

Submission:

Review of the Births, Deaths and Marriages Registration Act 2003 (Qld)

Discussion Paper 2 -

Registering life events: Functions and powers of the Registrar and the use and disclosure of information

Discussion Paper 3 –

Registering life events: Registration and access

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1. Introduction

Following is The Benevolent Society's submission to the Review of the Births, Deaths and Marriages Registration Act 2003 (QLD). We welcome the opportunity to provide input into this review and acknowledge the views of our clients, staff and stakeholders who have provided their accounts to us over the past ten years, in QLD in particular.

2. The Benevolent Society

As Australia's first charity, our vision is a just society where everyone lives their best life. We've been supporting people with disability, children, families, older Australians and carers since 1813. Not-for-profit and non-religious, we're committed to people. Through a dedicated team, a network of service providers, partnerships and volunteers, we change lives.

The Benevolent Society offers a range of services to children and families, including parenting support and coaching, early childhood development programs, specialist support when challenges arise, and post-adoption support services for adopted adults and children and their families.

Our Post Adoption Services

The Benevolent Society has a combined 37 years of experience in working with people affected by adoption in QLD and NSW and has worked with over 90,000 people across both jurisdictions, including adopted adults, biological parents, extended family members and adoptive families.

Our specialised counsellors work with individuals to address any issue relating to an adoption experience, decision, process or practice which may appear at different life stages, such as adolescence, forming relationships, birth of children or the death of parents. We recognise that the impact of adoption affects people in different ways and is likened to a 'ripple effect' for families across generations and the life span. We support people with issues specific to adoption relating to identity, loss, grief, attachment, trauma, relationships and mental health. Our support is not time-limited and aims to support people to undertake their healing in a manner that best suits their needs.

Our Post Adoption Services have an extensive body of knowledge and expertise in the effects of adoption, the process of finding family, and managing post reunion relationships.

Post Adoption Support Queensland

Post Adoption Support Queensland (PASQ) is a statewide service available to people in QLD whose lives have been affected by adoption practices and related issues. The service has operated since 2009, providing information and referral, counselling support and therapeutic groups and intermediary services to assist with search and re-connection for anyone dealing with the impacts of adoption.

Post Adoption Resource Centre

The Post Adoption Resource Centre (PARC) is the longest running service of its kind in NSW, providing assistance for the past 27 years. PARC services are available to all people affected by adoption including adopted people, parents (birth and adoptive), siblings, spouses, family members. Services include counselling, information and referral, support and therapeutic groups and intermediary services to assist with search and reconnection. PARC also conducts research and develops resources.

Discussion Paper 2 – Functions and powers of the Registrar and the use and disclosure of information

11. Release of historical information

ACCESS REQUIREMENTS

The Benevolent Society recommends the prescribed access periods for historical information is brought in line with NSW.

- For a birth – 100 years before the date of application
- For a marriage – 50 years before the date of application
- For a death – 30 years before the date of application

These changes would ensure access to historical records for the purposes of genealogy and family tree formation. For adopted people this may be their only means to piecing together their own family history.

12. Release of non-historical information

Current identity requirements are practicable. However, adopted people are unable to apply for death or marriage certificates of their relatives regardless of proof of identity. Current restrictions for access to birth fathers' records without proven paternity limits individuals access to family information - despite the father's name being recorded in the Adoption Information. This restriction serves to perpetuate the abuses of the forced adoption era where fathers were excluded from participating in their child's birth registration or adoption. The Benevolent Society recommends access levels are enhanced to allow non-historical information pertaining to fathers listed in the Adoption Information be released to the adopted person upon searching.

Further, The Benevolent Society supports the recommendations outlined in the **Commonwealth Contribution to Former Forced Adoption Policies and Practices Recommendation 14**

The committee recommends that:

- *All jurisdictions adopt a process for allowing the names of fathers to be added to original birth certificates of children who were subsequently adopted and for whom fathers' identities were not originally recorded; and*
- *Provided that any prescribed conditions are met, the process be administrative and not require an order of a court. (See Attachment 1)*

The current system by which an adopted person is required to complete four separate application forms i.e. their own birth certificate, the birth certificate for their mother, followed by a marriage and a death search is onerous, costly and insensitive to the history and complexities people impacted by adoption are facing when undertaking these tasks. The Benevolent Society recommends the introduction of a streamlined application form such as that used in NSW when a person seeks to apply for their relative's information contained in the register. A reduction in the administrative burden and the associated costs would be welcomed.

