

APPENDICES

APPENDIX ONE

Extract from the New South Wales Law Reform Commission's Report, *Names: Registration and Certification of Births and Deaths*, Report LRC 61, 1988.

Recommendation 1: An Open Register

The Commission's principal recommendation is that the Register of Births, Deaths and Marriages should become an open register available to all members of the public, except for those parts which are closed by statutory authority.

4.14 In New South Wales, the register has always been closed, subject to certain qualifications (see below, paragraph 4.19). The Registration of Births, Deaths and Marriages Act 1973²²⁴, gives the public no right to search either the indexes or the registers. Anyone wanting a copy of an entry on the register must satisfy the Principal Registrar of a sufficient reason for requiring it. The Principal Registrar has the discretion either to refuse the application or to issue a full or extract certificate.²²⁵

4.15 The intention of our recommendation for an open register is that the Registry of Births, Deaths and Marriages should provide open access to all its indexes, except those required by statute to be kept confidential. On payment of the prescribed fee, any person should be entitled to a full copy or an extract of any non-confidential register entry.

4.16 An open register, or open access, does not mean that the public has unrestricted access to the register books. As we understand it, the open register system in other jurisdictions operates in the following way:

- The indexes to the registers are made available in the public area of the registries.
- The public may search the indexes and request copies of the register entries to which they refer.
- No access is permitted to the registers themselves, except by requesting identified copies.

²²⁴ ss43 - 48A

²²⁵ s44

- A request may be made for an official search of the registers to be done by Registry staff.

- Some parts of the register are closed. The indexes and entries relating to adoptions and stillbirths are not available except with special dispensation.

Such an open register system operates in England, Scotland and New Zealand.²²⁶ We recommend that a similar register be introduced in the New South Wales Registry.

4.17 The Commission understands that the computer being installed in the Sydney Registry at present has capacity to implement an open register system. The fees structure is capable of being adapted to accommodate such a system. In other jurisdictions, the scales of fees imposed vary according to the detail of the information supplied by the applicant. A request which provides a precise reference to the certificate required attracts a lower fee than one which involves Registry staff in searching the indexes and entries in the register.

4.18 The reasons for the secrecy of a closed register are not made clear in the Registration Act. They appear to centre on considerations of privacy and confidentiality which are not necessarily given effect in the operation of the registration system or in other public registers in the State.

4.19 For a variety of reasons, the register is not totally closed at present and probably never can be. Both government and private institutions may gain access, although this is not widely known. Private citizens, on furnishing sufficient reasons to satisfy the Principal Registrar of a legitimate interest in the information, may also be given access without the knowledge of the person named in the entry. The confidentiality of the current system depends upon the exercise of the Principal Registrar's discretion in giving or denying this access. The principles on which the discretion is exercised are not publicly known and as no record is made of the people to whom certified copies are supplied, it is not possible to know whether privacy principles have been respected. There is no foolproof identity system, and therefore no practical way of verifying the identity of those applying for access. The Principal Registrar must rely on the honesty of applicants in assessing whether to release the information. As there is no way of guaranteeing the effective operation of a closed system, and since we have received no evidence of abuse of the open register system, the Commission recommends that an open register be substituted for the existing one which may be accessible to those interested enough to deceive the Principal Registrar.

²²⁶ *Births and Deaths Registration Act 1953 (England); Registration of Births, Deaths and Marriages (Scotland) Act 1965; Births and Deaths Registration Act 1951 (New Zealand).*

4.20 There is no doubt that at present a birth certificate can be improperly obtained and used to establish a false identity.²²⁷ Yet it continues to be used by many, including public authorities, as reliable evidence of identity. It is common practice for a birth certificate to be accepted uncritically, without requiring additional evidence to link the person tendering the certificate to the person named on it.²²⁸ It is not, and never has been the function of the Registry to provide a person with a complete proof of identity. The introduction of an open register should make this plain to all using it.

