



PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE COUNCIL

STANDING COMMITTEE
ON
SOCIAL ISSUES

**BIRTHS, DEATHS AND MARRIAGES:
AN OPEN REGISTER?**

March 1993

Standing Committee on Social Issues Report No. 5

ISBN 0 7310 0084 6

TABLE OF CONTENTS

TABLE OF CONTENTS	i	
CHAIRMAN'S FOREWORD	iii	
ACKNOWLEDGEMENTS	v	
PREVIOUS PUBLICATIONS	iv	
TERMS OF REFERENCE	vi	
MEMBERSHIP OF THE STANDING COMMITTEE	vii	
EXECUTIVE SUMMARY	ix	
RECOMMENDATIONS	xv	
GLOSSARY	xxi	
STRUCTURE OF THE REPORT	xxiii	
CHAPTER ONE	BACKGROUND TO THE INQUIRY	1
CHAPTER TWO	PRIVACY AND DATA PROTECTION	11
CHAPTER THREE	REGISTRY RECORDS AND COMPARATIVE ACCESS PROVISIONS	21
CHAPTER FOUR	OPEN REGISTER - ACCESS ISSUES	51
CHAPTER FIVE	PROPOSED ACCESS PROVISIONS	69
DISSENTING REPORT		85

BIBLIOGRAPHY	89
SUBMISSIONS RECEIVED	93
WITNESSES AT FORMAL HEARINGS	99
HEARING AND MEETING DATES	101
APPENDICES	103
1 Law Reform Commission Report's Recommendation One	105
2 Privacy Committee of New South Wales' recommended data protection principles	109
3 Comparative Registry Access	115
4 New South Wales Index and Certificate Records	121
5 Access Subject to the Principal Registrar's discretion and Access Under Special Arrangements	125
INDEX	131

CHAIRMAN'S FOREWORD

When the Committee began our Inquiry into this Reference, there was an expectation that it would be a relatively brief and simple task, in comparison with some of our previous inquiries. The Reference was, after all, quite specific, with a narrow focus.

However, closer examination soon revealed that the Reference involved one of the fundamental moral dilemmas of a free society: the question of how far an individual's personal information should be made available to other people. The right to freedom of information, here, is directly opposed to the right to privacy. The latter right is particularly threatened in this age of electronic data bases, especially in a jurisdiction where there is, as here, no legislated protection for data.

The Committee carefully considered the arguments from both sides, and believe we have struck an appropriate balance in our recommendations: safeguarding the right to privacy of individuals and their families, while supporting access for legitimate research purposes.

I am grateful to the members of the Committee for their contributions, and it needs to be acknowledged that every recommendation in the Report has the support of at least nine Members of Parliament representing five different political parties. Their diverse perspectives can occasionally be challenging, but ensure that our deliberations are wide-ranging and thorough, as sensitive, complex social issues deserve.

I would also like to express my gratitude to the staff of the Committee. Director Isobel Bothwell, Acting Senior Project Officers Jaleen Caples and later Glen Baird, Committee Officer Heather Crichton and Assistant Committee Officer Annie Marshall have provided the team which made this Report possible. Clerk Assistant - Committees of the Legislative Council, Mike Wilkinson, has given valuable administrative support.



Marlene Goldsmith
Chairman

**PREVIOUS PUBLICATIONS
BY
THE STANDING COMMITTEE ON SOCIAL ISSUES**

- Report No. 1** *Accessing Adoption Information*
October 1989
- Report No. 2** *Drug Abuse Among Youth, Volume One*
December 1990
- Report No. 3** *Medically Acquired H.I.V.*
October 1991
- Report No. 4** *Juvenile Justice in New South Wales*
May 1992

Copies available from: **The Secretariat
Legislative Council Standing Committee on
Social Issues
Parliament House
Macquarie Street
Sydney NSW 2000**

Telephone: **230 2986**

Facsimile: **230 2981**

ACKNOWLEDGMENTS

The Standing Committee on Social Issues wishes to record its appreciation for the many written submissions and the evidence received, particularly from members of the public. This Report is substantially based on such information.

Of particular assistance to the Committee were representatives from the New South Wales Registry of Births, Deaths and Marriages, the Privacy Committee of New South Wales, and the New South Wales Law Reform Commission.

The Committee also extends its thanks to the Staff of the New South Wales Parliamentary Library who were most helpful in the research for the Inquiry.

TERMS OF REFERENCE

That the Standing Committee on Social Issues undertake an inquiry and report on whether Recommendation One of the Law Reform Commission's Report, *Names: Registration and Certification of Births and Deaths*, be adopted.

Recommendation One of that Report states:

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.

MEMBERSHIP OF THE STANDING COMMITTEE

ON SOCIAL ISSUES

Hon Dr Marlene Goldsmith, MLC (Chairman)	Liberal Party
Hon Ann Symonds, MLC (Deputy Chairperson)	Australian Labor Party
Hon Franca Arena, MLC	Australian Labor Party
Hon Lloyd Coleman, MLC	National Party
Hon Keith Enderbury, MLC	Australian Labor Party
Hon Elisabeth Kirkby, MLC	Australian Democrats
Hon Doug Moppett, MLC	National Party
Rev The Hon Fred Nile, MLC	Call to Australia Group
Hon John Ryan, MLC	Liberal Party
Hon Helen Sham-Ho, MLC	Liberal Party

SECRETARIAT

Ms Isobel Bothwell	Committee Director
Ms Jaleen Caples/Mr Glen Baird	Senior Project Officer
Ms Heather Crichton	Committee Officer
Ms Annie Marshall/Mr Les Marsden	Assistant Committee Officer

EXECUTIVE SUMMARY

On 7 April 1992 the then Attorney General, the Hon P E J Collins, MP, requested the Standing Committee on Social Issues to inquire into and report on Recommendation One of the Law Reform Commission Report: *Names: Registration and Certification of Births and Deaths*.

The Terms of Reference accepted by the Committee on 5 May 1992 were to consider the question whether to adopt Recommendation One of the Law Reform Commission's Report, which states:

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.

The Commission's Report included eleven explanatory paragraphs on Recommendation One (see Appendix 1). The effects and implications of the terms "open Register" and "closed by statutory authority" required research, to both clarify their meaning and to gain an appreciation of Registry practice.

The definition of an "open Register" was taken from the Commission's Report. An open Register is one in which Indexes to the Registers are made available to the public: the public may search the Index, request copies of the Register entries in the form of certificates and requests may be made of Registry staff to conduct an official search. No public access is permitted to the Registers themselves except by requesting copies identified from the Index.

When the Commission's Report was released in 1988, five separate Registers were in existence. These were the Registers of Births, Deaths, Marriages, Adoptions and Stillbirths. Access to the latter two Registers was closed by statutory authority; that is, legislation prohibited public access.

Changes in legislation since 1988 have affected public access to the adoption and stillbirth Registers. The *Adoption Information Act 1990* has enabled adopted persons aged 18 years or more to gain access to their original Birth Certificates. An amendment in 1992 to the *Registration of Births, Deaths and Marriages Act 1973* has removed the separate Stillbirth register. Stillbirths are now registered on the Birth Register. The only Register now specifically "closed by statutory authority", that is with legislation specifically prohibiting public access, is the Register of persons adopted who are under 18 years of age.

Throughout the Inquiry the concepts of privacy and protection of data held on public Registers were considered. Evidence was heard concerning the Commonwealth *Privacy Act 1988* relating to the handling of information by Commonwealth government agencies. New South Wales has no similar legislation, although the *Data Protection Bill 1992* which is currently before the New South Wales Parliament incorporates data protection principles similar to those of the Commonwealth legislation. Both the *Privacy Act 1988* and the *Data Protection Bill 1992* draw on guidelines developed in Europe by the Organisation for Economic Co-operation and Development, the Council of Europe and the European Commission.

The Privacy Committee of New South Wales also has developed a set of eleven privacy principles similar to those in the *Privacy Act 1988*. As an advisory body, the Privacy Committee has no power to enforce the implementation of its guidelines. The Social Issues Committee considers that data protection principles should be developed into legislation for New South Wales as a priority.

During the Inquiry the Committee became aware of recommendations made in August 1992 by the Independent Commission Against Corruption report on *Unauthorised Release of Government Information*. That report raised a number of issues relevant to the Inquiry, such as the accuracy, consistency, ownership and purpose of data.

Purpose specification is a fundamental privacy principle which relates to the collection and release of data. When a person discloses information for a specific purpose, either under compulsion or in confidence, the information should generally be used only for the purpose for which it was required, or disclosed to persons who need it for that purpose or other socially accepted purposes. The Committee considers that where the purpose for which data is collected by the Registry is not specified in a written access policy of the Registry, the purpose for which such data is collected should be publicly stated.

Provision is made in legislation for a number of organisations, including the Australian Bureau of Statistics, the New South Wales Health Department and the Cancer Council, to access data held by the Registry. The *Registration of Births Deaths and Marriages Act 1973* as amended, provides the Principal Registrar with discretionary powers to allow access to Registry data. Over time a number of administrative practices have developed which allow regular access to Registry information by a number of other organisations. These organisations include the New South Wales Roads and Traffic Authority, the Australian Institute of Health and Welfare and the Office of the Sheriff.

The Principal Registrar also grants access under the legislative discretionary power invested in the position, to organisations requiring access to the data for specific purposes. For example, when data on either one or a number of individuals is required by a medical researcher, a law enforcement agency, the Public Trustee or the New South Wales Department of Community Services, each case is evaluated individually.

Consideration is given to privacy issues when discretion is employed by the Principal Registrar, with many cases being referred to the Privacy Committee of New South Wales for comment.

The Committee was advised that when the Principal Registrar gives consideration to access by medical researchers, the purpose of the research, the reputation of the body seeking access and the potential public benefit of the research. The provision of data for medical research involves a number of bodies, including the National Health and Medical Research Council which provides guidance on ethical considerations for research.

There is no Registry policy which is widely available to the public and which describes the statutory provisions for the release of information nor which outlines the practices of the Registry. Clearly, certain practices underlie the daily operation of the release of extracts of certificates or full certificates to members of the public for personal or research purposes. The Committee determines that a written access policy should be made available to members of the public and written in plain English and community languages.

A public access policy should define the provision in the legislation as it is interpreted by the Registrar whereby the "sufficient reason" for access is determined, and describe the statutory, formal and informal discretionary access arrangements permitted in Registry practice. Such a policy would reduce the discretionary power invested in the Principal Registrar in allowing or restricting access to Registry records. In this way, the access practices would become an accountable public policy. The Committee also considers that the access policy, particularly those parts which are determined under the discretionary power of the Principal Registrar, should be reviewed every five years.

The Committee considers that the Principal Registrar would need to retain some discretionary power under legislation, particularly with respect to requests for research by specialist researchers not specifically defined in the Registry's access policy. The Committee is of the view that such requests should be evaluated according to the existing criteria, that is the reason for the research, the reputation of the body seeking access, the public benefit of the research and issues relating to the privacy of individuals.

Although no formal access policy exists, practices relating to public access are based on clear operational guidelines. Indexes to Registry records are available for records for the years 1856 to 1905. These Indexes are available on microfiche at many public libraries throughout New South Wales and at local historical societies. Under Registry policy, access to a copy of a certificate is restricted and access depends on the type of certificate, that is, whether it is a Birth, Death or Marriage Certificate. Each Register raises different privacy concerns. For example, access to a Birth Certificate for a birth which occurred after 1905 is restricted to the subject of the certificate, the spouse, fiancé(e) or parent of the subject, or a solicitor or other authorised individual acting for the subject.

In considering an open Register, a distinction was made between the Indexes to the Register and the certificates of the Register. The amount of information on an Index is considerably less than the information detailed on a certificate. For example, the Birth Index contains the subject's full name, the parents' first names, the date of birth and a registration number. A Birth Certificate, in addition to the information contained on a Birth Index, includes age of both parents, parents' occupations, the place of birth, where and when the parents were married, whether any previous children are alive or dead, the name of the person who has completed the details on the registration form, and the name of witnesses present at the birth.

The Committee heard in evidence that, for administrative purposes, different numbered sequences or letter prefixes were used for the registration of particular types of entries on the Indexes of the Register. Should Indexes be openly available, knowledge of the identifying characteristics of numbered sequences would enable certain personal characteristics of an individual to be identified. Over time, different sequences on the Birth Index have been used to identify adoptions, stillborn children, ex-nuptial status, and births that have been the subject of paternity claims. The Committee is of the view that the progressive elimination of identifying characteristics of numbered sequences is desirable.

The Committee considered a number of important issues which fundamentally affected the decision whether to recommend the adoption of Recommendation One. The Committee notes an increasing range of entitlements for which Registry certificates are used as a partial or total form of identification.

The Registry, along with other Australian Registries, has been working toward increasing the authenticity of certificates through anti-forgery measures, including the introduction of tamper-proof paper and a watermark. The Committee determined that this direction also supports the notion that Registry certificates form significant proof toward the identification of an individual. Such identification may be seriously compromised by providing any person with information which has a particular value because of its confidential nature.

The Register contains a large amount of personal information on the citizens of New South Wales. The Committee considers that open access to the Register would enable data given on a compulsory basis to be used for commercial purposes. In this way the privacy of an individual may be invaded. The Committee is opposed to commercial use of a public Register for private profit at the expense of the privacy of an individual.

One of the reasons for the Law Reform Commission's Recommendation One on an open Register was that an open Register may result in the collection of less data, because of an increased awareness of privacy considerations. Genealogists and historians expressed concern at such a trade-off.

The Committee heard conflicting evidence that, on the one hand, an open Register may lead to a decrease in the accuracy of the data collected, and, on the other, might actually contribute to accuracy by making data more publicly accessible. The Registry is an important source of information for research. In particular the research conducted by medical researchers, social historians and the Australian Bureau of Statistics is considered by the Committee to be of particular benefit to New South Wales. Accuracy is also relevant for genealogical research. Maintaining an accurate source of Registry data is therefore considered very important. The Committee believes that an open Register may affect the accuracy of the information recorded.

The Committee unanimously recommends that an open Register as proposed by the Law Reform Commission should not be adopted. The Committee agrees that access should be increased to the Indexes. The Committee unanimously agrees that the current criteria used to grant access to certificates, namely the age of the record, the relationship of an applicant to the subject of a record, and the exercise of the Principal Registrar's discretion, should continue to be the basis for access provisions. The application of the age criteria for access to both Indexes and certificates recommended by nine Members of the Committee is designed to provide consistency with the role of the Registry and to protect the privacy of individual citizens. One Member of the Committee has a dissenting view on the application of the age criteria in the release of Indexes and certificates as recommended by the other nine Members of the Committee.

The Committee, with one dissenting voice, considers that Indexes to birth records should be made available with a 75 year time lag and that the ongoing release of Indexes be instituted into Registry practice. Nine Members of the Committee support the current restrictions placed on individual access to certificates of births occurring after 1905, based on the criterion of the applicant's relationship to the subject of the certificate. However, the Committee determine that access provisions be widened to allow access on the basis of written permission from the subject of a certificate and to any person who has or is entitled to the Death Certificate of the subject of a record. The Committee, with one dissenting voice, also considers that from the year 2006, Birth Certificates be released to any person after at least one hundred years have elapsed since the recording of a birth.

It is unanimously proposed by the Committee that Indexes to recorded deaths be available up to the present time, with ongoing release of Indexes each year. As Death Certificates include sensitive information, the Committee recommends that they continue to be made available to applicants currently entitled on the basis of their relationship to the subject of the record; to any person who provides written permission from any person so entitled to access; and to any person thirty years after the death of the subject.