Further, The Benevolent Society supports the recommendations outlined in the **Commonwealth Contribution to Former Forced Adoption Policies and Practices**

Recommendation 13 The committee recommends that:

- *Jurisdictions investigate harmonisation of births, deaths and marriages register access and the facilitation of a single national access point to those registers. (See Attachment 1.)*

13. Release of information under an arrangement, agreement or MOU

This section discusses MOU's in terms of private companies and data matching. The Benevolent Society proposes that, under the terms of a prescribed MOU, sensitive information contained in the register be released to people affected by adoption via a prescribed provider. This will ensure that adequate support is offered to individuals around the processing of sensitive information such as that contained in death certificates when searches are conducted. In NSW, the NSW Registry of Births, Deaths and Marriages (BDM) notifies Family and Community Services, Adoption Information Unit (AIU) when an adoption related search has been conducted and that person is found to be deceased. The information is passed to AIU who contacts, notifies and supports the searcher.

14. Products and Services

In relation to the standard products and services offered through RBDM, life event certificates are of particular significance for adopted people and birth parents. The **Commonwealth Contribution to Former Forced Adoption Policies and Practices Report states:**

13.4 'that natural parents and their children should, as adults, have free access to all their personal records, regardless of the state or territory in which the adopted person was born, the adoption took place, or the parties subsequently resided, and that no-one's consent be required for such access to be granted' (page 279).

The Benevolent Society believes that the current fee structure applied for searches and certificates be waived for people subjected to forced adoptions. This commitment to action would reflect the recommendations as outlined in the Commonwealth's pledge to right the wrongs of the forced adoption era and would go a long way in preventing the significant financial costs and the emotional re-traumatisation of individuals when seeking to locate and connect with lost loved ones.

Discussion Paper 3 – Registering life events: Registration and access

10. Barriers to birth registration

In the context of adoption, The Benevolent Society believes:

- All births should be registered; and
- Individuals provided with a copy of their birth certificate to support identity and attachment to family; and
- Birth parents should be entitled to their child’s new certificate after adoption without paying a fee.

12. Changing a child’s name

The Benevolent Society supports the current Adoption Act QLD to maintain a child’s given name. Section 215 of the Adoption Act QLD allows for several different orders regarding an adopted child’s name, ranging from the retention of their original surname and given names, to renaming of a child by a court by changing their given names and surname at the time a final adoption order is made. The court is required to make the order that will best promote the child’s wellbeing and best interests, and is specifically required not to make an order that changes a child’s given name unless satisfied the child’s wellbeing or best interests would be harmed by retaining their given name.

The Benevolent Society supports the right of a child to a name and nationality from birth. The Commonwealth Contribution to Former Forced Adoption Policies and Practices Report quotes the United Nations:

‘The naming of a child is so fundamental a concern that it has been recognised by the United Nations in the Declaration of the Rights of the Child, which states in principle 3:

- *The child shall be entitled from his birth to a name and a nationality.*

The International Covenant on Civil and Political Rights, ratified by Australia in 1996, states in similar terms, in article 24.2:

- *Every child shall be registered immediately after birth and shall have a name.’*

13. Information requirements for life event registration and certificates

The Benevolent Society supports the measures below as stated in the Discussion Paper 3 page 15 –

Birth registration and certificates

- *information could be added to recognise other children of the child’s mother or father as siblings on their birth certificates—currently older children are recorded on their younger siblings’ birth certificates, if the older sibling is a child ‘of the parents’ relationship’.*

Death registration and certificates

- *including more information about a deceased person’s family relationships, for example including information in both the Register and on a certificate about a deceased’s de facto spouse or any step children; or*
- *collecting information about a deceased person’s family relationships for inclusion in the Register but not including this on a death certificate.*

The Benevolent Society believes that life event registrations and certificates for both birth and death records should be enhanced to reflect the true nature of circumstances as reported. Operating from a place of openness and full disclosure ensures that what is contained in the register is shared with relatives without further contributing to secrecy. Transparent access to accurate information is vital to families separated by adoption and other life events.