4.21 In the Commission's view the possibility that the open register system will be used to gain access to another person's birth certificate merely to satisfy idle curiosity does present a significant privacy problem. We acknowledge that an open register will allow access to information on the register, some of which may be regarded by some people as sensitive; however the present system under which a certificate will be issued on any apparently legitimate application (see above paragraph 4.12) can lead to the same result. The greater concern about privacy arises where a person using a full certificate as evidence for a particular purpose (for example, age or nationality) must reveal all the registered information and not only that relevant to the circumstances. In practice the proposals contained in our recommendation about the content of certificates (see Recommendation 3 discussed at paragraphs 4.34 to 4.36) will provide greater protection for privacy than at present. It is unlikely that applications for copies of certificates relating to other people will be made regularly or to such an extent as to cause concern.

4.22 We have no evidence that the practice in other jurisdictions over many years has revealed problems with the open register. A real possibility for abuse of privacy, however, lies in commercial applications of access to registered information through the sale of computer links to the Registry data base.²²⁹ The problem seems to have been avoided in those jurisdictions by giving free personal access to the indexes only, which contain information going little beyond what is more readily available from other sources.²³⁰ Certificates are issued in response to individual applications and a not insubstantial fee is imposed, both of which discourage the extensive access necessary for commercial purposes. We believe that on-line access to the Registry's data base should occur only with statutory authority, or on clear principles of public benefit. Under New

²²⁷ Royal Commission of Inquiry into Drug Trafficking, Interim Report No 2 *Passports* (AGPS, Canberra, 1982) at 30-40.

²²⁸ *Id* at 50; D P Byrne and J D Heydon, *Cross on Evidence*, (Butterworths, Sydney, 3rd Australian edition, 1986) at 1058; *Evidence Act 1898* s30(1); *Registration Act*, s48(4).

²²⁹ The Lands Titles Office currently supplies information or sells indexes which are used to access information held at the Office: *Land Titles Office Annual Report 1988* at 13, and the Department of Motor Transport supplies information for commercial purposes.

²³⁰ For example, newspapers and electoral rolls.

South Wales law the Privacy Committee has statutory authority to act as a privacy ombudsman. It seems an appropriate body to assess any applications for computer access to information on the registers.

4.23 Another problem in the current provisions for access to the register is that they rely for implementation on exercise of the Principal Registrar's discretion. An open register will eliminate the need for such a discretion. Wide, unregulated discretion is not acceptable unless necessary in times of emergency.²³¹ The principles established in privacy and freedom of information legislation are direct applications of this philosophy. As the operation of the registration legislation has not been reviewed in any real sense since its passage in 1855, it does not contain the principles and guidelines expected in modern legislation. While the Principal Registrar has published some guidelines for the exercise of his discretion in the Registry's manuals, many sensitive decisions are left completely unfettered and depend upon the Principal Registrar's assessment for determination.²³² The exercise of such wide discretion cannot be justified by reference to the material stored or the circumstances in which requests are made for its release.

4.24 Legislative decisions have been made to restrict access to some registered material and confidential registers have been created for adoptions, legitimations and stillbirths. The Commission recommends that this system be maintained and that when information is regarded by Parliament as so sensitive that it should not be released without official sanction, it should be recorded on a closed section of the register.²³³ All other information should be available for public scrutiny.

²³¹ M Aronson and N Franklin, *Review of Administrative Action* (Law Book Co, Sydney, 1987) at 26-30; De Smith's *Judicial Review of Administrative Action* (J M Evans ed) (Stevens & Sons, London, 4th ed, 1980) at 295.

²³² Most of the Registry's practice in the choice and registration of names falls into this category, as does the practice on destroying stillbirth records and the issue of certificates to transsexuals.

²³³ The records of parentage in IVF births may also be dealt with in this way by statute.

APPENDIX TWO

PRIVACY COMMITTEE'S RECOMMENDED DATA PROTECTION PRINCIPLES

Note: These principles are based on the Commonwealth Information Privacy Principles contained in the Privacy Act 1988.²³⁴ Text which appears in italics is not in the Commonwealth Act. The changes have been made to take into account recent international developments in data protection, in particular the European Commission's draft directive.