The Committee, with one dissenting voice, considers that Indexes to marriages should be made available to members of the public fifty years after the event is recorded. People who intend to marry should also be able to gain access to information on any previous

marriages of their intended spouse. With respect to access to Marriage Certificates, the Committee judges that the current criteria should continue to serve as the basis for access provisions and, with one dissenting voice, that the application of these criteria be altered to allow access to a person with written permission from a person who has access under the current arrangements and to any person who can provide evidence that at least thirty years have elapsed since the death of the subjects of a marriage. Nine Members of the Committee also recommend that Marriage Certificates be made available to any person after at least fifty years have elapsed since the marriage was recorded.

Increased access to Registry data for medical and academic research is supported by the Committee. Access arrangements should be developed by the Registry in consultation with the New South Wales Health Department and any other appropriate agency. As far as practicable, the guidelines incorporate those developed by the National Health and Medical Research Council.

Consideration was also given to the process by which a person who has been denied access to the data held at the Registry may appeal. Whilst in the last five years there have not been a large number of complaints concerning access, the Committee believes that there should be an adequate and independent appeals process. Currently an individual denied access may appeal through the courts or to the Ombudsman or the Minister, that is the Attorney General, for the request to be reconsidered. Committee Members believe that the appeals process should be formalised and consideration given to the development of a further formal independent appeal mechanism in addition to those currently available.

RECOMMENDATIONS

Recommendation 1:

- That data protection principles be enacted in New South Wales in legislation, as a priority.

Recommendation 2:

- That the Attorney General pursue with the Commonwealth government and other States a policy of uniformity and national access to Registry data.

Recommendation 3:

- That negotiations on the establishment of a National Death Index be concluded as a matter of priority.

Recommendation 4:

- That the *Registration of Births, Deaths and Marriages Act 1973* be amended to define the functions of the Registry, and
- That those functions include:
 - the collection and provision of statistical data;
 - the recognition of Registry data as evidence toward the establishment of a range of citizen entitlements; and
 - the retention and maintenance of records for perpetuity.

Recommendation 5:

That the *Registration of Births, Deaths and Marriages Act 1973* be amended to specify the principles governing the use of the discretion of the Principal Registrar.

Recommendation 6:

- That access provisions continue to be based on the following criteria:
 - the age of the record; or
 - the relationship of an applicant to the subject(s) of a record; or
 - permission from the subject(s) of a record; or
 - the exercise of the Principal Registrar's discretion.

Recommendation 7:

- That a public access policy be developed for Registry data. The policy should include:
 - the criteria upon which access provisions are based;
 - an explanation of the rights of access for individuals based on these criteria;
 - the statutory provisions for research access; and
 - current informal access arrangements.

Recommendation 8:

- That, at the point of collection, the purposes for which Registry data may be used should be stated in general terms.

Recommendation 9:

- . That the access policy be:
 - . publicly available; and
 - . available in plain English and community languages.

Recommendation 10:

- . That the access policy be reviewed every five years.

Recommendation 11:

- . That annual Birth Indexes be made available on an ongoing basis after seventy-five years have elapsed.

See also Dissenting Report

Recommendation 12:

- . That identifying registration numbers on the Birth Indexes be progressively removed.

Recommendation 13:

- . That Birth Certificates be made available:
 - . to any person for births recorded up to and including 1905; or
 - . to applicants who are currently entitled on the basis of their relationship to the subject; or
 - . to any person who provides written permission, with reasonable identification, from the subject of a particular certificate; or
 - . to any person who has or is entitled to the Death Certificate of the subject of the item sought; or
 - . from the year 2006, to any person provided one hundred years have elapsed since the birth.

See also Dissenting Report

Recommendation 14:

- . That annual Death Indexes be available to the present time, with ongoing release.

Recommendation 15:

- . That Death Certificates be made available:
 - . to applicants who are currently entitled on the basis of their relationship to the subject; or
 - . to any person who provides written permission with reasonable identification from a person with access through the criterion of relationship to the subject of the Certificate; or
 - . to any person providing at least thirty years have elapsed since the death of the subject.

Recommendation 16:

- That current arrangements, allowing persons providing proof of intention to marry to be provided with information on previous marriages of their prospective spouse, continue and be formalised in the access policy.

Recommendation 17:

- That annual Marriage Indexes be made available on an ongoing basis after fifty years have elapsed.

See also Dissenting Report

Recommendation 18:

- That Marriage Certificates be made available:
 - to applicants who are currently entitled on the basis of their relationship to the subject; or
 - to any person who provides identifiable written permission from a person with access because of their relationship with either of the subjects; or
 - to any person provided the Death Index indicates that at least thirty years have elapsed since the deaths of both subjects of the Marriage Certificate; or
 - to any person providing at least fifty years have elapsed since the marriage.

See also Dissenting Report

Recommendation 19:

- **That access for medical research be contingent on meeting ethical and privacy guidelines on the use of the Registry. Such guidelines should be developed by the Registry, and as far as practicable, incorporating the National Health and Medical Research Council guidelines, in consultation with:**
 - **the New South Wales Health Department; and**
 - **any other appropriate agency.**

Recommendation 20:

- **That access to Registry records for special research projects not defined in the written access policy be assessed individually by the Principal Registrar, using the criteria of:**
 - **reason for the research;**
 - **reputation of the organisation seeking access;**
 - **public benefit of the research; and**
 - **adequate protection of the data for maintaining the privacy of individuals.**

Recommendation 21:

- **That the appeals process be formalised and consideration given to the development of a further formal independent appeal mechanism in addition to those currently available.**

GLOSSARY OF TERMS

Access	The ability to gain information on the births, deaths and marriages records held by the Registry, either by viewing Indexes to the Registers, inspecting the Registers or obtaining a copy of a record in the form of a certificate.
Certificate	A reproduction of the registered details of either a birth, death or marriage.
Data Protection	Safeguards for personal data against privacy infringement.
Evidence	Oral or written information supplied to the Committee by witnesses during formal parliamentary Hearings.
Index	An alphabetical listing of the subjects of birth, death or marriage registrations, usually produced on an annual basis as a means of referencing the Register entry. In addition to the names of the subjects and registration numbers, Indexes may include a limited amount of the personal data contained in the Register entry.
Open Register	Full public access to the Indexes of Birth, Death and Marriage Registers, and, subject to the payment of any prescribed fee, the issue of a full Certificate relating to any individual to any other individual upon request. No access is permitted to the Registers themselves. Parts of the Register, and access to Indexes and Certificates in relation to such parts, may be closed by statutory provisions.
Other Jurisdictions	Other countries and Australian states and territories with the exception of New South Wales.
Records	Any information held by the Registry regarding registered births, deaths or marriages.
Register	The consolidation of the information on all the births, deaths or marriages recorded by the Registry. This consolidation may be carried out by a variety of manual or computerised means.

Registration	The administrative process in which details concerning a birth, death or marriage are recorded.
Registration of Births, Deaths and Marriages Act 1973	New South Wales legislation relevant to the registration of a birth, death or marriage occurring within New South Wales.
Registry	The administrative area, usually within the Attorney-General's Department, which is responsible for maintaining records relating to registered births, deaths and marriages.
Submission	Written material provided by an individual or organisation to the Committee containing opinions in relation to the Inquiry.
Witness	An individual, summonsed and sworn by the Committee for the purpose of providing evidence concerning matters relevant to the Inquiry.

STRUCTURE OF THE REPORT

Chapter One outlines the terms of reference and the background to the Committee's Inquiry.

Chapter Two outlines the current access provisions to Registry records by individuals and organisations. The Committee reviews the current situation in New South Wales with respect to data protection and the protection of privacy, particularly in regard to legislation.

Registry records and access provisions in other jurisdictions are compared in Chapter Three, with current arrangements applying in New South Wales also described.

The Committee considers the way in which the role and function of the Registry is determined is pivotal in determining access. Chapter Four outlines evidence taken in this regard and the Committee's deliberations. The Report also describes a number of issues which have been reviewed by the Committee in regard to the public benefit of an open Register.

In Chapter Five, proposed access provisions are described with consideration given to appeals mechanisms should access be denied.

CHAPTER ONE

BACKGROUND TO THE INQUIRY

1.1 TERMS OF REFERENCE

On 7 April 1992 the then Attorney-General, the Hon P E J Collins, MP, asked that the Standing Committee on Social Issues of the New South Wales Legislative Council inquire into and report on Recommendation One of the Law Reform Commission Report, *Names: Registration and Certification of Births and Deaths*.

The Committee accepted this Inquiry on 5 May 1992. The Terms of Reference are consideration of the question whether to adopt Recommendation One of the Law Reform Commission's Report, namely 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.¹

1.2 ORIGINS OF THE REFERENCE

In 1985, the then Attorney General, the Hon T W Sheahan, MP, requested the Law Reform Commission investigate a decision by the Equal Opportunity Tribunal asserting that certain practices in the naming of children were discriminatory.

The Commission was requested to examine:

- . the criteria for the registration of the surname of married and unmarried parents;
- . the registration procedures, particularly concerning acknowledgment of an ex-nuptial child;
- . the details to be recorded in relation to births and deaths;

¹ NSW Law Reform Commission, 1988, p.28

the provision of certificates omitting potentially embarrassing details which appear in a registration; and any related matter.²

Recommendation One was one of fourteen made in the Commission's Report.

In support of Recommendation One, the Law Reform Commission included in its Report eleven explanatory paragraphs. Those paragraphs describe a number of the views of the Commission regarding the operation of the Registry and are reproduced in Appendix 1.

1.3 THE LAW REFORM COMMISSION REPORT

The Commission noted that the registration legislation has not been reviewed since its passage in 1855. It considered that the legislation does not contain the principles and guidelines expected in legislation today, and that the wide, unregulated discretion of the Principal Registrar is unacceptable. An open Register would eliminate the need for such discretion, the Commission believed.

In its Report the Commission stated that the Register is not and can never be totally closed. The *Registration of Births, Deaths and Marriages Act 1973*, as amended, does not specify the reasons for a secret Register although they appear to be based on issues of privacy and confidentiality, which the Commission suggested are not achieved. Whilst it is not widely known, statutory provisions provide government and private institutions access to Registry data. The Commission indicated that it considers that the confidentiality of the current system depends on the discretion and decision-making principles which underlie the manner in which the discretion of the Principal Registrar is exercised. In addition, the Commission noted that there is no foolproof identification system and accordingly no practical way of verifying the identity of those applying for access. Rather it is suggested that the Principal Registrar is required to rely on the honesty of applicants in determining whether to release requested information.

The Commission considered that it is not nor has ever been the function of the Registry to provide a person with complete proof of identity, and that an open Register would make this notion clear to all. Although Birth Certificates can be improperly obtained to establish a false identity, the Commission held that such certificates continue to be used as a reliable evidence of identity. Further, the Commission acknowledged that the privacy of an individual may be breached should an open Register system be used to gain access to another person's birth certificate for idle curiosity. However, it was considered that such applications would not be made frequently enough to cause concern. The need for

² Ibid, p.ix

an individual to provide a full certificate as evidence for a particular purpose which requires only part of the information contained on a certificate was considered a greater privacy concern.

The Commission indicated that it had no evidence that the practice of an open Register in other jurisdictions had led to abuses of personal privacy. Rather it considered that the possibility for abuse of privacy lies in commercial applications of access through the sale of computer links to the Registry data base. Whilst access only to the Indexes has avoided such problems in other jurisdictions, the Commission believes that on-line access to the Registry data base should only occur with statutory authority or on clear principles of public benefit. The Commission considered that the Privacy Committee was an appropriate body to assess applications for computer access to information. The Commission's report notes that the Registry has the technical capacity to open its Registers.

The intention of the Law Reform Commission's Recommendation One was that the Registry should provide open access to all Indexes, except those required by legislation to be kept confidential. Any person should then be entitled to a full copy or an extract of any non-confidential Registry entry upon the payment of a prescribed fee.³

1.4 DEFINITIONS

The Registry is the administrative area within the Attorney General's Department which is responsible for maintaining records of registered births, deaths and marriages, while the Register, in this Report, is defined as the consolidated information so recorded.

The Register has always, subject to certain qualifications, been closed to the public. The *Registration of Births, Deaths and Marriages Act 1973*, as amended, does not provide for the public to search the Indexes to the Register or the certificates themselves, and discretion is given to the Principal Registrar to either refuse an application or supply a certificate. Thus any person requesting a certificate from the Principal Registrar must provide sufficient reason for requiring it.

The meaning of "open Register" and "closed by statutory authority" were not immediately clear and required research and an appreciation of Registry practice to clarify their meaning. These two points are defined below.

³ Ibid, p.28

1.4.1 An Open Register

The Committee's view of an "open Register" was taken from the explanatory notes for Recommendation One, which indicated that an open Register operates in the following way:

- . Indexes of Registers are made available in the public area of the Registry;
- . 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;
- . requests may be made for an official search of the Registers to be undertaken by Registry staff; and
- . some parts of the Register are closed and not available except with special dispensation.⁴

1.4.2 Closed by Statutory Authority

Recommendation One of the Law Reform Commission's Report specifically excluded from an "open Register" those Registers that were "closed by statutory authority."

When the Report was released, in December 1988, there were five separate Registers. These were the Registers of Births, Deaths, Marriages, Adoptions and Stillbirths. The information contained on all the Registers was not generally available to members of the public. The release of the information on the latter two Registers was prohibited by legislation.

In recent years there have been two changes in the legislation which affect the Adoption and the Stillbirth Registers and consequently the meaning of Recommendation One as originally described has also changed.

Section 46(1) of the *Registration of Births, Deaths and Marriages Act 1973*, as amended, prevented the Principal Registrar allowing access to a certified copy of information on the Adoption Register unless so ordered by:

⁴ Ibid, p.29

- . the Supreme Court; or
- . a court having jurisdiction in New South Wales, in relation to proceedings before it; or
- . the Director-General of the (then) Department of Youth and Community Services.⁵

Following the report of the Standing Committee on Social Issues, *Accessing Adoption Information*, in October 1989, the *Adoption Information Act 1990* was developed. That legislation allows an exemption to Section 46(1) of the *Registration of Births, Deaths and Marriages Act 1973*, as amended, which has enabled persons who are aged 18 years or older, and who are adopted, to gain access to their original Birth Certificates containing the details of the adoptee's biological parents. The *Adoption Information Act 1990* also applies to birth parents, who may gain a birth certificate or information relating to their adult child relinquished for adoption.

Practices relating to the registration of a stillbirth have also changed since the Commission's Report was released. From 1969 stillbirths were registered in a yearly Register of Stillbirths. In addition, the Principal Registrar was prohibited from issuing a certificate from the Stillbirth Register unless ordered by a court. The *Registration of Births, Deaths and Marriages (Amendment) Act 1992* ceased the practice of maintaining a separate and closed Register for stillbirths. A stillbirth is now registered on the Birth Register, and the practice of noting on an entry that the child was stillborn has been discontinued. Access to the Birth Certificate of a stillborn child is now the same as for any other Birth Certificate.

Therefore, since June 1992, the only Register now specifically "closed by statutory authority" is the register of persons adopted who are under 18 years of age, as this is specifically defined as "closed" by the *Adoption Information Act 1990*.

Thus, simply, the Committee was asked to consider whether the records held on the Registers of Births, Deaths and Marriages should be "open", or more readily accessible to the public, with the exception of the Adoption Register for persons under 18 years of age, which remains closed.

⁵ *Registration of Births, Deaths and Marriages Act 1973*

1.5 METHOD OF INQUIRY

Advertisements calling for submissions and detailing the Terms of Reference for this Inquiry were placed in *The Sydney Morning Herald* and *The Australian* newspapers in May 1992. Agencies who have access to Registry records, either formally or through the discretionary powers exercised by the Principal Registrar, were advised of the Inquiry in order that they could respond and make submissions to the Inquiry.

1.5.1 Submissions

The Committee received 169 written submissions. Overwhelmingly these came from genealogists and family historians. In addition, a number of submissions were received from individuals and agencies which currently access or would like to access Registry records. Considerable interest was shown in the use of Registry information in the development of family histories and in researching social history.

