

Submission to the Queensland Legal Affairs and
Community Safety Committee on the *Justice
and Other Legislation Amendment Bill 2014*

19 December 2014

1. Executive Summary

We urge the Queensland Government to modify Clause 118 of the *Justice and Other Legislation Amendment Bill 2014* amending section 22 of the *Referendums Act 1997*. These are 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 referendum 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 The Department of Births, Deaths and Marriages is aware of this issue and could provide official statistics. There is however, clear evidence that 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

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 Gerber P and Castan M 'Achieving universal birth registration for Indigenous Australians: Recommendations from the Victorian Law Reform Commission' (2014) 8(14) *Indigenous Law Bulletin*; 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*; 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.

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:

- (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 **NO** requirement that individuals produce proof of identity documentation prior to being allowed to vote in a referendum.

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

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; 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. These are commonly accepted by Centrelink.

We note that the Bill does not specify what documents will constitute sufficient proof of identity, just stating 'proof of identity document' has the meaning given to that term in the *Electoral Act 1992* which says that:

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

The Electoral Commission Queensland set out the types of documents that are acceptable forms of ID (see <http://www.ecq.qld.gov.au/voting.aspx?id=92>) which do not include 'Proof of Aboriginality' documentation. Even the requirement to produce proof of identity may deter Aboriginal and Torres Strait Islander people from exercising their right to vote.

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

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



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