Principle 1 - Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
 - (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
 - (b) the collection of the information is necessary for or directly related to that purpose.
2. Personal information shall not be collected by a collector by unlawful or unfair means.

Principle 2 - Solicitation of personal information from individual concerned

1. *Personal information shall be solicited directly from the individual concerned except where the individual authorises otherwise, or where personal information may be disclosed to the collector in accordance with these Principles or a Code of Practice under this Act.*
2. Where:
 - (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
 - (b) the information is solicited by the collector from the individual concerned;the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is *informed* of:
 - (c) the purpose for which the information is being collected;
 - (d) if the collection of the information is authorised or required by or under law - the fact that the collection of the information is so authorised or required;

²³⁴ Submission 64. The Privacy Committee of New South Wales. Part B, pp.69-74

- (e) *the mandatory or voluntary nature of the information collection and the effects on the individual concerned, if any, of not providing all or any part of the requested information;*
- (f) *the existence of the right of access to and rectification of the data relating to the individual;*
- (g) *the name and address of the recordkeeper;*
- (h) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose (*sic*) personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first mentioned person, body or agency to pass on that information.

Principle 3 - Solicitation of personal information generally

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector;

the collector shall take steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected;

- (c) the information collected is relevant to that purpose, *not excessive*, and is *accurate*, up to date and complete; and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Principle 4 - Storage and security of personal information

A recordkeeper who has possession or control of a record that contains personal information shall ensure *that the personal information is:*

- (a) *stored for specified, explicit and lawful purposes and used in a way consistent with those purposes;*
- (b) *adequate, relevant, and not excessive in relation to the purposes for which it is stored;*
- (c) *processed fairly and lawfully;*

- (d) *kept for no longer than is necessary for the purposes for which the information is stored;*
- (e) personal information is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- (f) if it is necessary for the *personal information* to be given to a person in connection with the provision of a service to the recordkeeper, everything reasonably within the power of the recordkeeper is done to prevent unauthorised use or disclosure of *the information*.

Principle 5 - Information relating to records kept by recordkeeper

1. A recordkeeper, who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:
 - (a) whether the recordkeeper has possession or control of any records that contain personal information; and
 - (b) *whether the recordkeeper has possession or control of such a record relating to that person; and*
 - (c) if the recordkeeper has possession or control of a record that contains such information:
 - (i) the nature of that information;
 - (ii) the main purposes for which the information is used; and
 - (iii) the steps that the person should take if the person wishes to obtain access to the record.
 2. A recordkeeper is not required under clause 1 of the Principle to give a person information if the recordkeeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of *New South Wales* that provides for access by persons to documents.
 3. A recordkeeper shall maintain a record setting out:
 - (a) the nature of the records of personal information kept by or on behalf of the recordkeeper;
 - (b) *the sources of personal information contained in those records;*
 - (c) *the purpose for which the information was collected and the authority for that*
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collection;

- (d) the purpose for which each type of record is kept;
 - (e) the classes of individuals about whom records are kept;
 - (f) the period for which each type of record is kept;
 - (g) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
 - (h) the steps that should be taken by persons wishing to obtain access to that information.
4. A recordkeeper shall:
- (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and
 - (b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

Principle 6 - Access to records containing personal information

1. Where a recordkeeper has possession or control of a record that contains personal information, the individual concerned shall, *without excessive delay or expense*, be entitled to have access to that record, except to the extent that the recordkeeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of *New South Wales* that provides for access by persons to documents.

Principle 7 - Alteration of records containing personal information

1. A recordkeeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:
 - (a) is accurate; and
 - (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up-to-date, complete and not misleading.
 2. *Where personal information has been corrected, deleted or added to in accordance with clause 1, the individual concerned shall be entitled to have recipients of that information*
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notified of the alterations by the recordkeeper.