The vast majority of submissions from genealogists and family historians supported an open Register. Family historians currently have restricted access to Registry records, with records dated after 1905 being particularly difficult to access. Submissions from both individual genealogists and family history organisations consistently indicated that an open Register would assist genealogists in their research to develop family trees. In support of an open Register, the Australasian Federation of Family History Organisations indicated that it supports the Law Reform Commission's Recommendation One for an "open" Register because "the adoption of this recommendation would greatly assist the valuable work being done by family historians in recording and preserving the community history of this state."⁶

Submissions were received from organisations which, through the exercise of the Principal Registrar's discretionary power, have access to records. In particular a number of medical researchers expressed strong views that access to Registry records was particularly important and of considerable value to the people of New South Wales. A number of organisations involved in medical and health related research argued for ongoing access or improved access to the data held by the Registry. In some instances, particularly where current access is dependent on requests being reviewed on a case by case basis, organisations supported an increase in the current level of access. The Australian Institute of Health indicated that it "strongly supports the proposal for an open Register of Births, Deaths and Marriages in order to minimise delays in obtaining birth and death data for its research purposes."

⁶ Submission 78. Australasian Federation of Family History Organisations. p.3

Other organisations were aware of the benefits for families in increased access to Registry records. The submission from the Medical Genetics Unit of the Children's Hospital noted that "improved access to the Register of Births, Deaths and Marriages would be of benefit to our clients". In particular, the submission notes that, in the case of Huntington's disease, it is extremely important for families to access Death Certificates of relatives from previous generations to ascertain whether the causes of death are consistent with the symptoms of Huntington's disease.⁷

The Australian Bureau of Statistics has statutory access to Registry records. The Bureau indicated that the Registry is its main source for New South Wales demographic data. In its submission to the Registry, the Bureau expressed concern that an open Register may affect the coverage and accuracy of data collected, stating that its "major concern is that an open Register may cause informants to supply inaccurate data because of ease of access to copies of the Register entries".⁸

In submissions to the Committee, the Australian Bankers' Association, the Department of Foreign Affairs and Trade and the Independent Commission Against Corruption raised the issue of the use of Birth Certificates in providing an identity. These organisations had concerns that an open Register would affect the current value of a Birth Certificate in providing identification. The Australian Bankers' Association was against an open Register, and argued that "if the Registry remains closed, as it presently operates, it should continue to act as a form of deterrent against people who have fraudulent intentions."⁹

Data protection and privacy concerns were also raised in submissions to the Inquiry. In particular the concern was posed that privacy principles have not been widely adopted within New South Wales organisations and that no legislation was operating to protect personal data held in New South Wales databases. The Privacy Committee of New South Wales stated that it "opposes the Law Reform Commission's recommendation that the Register of Births, Deaths and Marriages should be open to public access. The Privacy Committee considers that the current procedures for access to Register information do not conform with data protection principles and require reform."¹⁰

⁷ Submission 82. Medical Genetics and Dysmorphology Unit, The Children's Hospital. p.1

⁸ Submission 109. Australian Bureau of Statistics. p.1

⁹ Submission 114. Australian Bankers' Association. p.2

¹⁰ Submission 64. Privacy Committee of New South Wales. p.5

1.5.2 Evidence and Research

Evidence was taken from witnesses at formal hearings held in Sydney. The Committee heard evidence from 36 witnesses. Witnesses before the Committee included genealogists, representatives of genealogical societies, and historical, social science, health and medical researchers. Evidence was also heard from representatives of the New South Wales Law Reform Commission, the New South Wales Registry of Births, Deaths and Marriages, the Privacy Committee of New South Wales and the Federal Attorney General's Department. These organisations demonstrated a considerable interest in the outcome of the Inquiry and in some instances a major concern regarding the proposal of an open Register.

Of the witnesses appearing before the Committee, two came from country areas, Armidale and Newcastle. Eight witnesses who appeared before the Committee were from outside New South Wales: six from the Australian Capital Territory and two from Victoria.

In addition to the submissions received and evidence taken, the Committee considered research concerning Registries throughout Australia and overseas. Among the issues which emerged and were considered by the Committee were the purpose of the Registry, the use of Registry data for identification purposes, data protection and privacy.

1.5.3 Social Context

The Inquiry coincided with the release of a report in August 1992 by the Independent Commission Against Corruption, entitled *Unauthorised Release of Government Information*. This report led to widespread media coverage and debate about the adequacy of protection accorded to government information, to ensure it is used for legitimate and accepted purposes. The Committee considered the matters raised in the Report in relation to the effects of an open Register and particularly in regard to the purpose of the Register.

The Committee was also aware that the Inquiry was taking place at a time when there had been moves towards more uniform Registry practices and procedures across Registries throughout Australia. It was therefore considered by the Committee that the outcome of this Inquiry may have ramifications for Registries beyond New South Wales.

It became apparent at an early stage of the Inquiry that not all witnesses were aware of the distinction between Registry Indexes and the certificates of the Registry. The Committee therefore was careful to distinguish between an Index entry and a certificate. The amount of information held on a Registry Index entry is considerably less than the

information detailed on a certificate. For example, the Birth Index contains the subject's full name, the parents' first names, the date of birth, and a registration number. A Birth Certificate also includes the age of both parents, parents' occupations, the place of birth, where and when the parents were married, details of any previous children, living or deceased, the name of the person who has completed the details on the Registration form, and the names of witnesses present at the birth.

Throughout the Inquiry, the Committee was concerned to strike a balance between the privacy considerations of individuals and the public benefits which may follow should changes be made to allow increased access to Registry records. To this end, the Committee examined the role and function of the Registry, legislation and guidelines concerning privacy and data protection, the use of Registry data by state and federal organisations and possible commercial uses of Registry data. In examining these issues the Committee considered what the effects of an open Register might be on a range of matters, including the accuracy and coverage of data collected, the nature of and need for the units of data collected and the manner in which the data is stored, collated and made available to members of the public.

CHAPTER TWO

PRIVACY AND DATA PROTECTION

2.1 INTRODUCTION

Throughout the Inquiry the concepts of the privacy of individuals and protection of personal data held on public Registers, particularly computerised Registers, were considered. The Committee was mindful of the considerable concern expressed in the community about the accumulation of personal information on government data bases: "... the spectre of Big Brother, and the debate about the Australia Card, are never far from the surface when the storage of government information is discussed."¹¹

It has been argued that the development of technology with the capacity to cross-match computer files and store a wide range of personal data has not been matched in New South Wales either by legislation or the acceptance and adoption of privacy guidelines. Currently, a person who believes that their privacy has been invaded has little redress or control over how, or to whom, their information is released, or how it is used or construed. The argument for greater protection of personal data is widening as new technology expands in capability.

The Committee examined the protective measures for the privacy of individuals which exist in other countries, and reviewed the need for guidelines and legislation relating to New South Wales. Although data protection is a broad issue relating to the collection, storage and dissemination of data across a range of areas, the Committee focused on this issue only as it specifically relates to the Registry.

2.2 BACKGROUND

The need to protect information which might be passed on to others without the consent of the person concerned became a matter of increasing concern in the 1960s. It was suggested then that there were three types of information about people: first, information which is private and should not be available to members of the public; second, information which is sensitive and should have limited availability; and last, information which is a matter of public record. Determining what information is sensitive or private

¹¹ Independent Commission Against Corruption, 1992, Vol 1, p.10

for an individual is complex and depends on subjective, cultural and societal issues. Any assessment of privacy needs to be made in light of the value of personal data to the broader interests of society. Time is also relevant, as facts or personal data which are sensitive today may not be sensitive in the future.¹²

The increased trans-border flow of information in the 1970s emphasised the need to ensure that similar types of data would be protected in different countries and between states. Without compatible approaches to data protection, some organisations could be reluctant to transmit data to or through countries which did not provide a degree of protection. Further, unscrupulous data users could escape the requirements of national legislation by transferring their data processing to a country which did not have data protection laws. The legislation and regulations which have developed in Europe have consequently focussed on two distinct areas, privacy regarding media coverage, and data protection measures, particularly in relation to the information processing capacity of computers.¹³

The first European initiative followed the 1968 Parliamentary Assembly of the Council of Europe. A Committee of Ministers was convened to:

explore the extent to which the Human Rights Convention and the domestic laws of the member states offered protection for information relating to individuals.¹⁴

The Committee of Ministers' findings indicated that there was inadequate privacy protection for individuals. The Committee resolved in 1973 and 1974 to establish principles of data protection in both the private and public sectors.

An "expert group" of the Organisation for Economic Co-operation and Development (O.E.C.D.) was convened to identify the "basic rules" for the protection of privacy for member countries.¹⁵ Australia's representative to that group, the Hon Justice Michael Kirby, AC, CMG, was elected Chairman of the group. In 1980 the O.E.C.D. guidelines were adopted. That same year Australia also ratified the *International Covenant on Civil and Political Rights*, which recognises the right of an individual to privacy.

¹² Moore, 1991, p.183

¹³ Ibid, p.185

¹⁴ Ibid.

¹⁵ Australian Law Reform Commission, 1980, p.23

The principles in the O.E.C.D. guidelines were embodied in 1984 in the British *Data Protection Act*, which attempted to create a balance between individual privacy and the free trade of information. The main objectives of the legislation were to educate the public on data protection issues and to influence and change attitudes and practices within Britain. In Britain and Europe data protection legislation has led to a wider awareness of the methods of international transmission of data.¹⁶

2.3 LEGISLATION AND REGULATION IN AUSTRALIA

Legal recognition of information privacy has progressed in Europe, the United States and Canada at a greater pace than in Australia. As previously stated, Australia adopted O.E.C.D. guidelines and in the same year, the *International Covenant on Civil and Political Rights* was ratified. That Covenant recognises the right of an individual to privacy. Since that time, the Privacy Committee of New South Wales has developed data protection guidelines.

The Commonwealth *Privacy Act 1988* outlined data protection principles to be applied in relation to information collected and stored by Commonwealth government organisations. However, as recently as August 1992, the Independent Commission Against Corruption noted that:

There is no established legal definition of the right to privacy. It is nonetheless acknowledged as an essential element of individual freedom and human dignity.¹⁷

2.3.1 The Commonwealth *Privacy Act 1988*

The Commonwealth *Privacy Act 1988* was introduced to address privacy concerns relating to the collection and handling of personal information by Commonwealth government agencies and employees of those agencies. Specifically, the Act includes the following eleven principles:

¹⁶ Moore, 1991, p.184

¹⁷ Independent Commission Against Corruption, 1992, p.176

personal information shall not be collected or made available unless it is collected for a purpose that is lawful and directly related to and necessary for a function, purpose or activity of the collector;

the collector of personal information should take steps to ensure that the individual concerned is aware of the purpose for which data is collected, whether the collection is authorised or required under law, and to which agencies the information is usually disclosed;

where a collector solicits personal information for inclusion in a generally available publication or record, the data is relevant to the purpose for collection, complete and up to date, and that the collection of the data does not unreasonably intrude into the personal affairs of the person concerned;

a keeper of a record containing personal information shall ensure that reasonable security safeguards are used to protect that information from loss, unauthorised access, use, modification, disclosure or other misuse;

a record-keeper should maintain records which specify for each record its nature, purpose, class of individual, period retained, who has access and the steps required to gain access;

a keeper of a record containing personal information should give access to the individual concerned, except where refusal is authorised under Commonwealth legislation;

specific steps be followed when alteration or deletion of records containing personal information occurs and that such steps consider: the purpose of the collection of the data and legislative provisions concerning accuracy;

the record-keeper must check the accuracy of personal information before its use;

a keeper of a record containing personal information should ensure that the data is only used for the purpose for which the information is relevant;

a record-keeper should ensure that the use of personal information is limited to the purpose for which it was obtained, except under specified circumstances; and

a record-keeper shall not disclose records containing personal information except under specified circumstances.

At the time the legislation was adopted, provision was made to ensure that some data protection principles applied to data collected prior to the implementation of the Act. Data protection principles number one, two, three, ten and eleven of the Act were designed to apply both to the collection process and access to data collected after the commencement of the Act.¹⁸ In this way data collected by Commonwealth agencies before and after the implementation of the Act was protected.

2.3.2 Privacy Committee of New South Wales

The *Privacy Committee Act 1975* established the Privacy Committee of New South Wales which commenced operations on 2 May 1975. As a statutory Committee, independent of government, the Privacy Committee of New South Wales acts as a privacy ombudsman and conducts research and educational work on the issue of privacy.

The Privacy Committee of New South Wales has developed eleven data protection principles. In developing the principles, the Privacy Committee drew on a number of guidelines from international organisations, including the O.E.C.D.'s *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*; the Council of Europe's *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981)*; and the European Commission's *Proposal for a Council Directive Concerning the Protection of Individuals in Relation to the Processing of Personal Data (1990)*. The principles are also based on the Information Privacy Principles contained in the Commonwealth *Privacy Act 1988*.¹⁹

The privacy principles developed by the Privacy Committee of New South Wales vary in a minor way from those contained in the Commonwealth *Privacy Act, 1988*. They include a number of additions which are said to take into account recent international developments in data protection, particularly from the European Commission.²⁰ In

¹⁸ *Privacy Act 1988*, principles 1, 2, 3, 10 & 11 to apply to information collected prior the commencement of the Act to and principles 4 - 9 to apply to information collected after the commencement of the Act.

¹⁹ Organisation for Economic Co-operation and Development, 1981

²⁰ Submission 64. Part B. Privacy Committee of New South Wales, p.69

particular, an amendment has been made to Principle 4, Principles 8 and 9 have been merged and an additional Principle 11 included. The last principle, number 11, seeks to ensure that information related to ethnic/racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual life should not be disclosed without the written consent of the individuals concerned. These principles are appended to the Report in Appendix 3. The variations from and additions to the principles in the *Privacy Act, 1988* are highlighted in italics.

In October 1992, at the International Data Protection and Privacy Commissioners' Conference held in Sydney, the Executive Member of the Privacy Committee of New South Wales was critical of the failure of organisations and government bodies within New South Wales to adopt privacy principles. The Privacy Committee of New South Wales is an advisory body with no power to implement its privacy and data protection guidelines. It appears that the guidelines from the advisory body have not been widely adopted throughout New South Wales.

2.3.3 Data Protection Bill 1992

No privacy or data protection legislation has been enacted in New South Wales. There was in 1992 a Data Protection Bill "lying on the table" before the New South Wales Parliament, introduced as a Private Member's Bill by Mr A A Tink, MP. In evidence before the Committee, Mr Tink indicated that the Bill differed from the Commonwealth *Privacy Act 1988* in a number of sections.²¹ Further, Mr Tink said that the Bill "sets out some proposals for criminal provisions relating to the offering for sale or selling of information in a way that ... I (would) describe as corrupt." He also indicated that the Bill incorporates data protection principles based on those developed in Europe and that the Bill is "essentially educative rather than punitive."²²

2.3.4 Independent Commission Against Corruption

In the report of the Independent Commission Against Corruption, *Unauthorised Release of Government Information*, comment is made on the *New South Wales Data Protection*

²¹ Evidence. Tink, 30.7.92, p.67. Sections 1, 2E, 2F, 2G, 3B, 3C, 4A-D, 5B, 7, 9 and 11 of the *Data Protection Bill 1992* were indicated to be different.

²² Evidence. Tink, 30.7.92, p.61

Bill 1992. The view expounded in that Report is that the Bill relates to offences and persons who disclose, supply or handle information without authorisation.²³

Among the issues examined in the Report were the accuracy of data; the standard of privacy to be adopted; determining the "public good"; consistency of data collection; ownership of data; and legislation.²⁴ Relevant recommendations concerned:

- . the development of a policy in respect of what government information is to be publicly available, and what protected;
- . the release of publicly available information;
- . security and access to government information storage and retrieval systems;
- . removing the restrictions proposed in the *Data Protection Bill 1992*; and
- . consistent application of legislation.

