

## CHAPTER THREE

### REGISTRY RECORDS AND COMPARATIVE ACCESS PROVISIONS

#### 3.1 INTRODUCTION

In the registration of births, deaths and marriages in various Australian and international jurisdictions, different information is requested and recorded. Opening the various Registers for free public access would therefore reveal different personal information.

Security and privacy concerns will be largely dependent on the extent of the information recorded and released by Registries. If a minimal amount of information is recorded, the potential problems in making that information available will also be minimised.

Indexes or certificates may reveal certain details relating to birth, death or marriage which may infer, for example, that a child was adopted, born out of wedlock, or is of a certain race. The sensitivity of this information, and the implications of its release, may vary over time with changing social norms.

Details of the information held on Registry records and access arrangements in other states and nations provide a useful comparison when considering records and access provisions in New South Wales.

This chapter will outline details of the content and access arrangements for both Indexes and certificates in England, New Zealand, Ontario and the Australian states and territories. A table summarising these details can be found in Appendix 3.

#### 3.2 INTERNATIONAL REGISTRIES

A considerable number of submissions made to the Committee compared the New South Wales Register with practices relating to registers in other countries, notably England. The Law Reform Commission Report also considered the English and New Zealand systems as being appropriate open systems for New South Wales to follow, and the Committee has therefore investigated these arrangements.<sup>28</sup> The NSW Registry also provided information on arrangements in Ontario, Canada, which the Committee considered.

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<sup>28</sup> NSW Law Reform Commission, 1988, p.29

### 3.2.1 England and Wales

Genealogical researchers in New South Wales who have traced their family records to England have been able to gain access to certificates from that country. While the English Register is open, fewer personal details are recorded when events are registered than is the case in New South Wales, so privacy implications differ.

#### Indexes

The practices for the registration of births, deaths and marriages evolved from the maintenance of a census roll designed for the purposes of conducting elections and collecting tax. Public Indexes to records of births, deaths, marriages, adoptions and divorces are available from 1837 to date. Access to those Indexes is only restricted for events occurring in the preceding twelve months, because of the administrative delay in producing the Index to the records. The stillbirth Register is closed so there is no public Index nor access to certificates of stillbirths.<sup>29</sup>

While the same details are collected on registration forms in England and New South Wales, sensitive personal information is collected in England on a section of the form which is clearly marked "confidential." The person completing the form is advised that such confidential data will only be used for government statistical purposes and not be included in the Register.<sup>30</sup>

The Birth Index includes the full name of the child and only the mother's first name; the Death Index contains the full name and date of birth of the deceased; and the Marriage Index includes the full names of the two parties.<sup>31</sup>

#### Certificates

Birth Certificates include the name of the child; its sex; date and place of birth; the parents' names and father's occupation; address of the mother; and, more recently, the name and address of the person reporting the birth and their relationship to the subject of the entry.<sup>32</sup> Details of the parents' marriage, their ages, the mother's occupation and

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<sup>29</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.12

<sup>30</sup> Ibid. Appendix II, p.12 and Appendix III

<sup>31</sup> Ibid. and p.13

<sup>32</sup> Ibid. Appendix II, p.12 and Appendix III

previous children are not included. A separate Register is maintained for adopted children, with certificates including the country of birth and details of the adoption order.

Death Certificates include the name, sex, age and occupation of the deceased; the cause, date, and place of death; and details of the name, address and relationship of the person registering the death. Certificates have more recently included the maiden name of married women, place of birth and usual address.<sup>33</sup> Information on any marriage(s), the names and ages of any children, and particulars of burial or cremation are not recorded.

Marriage Certificates in England and Wales include the names, ages, marital status and occupations of the two parties, fathers' names and occupations, the name of the minister performing the marriage and the names of the witnesses.<sup>34</sup> Details of the place of birth, dates of birth and the mothers' maiden names are not included.

Individuals can receive certificates relating to any other person without restrictions, upon an application providing relevant details.

### 3.2.2 New Zealand

New Zealand is generally considered to have an open access system in relation to Registry records. Registry practices in relation to Index and certificate content and access do, however, limit some of the information provided.

#### Indexes

Birth Indexes in New Zealand contain the surname and given name(s) of a child and the given name(s) of the mother. The father's name is not included, which means that no inference can be drawn that any birth was ex-nuptial. Clarification of paternity and the identification of the possibility of inherited health disorders is also not possible. References identifying adoption entries have been removed to help maintain the privacy of the subjects registered.<sup>35</sup> However, the absence of this information would mean that adoptees would not be able to obtain knowledge of the circumstances of their birth from the Indexes.

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid. Appendix II, p.11 and Appendix III

The Death Index contains the full name of the deceased, date of death, place of registration and number, and more recently the date of birth. The names of the parents of the deceased are not included.<sup>36</sup>

The Marriage Index contains the full names of the bride and bridegroom, the place where the marriage was registered, and the registration number.<sup>37</sup>

Only Indexes for events recorded up to and including 1920 are publicly available. Any person may, however, request that a search of Indexes for subsequent years be undertaken by Registry staff.<sup>38</sup>

### Certificates

Any individual can apply for the Birth, Death or Marriage Certificate of any other individual, with the exception of pre-adoptive Birth Certificates, provided that the name of the person is specified and the date of the event or period in which to search is provided.<sup>39</sup>

Certificates issued in New Zealand do not, however, provide all the details which are recorded when an event is registered.<sup>40</sup>

The Birth Certificate includes the name, sex, date and place of birth, and parents' names, ages, occupations and birthplaces. Details of the parents' marriage and, where appropriate, previous children are recorded on the Register, but do not appear on the Birth Certificate.<sup>41</sup>

The additional information recorded upon registration may, however, be obtained by requesting that particular details be verified, or by applying to physically inspect the

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<sup>36</sup> Ibid. Appendix II, p.11 and Registrar-General's Office, February 1993

<sup>37</sup> Ibid.