3. The obligation imposed on a recordkeeper by clause 1 is subject to any applicable limitation in a law of *New South Wales* that provides a right to require the correction or amendment of documents.
4. Where:
 - (a) the recordkeeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and
 - (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of *New South Wales*;

the recordkeeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

Principle 8 - Recordkeeper to check accuracy etc. of personal information before use

A recordkeeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is *relevant*, accurate, up to date and complete.

(Commonwealth Principle 9 has been deleted as it is effectively incorporated into Principle 8 by addition of the word "relevant". Commonwealth Principle 9 states:

A recordkeeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant).

Principle 9 - Limits on use of personal information

1. A recordkeeper who has possession or control of a record that contains personal information shall not use the information for a *purpose other than that for which it was collected and which was specified in accordance with Principle 5* unless:
 - (a) the individual concerned has consented to use of the information for that other purpose;
 - (b) the recordkeeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual

concerned or another person; or

- (c) use of the information for that other purpose is required or authorised by or under law.

(Parts (d) and (e) of the Commonwealth's IPP 10 have been deleted. Derogations from the statements of principle should be dealt with in either the Codes of Conduct or specific legislative provisions relating to the recordkeeper).

Principle 10 - Limits on disclosure of personal information

1. A recordkeeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
 - (a) the individual concerned *has been informed* under Principle 2, that information of that kind is usually passed to that person, body or agency;
 - (b) the individual concerned has consented to the disclosure;
 - (c) the recordkeeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
 - (d) the disclosure is required or authorised by or under law.
2. A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

Parts 1(d) and (e) and 2 of the Commonwealth's IPP 11 have been deleted for the same reason as deletions were made to the previous principle.

New Principle 11

1. *Notwithstanding Principles 9 and 10 information relating to ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual life shall not be used or disclosed by a recordkeeper without the express written consent, freely given, of the individual concerned.*
2. *Information relating to an individual's criminal history may only be processed as required or authorised by law or a Code of Practice under this Act.*

APPENDIX THREE

REGISTRY ACCESS ARRANGEMENTS IN OTHER JURISDICTIONS

AUSTRALIAN JURISDICTIONS

STATE	INDEX CONTENT	INDEX ACCESS	CERTIFICATE CONTENT	CERTIFICATE ACCESS BY PRIVATE INDIVIDUALS
New South Wales	<p>Births: subject's full name and parents' first names and registration number, and, from 1974, the date of birth. Adoptions identifiable by registration number.</p> <p>Deaths: Basically as for above.</p> <p>Marriages: Full names of both parties and registration numbers</p>	Births, deaths and marriages to 1905.	Content varies over time (see Appendix 4).	Unrestricted up to 1905. Otherwise unrestricted to subject/parents/spouse re births, immediate family re deaths, subject re marriages.
Victoria	As for New South Wales with inclusion of place of birth or death and mother's maiden name	Births to 1913, marriages to 1930, deaths to 1960.	As for New South Wales	Unrestricted up to 1913 - births, 1930 - marriages, 1960 - deaths, then as for New South Wales
Queensland	As for New South Wales	Births to 1904, Others to 1914.	As for New South Wales except NO marriage details on birth certificates. Usual residence does not appear on Death Certificates, but period of residence in Australia included.	Unrestricted up to 1890, then as for New South Wales

Appendix 3

STATE	INDEX CONTENT	INDEX ACCESS	CERTIFICATE CONTENT	CERTIFICATE ACCESS BY PRIVATE INDIVIDUALS
Tasmania	Subject's full name and registration number only	All to 1899	Content varies over time, tend to increase information collected, current certificate basically as for New South Wales. Death Certificates do not include cause of death or burial details, and only either parents' or spouse's names are included.	Unrestricted up to 1899, then as for New South Wales
South Australia	As for Tasmania. Father's given named included from 1929. Full date of birth from 1939. From 1986 to 1989, residence, occupation and place of death and age at death are recorded in Death index. Date of marriage appears in Marriage Index from 1933.	Births to 1906, deaths to 1915, marriages to 1916.	As for New South Wales but death includes period of residence in Australia and funeral director details	Unrestricted up to 1906 births, 1916 marriages, and all deaths, then as for New South Wales