Whilst the unauthorised use of government information is an important issue, detailed examination of the issue was beyond the scope of the Terms of Reference before the Committee.

2.4 THE REGISTRY AND DATA PROTECTION PRINCIPLES

The New South Wales Law Reform Commission's Report, *Names: Registration and Certification of Births and Deaths* was prepared in 1988, the same year that the Commonwealth *Privacy Act 1988* was enacted. Without clear principles to govern the recording, storage of and access to records of births, deaths and marriages, the Commission sought guidance from three sources. These included the *Guidelines for the Operation of Personal Data Systems* propounded by the Privacy Committee of New South Wales, privacy guidelines stated by the Australian Law Reform Commission in its *Report on Privacy* and principles gathered from freedom of information legislation from Victoria

²³ Independent Commission Against Corruption, 1992, pp.173-174

²⁴ Ibid. p.176

and the Commonwealth.²⁵ The New South Wales Law Reform Commission formulated three principles for general application, viz:

- . only the minimum personal data necessary should be sought and recorded;
- . care should be taken to ensure the accuracy of all information recorded; (and)
- . access to the information should be consistent with the socially accepted purposes of the Register.²⁶

The Commission indicated in its Report that the Registry generally followed these principles. It also determined that, while only the minimum personal data should be recorded, all data that was currently recorded served a range of useful purposes.

Evidence before the Social Issues Committee addressed the tension among principles of privacy, freedom of information and the use of information in the public interest.²⁷ Issues raised concerned the accuracy of data held, the need for the subject of an entry to be able to access and verify data, the protection of privacy and the use of personal data for commercial purposes. These issues are discussed in Chapter 4 of the Report.

The Committee considered the data principles outlined in the Commonwealth *Privacy Act 1988*, *New South Wales Data Protection Bill 1992* and the data protection principles of the Privacy Committee of New South Wales. The principles within these documents were considered in relation to the data collected and data made available for research and to the public. The Committee considers that it is a priority for New South Wales that data protection principles be enacted in legislation.

²⁵ Privacy Committee of New South Wales, Paper No.31; Australian Law Reform Commission 22, Privacy, AGPS, 1983; *Freedom of Information Act 1982* (Vic) and *Freedom of Information Act 1982* (Australia).

²⁶ NSW Law Reform Commission, 1988, para 4.3, p.25

²⁷ Evidence. Rose, 18.9.92

Recommendation 1:

- That data protection principles be enacted in New South Wales in legislation, as a priority.

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.²⁸ The NSW Registry also provided information on arrangements in Ontario, Canada, which the Committee considered.

²⁸ 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.²⁹

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.³⁰

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.³¹

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.³² Details of the parents' marriage, their ages, the mother's occupation and

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

³⁰ Ibid. Appendix II, p.12 and Appendix III

³¹ Ibid. and p.13

³² 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.³³ 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.³⁴ 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.³⁵ 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.

³³ Ibid.

³⁴ Ibid.

³⁵ 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.³⁶

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

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.³⁸

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.³⁹

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

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.⁴¹

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

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

³⁷ Ibid.

³⁸ Submission 87. NSW Registry of Births, Deaths and Marriages. p.3

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

⁴⁰ Ibid. p.11

⁴¹ Ibid.

Register.⁴² 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.⁴³

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.⁴⁴

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.⁴⁵

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.⁴⁶ The certificates do not include signatures of the parties, as opposed to all current Australian Marriage Certificates, with the exception of Western Australia.⁴⁷

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

⁴² Submission 87. NSW Registry of Births, Deaths and Marriages. p.3

⁴³ Office of the Registrar, Lower Hutt, January 1993.

⁴⁴ Submission 87A. NSW Registry of Births, Deaths and Marriages. Appendix III

⁴⁵ Ibid.

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

⁴⁷ Ibid. Appendix III

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

Indexes

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

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.⁵¹

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.⁵²

⁴⁸ Ibid. Appendix II, p.14

⁴⁹ Ibid. Appendix II, p.11

⁵⁰ Office of the Registrar-General, January 1993.

⁵¹ *Vital Statistics Act 1980*, s44(1)

⁵² Ibid. s44(3)

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.⁵³

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.⁵⁴

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.⁵⁵

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

⁵⁴ Ibid. Appendix II, pp.15-17

⁵⁵ 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.⁵⁶ The marital status of the child's mother also appears.⁵⁷

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."⁵⁸

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.⁵⁹ 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.⁶⁰

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.⁶¹

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"⁶².

⁵⁶ *Vital Statistics Act 1980*, s39(1)

⁵⁷ Office of the Registrar General, January 1993.

⁵⁸ *Vital Statistics Act 1980*, s40(1)

⁵⁹ *Ibid.* s39(2)

⁶⁰ *Ibid.* s40(2)

⁶¹ *Ibid.* s39(3) and Office of the Registrar General, January 1993.

⁶² *Ibid.* s40(3)

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.⁶³

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.⁶⁴

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.⁶⁵

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"⁶⁶. In the case of marriage registrations, the Act explicitly provides for issue "to one of the parties of the marriage"⁶⁷.

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

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

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ *Vital Statistics Act*, 1980, s41

⁶⁷ Ibid. s41(2)

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

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

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.⁷⁰ 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.⁷¹

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*.⁷²

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

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Office of the Registrar-General, January 1993.

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

Registries.⁷³ 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.⁷⁴

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.⁷⁵

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.

⁷³ Australian Bureau of Statistics, February 1993

⁷⁴ Australian Institute of Health and Welfare, February 1993.

⁷⁵ 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.⁷⁶

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.⁷⁷

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

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

⁷⁷ Office of the Registrar General, January 1993.

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

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.⁸⁰ 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.⁸¹

3.3.2 Victoria

Compulsory registration commenced in Victoria on 1 July 1853.⁸² 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.

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

⁷⁹ Office of the Registrar General, January 1993.

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

⁸¹ Office of the Registrar General, January 1993.

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

The Marriage Indexes contain details of both the bride's and groom's names and are freely available for registrations from 1836 to 1930.⁸³

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 2015.⁸⁴

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.⁸⁵

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.⁸⁶

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.⁸⁷

⁸³ Ibid. p.3

⁸⁴ Registry of Births, Deaths and Marriages, January 1993

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

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

⁸⁷ Ibid. p.3 and Appendix III

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.⁸⁸ The Registrar has the discretion to refuse the issue of any certificate when there is sufficient reason to do so.⁸⁹

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.⁹⁰

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.⁹¹

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

⁸⁸ Ibid. p.3

⁸⁹ Registry of Births, Deaths and Marriages, January 1993

⁹⁰ Ibid.

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

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.⁹²

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.⁹³ Spouses, parents, fiance(e)s and solicitors may also be issued with Certificates.⁹⁴

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.⁹⁵ 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.⁹⁶

Death Certificates are generally issued to applicants providing details of the death.⁹⁷

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

⁹² Ibid. Appendix II, p.5 and Appendix III

⁹³ Ibid. p.5

⁹⁴ Office of the Registrar, January 1993.

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

⁹⁶ Ibid. Appendix III

⁹⁷ Office of the Registrar, January 1993.

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

⁹⁹ Office of the Registrar, January 1993.

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.¹⁰⁰ Indexes for the period 1842 to 1906 are publicly available.¹⁰¹

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.¹⁰² For deaths recorded between 1842 and 1915, the Indexes may be freely accessed.¹⁰³

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

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.¹⁰⁶

¹⁰⁰ Births, Deaths and Marriages Registration Office, January 1993

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

¹⁰² Births, Deaths and Marriages Registration Office, January 1993

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

¹⁰⁴ Births, Deaths and Marriages Registration Office, January 1993

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

¹⁰⁶ Births, Deaths and Marriages Registration Office, January 1993

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.¹⁰⁷

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.¹⁰⁸

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.¹⁰⁹

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.¹¹⁰

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

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

¹⁰⁸ Ibid. p.6

¹⁰⁹ Ibid. and Appendix III

¹¹⁰ Office of the Principal Registrar, January 1993.

parties are deceased and certificates are released without evidence of death being required.¹¹¹

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.¹¹²

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.¹¹³

¹¹¹ Ibid.

¹¹² Registrar General's Office, January 1993.

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

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.¹¹⁴

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.¹¹⁵

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.¹¹⁶

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.¹¹⁷

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.¹¹⁸

¹¹⁴ Ibid. p.8

¹¹⁵ Ibid. Appendix II, p.7 and Appendix III

¹¹⁶ Registrar-General's Office, January 1993.

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

¹¹⁸ 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.¹¹⁹

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.¹²⁰

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

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

¹²⁰ Office of the Registrar-General, January 1993

therefore subject to New South Wales access arrangements.¹²¹ 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.¹²²

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.¹²³

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.¹²⁴

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.¹²⁵

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

¹²² Ibid. and Appendix III

¹²³ Ibid. p.10

¹²⁴ Ibid. p.9

¹²⁵ Ibid. p.10

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

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 1855.¹²⁷

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.¹²⁸ 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.¹²⁹

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

¹²⁶ Ibid.

¹²⁷ NSW Law Reform Commission, 1988, p.15

¹²⁸ Ibid. p.16

¹²⁹ Ibid.

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

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 1929.¹³¹ 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.¹³² 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.¹³³

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.¹³⁴

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 1974.¹³⁵

¹³⁰ Submission 87A. NSW Registry of Births, Deaths and Marriages. p.10

¹³¹ Evidence. Miller, 5.8.92, pp.82-83

¹³² Evidence. Flett, 5.8.92, pp.82-83

¹³³ NSW Registry of Births, Deaths and Marriages, January 1993.

¹³⁴ Submission 87A. NSW Registry of Births, Deaths and Marriages. p.10

¹³⁵ 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.¹³⁶

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.¹³⁷

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.¹³⁸

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.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ 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.¹³⁹ 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.¹⁴⁰

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.¹⁴¹

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

¹³⁹ Evidence. Flett, 6.8.92, p.12

¹⁴⁰ Submission 87A. NSW Registry of Births, Deaths and Marriages. p.12

¹⁴¹ 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.¹⁴²

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.¹⁴³

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

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 boards¹⁴⁵ 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.

¹⁴² Ibid.

¹⁴³ Evidence. Flett, 6.8.92, p.18

¹⁴⁴ Ibid. p.12

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

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.

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.¹⁴⁶

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.¹⁴⁷

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.

¹⁴⁶ Evidence. Flett, 30.7.92, pp.76-77

¹⁴⁷ Evidence. Morgan, 30.7.92, pp.51-51a

CHAPTER FOUR

AN OPEN REGISTER - ACCESS ISSUES

4.1 INTRODUCTION

In order to determine whether to support Recommendation One of the Law Reform Commission's Report, the Committee considered the effects and implications of adopting an Open Register in regard to the privacy of individual citizens, data protection, and the purposes for which the data is collected and subsequently used.

A major issue of the Inquiry was the role and function of the Registry. The various practices developed within the Registry, based on the legislative discretionary power of the Principal Registrar, and the growth in the uses of data, have contributed to the development of varying opinions as to the Registry's role.

Throughout the Inquiry the Committee has consistently endeavoured to balance considerations of the public benefit of open access and the need for individual privacy. Current Registry policies have led the public to expect that restricted access will continue, with older records being progressively released. However, the Committee believe that the practices of the Registry in relation to access and the statutory discretion with which the Principal Registrar is empowered, are not widely understood. The fact that practices are not clearly defined, and the criteria used to approve access not readily available, contributes to misunderstandings.

This chapter reviews issues relating to privacy; the nature of the data collected; the use of Registry records for identification, medical research, genealogical studies, statistical analysis and commercial applications; and outlines what the Committee believes to be the role and functions of the Registry.

4.2 PRIVACY CONCERNS

In endeavouring to balance the public and private benefits of access to Registry data, the Committee has had regard to increasing public awareness of the need to protect data collected on individuals, as computer capabilities increase and the technology is more widely used.

When the New South Wales Law Reform Commission undertook its inquiry into the Registry, no Commonwealth privacy legislation was in place. For the purposes of that

inquiry, the Commission formulated its own principles of data protection for general application.¹⁴⁸ The principles it adopted indicated that only the minimum personal data required should be sought and recorded; that care should be taken to ensure the accuracy of all information recorded; and that access to the information should be consistent with the socially accepted purposes of the Register. The Law Reform Commission indicated that Registry practices are generally in accordance with these principles, suggesting that the reasons for the secrecy of a closed Register "appear to centre on considerations of privacy and confidentiality."¹⁴⁹

4.2.1 The Purpose Specification Principle

In its Report, *Unauthorised Release of Government Information*, the Independent Commission Against Corruption recognises the right to privacy in relation to the collection of information and access to government data bases.¹⁵⁰ The Commission considered the question of ownership of information collected, stating:

if the information is to be "owned" at all, it belongs to the person to whom it relates. If it has been made available to a government department for a specific purpose, then in the absence of special circumstances, that department should not use it, or allow its use, for any other purpose.¹⁵¹

The Committee was advised in evidence that the "purpose specification principle" is a fundamental principle which underlies all privacy and data protection laws.¹⁵² The principle requires that when a person discloses information for a specific purpose, either under compulsion or in confidence, the information should generally be used only for the purpose for which it was required or given, and disclosed only to persons who need it for that specific purpose.

¹⁴⁸ NSW Law Reform Commission. 1988. para 4.3, p.25. The principles were formulated from the NSW Privacy Committee Guidelines for the Operation of Personal Data Systems; The Australian Law Reform Commission report on privacy; and freedom of information legislation.

¹⁴⁹ Ibid. p.29

¹⁵⁰ Independent Commission Against Corruption, 1992, pp.176-182

¹⁵¹ Ibid. p.153

¹⁵² Evidence. Alston, 30.7.92, p.51

The Privacy Committee of New South Wales emphasised that application of the principle becomes particularly important when disclosure of the information is compulsory, as is the case for information collected for the Register of Births, Deaths and Marriages.¹⁵³

The Registry submission gives due regard to the principle, stating that:

The general privacy principle underlying disclosure of personal information is that disclosure other than for a purpose that governed the collection of that information would violate the individual's reasonable expectation of privacy, and therefore should not occur.¹⁵⁴

Further, the submission indicates that the principle is part of the standards implicit in the operation of the Registry's policy of restricted access, with generally only those persons affected by entries on the Register having access to and control over the release of the information, unless a broader public interest is involved.¹⁵⁵

The Law Reform Commission also indicated support for the purpose specification principle in indicating that "access to the information should be consistent with the socially accepted purposes of the Register."¹⁵⁶

The Committee acknowledges the importance of the concept of the purpose specification principle in determining access to Registry information, and believes that the role and function of the Registry and the purposes for which information is used must be clarified.

4.2.2 Consistency and Uniformity

A significant issue raised by the Independent Commission Against Corruption in its Report is that of consistency.¹⁵⁷ Consistency was considered to be important in inhibiting the unauthorised use of information in two respects: consistency of approach

153 Ibid.

154 Submission 87A. New South Wales Registry Of Births, Deaths and Marriages. p.21

155 Ibid.

156 NSW Law Reform Commission, 1988, para 4.12, pp.25-27

157 Independent Commission Against Corruption, 1992 pp.171-172

(for example, government departments having a set of uniform rules for handling what may be basically the same information); and consistency in the law. The I.C.A.C. Report also noted that it was imperative that every effort be made to achieve consistency with other States and between the States and the Commonwealth.¹⁵⁸

The latter point is particularly relevant to the Committee's Inquiry, as different access arrangements exist throughout Australia. As described in Chapter Three, public access to data stored in Registries throughout Australia varies. To some extent the differences in times from which records are available is a factor of the way in which they have been physically consolidated rather than any issue of individual privacy.¹⁵⁹

The Principal Registrars from Registries across Australia meet on a regular basis to consider matters affecting service delivery, including widening the availability of certificates to the general public. This forum is instrumental in the development of consistency in regard to the release of personal information from the Register to the public. The Committee is of the view that an Australia-wide approach to the release of Registry data is desirable, based on considerations of parity in the rights of citizens and facilitation of research. In this regard the Committee determined that the responsible New South Wales Minister, the Attorney General, should pursue with the Commonwealth Government and other States a policy of uniformity of access to Registry data.