<sup>38</sup> Submission 87. NSW Registry of Births, Deaths and Marriages. p.3

<sup>39</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.10

<sup>40</sup> Ibid. p.11

<sup>41</sup> Ibid.

Register.<sup>42</sup> Written requests may, for example, ask if the subject's parents are recorded as living at a particular address when they were born and a return letter will verify the facts requested. While genealogists frequently make such requests, the fact that individuals can obtain this additional information or inspect the Registers is not widely known or publicised, so sensitive material is generally not released to the merely curious.<sup>43</sup>

Prior to 1961, a different registration form was completed for Maori births, with details recorded in a separate Register. A different certificate is still issued to Maoris born prior to this date, which includes details of tribal heritage and residences of parents but has no reference to parents' ages, occupations or birthplaces.<sup>44</sup>

The Death Certificate includes the place of birth and period of residence in New Zealand, parents' names and father's occupation, details of marriage, living issue, burial and cause of death, and the interval between onset of cause and death.<sup>45</sup>

The Marriage Certificate contains details of the date and place of marriage and the names, occupations, marital status, places of birth and usual residences of both parties. Parents' names and occupations are included on the long form of the certificate which is usually issued, although a short form is also available which does not contain these details.<sup>46</sup> The certificates do not include signatures of the parties, as opposed to all current Australian Marriage Certificates, with the exception of Western Australia.<sup>47</sup>

There are no informant details provided on any certificates.

### 3.2.3 Canada

The registration of births, deaths and marriages in Canada is undertaken on a province by province basis, as is the case in Australian states and territories. Ontario, the most

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<sup>42</sup> Submission 87. NSW Registry of Births, Deaths and Marriages. p.3

<sup>43</sup> Office of the Registrar, Lower Hutt, January 1993.

<sup>44</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix III

<sup>45</sup> Ibid.

<sup>46</sup> Ibid. and Appendix II, p.11 and Office of the Registrar, Lower Hutt, January 1993.

<sup>47</sup> Ibid. Appendix III

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populous Canadian province, has a similar social make-up, administrative tradition and structure to New South Wales, making it a good comparison.<sup>48</sup> New South Wales and Ontario also have similar systems of data collection, record similar information on registrations, and have similar access arrangements.<sup>49</sup>

### Indexes

Records of events registered from the 1860s to 1920 are held at the Ontario Archives Office, and their Indexes are publicly available.<sup>50</sup>

Applicants may, however, request that a search of any more recent Indexes be carried out by Registry staff. This approach is similar to arrangements in New Zealand for Indexes from 1920 to date. In Ontario, however, a search is restricted to:

Any person who:

- (a) applies;
- (b) pays the prescribed fee; and
- (c) satisfies the Registrar General as to his reason for requiring it.<sup>51</sup>

In New Zealand, searches reveal all details in the Index entry, and any subsequent request for a full certificate is then granted. In Ontario, details revealed by an Index search are limited by provisions of the *Vital Statistics Act 1980*. The only information released is:

- (a) whether the registration exists, or not;
- (b) the registration number, if any; and
- (c) at the Registrar General's option, the date of the event, if any.<sup>52</sup>

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<sup>48</sup> Ibid. Appendix II, p.14

<sup>49</sup> Ibid. Appendix II, p.11

<sup>50</sup> Office of the Registrar-General, January 1993.

<sup>51</sup> *Vital Statistics Act 1980*, s44(1)

<sup>52</sup> Ibid. s44(3)

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The search therefore simply confirms the registration of an event described by an applicant, and as a result, searches are granted quite freely. Applicants failing to state a reason for the search would, however, be refused.<sup>53</sup>

### Certificates

Ontario produces three forms of certificates:

- . A short, uncertified form containing only the subject's names, the date and place of the event, and its registration number;
- . A Certified Extract of the Registration, which contains only a proportion of the details of the registration as prescribed in the Act; and
- . Certified Copies of Registrations, which contain all the details recorded upon registration.

### Uncertified Certificates

Access to uncertified, short form certificates is more restricted than access to Index searches, since a relationship to the subject, or a substantial reason, must be established.<sup>54</sup>

### Certified Extracts

These certificates can be used for some official purposes such as school enrolment and proving family relationship, but for substantial identity requirements, such as those applicable in the provision of passports or drivers' licences, the Certified Copy of Registration is required.<sup>55</sup>

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<sup>53</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.15

<sup>54</sup> Ibid. Appendix II, pp.15-17

<sup>55</sup> Ibid.

Certified Extracts of Registrations of births contain details of the subject's name; date and place of birth; sex; and the date and number of the registration.<sup>56</sup> The marital status of the child's mother also appears.<sup>57</sup>

*The Vital Statistics Act 1980* provides the Registrar General with the discretion to issue this type of certificate. The Registrar may issue a Birth Certificate to "any person who furnishes substantially accurate particulars, and satisfies the Registrar General as to his reason for requiring it."<sup>58</sup>

Certified Extracts of Registrations of death contain the name, age, sex and marital status of the deceased; date and place of death; date of registration and registration number.<sup>59</sup> No personal details of the marriage, children, cause of death and burial of the deceased are included.

The Act states that a Certified Extract of a Registration of any death may be issued to any person who applies.<sup>60</sup>

Certified Extracts of Registrations of marriages contain the names of the two parties; the date and place of the marriage; the place of birth of each party; their previous marital status; and the date of registration and registration number.<sup>61</sup>

Access to Certified Extracts of Registrations of marriages is defined in the legislation, and they may be issued to "(a) one of the parties; (b) a parent of one of the parties; (c) a child of the marriage; or (d) any person with the approval of the Registrar General"<sup>62</sup>.

