in the electoral process.

2. Indigenous Australians and Birth Certificates

In 2005, of the 9,900 children born to Indigenous mothers in Australia, 13% (1,300 children) were not registered.¹ Whilst it is not known how many of these births were in Queensland, these numbers suggest that the lack of birth registration in Indigenous communities is a significant problem.

Preliminary investigations attribute the non-registration of births by Indigenous Australians to a lack of confidence in dealing with authorities, marginalisation from mainstream services, lack of understanding of the requirements and benefits of birth registration, poor literacy levels and the low priority afforded to birth registration.² It may also be that the now discredited government policies of removing Indigenous children from their parents, which created what has become known as the 'Stolen Generations', is a reason behind Indigenous Australians not registering the birth of their children. These policies may have left Indigenous Australians with a residual fear of government record keeping, particularly when it comes to their children. In this regard, birth registration could operate as an undiscovered site of inter-generational trauma. Intergenerational trauma being the 'trauma that is multigenerational and cumulative over time; it extends beyond the life span'.³

Anecdotal evidence suggests that Indigenous Australians encounter difficulties obtaining a birth certificate.⁴ There appear to be two principle causes of this inability to obtain a birth certificate, namely that:

¹ Orenstein J 'Being Nobody – The Difficulties Faced by Aboriginal Victorians in Obtaining Identification', Speech delivered at National Association of Community Legal Centres Conference, 14-17 September 2009.

² Gargett A, Gerber P, Castan M 'A Right to Birth Registration in the Victorian Charter? Seek and You Shall Not Find!' (2010) 36(3) *Monash University Law Journal* forthcoming; Gerber P 'Making Indigenous Australians "Disappear": Problems arising from our birth registration system' (2009) 34(3) *Alternative Law Journal* 158; Gerber P 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52; and Orenstein J 'The Difficulties Faced by Aboriginal Victorians in Obtaining Identification' (2008) 7(8) *Indigenous Law Bulletin* 14.

³ Cox D 'Working with Indigenous survivors of sexual assault' (2008) 5 *ACSSA Wrap* 1, 3.

⁴ Gargett, A. Gerber, P. and Castan, M. 'A Right to Birth Registration in the Victorian Charter? Seek and You Shall Not Find!', *Monash University Law Review*, Vol. 36, No 2, 2011 (forthcoming); Gerber, Making Indigenous Australians "Disappear", Problems arising from our birth registration system' (2009) 34(3) *Alternative Law Journal* 158; Gerber P 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52;

- (a) the birth was never registered (discussed above), or
- (b) although the birth was registered, the person is unable to subsequently satisfy the bureaucratic requirements that are imposed on applicants seeking to obtain a copy of their birth certificate.

In Queensland, a birth certificate is not automatically issued when a birth is registered. The person registering the birth must apply for a certificate and pay the prescribed fee. The cost of obtaining a birth certificate (\$40.50) may be one of the reasons why an Indigenous parent may not obtain a certificate at the time of birth registration.

If a person seeks to obtain a birth certificate after the time of registration, the Births, Deaths and Marriages Registrar has strict requirements regarding the production of documents to establish the individual's identity. This requirement also impedes Indigenous Australians from obtaining a birth certificate. Many of the required identification documents (e.g. a driver's licence and passport) can only be obtained by a person who already has a birth certificate. This creates a 'vicious circle' whereby a birth certificate will not be provided because a person cannot produce the requisite identity documents, documents that require a birth certificate to obtain!⁵ Applicants are also required to produce identity documents which include a current address. This can be problematic for persons who do not have a fixed address, which includes some Indigenous Australians.

3. Recommendations

For all the reasons set out above, we recommend that there should be requirement that individuals produce proof of identity documentation prior to being allowed to vote.

Alternatively, if the Bill retains a requirement for proof of identity, those ID documents should include forms of ID that the majority of Indigenous Queenslanders possess such as 'Proof of Aboriginality' documents.⁶ We note that the Bill does not specify what documents will constitute sufficient proof of identity, just stating in the definitions section that:

proof of identity document means a document relating to proof of a person's identity prescribed under a regulation.

Indigenous Australians already suffer disadvantage by not being able to obtain a birth certificate which is essential for accessing services that are only available to those with a birth certificate.

Orenstein J 'The Difficulties Faced by Aboriginal Victorians in Obtaining Identification' (2008) 7(8) *Indigenous Law Bulletin* 14.

⁵ Gerber P 'Making Visible the Problem of Invisibility' (2009) 83(10) *Law Institute Journal* 52.

⁶ Proof of Aboriginality documentation is a signed document bearing the seal of an Aboriginal organisation: Orenstein, *Being Nobody*, *loc.cit.* note 5.

The Castan Centre for Human Rights Law urges the Queensland Government to refrain from increasing disadvantage and exclusion, by not introducing voter identity requirements as a condition precedent to voting.

To further elaborate on this problem, and support the above recommendations, we include with our submission, the following two articles:

1. Castan, Melissa, Gerber, Paula & Gargett, Andy 'Indigenous Australians' Access to Birth Registration Systems: A Breach of International Human Rights Law?' (2011) 17(1) *Australian Journal of Human Rights* 55-89.
2. Gerber, Paula 'Making Indigenous Australians 'Disappear': Problems arising from our Birth Registration Systems' (2009) 34(3) *Alternative Law Journal* 158-167.

Please do not hesitate to contact us if you have any questions or would like clarification of any matters raised in this submission.



Dr Paula Gerber
Deputy Director, Castan Centre for Human Rights Law,
Associate Professor
Law School
Monash University
Clayton, Vic, 3800

Ph: (03) 9905 5085
Mob: 0410 596 494
Email: paula.gerber@monash.edu