Recommendation 2:

That the Attorney General pursue with the Commonwealth government and other States a policy of uniformity and national access to Registry data.

Comment was made in Chapter 2 of this Report regarding the increased flow of information across state and international boundaries which has grown with the development of electronic communications. The Independent Commission Against Corruption Report raises the issue of uniformity as vital to achieving efficient data security. Legislation was considered essential to achieve uniformity in managing and transferring government information.¹⁶⁰ It was suggested in the Independent

¹⁵⁸ Ibid. p.172

¹⁵⁹ Submission 87A. Registry of Births, Deaths and Marriages. p.23

¹⁶⁰ Independent Commission Against Corruption, 1992, p.172

Commission Against Corruption Report that the development of legislative measures are also necessary to overcome corrupt trade and to meet the community's expectation that the Government will respect and maintain the confidentiality of the increasing amounts of personal information it holds.¹⁶¹

The Committee recognises and supports the need for uniformity and consistency in the way in which personal information held by the government is managed. In recognising the need for uniformity in legislation and practices, the Committee has refrained from developing any specific recommendations in this area, but supports agreement between states to achieve equal access rights.

4.2.3 The Public Nature of the Register

In evidence provided to the Committee the Commissioner in charge of the Law Reform Commission's Inquiry suggested that the Register is a public Register and ought to be acknowledged up front as a public Register.¹⁶² The implication is that the data should therefore be readily available to members of the public.

It was brought to the attention of the Committee that other public records such as probate records are open to the public to view or copy. Access to probate records depends on the age of the record sought and is subject to the payment of a prescribed fee. While the subject of a probate record is deceased, the Committee felt that family members of the subject of a probate record, and similarly of a Death Certificate, may be sensitive to the release of such information.

The Committee determined that the fact that government records or property might be described as public should not necessarily guarantee open access or common public usage. For example, Parliament House is a public building but access to certain areas is not publicly available. The Committee deemed that the Register is a public record only in the sense that the data is being held in trust, by the state. It is considered that there is a need for the government to respect and maintain the confidentiality of individuals particularly when the information was provided on a compulsory basis. Access is therefore only warranted for individual applicants or authorised agents acting in the subject's interests, or organisations acting in a broader public interest. The Committee considers that such interests would include law enforcement, the prevention of fraud and medical and demographic research.

¹⁶¹ Ibid. p.176

¹⁶² Evidence. Gamble, 5.8.92, p.13

4.3 REGISTRY DATA

In considering the question of open access to the Register, the Committee considered the amount of data recorded, the accuracy of that data and the various uses to which that data may be put. The Committee deliberated on the purpose of data collection and the role and function of the Registry.

4.3.1 Amount of Data Collected

As outlined in Chapter 3, the New South Wales Register contains more personal data than a number of Registers in other jurisdictions, and providing greater access to records would therefore allow more personal details to become available.

In the absence of a definitive statement of the purpose of data collection, the Commissioner in charge of the Law Reform Commission's Inquiry expressed concern that more information may be collected and recorded than is actually necessary.¹⁶³ An open Register, it was claimed, might discourage the collection of excess information by making privacy concerns more paramount.¹⁶⁴ The Privacy Committee of New South Wales also indicated that only the minimum amount of personal information necessary should be collected.¹⁶⁵

The Committee conversely heard that a number of organisations have pressured the Australian Bureau of Statistics to collect and provide additional information.¹⁶⁶ The Deputy Commonwealth Statistician, Mr Denis Farrell, indicated that the Bureau is seeking to develop a collection standard in terms of the items of information and the processing of data. For consistency of information across Australia standardised systems and procedures were said to be essential.¹⁶⁷

The Committee determined that the extent of personal data collected by the Registry is not specifically relevant to the Committee's Terms of Reference except in evaluating the

¹⁶³ NSW Law Reform Commission. 1988, Rec.2, p.31

¹⁶⁴ Evidence. Gamble, 5.8.92, p.12

¹⁶⁵ Submission 64. Privacy Committee, p.53

¹⁶⁶ Evidence, Farrell, 5.8.92, p.8

¹⁶⁷ Evidence. Farrell, 5.8.92, p.9

implications of any release of that data resulting from the introduction of an open Register.

4.3.2 Accuracy of Registry Data

The New South Wales Law Reform Commission indicated in 1988 that, in relation to the accuracy of the information held by the Registry of Births, Deaths and Marriages:

the Register will continue to offer reasonably accurate information, but will not be a completely reliable source of personal data.¹⁶⁸

It was suggested that "the accuracy of the information would be better maintained by more public access to it."¹⁶⁹ The Commission held that members of the public would be in a position to notice any inaccuracies and request that amendments be made to the Register record.

The Committee heard that the Registry data was of considerable importance, particularly for the development of population estimates, developing the formula for Commonwealth grants and the distribution of electoral seats. The question of accuracy is therefore very important. The Deputy Commonwealth Statistician of the Australian Bureau of Statistics asserted that the Registry provides "as good a source of information as any country in the world, in terms of the quality of the Register."¹⁷⁰ This view is based on both the accuracy of the information a person supplies and the coverage in ensuring that every birth, death and marriage is registered.

While the Law Reform Commission believed accuracy would be enhanced by greater public access, the Committee heard conflicting evidence that an open Register may undermine the accuracy and coverage of the data that is made available to the Bureau. If informants were aware that the information they provided was to be more easily accessible and would be used for a broader range of purposes than is now the case, it was argued that they may be less inclined to provide the correct information.¹⁷¹

¹⁶⁸ NSW Law Reform Commission. 1988, pp.26-27

¹⁶⁹ Evidence. Gamble, 5.8.92, p.12

¹⁷⁰ Evidence. Farrell, 5.8.92, p.3

¹⁷¹ Ibid. p.4

The Committee considers that achieving high degrees of accuracy and coverage is a fundamental part of the role of the Registry as a statistical record-keeper. The present policy of the Registry is to consider that it is the right of an individual "to be aware of and have access to" information held about them and to challenge the accuracy of that data.¹⁷² Whilst there is no specific right under the legislation to make corrections to records of registrations, the Principal Registrar indicated that changes are made to records if she is satisfied of the need for an amendment. The Committee was satisfied that the accuracy and coverage of personal details provided to the Registry are not compromised by the operation of a closed Register.

4.4 USES OF REGISTRY DATA

The *Registration of Births, Deaths and Marriages Act 1973* does not clearly define the purpose for which personal data should be collected nor the uses which may be considered acceptable. The Act provides the Principal Registrar with the discretion to allow or restrict access and, as detailed in Chapter 3, legislation provides for data to be provided to a number of government agencies.

The uses to which Registry data may be put formed a considerable part of the Committee's deliberations on whether to adopt the Law Reform Commission Report's Recommendation One supporting an open Register. Evidence was taken concerning the uses to which Registry data has been put and the nature of requests for further access. The Committee gave due consideration to the public benefit of such uses and the possible effects of proposed uses on the privacy of individuals. This section reviews the existing and proposed uses for Registry data considered by the Committee.

4.4.1 Entitlements and Identification

The original role of the Registry in recording information on individuals and their family ancestry resulted in that information being used to establish rights to entitlements such as inheritance. In evidence before the Committee, the Principal Registrar put the view that while the fundamental role of the Registry has not changed, "the type of entitlement has probably changed."¹⁷³ The increasing use of certificates as a form of identification to access these entitlements has resulted in the issue of these certificates evolving as a function of the Registry, despite the lack of any original intention to this effect. This has

¹⁷² Submission 87. NSW Registry of Births, Deaths and Marriages. p.20

¹⁷³ Evidence. Flett, 30.7.92, p.74

occurred as a result of the importance being placed on the certificates by other agencies, rather than any appreciation of their integrity as identity documents by the Registry itself:

It doesn't mean that it actually proves your identity, the Registry is not an identity bureau.¹⁷⁴

A number of government organisations, such as the Roads and Traffic Authority, use Birth Certificates as a form of identification, either entirely or in part. Legislation such as the *Cash Transactions Reporting Act 1988* has confirmed and formalised the use of Birth Certificates for this purpose.¹⁷⁵ The Committee acknowledges that certificates are now an integral part of the processes leading toward the provision of certain social benefits, such as an Australian passport, driver's licence or bank account.¹⁷⁶

The Committee recognises that the value placed by external agencies such as the Passports Office on certificates from the Registry has affected the way in which the Registry functions. The increased reliance on certificates for identification purposes requires more resources to be allocated to the task of issuing certificates and to improving security measures. Initiatives are being considered collectively by all Australian registries to increase the authenticity of the certificates, through improving the quality of the paper used, and placing a watermark in the paper.¹⁷⁷

The Law Reform Commission Report recommended an open Register on the basis of some key perceptions of the weaknesses of the current system in verifying the identity of certificate applicants:

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.¹⁷⁸

¹⁷⁴ Evidence. Flett, 30.7.92, p.74

¹⁷⁵ Evidence. Rowlands, 5.8.92, p.4

¹⁷⁶ Evidence. Middleweek, 5.8.92, p.38

¹⁷⁷ Submission 87. NSW Registry of Births, Deaths and Marriages. p.18

¹⁷⁸ NSW Law Reform Commission, 1988, p.29

In evidence it was suggested that it is possible for forged certificates to be produced. The Committee considered that whilst it may never be possible to prevent professional criminals forging certificates, the steps being undertaken by the Registry in protecting the authenticity of Registry documents would minimise the opportunity for fraud.

4.4.2 Medical, Historical and Demographic Research

The Committee recognises the important public benefit to the community of medical, historical and demographic research. The Committee also acknowledges that the use by medical researchers and other health personnel, particularly geneticists, of data contained in Registry records may facilitate their understanding and the treatment of medical conditions.

The Executive Director of the Cancer Council stated that, although cancer is a notifiable disease in New South Wales, five percent of cases are first reported on the Death Certificate.¹⁷⁹ She noted that the Registers of births and marriages could also be useful in assisting in epidemiological research:

we are most interested in the Death Register ... (but) ... if one was doing a cohort study of cancer, one could take a whole group of births and follow them through and determine which ones get cancer and which ones don't... (and) the Marriage Register could be used to check on name changes.¹⁸⁰

The Australian Institute of Health and Welfare supports a National Death Index using Register data, based on the view that the public benefits of such a development outweigh any privacy concerns that may exist. In evidence before the Committee, the Director of the Institute noted that the National Health and Medical Research Council first approved the establishment of a National Death Index in 1979. The Council of Australian Health Ministers approved the development of such an Index, to facilitate medical research, in 1984. However it was noted that negotiations with New South Wales about specific circumstances under which their Index data could be made available were yet to be concluded.¹⁸¹ The Committee supports the establishment of a National Death Index.

¹⁷⁹ Evidence. Taylor, 30.7.92, p.22

¹⁸⁰ Ibid. p.17

¹⁸¹ Evidence. Smith, 30.7.92, p.19

Recommendation 3:

That negotiations on the establishment of a National Death Index be concluded as a matter of priority.

The Executive Member of the Privacy Committee of New South Wales was critical of the ethical standards which govern medical research projects, arguing that the ethical guidelines provided by the National Health and Medical Research Council were open to interpretation, with the consideration of applications by Ethics Committees of the various Area Health Boards yielding different outcomes.¹⁸²

In evidence the Committee was advised of the problems which result from the absence of a clear access policy to Registry records. The Director of the Australian Institute of Health and Welfare indicated that in a number of cases proposed medical research projects have been reviewed and accepted by the Federal Privacy Commissioner. Dr Smith noted that instances occur in which there was a clear, obvious and sometimes urgent public interest in medical studies being undertaken. He also indicated that proposed medical research projects were not only subject to the scrutiny of the Institute's ethical and scientific criteria but also in most instances proposed projects are referred by the Registry to the Privacy Committee of New South Wales, when such projects require access to both Indexes and full registration details:

We do not seem to have been able to establish any general principles that would allow medical researchers access to the data. Every case is examined on a one-off basis and that has resulted in some very very lengthy delays in these important studies proceeding.¹⁸³

The adequacy of ethical standards for medical research is a complex matter involving both national and state standards and consideration of the degree of discretion these standards allow individual medical organisations. This matter is further considered at 5.7.

The Committee appreciates the difficulties people suffering from genetic disorders such as Huntington's disease face in gaining access to information on deaths in their family.

¹⁸² Evidence. Morgan, 30.7.92, p.52

¹⁸³ Evidence. Smith, 30.7.92, p.19

There are at present no formal arrangements for such individuals or medical professionals acting on their behalf to carry out research on the genetic history of the disorder and its characteristics within their family. Access to Indexes and certificates is only available on the basis of the arrangements for individual access based on relationship to the subject and the payment of fees. These considerations do not apply to large organisations such as the Cancer Council, which receive data on magnetic tapes on the basis of long-standing arrangements. Other medical researchers who need only non-identifying, computer generated information on large segments of the population, pay only for the transfer of this data, often from the Australian Bureau of Statistics. Any costs associated with manipulating that data to meet the request are also charged to the researcher. Researchers studying groups of individuals with particular disorders must, however, apply to the Registry and pay for information on the basis of the manual searches required. The Committee believes that the Registry should consider the introduction of special arrangements which provide access to Death Certificates when it is demonstrated that cause of death needs to be ascertained where a recognised genetic disorder is being investigated, either by individuals or medical professionals.

Evidence was also heard regarding the use of Registry data for social science and historical research purposes. Researchers may be able to gain access to Registry records at the discretion of the Principal Registrar, although no clear principles concerning the ethical use of data for this type of research exist.¹⁸⁴

The Deputy Commonwealth Statistician, Mr Denis Farrell, indicated to the Committee that the Bureau are governed by the Commonwealth *Privacy Act 1988* and the secrecy provisions contained in the *Census and Statistics Act 1905*, as amended. The Committee were advised that the policy of the Bureau was not to release personal information of any type from any of its statistical collections.¹⁸⁵ General statistical information compiled from births, deaths and marriages that contains any reference to individual records is only obtainable upon application through the individual Registries from whose records the data is compiled, and not directly from the Bureau.¹⁸⁶ The value of this statistical data for historical, social science and medical research is further compromised by different information on, for example, Aboriginal births and deaths, being recorded and released in various states.¹⁸⁷ The Committee recognises the vital role such statistical information

184 Evidence. Spearitt, 4.9.92, p.33

185 Evidence. Farrell, 5.8.92, p.5

186 Ibid. p.8

187 Ibid. p.8A

can offer in the formulation of government policies and programs, and believes that national standards should be developed for the recording, reliability and release of statistical information. The views of representatives of the Aboriginal community should be sought in relation to the recording and use of data relating to Aboriginality.

The Committee appreciates that both the Registry records and the statistical data produced from them is of value for research purposes, and considers that there is a need for greater clarification of the access arrangements to Registry records by researchers.

4.4.3 Genealogical Research

A further function of the Registry which has developed over time is its use as a source of information for genealogical studies. The Committee received a large number of submissions in support of an open Register from individuals and representative organisations with a specific interest in researching family histories.