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<sup>56</sup> *Vital Statistics Act 1980*, s39(1)

<sup>57</sup> Office of the Registrar General, January 1993.

<sup>58</sup> *Vital Statistics Act 1980*, s40(1)

<sup>59</sup> Ibid. s39(2)

<sup>60</sup> Ibid. s40(2)

<sup>61</sup> Ibid. s39(3) and Office of the Registrar General, January 1993.

<sup>62</sup> Ibid. s40(3)

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### Certified Copies of Registrations

Certified Copies of Registrations detail all particulars contained on the Register for a birth, death or marriage.

This form of certificate includes, in relation to births, additional details of parents' names, ages, places of birth, marriage, previous children and details of the person registering the birth.<sup>63</sup>

In addition to the details on the Certified Extracts, Certified Copies of Registrations of deaths include details of previous and current marriage(s), children of the deceased, cause of death and burial, together with details of the person informing the Registry of the death.<sup>64</sup>

Certified Copies of Registrations of marriages include additional details of the addresses of the parties before marriage, their occupations and details of their parents' names and any previous marriages.<sup>65</sup>

As a result of the fact that the documents contain considerable detail, and may be used for identification and other purposes, and the fact that abridged certificates are available to otherwise interested applicants such as parents or children, the issue of Certified Copies is restricted. The *Vital Statistics Act 1980*, states that Certified Copies of Registrations are not to be issued "except to a person authorised by the Registrar General or order of the court"<sup>66</sup>. In the case of marriage registrations, the Act explicitly provides for issue "to one of the parties of the marriage"<sup>67</sup>.

In practice, Certified Copies of Registrations are released to the subjects themselves, and their spouses or authorised agents such as solicitors.<sup>68</sup> Certified Copies of Registrations

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<sup>63</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.16

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> *Vital Statistics Act*, 1980, s41

<sup>67</sup> Ibid. s41(2)

<sup>68</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.18

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of deaths are only available to the deceased person's immediate family or their executor.<sup>69</sup>

Applicants for copies of birth and marriage registrations are required to produce personal identification at the time of making the application. For postal applications, the evidence must be produced at a provincial Registrar's office prior to the application being lodged.<sup>70</sup> Acceptable forms of identification include Birth Certificates; social security cards; credit cards; driver's licence; and regular bills. Two such forms of identification must be produced.<sup>71</sup>

The discretion conferred on the Registrar in the *Vital Statistics Act 1980* has recently been considered by the Information and Privacy Commissioner in Ontario. The Commissioner ruled in 1992 that the Registrar's discretionary power to refuse the release of sensitive personal information can be extended to information which is not exempted on invasion of privacy grounds under the Ontario *Freedom of Information and Protection of Privacy Act 1987*.<sup>72</sup>

### 3.3 AUSTRALIAN REGISTRIES

Public access to births, deaths and marriages information in Australian jurisdictions is permitted on the basis of either an applicant's relationship to the subject of the registration, the time elapsed since the event was recorded, or consideration of any public benefit.

Details requested when a birth, death or marriage is recorded, and the contents of Indexes and certificates, differ throughout Australia. As a result, the practices of the various Registries in relation to public access to Indexes and certificates have different implications when considering the subject's privacy.

Access arrangements for genealogists and medical and other researchers also differ. The Registrars of the states and territories are responsible for collecting information on statistics on births and deaths. The Australian Bureau of Statistics, in compiling accurate national data, must attempt to negotiate uniform standards and definitions with the various

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Office of the Registrar-General, January 1993.

<sup>72</sup> Submission 87. NSW Registry of Births, Deaths and Marriages. Appendix II, p.18

Registries.<sup>73</sup> Similarly, medical researchers attempting a national approach must seek agreement from each Registry in order to be supplied with the detailed information they may require. The attempts by the Australian Institute of Health and Welfare to access the full input data on deaths that the Registries supply to the Australian Bureau of Statistics, and to link this to Registry records, illustrate this difficulty. In addition to the fact that various technologies have been introduced in the Registries at various times, differences in legislation, access policies and changing practices mean that separate negotiations must be held with the Registrar of each state. The Institute, after extensive negotiation, now has agreement in principle to be provided with death information from the various states and territories, with the exception of the Australian Capital Territory. Western Australia, South Australia and Tasmania have begun to supply the data. Western Australia and Tasmania have also given approval for the Institute to gain identifying data from the Australian Bureau of Statistics, enabling this data to be matched to Registry records. It is expected that other states will also give approval in the near future.<sup>74</sup>

In considering Registry records and access provisions in New South Wales, the committee examined arrangements in other Australian jurisdictions.

### 3.3.1 Queensland

Compulsory registration of births, deaths and marriages commenced in Queensland in 1856, and is now provided for by the *Registration of Births, Deaths and Marriages Act 1962*. Indexes of church records of baptisms, burials and marriages between 1839 and 1856 are held in the state archives.<sup>75</sup>

#### Indexes

Birth Indexes are available to the public for registrations from 1850 to 1904. A reference in the Birth Index includes the subject's family name and identifying or first name(s); the parent's first name(s); and the registration number.

Death Indexes for registrations between 1850 and 1914 are publicly available, and record the subject's family name and first name(s); the first name(s) of the parents of the deceased; and the registration number.

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<sup>73</sup> Australian Bureau of Statistics, February 1993

<sup>74</sup> Australian Institute of Health and Welfare, February 1993.

<sup>75</sup> Ibid. Appendix II, p.1

Marriage Indexes for records from 1856 to 1914 are available, and registrations are indexed both under the bride's family name and the groom's family name, with both references including the full names of each party and the registration number of the event.

### Certificates

Certificates for events occurring prior to 1890 are available to any member of the general public making a written request.

A Birth Certificate, in addition to the details recorded in the Birth Index, includes the sex of the child; when and where the birth took place; the father's name, occupation, age and birthplace; mother's name and maiden name, age and birthplace; details of previous children including the number and sex of deceased children; the name, description and address of the person registering the birth; and the date of registration.