Registry Access Arrangements in Other Jurisdictions

STATE	INDEX CONTENT	INDEX ACCESS	CERTIFICATE CONTENT	CERTIFICATE ACCESS BY PRIVATE INDIVIDUALS
Western Australia	As for Tasmania	Births to 1905, marriages to 1930, deaths to 1953.	As for New South Wales but includes previous marriage details on termination of previous marriage on Marriage Certificates, but no signatures. Witnesses and occupier of place of birth on Birth Certificates. Residence period and interval between onset of cause and death on Death Certificates.	Unrestricted after 80 years for births, 40 years for marriages and 1979 deaths, then as for New South Wales

OVERSEAS JURISDICTIONS

NATION	INDEX CONTENT	INDEX ACCESS	CERTIFICATE CONTENT	CERTIFICATE ACCESS BY PRIVATE INDIVIDUALS
New Zealand	<p>Births: subject's full name and mother's first names, place and year of registration, registration number, adoptions not identifiable.</p> <p>Deaths: subject's full name, date of death, registration number and place. Date of birth also included for more recent registrations.</p> <p>Marriages: both parties' full names, place of registration, registration number.</p>	Births, deaths and marriages to 1920. After 1920 search by Registry staff upon application	<p>Births: no parents' marriage or previous issue details, no informant details, otherwise as for New South Wales.</p> <p>Deaths: period of residence, interval between onset of cause and death, father's occupation, otherwise as for New South Wales but no informant details.</p> <p>Marriages: as for New South Wales but may include parents' occupations.</p>	Unrestricted except for adoptions.

Registry Access Arrangements in Other Jurisdictions

NATION	INDEX CONTENT	INDEX ACCESS	CERTIFICATE CONTENT	CERTIFICATE ACCESS BY PRIVATE INDIVIDUALS
England and Wales	<p>Births and Marriages: as for New Zealand</p> <p>Deaths: as for NZ.</p>	<p>Births, deaths, marriages, adoptions and divorces - all but the last year.</p>	<p>Births: as for New South Wales but minus parents' ages, marriage and other issue.</p> <p>Deaths: as in New South Wales but no marriage or issue details, or particulars of burial.</p> <p>Marriages: as for New South Wales but with father's occupation, but mother's name, places of birth and dates of birth not included.</p>	<p>Unrestricted except for adoptions and stillbirths.</p>

Appendix 3

NATION	INDEX CONTENT	INDEX ACCESS	CERTIFICATE CONTENT	CERTIFICATE ACCESS BY PRIVATE INDIVIDUALS
Ontario, Canada	As for New South Wales	All to 1920 at Archives Office. No public indexes at Registry. Restricted index search by Registry staff upon application.	Generally Certified Copies of Registrations as for New South Wales	<p>Unrestricted for Archives records.</p> <p>Births: Certified Extracts of births as for New South Wales but for Certified Copies of Registrations only the subject, with ID required.</p> <p>Marriages: Parents/subject/children re Certified Extracts of Marriages but only the subjects for Certified Copies.</p> <p>Deaths: Unrestricted re certified extracts of deaths but only immediate family for Certified Copy of Registration of deaths.</p>

APPENDIX FOUR

CONTENTS OF NSW INDEXES AND CERTIFICATES

The following details are included on the Index and Certificate records of the Register.

Birth Indexes record

- . full name of the baby;
- . parents' first names;
- . date of birth (from 1974); and
- . registration number.

Birth Certificates record

- . full name of the baby;
- . district where child is born;
- . christian names;
- . sex;
- . where and when born;
- . father - christian name, surname, occupation, age and birthplace;
- . mother - christian name, surname, age, birthplace and, increasingly, occupation.
- . when and where married, previous issue - living and deceased;
- . informant's name, description and residence;
- . witnesses (for older registrations) - name of doctor and nurse or other persons present at the birth; and
- . registration - signature of Assistant District Registrar, date of registration.