Genealogists acknowledged that much of the information available to researchers through the birth, death and marriage records is in fact also available from probate indexes, personal announcements in newspapers, legal and public notices, church registers, cemetery transcriptions and burial registers.¹⁸⁸ The task of searching such sources can be time consuming and exacting. The release of birth, death and marriage records to the present day would, it was claimed, serve to consolidate the information currently available, and also release additional details to researchers.¹⁸⁹

While it was suggested that the fact that a large amount of personal information is already freely available negates arguments concerning the need to protect individual privacy, the evidence heard by the Committee suggested that genealogists are aware of the delicate balance between privacy considerations and the public interest:

I do not believe anybody's privacy should be invaded, but I do believe that we have the right to know our history.¹⁹⁰

A distinction was often drawn in this regard between access to the Indexes and access to certificates or registrations. The proposal to open all Indexes to date for public access is

¹⁸⁸ Submission 59. NSW Association of Family History Societies. p.2

¹⁸⁹ Ibid.

¹⁹⁰ Evidence. Vine Hall, 5.8.92, pp.79-80

widely supported by genealogists. Opinions differ, however, regarding the access that should be allowable for certificates, since privacy concerns relating to this access are seen to be more relevant. The Committee heard in evidence that the present arrangements restricting access to certificates should continue:

a genealogist, a historian, is going back in time I personally, as a historian and genealogist respect the sensitivity of the people who are living and their privacy considerations ... the historian would be looking at the information as contained in the Registers for a much older registration, I don't think they would be looking for current information unless they have the permission of a living party.¹⁹¹

Other genealogists suggested in evidence before the Committee that the access restrictions should be amended to allow free access to all Death Certificates, with the progressive release of Birth Certificates after 75 years and Marriage Certificates after 50 years.¹⁹² An alternative view was that Birth Certificates should be available after 72 years and Marriage Certificates for the years preceding 1930.¹⁹³ Other evidence suggested that ideally access to all certificates regardless of their age should be available to the public.¹⁹⁴

In supporting open Indexes, there was an appreciation that some of the information contained in the Indexes is sensitive and that the privacy of living individuals should be protected by some means.¹⁹⁵ There was some support for removing identifying information from the indexes to protect the privacy of persons for whom such information may indeed be sensitive.¹⁹⁶

191 Evidence. Donohoe, 5.8.92, p.54

192 Evidence. Killion, 5.8.92, p.5, and Garnsey, 5.8.92, p.7

193 Evidence. Vine Hall, 5.8.92, p.70

194 Evidence. Worthington, 5.8.92, p.9

195 Evidence. Vine Hall, 5.8.92, p.72

196 Ibid.

Genealogists also support an open Register in order to promote increased uniformity of access provisions throughout Australian states and overseas.¹⁹⁷ Genealogists, it is claimed, "feel strongly discriminated against in comparison to those with families in other states and countries."¹⁹⁸

Open Registers in other jurisdictions, it was argued, have had minimal effects on the privacy of individuals.¹⁹⁹ It was also suggested that, rather than Registry information being used for any malicious purpose, it was used for positive purposes including reuniting families after long periods of separation for a variety of reasons.²⁰⁰ As outlined in Chapter 3, the Committee became aware that the amount of information available on Registers in other jurisdictions varied from that recorded in New South Wales, affecting the amount of information which would be available should an open Register system be introduced in this state.

The Committee is mindful of the privacy of the citizens of New South Wales and the purposes to which data can be put. The Committee is concerned with the ethical implications of research which is conducted for commercial purposes. The Committee has considered the fact that genealogical research is not always undertaken by individuals researching their own family, but is sometimes undertaken by others for commercial gain, which may in some circumstances have privacy implications.

4.4.4 Other Uses

Other purposes for which Registry records may be used, including possible commercial uses, were considered by the Committee. The role of the Registry was never intended to include any promotion of private gain by individuals or businesses. In its Report, the Law Reform Commission was mindful of this possibility, and thus differentiated between giving free access to the Indexes, which contain a small amount of information, and access to the certificates. Certificates in jurisdictions with open Register systems are

197 Submission 78. Australasian Federation of Family History Organisations. p.2

198 Submission 39. Nick Vine Hall. p.2

199 Submission 59. Society of Australian Genealogists. p.2

200 Evidence. Worthington, 30.7.92, p.11

issued in response to individual applications and upon the imposition of a fee, which discourages applications for commercial purposes.²⁰¹

In evidence given to the Committee, Registry staff indicated that disclosure of personal information to parties not authorised by the subject or acting in some broader public interest would result not only in a breach of privacy, but also possibly in an action for breach of confidence.²⁰²

The Committee is aware that there are a number of commercial opportunities for which applications may be made to the Registry for access to data. In particular the Committee is aware that companies marketing products or services may express interest in accessing data. Such uses of Registry data are considered by the Committee to be inappropriate.

It is recognised that some future commercial uses for Registry data may be in the public interest. However, the use of the information to locate a person is considered, generally, to be an invasion of privacy rather than an appropriate use of the data. The Committee is of the view that a person may change their name through marriage or usage, with the wish not to be found, particularly following violent relationships. Only the pursuit of individuals for the purpose of law enforcement is determined a valid use in such instances.

4.5 FUNCTION OF THE REGISTRY

As indicated earlier in this Chapter the *Registration of Births, Deaths and Marriages Act 1973*, does not clearly define the purpose for which data is collected, but focuses on the procedural functions of the Registry. Access to the data, as noted in Chapter 3, is provided either in legislation or through the discretion given to the Principal Registrar to allow or restrict access.

The purposes of registration suggested by the Law Reform Commission are outlined in terms of the public and private purposes implicit in the establishment of the Registry in 1856. Information is collected to provide statistical data to the government and the public, and to serve as an authentic legal record for proving descent and identity.²⁰³ In

²⁰¹ NSW Law Reform Commission, 1988, p.30

²⁰² Submission 87A. NSW Registry of Births, Deaths and Marriages. p.21

²⁰³ NSW Law Reform Commission, 1988, p.16

evidence before the Committee, Professor Helen Gamble, former Law Reform Commissioner, suggested that:

the Registry was never there to establish anyone's identity or to maintain a genealogical record the real reason for setting it up ... was the statistical function ... to collect public information ... to send home to England on the state of the colony.²⁰⁴

The Registry submission describes its role as being:

- . to record all births, deaths and marriages occurring in New South Wales,
- . to store this information in perpetuity, and
- . to provide access for the purposes of establishing legal identity, age, entitlement to citizenship or a change in status.

The registry also has a responsibility to supply statistical data to the Australian Bureau of Statistics and to administer the Commonwealth *Marriage Act* of 1961.²⁰⁵

The Committee considers that the role of the Registry can be defined by considering its original functions, with an appreciation of its more recent role of establishing proof toward identity for a range of entitlements. A secondary function which has developed over time is the use of Registry records for genealogical and medical research purposes.

In relation to the role and function of the Registry and its operation, the Committee makes the following recommendation:

²⁰⁴ Evidence. Gamble, 05.08.92, p.21

²⁰⁵ Submission 87A. NSW Registry of Births, Deaths and Marriages. p.7

Recommendation 4:

- . That the *Registration of Births, Deaths and Marriages Act 1973* be amended to define the functions of the Registry, and
- . That those functions include:
 - . the collection and provision of statistical data;
 - . the recognition of Registry data as evidence toward the establishment of a range of citizen entitlements; and
 - . the retention and maintenance of records for perpetuity.

CHAPTER FIVE

PROPOSED ACCESS TO THE REGISTRY

5.1 INTRODUCTION

The New South Wales Register of Births, Deaths and Marriages contains a substantial amount of personal information on the citizens of New South Wales. The Committee considers that, as one consequence, open access to the Register raises issues in relation to privacy, accuracy of data and the use of data.

It should be noted that the Committee's recommendations relate to the Registry, or the administrative area collecting data, and to the Indexes and certificates produced from the Birth, Death and Marriage Registers which contain this data.

In giving consideration to an open Register, the Committee reviewed existing access provisions and compared the privacy concerns of individuals to the benefits of public access to the data. These matters were considered in relation to increased access to the Indexes and to the certificates of the Registers of Births, Deaths and Marriages. Consideration was given to the nature of personal information that would be available should increased access to Registry Indexes and certificates be allowed.

Recommendations made by the Committee concern differential access to the Register. The rationale of the Committee in these recommendations is to maintain a balance between privacy protection and public interest. In general, because of privacy considerations, it is recommended that individual members of the public have less access to Registry data than persons involved in medical, historical and other academic research. However, the Committee considers that an access policy advising members of the public of access provisions to the Register, and a legislative amendment specifying the principles governing the exercise of the discretion of the Principal Registrar, would enhance public understanding of the operation of the Registry. Recommendation 5 concerns an amendment to the legislation, while Recommendations 6 to 10 concern the proposed access policy.

Access recommended by the Committee is described in two parts. Recommendations 11 to 18 concern access proposed for family researchers and the general public, and Recommendations 19 and 20 concern access by specialist researchers. The Committee considers that the options proposed in this chapter achieve a balance between the need to protect individual privacy and the public benefit of access to the information contained on the Register.

5.2 ACCESS POLICY

The Registry has no written access policy or public document available which details the way in which the discretionary power of the Principal Registrar is exercised in Registry practices. Nor are the criteria which are generally used to determine access publicly available. The Committee believes that some discretionary power to allow a degree of flexibility for access should remain with the Principal Registrar. For instance, the Committee was informed of a number of specific cases where certificates were urgently needed for humanitarian purposes. The Committee is of the view that any legislation delineating the power of the Principal Registrar should not be so overly prescriptive as to prevent the exercise of discretion in unforeseen circumstances.

The Committee considers that an access policy should be developed which describes the provisions under which access may be sought by the general public and by specialist researchers. The Committee believes that the current criteria underlying Registry practices should continue, with access based on the age of the record requested, the relationship of the applicant to the subject of a record, and the purpose for which access is requested.

That policy should also include a description of the criteria to be used by the Principal Registrar to determine whether a reason offered for access is sufficient to allow for the release of data requested when such reason is not specified in the access policy. While the Committee believes that the discretionary power of the Principal Registrar should be minimal, it also believes the power, as defined in legislation, should continue to allow sufficient flexibility to deal with particular cases. The *Registration of Births, Deaths and Marriages Act 1973*, should set out clearly the power of the Principal Registrar for the purpose of accountability, and for the protection of privacy for Registry data.

The Committee considers that the Registry access policy should list the organisations which receive data through statutory authority. The policy should also include a description or codified list of informal and discretionary access arrangements. As indicated earlier in this Report, the Committee believes that data in the Register should not be used for direct mail or marketing purposes, as such use of data may intrude on the privacy of individuals.

Recommendation 5:

That the *Registration of Births, Deaths and Marriages Act 1973* be amended to specify the principles governing the use of the discretion of the Principal Registrar.

Recommendation 6:

- . **That access provisions continue to be based on the following criteria:**
 - . **the age of the record; or**
 - . **the relationship of an applicant to the subject(s) of a record; or**
 - . **permission from the subject(s) of a record; or**
 - . **the exercise of the Principal Registrar's discretion.**

Recommendation 7:

- . **That a public access policy be developed for Registry data. The policy should include:**
 - . **the criteria upon which access provisions are based;**
 - . **an explanation of the rights of access for individuals based on these criteria;**
 - . **the statutory provisions for research access; and**
 - . **current informal access arrangements.**

Recommendation 8:

- . **That, at the point of collection, the purposes for which Registry data may be used should be stated in general terms.**

Recommendation 9:

- . **That the access policy be:**
 - . **publicly available; and**
 - . **available in plain English and community languages.**

Recommendation 10:

- . **That the access policy be reviewed every five years.**

5.3 THE BIRTH REGISTER

The Law Reform Commission and a number of genealogists considered that both the Birth Index and Birth Certificates should be made openly available.²⁰⁶ Others proposed that for the benefit of historical research, access should be available to birth records made prior to and including the years of World War I.²⁰⁷

Evidence taken from representatives of the Australian Bureau of Statistics and the Passport Office supported maintenance of current restrictions, on the grounds that accuracy and coverage of data would diminish should the Birth Register become open. It was suggested that some people providing data to the Registry would not provide the correct information should access to birth records be widely available. The Committee was told that less accurate data would be detrimental to research and more accessible data would damage the value of birth information for the purpose of identification.²⁰⁸ Representatives of the Law Reform Commission suggested, on the other hand, that an open Register would contribute to greater accuracy by making data more publicly accessible.²⁰⁹

²⁰⁶ NSW Law Reform Commission, 1988 and Evidence. Killion, 30.7.92, p.4

²⁰⁷ Evidence. Townsend, 30.7.92, p.43

²⁰⁸ Evidence. Farrell, 5.8.92, pp.3-4, Middleweek, 5.8.92, p.39

²⁰⁹ Evidence. Gamble, 5.8.92, p.12

5.3.1 Birth Indexes

In evidence the Committee heard a wide range of opinions concerning access to Birth Indexes. Views ranged from suggestions that the Birth Index be made completely open to a view that access should be restricted to one hundred years after the recording of a birth. The latter view is more restrictive than the current practice, but it was suggested that such a time frame would enable very few living people to have their records accessed and therefore reduce any intrusion of privacy.²¹⁰ The Registry Office proposed that Birth Indexes become available seventy-five years after a birth.²¹¹

The Committee, with one dissenting voice, recommends that access to the Birth Indexes should be available after the passage of seventy-five years from a birth and that a system be introduced which would enable ongoing release year by year of the respective Birth Indexes. The Committee judges that this recommendation is a reasonable balance between protecting the privacy of individuals, including those who might be sensitive to their age being made readily available, and the broader public relevance of the data.

Concern was expressed that past and present recording practices may include an identifying characteristic on a record. Registration numbers have been used to indicate the status of the subject of the record. For example, a particular sequence of numbers has been used to identify ex-nuptial births that have been subsequently re-registered as being legitimate following the marriage of the parents. The Committee considers that registration numbers which are identifying should be removed, particularly on Indexes that are widely available.

Recommendation 11:

That annual Birth Indexes be made available on an ongoing basis after seventy-five years have elapsed.

See also Dissenting Report

²¹⁰ Evidence. Morgan, 30.7.92, p.48

²¹¹ Submission 87A. NSW Registry of Births, Deaths and Marriages. p.24

Recommendation 12:

. **That identifying registration numbers on the Birth Indexes be progressively removed.**

5.3.2 Birth Certificates

The Principal Registrar suggested that Birth Certificates should be made available seventy-five years after a birth.²¹² A number of genealogists supported this view.²¹³ Personal information included on a Birth Certificate but not on a Birth Index includes details of the parents' marriage, ages, and full names and the mother's maiden name. As more details are available on a Birth Certificate than on a Birth Index, and the certificate has identification value for its subject, the Committee considers that restrictions on accessing a Birth Certificate should be greater than those for accessing the Birth Index.

Whilst access to the Birth Certificates in England is described as open, access to a Birth Certificate for a person born in 1930 or a later year requires the applicant to provide details of the birth and names of both parents of the subject of a certificate.²¹⁴ One reason for the greater openness of the English system is undoubtedly the fact that less information is recorded.

The Committee recognises the role of a Birth Certificate in providing identity, either wholly or in part. Further the Committee considers that sensitive information on a Birth Certificate precludes the provision of a certified copy of a Birth Certificate being made available until one hundred years after the record was made. Access to the details provided on a record of a birth occurring within the last one hundred years should only be available to people:

- . with access due to their relationship to the subject, as for current practice (outlined in Section 3.4.4 above); or
- . with permission from the person who is the subject of a record; or
- . who have or are entitled to have the Death Certificate of the subject of the item sought; or

²¹² Evidence. Flett, 30.7.92, p.84

²¹³ Evidence. Killion, 30.7.92, p.5

²¹⁴ Evidence. Garnsey, 30.7.92, p.5

whose reasons for requesting access are accepted by the Principal Registrar as sufficient to enable them to be allowed the access so requested.