The marriage details of the parents are registered, but do not appear on the certificates released to the public.<sup>76</sup>

For births after 1890, genealogists can generally gain access to certificates through to the early 1900s when it may be assumed that the subject is deceased. Certificates of later births are released to the subjects, their immediate family, or when an applicant has authorisation from either the subject or a member of the immediate family. Applicants must provide full details and the reason for the request, and each case is judged on its merits.<sup>77</sup>

A Death Certificate, in addition to the details on the Death Index, includes the deceased's usual occupation, sex and age; the date, place and cause of death; the duration of last illness; the name of the medical attendant who certified the death and details of when that person last saw the deceased. Details of the parents' names; father's occupation; mother's maiden name; the date and place of any marriage; spouse's name; and the name and age of any living children and number and sex of deceased children are also included. The Certificate states the date and place of burial or cremation; the person certifying that event, and the name and religion of the Minister and/or names of two witnesses of the event. Additional details recorded include the period of residence in Australia, and the name and address of the person providing the details to the Registry. The usual place of

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<sup>76</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.2 and Appendix III

<sup>77</sup> Office of the Registrar General, January 1993.

residence of the deceased is absent, in contrast to some other states.<sup>78</sup> Certificates are generally available to the immediate family of the deceased, or executors and solicitors.<sup>79</sup>

Marriage Certificates contain details of the full names of both parties; occupations and usual places of residence; marital status prior to the marriage; places and dates of births; parents' names, and the signatures of the parties.<sup>80</sup> While actual certificates are not generally available to persons other than the parties to the marriage, information may be released upon request and the establishment of a satisfactory reason.<sup>81</sup>

### 3.3.2 Victoria

Compulsory registration commenced in Victoria on 1 July 1853.<sup>82</sup> The *Registration of Births, Deaths and Marriages Act 1959* is the current legislation providing for registrations.

#### Indexes

The Birth Index contains information on the names of the child and parents, and on the place of birth and mother's maiden name.

Indexes are available for births registered from 1837 to 1913. While New South Wales Indexes have been produced on an annual basis from 1900 onwards, the Victorian Indexes were produced as consolidated volumes, which resulted, for reasons of practicality, in the release of information to 1913.

The Death Index includes details of the deceased's name and those of their parents, and also includes details of the place of death and age at death. Indexes prior to 1880 also include details of the place of birth. Death Indexes from 1837 to 1960 are publicly available.

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<sup>78</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.2 and Appendix III

<sup>79</sup> Office of the Registrar General, January 1993.

<sup>80</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.2

<sup>81</sup> Office of the Registrar General, January 1993.

<sup>82</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.2

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The Marriage Indexes contain details of both the bride's and groom's names and are freely available for registrations from 1836 to 1930.<sup>83</sup>

The Registry will apply a 75 year rule regarding the release of additional records to the public. The consolidation of blocks of years means that birth records for 1914 to 1930 will be released in 2005 and marriage records for 1931 to 1940 in 2015.<sup>84</sup>

### Certificates

Birth Certificates contain the same range of information as is recorded on Queensland certificates: the sex of the child; when and where the birth took place; the father's name, occupation, age and birthplace; mother's name and maiden name, age and birthplace; details of previous children; the name, description and address of the person registering the birth; and the date of registration. Additional information is also included on the mother's occupation and the parents' marriage details.<sup>85</sup>

Certificates for births recorded after 1913 are only available to the subjects and their parents; legal guardians and step-parents; spouses, siblings and children; persons with power of attorney or trustees, solicitors or travel agents acting for the subject; and the police, Taxation Office, Department of Social Security, Director of Public Prosecutions, Department of Veterans' Affairs and other Government departments who can acquire information through their legislation.<sup>86</sup>

Death Certificates contain the deceased's usual occupation, sex and age; the date, place and cause of death; the duration of last illness; and the name of the medical attendant who certified the death. Details of the parents' names and occupations; mother's maiden name; the date and place of any marriage and age at marriage; spouse's name; and the name and age of any living children are also included, along with the name of the undertaker.<sup>87</sup>

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<sup>83</sup> Ibid. p.3

<sup>84</sup> Registry of Births, Deaths and Marriages, January 1993

<sup>85</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.3 and Appendix III.

<sup>86</sup> Ibid. Appendix II, p.4 and Registry of Births, Deaths and Marriages, January 1993

<sup>87</sup> Ibid. p.3 and Appendix III

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There is unrestricted access to certificates for deaths to 1960. After that date, certificates are generally obtainable by any person although the relationship to the subject and the reason for the request must be specified on the application.<sup>88</sup> The Registrar has the discretion to refuse the issue of any certificate when there is sufficient reason to do so.<sup>89</sup>

The Commonwealth Certificate of Marriage form constitutes the Marriage Register in Victoria, as is the case in most states, with the standard information recorded and released. A certificate or information on marriages after 1930 is only available to the parties to the marriage, or their children, solicitors, travel agents or authorised Government Departments.<sup>90</sup>

### 3.3.3 Tasmania

Compulsory civil registration commenced on 1st December 1838. The *Registration of Births, Deaths and Marriages Act 1895* and the *Marriage Registration Act 1962* now contain the provisions regarding the registration of events. Historical Indexes and Registers for the years prior to 1900 are held by the State Archives office.

#### Indexes

Both the Birth and Death Indexes only record details of the subject's full name and the registration number, with Indexes from 1803 to 1899 being publicly available.

The Marriage Indexes record the same details as all states, and the 1803 to 1899 Indexes are accessible by the general public.<sup>91</sup>

#### Certificates

The content of Birth Certificates varies depending on the time of the registration. In 1896 parents' marriage details were added, with only the place and year of marriage appearing on current registrations; in 1902, parent's ages and places of birth were added; and in

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<sup>88</sup> Ibid. p.3

<sup>89</sup> Registry of Births, Deaths and Marriages, January 1993

<sup>90</sup> Ibid.

