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26 November 2012

To: The Victorian Law Commission
By email: law.reform@lawreform.vic.gov.au

Submission: Birth Registration and Birth Certificates - Victorian Law Reform Commission – Community Law Reform Project 2012

1. Liberty Victoria is grateful for the opportunity to make this submission in response to the consultation paper prepared by the Victorian Law Reform Commission into birth registration and birth certificates. Thank you for the extension of time granted to make this submission.
2. Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty is actively involved in the development and revision of Australia's laws and systems of government. Further information on our activities may be found at www.libertyvictoria.org.au.

Human Rights Instruments

3. Birth registration is a fundamental human right recognised at international law, and supports the right of every person to recognition before the law. The International Covenant on Civil and Political Rights (ICCPR) contains this right in Article 24(2) which states that 'every child shall be registered immediately after birth and shall have a name'.¹
4. The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter) contains a number of provisions that are relevant to a review of birth registration: for example the right to recognition before the law contained in section 8(1).²

¹ *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, art 24(2) (entered into force 23 March 1976).

² As noted in the VLRC Consultation Paper Birth registration and birth certificates at 2.22.

Further, the Charter places an obligation on public authorities to act in a way that is compatible with human rights, and to give proper consideration to a relevant human right.³

5. The VLRC report acknowledges concerns raised by the UN Committee on the Rights of the Child (CRC) in its recent report on Australia's implementation of the Convention on the Rights of the Child. The CRC urged a government review of birth registration processes to ensure procedural barriers do not disadvantage any child. It also urged governments to issue a birth certificate at the time of registration without charge.⁴

Review of birth registration and birth certificates in Victoria

6. Liberty Victoria recognises the importance of reviewing the birth registration and certification process in Victoria. Recent research conducted by the Castan Centre for Human Rights indicates that each year a number of births are not registered in Victoria, although that extent of the problem is not fully known, it is thought that Indigenous communities, CALD communities, the disadvantaged and vulnerable members of the community are over-represented in unregistered births.
7. Birth registration and access to a birth certificate are fundamental to engaging in all aspects of society. Without a birth certificate a person is unable to invoke their full rights as a citizen. These rights include: enrolling at school; enrolling to vote; obtaining a passport, Medicare card, driver license or tax file number; and accessing various government benefits. Both birth registration and birth certificates are fundamental to our existence in a modern developed society.

Barriers to registration and certification

8. Research conducted by the Castan Centre and the VLRC suggests that members of Indigenous communities, CALD communities, vulnerable and disadvantaged members of the community may be over-represented in unregistered births and are more likely not to have a birth certificate for the following reasons –
 - a. The current two stage process of registering a birth and obtaining a birth certificate may be providing a barrier to obtaining a birth certificate.
 - b. The fee associated with obtaining a birth certificate. Currently there is no fee to register a birth, but there is a fee to apply for a birth certificate.
 - c. Low literacy rates amongst disadvantaged communities.
 - d. Lack of confidence in dealing with authorities amongst certain disadvantaged communities.
 - e. Lack of educative function or initiative to promote birth registration amongst Aboriginal and other disadvantaged communities.

³ *Charter of Human Rights and Responsibilities Act 2006* (Vic) section 38.

⁴ UN Committee on the Rights of the Child, noted at fn 48 of the VLRC Report

Submission

9. Liberty Victoria draws the VLRC's attention to the State's obligations under the Charter and under international human rights law and makes the following recommendations –
 - a. Elimination of the current two stage process of registration and certification of births. This should be incorporated as a one stage process whereby a birth certificate is automatically issued upon receipt of birth registration.
 - b. Fees for birth registration and certification should ideally be waived, or alternatively, fees should be waived for certain categories such as Health Care Card holders and for people experiencing financial hardship. There should be a discretion to waive fees in certain circumstances not covered by legislation with a presumption in favour of waiver.
 - c. Forms and guides for registration should be available online and available in several community languages.
 - d. Broadening the categories of persons authorised to certify documents. We note the submission made by the Law Institute of Victoria and support its submission on this point under the heading "Identity document certification".
 - e. The Registrar of Births Deaths and Marriages should develop strategies and initiatives to communicate with relevant Aboriginal and other communities to ensure that individuals are aware of the benefits of registering a birth and receiving a birth certificate, and to promote and facilitate the registration process. We note the submission made by the Victorian Equal opportunity Commission and we support its recommendation under paragraph 4 of its recommendation section.
10. Thank you for the opportunity to make this submission. Please contact Stewart Bayles through the Liberty Victoria office on 9670 6422 or info@libertyvictoria.org.au if we can provide any further information or assistance. This is a public submission and is not confidential.