Birth Certificates are currently widely available for a record of a birth occurring in 1905 or earlier years. Thus the Committee has determined a more restricted access in order to protect the privacy of most living people in New South Wales. The Committee, with one dissenting voice, deems that, rather than prohibiting access immediately to records now available, access to Birth Certificates should remain open for births up to 1905. From the year 2006, it is proposed that access to Certificates be available for births to 1906 with annual ongoing release.

The Committee, in rejecting open access to the Birth Certificates of deceased persons, had regard to the possible misuse of such certificates for creating false identities. The Committee, however, has recommended less restrictive access to the Birth Certificates of deceased persons than is the case with certificates of living persons, as the recommendations concerning access to Death Certificates provide an appropriate safeguard.

Recommendation 13:

That Birth Certificates be made available:

- to any person for births recorded up to and including 1905; or**
- to applicants who are currently entitled on the basis of their relationship to the subject; or**
- to any person who provides written permission, with reasonable identification, from the subject of a particular certificate; or**
- to any person who has or is entitled to the Death Certificate of the subject of the item sought; or**
- from the year 2006, to any person provided one hundred years have elapsed since the birth.**

See also Dissenting Report

5.4 DEATH REGISTER

Opinion taken concerning access to the Death Register was divided. The Law Reform Commission and some genealogists supported both open access to Death Indexes and open access to Death Certificates. Representatives of the Passport Office were concerned that increased access to the Death Register might result in an increase in the creation of false identities.²¹⁵ It was also suggested that an open Register would affect the accuracy of information provided.²¹⁶

5.4.1 Death Indexes

The majority of witnesses indicated support for open access to the Death Indexes. The Committee believes that Indexes to recorded deaths should be open up to the present time with Indexes progressively released. Major factors behind the Committee's recommendation were the minimal amount of personal information described on the Index, and the fact that the subject is deceased. Death Indexes list the subject's family name and first name(s) and the first name(s) of the parents of the deceased, with the full date of death also included from 1974.

Recommendation 14:

That annual Death Indexes be available to the present time, with ongoing release.

5.4.2 Death Certificates

The sensitive nature of information recorded on a Death Certificate, including the cause of death, led the Committee to support restrictions of access to Death Certificates. The Committee considers that information on a death resulting from an illness or action such as suicide might cause distress to surviving family members. Further, it considers that the knowledge that information on a Death Certificate will become public may result in less accurate recording of the cause(s) of a death and thus diminish the role of the Register as a valuable research source.

²¹⁵ Evidence. Middleweek, 5.8.92

²¹⁶ Submission 109. Australian Bureau of Statistics. p.1

The Committee recommends that Death Certificates be made available providing at least thirty years have elapsed since the death of a subject. If a Death Certificate is requested for a death recorded in the last thirty years, the Committee believes that the current rules, which allow access on the basis of the reason for the request and the relationship of the person requesting the certificate to the person who is the subject of the certificate, should be used as the criteria to determine access. Further, it is considered that a Death Certificate should be made available to an applicant with written permission from a person, reasonably identified as one who is entitled to have a Death Certificate through the criterion of relationship to its subject, as outlined in Section 3.4.4.

The Committee's recommendation is based on a belief that a period of time approximate to that separating generations should pass before Death Certificates are freely available. In light of the recommendation that Birth Certificates be freely available upon the production of Death Certificates, the Committee considers that a restriction for this period of time is necessary to safeguard against fraud. If further action to counter fraud is required, the Registry might consider recording the fact that a person is deceased on their Birth Certificate.

Recommendation 15:

That Death Certificates be made available:

- **to applicants who are currently entitled on the basis of their relationship to the subject; or**
- **to any person who provides written permission with reasonable identification from a person with access through the criterion of relationship to the subject of the Certificate; or**
- **to any person providing at least thirty years have elapsed since the death of the subject.**

5.5 MARRIAGE REGISTER

In considering access to records of marriage the Committee reviewed the amount of personal information on a Marriage Index and the content of a Marriage Certificate. Those details are outlined in Chapter Three.

The Committee believes that any person who can provide proof of intention to marry, in the form of a copy of a Notice of Intended Marriage or other form of proof, should be able to ascertain through the Registry whether the other concerned party has been married in New South Wales. The discretionary power of the Principal Registrar has been used to enable such a person to determine whether the other concerned party has been married. Such access should be a right and provision for this purpose included in the written access policy of the Registry.

In principle, the Committee recognises the need for a national access policy in this regard, to allow parties intending to marry the ability to check with ease the records of all Australian jurisdictions. As Recommendation 2 suggests, the Committee believes that the responsible Minister should pursue with the Federal Government and Ministers of other states a policy of uniformity and national access to Registry records.

5.5.1 Marriage Indexes

Evidence taken by the Law Reform Commission and a number of genealogists supported open access to Marriage Indexes.²¹⁷ It was alternatively proposed that access to Indexes only be available eighty-five years after an event.²¹⁸ The Principal Registrar indicated that the Registry supported access to the Indexes of Marriages to 1930, or after sixty years had elapsed, being made available. This view is based on the fact that a person married at fifteen years of age would be seventy five years of age after sixty years had elapsed since the marriage.²¹⁹

The Committee, with one dissenting voice, recommends that Indexes to Marriages should be made publicly available fifty years after the marriage. The Committee recognises that people are now marrying later in life, with most people who marry being between twenty and twenty five years of age. Releasing the Marriage Indexes after fifty years have elapsed would therefore approximately coincide with the recommended release of the parties' Birth Indexes.

²¹⁷ Evidence. Killion, 30.7.92, p.4; Donohoe, 5.8.92, p.56 and Vine Hall, 5.8.92, p.71

²¹⁸ Submission 64. Privacy Committee, p.6

²¹⁹ Evidence. Flett, 30.7.92, p.83

Recommendation 16:

That current arrangements, allowing persons providing proof of intention to marry to be provided with information on previous marriages of their prospective spouse, continue and be formalised in the access policy.

Recommendation 17:

That annual Marriage Indexes be made available on an ongoing basis after fifty years have elapsed.

See also Dissenting Report

5.5.2 Marriage Certificates

The evidence from the Law Reform Commission supported an open Marriage Register and freely available certificates.²²⁰ Evidence from genealogists acknowledged that some of the information contained on a marriage record may breach a person's privacy if made publicly available within fifty or sixty years of the event.²²¹

Considering that a large number of people get married between the ages of twenty and twenty-five years of age, the Committee believes that a policy of access to Marriage Certificates after fifty years have elapsed is appropriate. Marriage Certificates would therefore not normally be available until the subjects were approximately seventy-five years old. This would result in restrictions being lifted on access to the information at approximately the same time as the subject's Birth and Marriage Indexes are released.

Given that the Committee received no expressions of concern about the current accessibility of Marriage Certificates, the Committee considers that access to certificates for marriages occurring less than fifty years ago should be available according to the restrictions which currently apply, such as the relationship of the person to the subject(s) of a Certificate and the reason for the request, as outlined in Section 3.3.4. Further, it is

²²⁰ Evidence. Gamble, 5.8.92, p.18A

²²¹ Evidence. Killion, 30.7.92, p.4 and Vine Hall, 5.8.92, p.71

considered that access should also be provided to a person with written permission from a person who is entitled to a Marriage Certificate through their relationship to either of the subjects of a Certificate.

The Committee recommends that Marriage Certificates should also be made available to any person who can provide evidence that at least thirty years have elapsed since the death of both subjects of a marriage.

Recommendation 18:

That Marriage Certificates be made available:

- . to applicants who are currently entitled on the basis of their relationship to the subject; or**
- . to any person who provides identifiable written permission from a person with access because of their relationship with either of the subjects; or**
- . to any person provided the Death Index indicates that at least thirty years have elapsed since the deaths of both subjects of the Marriage Certificate; or**
- . to any person providing at least fifty years have elapsed since the marriage.**

See also Dissenting Report

5.6 ANNUAL CONFERENCE OF AUSTRALASIAN REGISTRARS

The annual conference of Australasian Registrars of Births, Deaths and Marriages was held in November 1992, and the conclusions of the Conference were brought to the attention of the Committee by the New South Wales Principal Registrar in February of 1993.

The Principal Registrar provided details of the resolutions which adopted specific target release dates for Indexes of Births, Deaths and Marriages in order to provide a basis for uniform release provisions throughout Australia. The Committee was advised that the

Conference agreed to release Birth Indexes eighty years after registration, Death Indexes thirty years after registration and Marriage Indexes sixty years after registration.

The Principal Registrar had proposed a seventy-five year release rule for the release of Birth Indexes in her formal submission. However, in correspondence regarding the Conference, the Principal Registrar supported the agreed schedule and brought the decision to the attention of the Committee.

The conference proceedings were not available for the consideration of the Committee and no Committee Member had the benefit of hearing the discussion which led to the adoption of the preferred release dates.

The Committee strongly supports the objective of national uniformity. However, in the absence of any knowledge of the reasons for the Conference's decisions, the Committee resolved to uphold the recommendations contained in this report. The Committee's recommendations were made following a lengthy inquiry and consultative process and are considered to represent the most appropriate balance between privacy considerations and the benefit to the public through access.

5.7 ACCESS BY SPECIALIST RESEARCHERS

The Committee is of the view that there is widespread community support for specialist medical, historical and social research which benefits society.

As outlined earlier in the Report, there are a number of agencies which receive data by statutory authority, others through long standing practices and others on a case-by-case basis through the discretionary power of the Principal Registrar. The Committee considers that the access policy of the Registry should clearly state the criteria used to determine the public interest in allowing discretionary access.

In relation to the issues of data protection and medical research, it was noted above (4.2.2) that the adequacy of ethical standards is a complex matter involving both national and state standards and consideration of the degree of discretion these standards allow individual medical organisations. The Committee believes that guidelines concerning the ethical use of medical data should be developed. The guidelines should provide general ethical standards which any medical researcher would need to show would be met in the use of data from the Registers. The guidelines should be developed by the Registry in consultation with the New South Wales Health Department, and any other appropriate agency. As far as practicable, the guidelines should incorporate those developed by the National Health and Medical Research Council.

The Committee considers that the Principal Registrar should retain the discretionary power to consider requests which are not defined in the access policy. In this way special research projects, especially those which may develop concerning as yet unidentified illnesses, may be allowed appropriate access. The Committee supports the criteria currently used by the Principal Registrar for consideration of special research projects, viz: the reason for the research, the reputation of the organisation seeking access, the public benefit of the research and adequate protection of the data for maintaining the privacy of individuals.

Any research, medical or otherwise, should safeguard the privacy of individuals whose data is being utilised. Similar criteria should be developed and applied as ethical research protocols in, for example, the fields of history and demography.

Recommendation 19:

That access for medical research be contingent on meeting ethical and privacy guidelines on the use of the Registry. Such guidelines should be developed by the Registry in consultation with:

- the New South Wales Health Department; and
- any other appropriate agency.

As far as practicable, the guidelines should incorporate those developed by the National Health and Medical Research Council.

Recommendation 20:

That access to Registry records for special research projects not defined in the written access policy be assessed individually by the Principal Registrar, using the criteria of:

- reason for the research;
- reputation of the organisation seeking access;
- public benefit of the research; and

adequate protection of the data for maintaining the privacy of individuals.

5.8 APPEALS

Consideration was also given to the process by which a person who has been denied access to Registry data may appeal against that decision. Of some 1.65 million requests over the last five years, some eighty-five people (a proportion of minor statistical significance) wrote to the Attorney-General complaining about incidents in which access had been denied. Of those complaints twenty concerned denial of access to Indexes and fifteen related to prohibited access to a certificate when consent had not been given by the subject of the certificate. Currently an individual denied access has a right to appeal to the Minister, the Attorney General, for reconsideration of a denied request or to request the Ombudsman to investigate a refusal. However, with no legislative base for Registry access there is little leeway for the Ombudsman to exercise discretion. The Committee was advised that as the rejections made in the last five years conformed to Registry policy all were upheld.²²²

In evidence to the Committee, both the Deputy Director-General of the Attorney General's Department of New South Wales and the Principal Registrar commented on the need for an improved appeal mechanism. In evidence the Deputy Director-General, Mr Grant, said that he shared the view of the Principal Registrar that there should be an appeal mechanism, although "the difficulty is deciding what the appeal mechanism should be."²²³

Mr Grant outlined to the Committee a number of options for an appeal mechanism. The first option was appeal to the departmental head, that is, the Director-General of the Attorney General's Department. A second option suggested was a Ministerial review of the Principal Registrar's discretion. Finally it was suggested that a person be nominated to hear appeals and that such a person be nominated in the registration legislation or by the Minister, after consultation with interested groups. While people currently have appeal rights through judicial processes, the cost of court processes and the delays in matters proceeding are prohibitive.

²²² Discussion. Flett, 14.12.92

²²³ Evidence. Grant, 4.9.92, p.5

The Committee agreed that there is a need to consider an additional independent appeal mechanism. One possibility is a state Administrative Appeals Tribunal, along the lines of the Commonwealth Administrative Appeals Tribunal. The jurisdiction of such a Tribunal would be substantially beyond the terms of reference of this inquiry.

Recommendation 21:

- **That the appeals process be formalised and consideration given to the development of a further formal independent appeal mechanism in addition to those currently available.**

DISSENTING REPORT

by the Hon Ann Symonds, MLC

I oppose the majority decisions of this Committee which will have the effect of unnecessarily restricting the access to Indexes held at the New South Wales Registry and imposing undue limitations on the availability of certificates.

It must be emphasised that I am not advocating open or public access to the Birth, Death and Marriage Certificates, but I do support open access to the Indexes, which contain limited information.

Essentially, I agree with the arguments put to the Committee by the Law Reform Commission and supported by medical researchers, genealogists and historians. I note:

1. The role of the Registry of Births, Deaths and Marriages should be to allow access to information for socially accepted purposes and in keeping with the social attitudes of the day. The level of access must never be fixed but rather open to constant review and it is my firmly held opinion that an individual's right to information about their own family members, the value to the community of historically accurate accounts of our heritage and the potential advantages to be gained from the genetic 'tracking' of serious hereditary illnesses by medical researchers are all indeed socially acceptable; and
2. Open, public Indexes would encourage the collection of a minimum of detail on those Indexes and increase the accuracy of that data. Access would be more in line with publicly accepted Freedom of Information principles and more easily enable corrections.
3. Greater efficiency in the operation of the Registry would be achieved by individuals being able to search the Indexes themselves. Staff would then be able to concentrate on processing applications for certificates, the existence of which had been identified by perusal of the Index. (Of course, access to the certificates would remain governed by criteria of relationship, need and age of the record.)

The concern expressed about notations on the Index associated with adoptions, or the fact that some registrations of ex-nuptial births will contain only one name, reflects the shame and stigma associated with adoption and illegitimacy in the 1950s and 1960s, not the 1990s where

adopted people and birth parents are legally able to access their records and where ex-nuptial births are common.

4. There is no evidence from other jurisdictions that an open Register leads to invasions of privacy. The concern expressed by the passport section of the Department of Foreign Affairs and Trade can still be overcome by people needing to prove their relationship before a certificate is issued.
5. By allowing open access to the Indexes the rights of ordinary citizens would be given parity with agencies which have **statutory access**, for example, the Australian Bureau of Statistics and the Department of Social Security; and particular bodies which have **special access**, such as consulates, the Roads and Traffic Authority and professional boards.

In summary, it is my opinion that the arguments in favour of allowing open access to all Indexes are considerable. The information available on Indexes is already largely available on electoral rolls, in birth, death and marriage columns of newspapers and in probate records. The arguments used by the majority of Committee Members in defence of continued restriction fail to convince me to support increased secrecy of the records. As was often stated in evidence anyone determined to get information can do so anyway by legal if tedious means.

I also oppose the recommendations of the majority of the Committee in respect of access to Birth and Marriage Certificates. Whilst I acknowledge that a considerable amount of personal information is recorded on certificates I cannot support a policy which would, in the future, effectively increase the restrictions which currently apply under the age criterion.