<sup>91</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.4

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1909 the number and sex of older siblings, both living and deceased, were included. Both parents' names and occupations also appear, but informant details are absent.<sup>92</sup>

The Tasmanian Registry's public search brochure states that "the powers of restriction exist to protect equally each person's right to privacy, and an application likely to involve an obvious breach of those rights will not be acted upon." Certificates from 1900 onwards are generally not accessible for genealogical purposes unless the applicant is either a person named in the record or a direct descendant of such a person.<sup>93</sup> Spouses, parents, fiance(e)s and solicitors may also be issued with Certificates.<sup>94</sup>

The content of Death Certificates has also varied over time. In 1897, details of the place of birth of the deceased were added; in 1914, age at marriage and the numbers and sex of children were recorded.<sup>95</sup> The deceased's usual residence, period of residence in Australia, occupation and marital status are included, but the cause of death and particulars of burial are absent. Parents' names are only recorded if the deceased was unmarried; otherwise the name of the spouse is included.<sup>96</sup>

Death Certificates are generally issued to applicants providing details of the death.<sup>97</sup>

The full particulars of marriages have been recorded since 1896, and the Commonwealth marriage form is now registered.<sup>98</sup> Marriage Certificates are generally only available to the parties, their children and solicitors acting for the parties.<sup>99</sup>

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<sup>92</sup> Ibid. Appendix II, p.5 and Appendix III

<sup>93</sup> Ibid. p.5

<sup>94</sup> Office of the Registrar, January 1993.

<sup>95</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.5 and Appendix III

<sup>96</sup> Ibid. Appendix III

<sup>97</sup> Office of the Registrar, January 1993.

<sup>98</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.5

<sup>99</sup> Office of the Registrar, January 1993.

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### 3.3.4 South Australia

Civil registration commenced in South Australia on 1 July 1842, and is presently governed by the *Births, Deaths and Marriages Registration Act 1966*.

Over time, registration practices have changed, with different details being recorded on Indexes and certificates for events occurring in various periods.

#### Indexes

Birth Indexes before 1929 only contain details of the subject's full name and registration number. From 1929, details of the district and year of birth, and the father's given names, were included and from 1939 the full date of birth appears.<sup>100</sup> Indexes for the period 1842 to 1906 are publicly available.<sup>101</sup>

Only the subject's full name and registration number are included in entries in the Death Indexes prior to 1931. From that year, the district and date of death were added, and for Indexes for the period from 1986 to 1989, the residential address, occupation, place of death, and age at death.<sup>102</sup> For deaths recorded between 1842 and 1915, the Indexes may be freely accessed.<sup>103</sup>

The Marriage Indexes contain the parties' names, with the district and date of marriage being added from 1933,<sup>104</sup> and Indexes of registrations from 1842 to 1916 are available.<sup>105</sup>

All Registry information is now on a computerised system which is effectively self-indexing. No separate Indexes have therefore been produced since 1980 for births and since 1990 for deaths and marriages.<sup>106</sup>

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<sup>100</sup> Births, Deaths and Marriages Registration Office, January 1993

<sup>101</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.5

<sup>102</sup> Births, Deaths and Marriages Registration Office, January 1993

<sup>103</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.5

<sup>104</sup> Births, Deaths and Marriages Registration Office, January 1993

<sup>105</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.5

<sup>106</sup> Births, Deaths and Marriages Registration Office, January 1993

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## Certificates

The Birth Certificate information now includes all details of the parents, including full dates of birth and also the mother's address, and of the marriage and previous children.<sup>107</sup>

Birth Certificates available to adopted persons did not include marriage details of the adopting parents until recently, because of the difficulty of obtaining this information from the court granting the adoption.

Certificates for registrations up to 1906 are freely available. Genealogists may also be provided with certificates for deceased persons born after 1906. If the person is living, certificates may only be issued to that person or their parents, spouse, guardian, grandparents, siblings, grand-children, fiance(e) (if the stated purpose is for marriage) and solicitor or land broker. If a request for a person's Certificate is received from someone without written authority, the Registry will mail the certificate to the subject or an authorised person.<sup>108</sup>

Death Certificates include details of the deceased's marriage, children, place of death, cause of death and, since 1948, details of burial or cremation. In addition, the deceased's period of residence in Australia is recorded, and details of the duration of the illness and of the funeral director.<sup>109</sup>

Death Certificates for persons who died in the time up to and including 1915 are generally available. For more recent deaths, applicants stating the reason for the request and their relationship to the subject may be issued with a certificate when the stated reason and relationship are judged to be appropriate.<sup>110</sup>

The Commonwealth form of Marriage Certificate serves as the basis for the Register in South Australia, and certificates are issued upon a request from the parties and a child of the marriage or of one of the parties, or, should both parties be deceased, any family member or genealogist. If the marriage occurred before 1916, it is assumed that both

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<sup>107</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.6 and Appendix III.

<sup>108</sup> Ibid. p.6

<sup>109</sup> Ibid. and Appendix III

<sup>110</sup> Office of the Principal Registrar, January 1993.

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parties are deceased and certificates are released without evidence of death being required.<sup>111</sup>

### 3.3.5 Western Australia

Civil registration commenced in Western Australia on 8 September 1841, and is now carried out under the authority of the *Registration of Births, Deaths and Marriages Act 1961*.

#### Indexes

All Indexes record only the subject's name and registration number. Until recently, only Birth, Death and Marriage Indexes for events registered between 1841 to 1905 were available to the public. Indexes to church records of events prior to 1841 were also available.