14. New types of certificates

The Benevolent Society recommends that current practices relating to birth certificates be reviewed; further consultation should occur and; practices should be standardised nationally. The Benevolent Society also supports one integrated birth certificate that includes details of both birth and adoptive information. This was identified in Recommendation 13 of the **Commonwealth Contribution to Former Forced Adoption Policies and Practices**.

The committee recommends that:

- *all jurisdictions adopt integrated birth certificates, that these be issued to eligible people upon request, and that they be legal proof of identity of equal status to other birth certificates*

Current practice sees new birth certificates issued to a child upon adoption, with the child's adopted family names replacing their birth family's details. Amended birth certificates create the appearance that an adopted child was born to the people who adopted them and fail to reflect the fact that an adopted person has in reality two sets of parents and two sets of family backgrounds.

The review of the QLD Adoption Act 2009 identified the number of requests from stakeholders for integrated birth certificates in the Final Report July 2016'

Integrated birth certificates and identity

All legal adoptions in Queensland result in a second post-adoption birth certificate being issued by the Registry of Births, Deaths and Marriages (BDM). The first entry about a person in the birth register or adopted children register is closed under section 41A of the *Births, Deaths and Marriages Registration Act 2003*, when the registrar registers an adoption. The official birth certificate that is issued by BDM will only include information that reflects the child's legal status post adoption. That is, it will include details of the child's adoptive parents and siblings, but no details about the child's birth family. Section 290 of the Act enables an adopted person, with the chief executive's authorisation, to obtain their original birth certificate under section 44 of the *Births Deaths and Marriages Registration Act 2003*. However, the original birth certificate will be marked as not being an official document.

Integrated birth certificates that include both pre and post adoption information were raised by a number of individuals and stakeholders as a means of recognising the adopted person's birth family and adopted family. Participants in the targeted consultation sessions with the specialist consultant reported considerable anguish relating to birth certificates. Most participants held the view that birth certificates should include all of the information from birth through to the adoption, as a record of history and identity, and should include names of birth parents and the person's original name as well as the adoptive parents and adoptive name.

Some participants expressed the view that access to an integrated birth certificate needs to be easier to make sense of, and to overcome, the damage inflicted by adoption. Support was provided by more recent adoptive parents for birth certificates that help children maintain their full identity and history. Some adopted people recounted the difficulties of having a birth certificate that states they were born overseas, causing problems in areas such as getting a passport and driver's license.'

In its examination of this issue the Victorian Law Reform Commission (VLRC) found that many people affected by past closed and forced adoption practices felt that this formal removal from one family tree and placement into another constituted an erasure of their past and an a re-writing of their identity. For this reason, the VLRC recommended the formulation of integrated birth certificates as a more accurate reflection of adopted children's lived reality.

The Benevolent Society believes that what has been learnt from adoption practices should be applied to surrogacy. A child born through surrogacy should have access to the full information about their conception and birth on an Integrated Birth Certificate.

ATTACHMENT 1

The Senate Community Affairs References Committee

Commonwealth Contribution to Former Forced Adoption Policies and Practices

February 2012

Recommendations pages x - xi

Recommendation 13

12.33 The committee recommends that

- all jurisdictions adopt integrated birth certificates, that these be issued to eligible people upon request, and that they be legal proof of identity of equal status to other birth certificates, and
- jurisdictions investigate harmonisation of births, deaths and marriages register access and the facilitation of a single national access point to those registers.

Recommendation 14

12.36 The committee recommends that:

- All jurisdictions adopt a process for allowing the names of fathers to be added to original birth certificates of children who were subsequently adopted and for whom fathers' identities were not originally recorded; and
Provided that any prescribed conditions are met, the process be administrative and not require an order of a court.

Recommendation 15

12.104 The committee recommends that the Community and Disability Services Ministers Conference agree on, and implement in their jurisdictions, new principles to govern post-adoption information and contact for pre-reform era adoptions, and that these principles include that:

- All adult parties to an adoption be permitted identifying information;
- All parties have an ability to regulate contact, but that there be an upper limit on how long restrictions on contact can be in place without renewal; and
- All jurisdictions provide an information and mediation service to assist parties to adoption who are seeking information and contact.