In 1992, the Registrar-General released Death Indexes to 1953. While 1960 was considered a more appropriate date, following the Victorian precedent, the reality of Index consolidation meant that 1953 was more practical.

Marriage Indexes for registrations prior to 1930 have also recently been released.<sup>112</sup>

#### Certificates

Western Australian birth, death and marriage certificates contain more details than is the case in other states.

Birth Certificates, in addition to the details recorded in all other states, contain the occupations of both parents and their dates of birth, or age if the full date is unavailable. Complete given names and ages of previous children are provided. In addition to details of the witnesses to the birth, the name of the "occupier" of the place of birth is also included, which is usually the hospital matron.<sup>113</sup>

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<sup>111</sup> Ibid.

<sup>112</sup> Registrar General's Office, January 1993.

<sup>113</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.7 and Appendix III, and Registrar-General's Office, January 1993.

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Birth Certificates are issued to the subject or that person's parents and, in addition, to their siblings, children, spouse or legal representative. Certificates are generally issued to other persons 80 years after the birth, with applicants required to provide full details and state their relationship to the subject and the purpose for which the document is required.<sup>114</sup>

Death Certificates include full details of the deceased, including the interval between the onset of disease or condition and death; marriages and children; and additional details of years lived in each Australian state. As well as the particulars of the interment, the name of the cremation or burial official is stated, as is the religious denomination of the officiating minister and the names of witnesses.<sup>115</sup>

Applicants for certificates of deaths occurring prior to 1980 must provide full details and reasons, but certificates are generally available. For more recent deaths, the availability of certificates is restricted to the deceased's executor, any family member (undefined), family historians who are direct descendants of the deceased, or who have written permission from a direct descendant, and solicitors, government departments and funeral directors.<sup>116</sup>

In Western Australia, the Commonwealth form of Marriage Certificate is retained, but the Register itself consists of the details being retyped as a separate marriage registration. Additional details of the date of death of previous spouse or decree absolute of divorce, which are ascertained from the Notice of Intended Marriage, are also recorded, but the signatures of the parties are absent.<sup>117</sup>

Marriage Certificates can only be obtained by parties to the marriage, and any child or parent. Siblings and former or future spouses can only obtain certificates with the consent of the parties. Family historians can obtain certificates for marriages registered at least 40 years ago, without the consent of the parties or family members.<sup>118</sup>

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<sup>114</sup> Ibid. p.8

<sup>115</sup> Ibid. Appendix II, p.7 and Appendix III

<sup>116</sup> Registrar-General's Office, January 1993.

<sup>117</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, pp.7-8

<sup>118</sup> Ibid. p.8

### 3.3.6 Northern Territory

Civil registration commenced on 24 August 1870, and is now provided for in the *Registration of Births, Deaths and Marriages Act*, as consolidated in 1980 and amended in 1987.

#### Indexes

Indexes for registered events from 1870 to 1902 are publicly available. The Indexes contain the basic information as recorded in the various states.<sup>119</sup>

#### Certificates

Certificates of births, deaths and marriages contain the basic details common to certificates of all states.

Access to the various certificates is granted only to subjects of the certificates, or members of the immediate family, including parents, siblings or grandparents. Access may also be granted to the subject's authorised agent, legal representative, executor or administrator of a deceased estate. Accredited historical researchers may also be issued with certificates. Members of the extended family, such as uncles, aunts or cousins must have written authority from the subject of the certificate. The Registrar has the discretion to determine other applicants as being eligible to apply, including various government departments requiring information for statistical, medical or social research purposes. In establishing access entitlements, the general requirement is that an applicant have a personal or special interest in an event. The Registrar has the discretionary power to refuse to issue a certificate to any category of applicant if it is determined that the certificate is required for an improper purpose or that there is not a proper reason for requiring it.<sup>120</sup>

### 3.3.7 Australian Capital Territory

Registration has only been carried out in the Australian Capital Territory since 1 January 1930. Prior to this, all events were registered in Queanbeyan, New South Wales, and are

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<sup>119</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.8 and Registrar's office, January 1993.

<sup>120</sup> Office of the Registrar-General, January 1993

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therefore subject to New South Wales access arrangements.<sup>121</sup> The *Registration of Births, Deaths and Marriages Ordinance* of 1963 is the current regulatory framework for registrations.

### Indexes

There are no Indexes of births, deaths or marriages made available for public access in the Australian Capital Territory.

### Certificate Content

Birth Certificates contain the basic details common to all states, and mother's occupation, names of previous children and numbers and sex of deceased children.<sup>122</sup>

Generally, applicants for full certificates must be 18 years of age or older, although for the purposes of obtaining a driver's licence or passport, applications from persons over 16 are accepted. In addition to the subject, parents, children, spouses or solicitors acting for the subject or their family may apply for certificates. Other applicants with a letter of authority may be issued with a full certificate. In addition, Birth Extracts may also be issued to the subject's fiance(e) prior to marriage.<sup>123</sup>

Death Certificates include full details of the deceased, including the duration of fatal illness; details of marriages and children both living and dead, and additional details of length of residence in Australia and parents' occupations. As well as the particulars of the burial or cremation, the name of the person performing the interment is stated, as is the name and religious denomination of the officiating minister. Names of witnesses to the event are also provided.<sup>124</sup>

Death Certificates may be issued to the deceased's parents, children, spouse, solicitor and funeral director. In addition, Death Extracts may be issued to banks and insurance or credit companies to assist in the settlement of claims.<sup>125</sup>

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<sup>121</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix II, p.9

<sup>122</sup> Ibid. and Appendix III

<sup>123</sup> Ibid. p.10

<sup>124</sup> Ibid. p.9

<sup>125</sup> Ibid. p.10

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The Commonwealth form of Marriage Certificate is registered, and certificates are available to the parties, their parents, children and solicitors.<sup>126</sup>

### 3.4 NEW SOUTH WALES

Records of baptisms, burials and marriages were maintained by ministers and chaplains of the Church of England from 1788. In 1810, chaplains were formally directed by the Governor to record all the births and deaths in their parish, and ministers of other denominations were later required to record baptisms, burials and marriages at which they officiated. The registration of births, deaths and marriages has been provided by legislation since 1855.<sup>127</sup>

The advantages of registration were chiefly perceived to relate to the collection of statistical data to assist social planning in the colony, and to provide some means of identity, particularly in relation to parentage.<sup>128</sup> Registration was never intended, however, to be able to provide complete proof of identity. Until the Australian Bureau of Statistics was formed in 1887 the Registry was the only form of record keeping in the colony.<sup>129</sup>

Details of the information held and released by the Registry appears below. Appendix 4 summarises this information.

#### 3.4.1 Indexes

Indexes to the contents of Birth, Death and Marriage Registers from 1855 to 1905 are publicly available. Many public libraries and offices of historical societies hold microfiche copies.

Each record on the Birth Index includes the subject's family name and identifying or first name(s); the parent's first name(s); and the registration number. Indexes from 1974 include the date of birth. If no details of the father of a child have been provided upon registration, the entry appears after all other births listed under the same surname that do

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<sup>126</sup> Ibid.

<sup>127</sup> NSW Law Reform Commission, 1988, p.15

<sup>128</sup> Ibid. p.16

<sup>129</sup> Ibid.

include a father's name. Inferences of ex-nuptial births can therefore be drawn from the Birth Index.<sup>130</sup>

A system of prefixes and number sequences on the various Registers allows other potentially sensitive information on the status of individuals to be identified. Should the parents be married after the child's birth, the birth may be re-registered at the time of the marriage, with a new Index entry appearing at that time. Both the original registration and original Index entry are cross-referenced with the new registration number. The fact that the birth has occurred outside of marriage is clearly identifiable by the prefix "L" or "LA", denoting "legitimation", appearing against the new number entered. Births which have been the subject of a paternity claim are also identifiable by a certain series number.

Similarly, the prefix "A" and an identifiable number have appeared against Index entries of registrations of adopted children from 1923. Separate sections for Aboriginal births and deaths were maintained in the Indexes until 1929.<sup>131</sup> Stillbirths prior to 1969 may appear in both the Birth and Death Indexes, depending on the registration details received by the Registry, and subsequently appear solely as births, with "unnamed stillborn" appearing in the Index when no name is given.<sup>132</sup> For stillbirths occurring prior to 1993, all Index entries are identifiable by the use of a unique series number or the absence of a registration number, as the stillbirth Register was organised on a different basis from the Birth Register.<sup>133</sup>

Details recorded in the Death Index include the subject's family name and first name(s); the first name(s) of the parents of the deceased; the registration number; and, from 1974, the full date of death.<sup>134</sup>

Marriage Registers are indexed by a reference under both the bride's family name and the groom's family name. Both references include the full names of each party and the registration number of the event, with the date and month of the event also recorded in annual Indexes from 1974.<sup>135</sup>

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<sup>130</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. p.10

<sup>131</sup> Evidence. Miller, 5.8.92, pp.82-83

<sup>132</sup> Evidence. Flett, 5.8.92, pp.82-83

<sup>133</sup> NSW Registry of Births, Deaths and Marriages, January 1993.

<sup>134</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. p.10

<sup>135</sup> Ibid.



### 3.4.2 Certificates

A Birth Certificate, in addition to the details recorded in the Birth Index, includes the sex of the child, when and where the birth took place, the father's name, occupation, age and birthplace; mother's name and maiden name, age and birthplace, and occupation if stated, which is increasingly the case; where and when the parents were married, and details of previous children; the name, description and address of the person registering the birth; and the date of registration. The names of the witnesses at the birth appear on certificates when the information is available, but current registration forms do not request these details.<sup>136</sup>

A Death Certificate, in addition to the details on the Death Index, includes the usual occupation, sex, age, and marital status, the date and place of death, the usual residence and place of birth of the deceased. Details of the parents' names and mother's maiden name, the date and place of any marriage, age at marriage, and spouse's name, and the name and age of any children are also stated. The certificate also lists the causes of death, the name of the medical practitioner who certified the death, the date and place of burial or cremation, and the name and address of the person providing the details to the Registry.<sup>137</sup>

Marriage Certificates contain details of the full names of both parties; occupations and usual places of residence; marital status prior to the marriage; places and dates of births; and parents' names. Registers are now produced by binding the actual certificate completed and signed by the parties. As a result, certificates issued for marriages occurring from 1974 contain the signatures of the parties, which has security implications as a result of the potential for fraud.<sup>138</sup>

Access to Registry records is allowable as a result either of formal or legislatively defined arrangements or through the exercise of the discretionary powers of the Principal Registrar.

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<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid. p.11

### 3.4.3 Statutory Access

The Committee was advised that a number of bodies are entitled to gain access to Registry records through statutory provisions. Legislation containing such provisions includes the *Statistics (Arrangements with States) Act 1956* (Commonwealth); the *Parliamentary Electorates and Elections Act 1912*; and the *Public Health Act 1991*.

Under such legislative provisions, the Registry has determined that data be released to the following bodies:

- . Australian Bureau of Statistics;
- . Australian Electoral Office;
- . Australian Taxation Office;
- . Department of Social Security;
- . Department of Veterans' Affairs;
- . Department of Immigration, Local Government and Ethnic Affairs;
- . Department of Employment, Education and Training;
- . Child Support Agency;
- . Australian Institute of Health and Welfare;
- . New South Wales Health Department; and
- . New South Wales Cancer Council.

Birth, Death or Marriage Certificates can also be subpoenaed for court proceedings, being regarded under the New South Wales *Evidence Act 1898* as prima facie evidence that the event specified occurred.

The only organisation which receives all three sets of data - births, deaths and marriages - is the Australian Bureau of Statistics. The other organisations tend primarily to be interested in the data on deaths.

### 3.4.4 Discretionary Access

The discretionary power of the Principal Registrar to refuse to furnish Certificates is provided for in s44 of the *Registration of Births, Deaths and Marriages Act 1973*. In determining whether or not Registry information is released, the age of the record, the reasons for the request, the relationship of the person making the request to the subject of the record and any public benefit are considered.<sup>139</sup> In practice, the Principal Registrar applies these criteria in different ways with respect to:

- . one-off requests by individuals;
- . developing arrangements with a number of agencies with a view to releasing records on an ongoing basis; or
- . one-off requests by organisations on behalf of a client.

#### Requests by Individuals

Access by individuals is also based on the discretionary power of the Principal Registrar as provided for in the *Registration of Births, Deaths and Marriages Act 1973*. Certificates for births occurring after 1905 are available only to the subject or their spouse; parents; fiance(e) (if the stated purpose is for marriage); or a solicitor acting for the subject. Other applicants require written authorisation or authority by law, such as may be the case with the police or the Taxation Office.<sup>140</sup>

Access to a certificate for a death registered less than 50 years ago is restricted to the informant; the spouse or children of the deceased (as named in the Certificate); the parents of the deceased; the consulate of a deceased foreign national; the solicitor, executor or trustee of the deceased; and any previous spouse intending to remarry. For deaths recorded more than 50 years ago, the Certificates are available on request.<sup>141</sup>

Access to certificates for marriages occurring within the last fifty years is restricted to the parties to the marriage; children of the marriage if the certificate is required towards

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<sup>139</sup> Evidence. Flett, 6.8.92, p.12

<sup>140</sup> Submission 87A. NSW Registry of Births, Deaths and Marriages. p.12

<sup>141</sup> Ibid.

providing evidence of eligibility for entitlements based on parents' country of birth, or if the parties are deceased; solicitors acting for either party; and consulates. Certificates for marriages occurring more than fifty years ago may be available on request if both parties are deceased.<sup>142</sup>

The Registry indicates to persons intending to marry whether or not a prior marriage by a party has been registered, but does not reveal any particulars.<sup>143</sup>

The practice of releasing Death and Marriage Certificates fifty years after the event is provided for in the current guidelines issued to Registry staff.<sup>144</sup>

In summary, an individual has access to any other individual's Birth Certificate for births recorded up to 1905, and a certificate for any death or marriage occurring more than fifty years ago, but they are unable to freely access the Indexes for these registrations after 1905. For more recent events, an individual can obtain their own Birth Certificate, and those of their spouse, children or fiance(e). Death Certificates are obtainable for a person's spouse, or previous spouse if they are intending to remarry, and any parent or child. An individual may only get a copy of their own Marriage Certificate, and that of their parents if they are both deceased, but can obtain information as to the existence of a certificate for a fiance(e).

In addition, the Principal Registrar retains the discretion to consider requests for certificates outside these provisions on the basis of sufficient reason.

### Long-standing Arrangements

Special access to Registry data is made available to the Roads and Traffic Authority, the Sheriff's Office, and professional registration boards<sup>145</sup> to enable them to update their respective records; to Members of the New South Wales Parliament for them to verify constituent details in congratulatory telegrams; and to Consulates. Details of organisations provided with access are outlined in Appendix 5.

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<sup>142</sup> Ibid.

<sup>143</sup> Evidence. Flett, 6.8.92, p.18

<sup>144</sup> Ibid. p.12

<sup>145</sup> Formerly authorised by various statutes, but all relevant provisions have now been repealed. NSW Law Reform Commission, 1988, p.20

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Special access arrangements to Registry data have evolved as a matter of practice but lack the formal acknowledgment provided by statutory provision or a publicly available access policy.

### Requests by Organisations

Requests for access by the following organisations are considered on a case by case basis with regard to both the interest of the subject of a requested Certificate and the public interest:

- . New South Wales Department of Community Services, and interstate counterparts;
- . Legal Aid Commission;
- . Public Trustees;
- . Australian Defence Forces;
- . Law Enforcement Agencies, namely
  - Federal and State Police;
  - Director of Public Prosecutions;
  - Independent Commission Against Corruption;
  - National Crime Authority;
  - Attorneys-General;
  - Australian Securities Commission;
  - Royal Commissions;
- . Department of Defence;
- . Insurance Companies, banks and credit unions;
- . Medical and other researchers.

Details of the types of access provided are outlined in Appendix 5.

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The discretionary ability of the Principal Registrar to allow access to Registry records, in the absence of any statutory guidelines or long-standing arrangements, was an area where the Committee heard a number of views. In evidence before the Committee the Principal Registrar noted that:

The way that discretion is exercised and what guidance you have for it at the moment... is based on past practice, case files, a set of operational guidelines which are available for staff, (a considerable number of) Crown Solicitors' opinions ... and ... the Hansard debate about the Registry when it was first set up.<sup>146</sup>

The Privacy Committee of New South Wales expressed concern about such unfettered discretion in accessing Registry records. The Executive Member of the Privacy Committee stated in evidence before the Committee:

... the time has come in this information age (where) there needs to be controls on the information so that everybody has a guide, an understanding, of the principles behind information management.<sup>147</sup>

The Committee concurs with this view. However, this should in no way be interpreted as criticism of the way in which the Principal Registrar has exercised discretion until now. Indeed, the lack of community concern, as shown by the very few appeals against the Registrar's rulings, is evidence that the Registrar has exercised this freedom with considerable care, sensitivity and balance.

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<sup>146</sup> Evidence. Flett, 30.7.92, pp.76-77

<sup>147</sup> Evidence. Morgan, 30.7.92, pp.51-51a

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