There were no submissions to the Committee that supported the Law Reform Commission's proposal that, in the interests of privacy, less information should be collected on certificates. I support continued collection of detailed personal information for medical and historical benefit and agree that criteria for access to certificates should rely on relationship, need and age of record.

I believe, however, that setting the age criterion for Birth Certificates at 100 years, and Marriage Certificates to 50 years since the marriage or 30 years after the death of both parties is unnecessarily restrictive. This is particularly so when this proposal is compared to the practice of releasing sensitive Government records after 30 years have elapsed.

In Victoria there is less restriction on the access to certificates than currently exists in New South Wales, yet there have been no complaints of breaches of privacy. In Western Australia death certificates are available up until 1979.

I propose that a 75 year restriction pertain to the issue of Birth Certificates and a 30 year restriction apply to gaining Marriage Certificates.

As a general principle I believe there is no need to create obstacles to accessing information, mostly sought for legitimate reasons by worthy citizens.

Alternative Recommendation 11:

- . **That annual Birth Indexes be open up to the present time, with ongoing release.**

Alternative Recommendation 13:

- . **That Birth Certificates be made available:**
 - . **to applicants who are currently entitled on the basis of relationship, need and age of record; or**
 - . **to any person who provides written permission, from the subject of a particular certificate; or**
 - . **to any person who provides the Death Certificate of the subject of the item sought; or**
 - . **after 75 years.**

Alternative Recommendation 17:

- . **That annual Marriage Indexes be open up to the present time, with ongoing release.**

Alternative Recommendation 18:

- . **That Marriage Certificates be made available:**
 - . **to applicants who are currently entitled on the basis of their relationship, need and age of record; or**
 - . **to any person who provides identifiable written permission from a person with access because of their relationship with either of the subjects; or**
 - . **to any person providing at least thirty years have elapsed since the marriage.**

BIBLIOGRAPHY

Aronson, M and Franklin, N. *Review of Administrative Action*, Law Book Co, Sydney, 1987.

Australian Law Reform Commission. *Privacy and Personal Information*, Discussion Paper 14, Canberra, June 1980.

Australian Law Reform Commission. *Privacy Report: Background and Proposals*, Report 22, 2 vols, AGPS, 1983.

Australian Law Reform Commission. *Privacy and the Census*, Report 12, Canberra, AGPS, 1979.

Byrne, D P and Heydon, J D. *Cross on Evidence*, Butterworths, Sydney, 3rd Australian Edition, 1986.

Council of Europe. *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*, 1981.

European Commission. *Proposal for a Council Directive Concerning the Protection of Individuals in Relation to the Processing of Personal Data*, 1990.

Finn, P D. "Confidentiality and the 'Public Interest'", *Australian Law Journal*, vol.58, September 1984, pp.497-508.

Gaze, B. "Protection of Privacy", *Legal Service Bulletin*, vol.14, no.2, April 1989, pp.82-85.

Hughes, G. "An Overview of Data Protection in Australia", *Melbourne University Law Review*, vol.18, June 1991.

Independent Commission Against Corruption, Report on *Unauthorised Release of Government Information*, 3 volumes, Sydney, August, 1992.

Moore, N and Steele, J. *Information Intensive Britain: a Critical Analysis of the Policy Issues*, London, Policy Studies Institute, 1991.

New South Wales Law Reform Commission. *Names: Registration and Certification of Births and Deaths*, LRC 61, 1988.

Bibliography

New South Wales Legislative Council Standing Committee on Social Issues. *Accessing Adoption Information*, Sydney, the Committee, 1989.

Organisation for Economic Co-operation and Development. *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, 1981.

Potter, J & McMichael, A J. "Commentary: the Draft Privacy Bill - What the Epidemiologist Saw", *Community Health Studies*, vol.8, no.3, 1984, pp.332 - 334

Privacy Committee of New South Wales. *Guidelines for the Operation of Personal Data Systems*, Paper 31, 1977.

Wacks, R. *Personal Information: Privacy and the Law*, Oxford, Clarendon Press, 1989.

ACTS, BILLS AND REGULATIONS

Adoption Information Act 1990. New South Wales.

Births, Deaths and Marriages Registration Act 1966 South Australia.

Cash Transaction Reports Act 1988. Australia.

Data Protection Act 1984. United Kingdom.

Data Protection Bill 1992. New South Wales.

Evidence Act 1898. New South Wales.

Freedom of Information Act 1982. Australia.

Freedom of Information Act 1982. Victoria.

Freedom of Information and Protection of Privacy Act 1987. Ontario, Canada.

Marriage Act 1961. Australia.

Marriage Registration Act 1962. Tasmania.

Parliamentary Electorates and Elections Act 1912. New South Wales.

Privacy Act 1988. Australia.

Privacy Committee Act 1975. New South Wales.

Public Health Act 1991. New South Wales.

Registration of Births, Deaths and Marriages Act (consolidated) 1980. Northern Territory.

Registration of Births, Deaths and Marriages Act 1895. Tasmania.

Registration of Births, Deaths and Marriages Act 1959. Victoria.

Registration of Births, Deaths and Marriages Act 1961. Western Australia.

Bibliography

Registration of Births, Deaths and Marriages Act 1962. Queensland.

Registration of Births, Deaths and Marriages Act 1973. New South Wales.

Registration of Births, Deaths and Marriages Amendment Act 1992. New South Wales.

Registration of Births, Deaths and Marriages Ordinance 1963. Australian Capital Territory.

Statistics (Arrangements with States) Act 1956. Australia.

Vital Statistics Act 1980. Ontario, Canada.

SUBMISSIONS RECEIVED

- Allard, H J
 - Armidale Family History Group, Secretary, K Watkins
 - Arnold, E D
 - Atkinson, R
 - Australasian Association of Genealogists and Record Agents, H D Harris
 - Australasian Federation of Family History Organisations, President, M Killion
 - Australian Bankers' Association, National Operation Committee, Chairman, J Harding
 - Australian Bureau of Statistics, Deputy Commonwealth Statistician, D Farrell
 - Australian Council of Archives, President, P Crush
 - Australian Institute of Genealogical Studies, Member, W Nattestad
 - Australian Institute of Health, Director, Dr L R Smith

 - Bega Valley Genealogy Society Inc, President, P Rice
 - Black, D
 - Blackburn, L L
 - Blue Mountains Family History Society, Secretary/Publicity Officer, M Templeton
 - Botany Bay Family History Society Inc, Hon Secretary, M Cavanagh
 - Bowd, L M
 - Brombey, H
 - Browning, Y
 - Bull, R J
 - Bullivant, J M
 - Burke, E J
 - Burwood Drummoyne & Districts Family History Group, Secretary, K J Quinlan

 - Campbell, J H
 - Campbell, N
 - Cancer Council of NSW, Executive Director, E Henry
 - Cape Banks Family History Society Inc, H Brombey
 - Cardow, C
 - Cathro, A
 - Children's Hospital, HD Clinic, F Richards & Dr E McCusker
 - Cole, V
 - Coonamble Family History Group, Hon Secretary, G Chambers
 - Cruickshank, E
-

Submissions

- Davis, J
- Department of Foreign Affairs and Trade, Passports Operations Section, C Dyer & L Gould
- Donohoe, J H
- Dougherty, A W
- Dubbo Macquarie Family History Society Inc, J Clark
- Dubbo Macquarie Family History Society Inc, P M Harvey
- Dunn, G
- Dwyer, K N

- Eade, P M
- Emery, L
- Evans, D M
- Eurobodalla Family History Society Inc, Vice President, J Norman

- Field, N B
- Flood, E
- Fellowship of First Fleeters - Hunter Valley Chapter, J Mackie & R Meredith
- Frederick Meredith Descendants' Group, Hon Secretary, J W Gibbins

- Gardner, K A
- Genealogical Society of Queensland Inc, Hon Secretary, A Budd
- Genealogical Society of Tasmania Inc, Devonport Branch, Hon Secretary, I D Harris
- Genealogical Society of Tasmania Inc, Hobart Branch, Hon Secretary, A Hay
- Genealogical Society of Tasmania Inc, State Secretary, C Read
- Genealogical Society of Victoria Inc, G Reynolds
- Gosford City Library, Local Studies Librarian, J Baxter
- Gwydir Family History Society (Moree), H K Watts
- Gwydir Family History Society (Moree), L Watts
- Gwydir Family History Society (Moree), Hon Secretary, L Watts

- Harvey, V
- Harvey, N E
- Haspell, W A
- Hasting Valley Family History of NSW Society, J Tarby
- Hawkesbury Family History Group, J A Norris
- Heraldry & Genealogy Society of Canberra Inc, Secretary, B Moore
- Herriott, J G
- Hewitt, S
- Holohan, N
- Hope, C M
- Human Rights Australia, Privacy Branch, Head, N Waters

- Hunter Area Health Service, Regional Medical Genetics Unit, M W Partington & J Conaghan
- Ings, J L
- Independent Commission Against Corruption, Director of Corruption Prevention, A Reed
- Inverell Family History Group, A Culey
- Inverell Family History Group, Secretary, J Lyne

- Johnson, A
- Jones, E C

- Kent, A
- Kirby, AC, CMG, Hon Justice M

- Lambert, J A
- Lee, E
- Lee, R A
- Lithgow & District Family History Society Inc
- Liverpool & District Family History Society, President, B G Shepherd
- Lock, C
- Lockhart, A N
- Longley, The Hon J, MP, Minister for Community Services and Assistant Minister for Health

- Mackie, C
- Manning, K & I
- Mathews, R G
- May, N D & B A
- McCloskey, Lt Col E A
- McDonald, M D
- McIntyre Research Pty Ltd, P C McIntyre
- McKelvey, N
- McRae-Clift, A S
- Murphy, C
- Mutch, MLC, Hon S B

- Nash, T
- Neal, P E
- Nepean Family History Society, B Carpenter

Submissions

- Nepean Family History Society Inc, P V James
 - Nepean Family History Society Inc, Hon Secretary, K E Radford
 - Nepean Family History Society, A Simpson
 - Newcastle Family History Society Inc, I J Lyons
 - NSW Association of Family History Societies, President, H Garnsey

 - Ogle, F
 - OTC Lawpoint, Lawpoint Pty Ltd, Managing Director, E Griffin

 - Parkes, D S
 - Pauling, R G
 - Pearson, B I
 - Pearson, G
 - Privacy Committee NSW, Executive Member, Dr J Morgan

 - Queensland Family History Society Inc, R M Adamson

 - Registry of Births, Deaths and Marriages, NSW, G Taylor
 - Repatriation General Hospital (Concord), Aged & Extended Care Department, Medical Research Historian, Dr J Harrison
 - Roads and Traffic Authority NSW, Driver Licensing Branch, General Manager, D Campbell
 - Ryde District Historical Society Inc, Secretary, J Dawson

 - Saundercock, H J
 - Scott, W D & L J
 - Scriptorium Family History Centre, N Vine Hall
 - Shoalhaven Family History Society Inc, Secretary, M Boyd
 - Shoalhaven Family History Society Inc, T & M Burton
 - Shoalhaven Family History Society Inc, E Farrar
 - Shoalhaven Family History Society Inc, R J Forsyth
 - Shoalhaven Family History Society Inc, E D Herne
 - Shoalhaven Family History Society Inc, C Kerio
 - Shoalhaven Family History Society Inc, J C Linsley
 - Shoalhaven Family History Society Inc, M Newnham
 - Shoalhaven Family History Society Inc, J V Sweet
 - Shoalhaven Family History Society Inc, H Thorne
 - Shoalhaven Family History Society Inc, President, W D Vost
 - Shoalhaven Family History Society Inc, J West
 - Society of Australian Genealogists, Executive Officer, H Garnsey
 - Social Workers in Aids Committee of NSW, M Flarey & P McCorriston
 - Southeron, J A
-

- Stafford, D J
- Storer, C
- Strachan, P L
- Sturt, D & G

- Taylor, H
- Taylor, G E & M L
- Telfer, L
- Thomson, B
- Tracy, H
- Traynor, G
- Tamworth Family History Group, L W Brown
- Tamworth Family History Group, J L Butler
- Tamworth Family History Group, A Prince
- Tamworth Family History Group, C G Rinnick
- Tamworth Family History Group, A Ware
- Tamworth Family History Group, J Westley
- Tamworth Family History Group, J & J Williams
- Tink, MP, A A

- University of New England, History Department, Associate Professor A Atkinson & Professor S Arasaratnam
- University of NSW, History School, Dr F Farrell
- University of Sydney, Repatriation General Hospital (Concord), Aged & Extended Care Department, Research Officer, Dr W S Brooks
- University of Technology, Kuring-gai Campus, Reference Librarian, S Pedersen

- Van Diemen's Land - Norfolk Island Interest Group, Convenor, I Schaffer

- Western Australian Genealogical Society Inc, Secretary, P Clatworthy
- Whatson, B
- Wilson, J
- Worthington Clark Pty Ltd, J Worthington

- Young, D I
- Young, E D
- Young & District Family History Group Inc, Hon Secretary, R Griffiths

- 1788-1820 Pioneer Association, Honorary Secretary, F Blundell

WITNESSES AT FORMAL HEARINGS

NAME	REPRESENTING/CAPACITY
Mr B Alston	Privacy Committee of New South Wales
Ms A Bailey	NSW Law Reform Commission
Mr J Broom	Federal Attorney General's Department
Ms D Campbell	NSW Roads and Traffic Authority
Mr J Conaghan	Regional Medical Genetics Unit, Hunter Area Health Service, NSW
Mr N A Cowley	Australian Bureau of Statistics
Mr J Donahoe	Genealogist
Mr D P Farrell	Deputy Commonwealth Statistician, Australian Bureau of Statistics
Ms B Flett	Principal Registrar, NSW Registry of Births, Deaths and Marriages
Professor H Gamble	Former NSW Law Reform Commissioner
Ms H Garnsey	Society of Australian Genealogical Research
Mr L Gould	Department of Foreign Affairs and Trade
Mr B Grant	NSW Attorney General's Department
Ms E Henry	Executive Director, NSW Cancer Council
Ms M Jackson	Federal Attorney General's Department
Mr M Killion	Australasian Federal Family History Organisation

Witnesses

Hon Justice M Kirby, AC, CMG	Private Citizen
Ms M McDonald	Benevolent Society Post Adoption Resource Centre
Mr G Middleweek	Department of Foreign Affairs and Trade
Mr R Miller	NSW Registry of Births, Deaths and Marriages
Dr J Morgan	Executive Member, Privacy Committee of New South Wales
Ms F Richards	Medical Genetics Unit, The Royal Alexandra Hospital for Children
Mr A Rose	Secretary, Federal Attorney General's Department
Dr L R Smith	Director, Australian Institute of Health
Professor P Spearritt	National Centre for Australian Studies, Monash University
Mr S Stretton	NSW Independent Commission Against Corruption
Associate Professor R Taylor	Head, NSW Central Cancer Registry
Mr A A Tink, MP	Parliamentarian
Ms N Townsend	Lecturer, Department of History, University of New England
Mr N Vine Hall	Genealogist
Mr N Waters	Human Rights and Equal Opportunity Commission
Ms J Worthington	Society of Australian Genealogists

The Committee also heard in-camera evidence from four witnesses

HEARING AND MEETING DATES

- WEDNESDAY 29TH JULY 1992
- THURSDAY 30TH JULY 1992
- WEDNESDAY 5TH AUGUST 1992
- THURSDAY 6TH AUGUST 1992
- FRIDAY 4TH SEPTEMBER 1992
- FRIDAY 18TH SEPTEMBER 1992
- MONDAY 12TH OCTOBER 1992
- FRIDAY 16TH OCTOBER 1992
- FRIDAY 20TH NOVEMBER 1992
- MONDAY 30TH NOVEMBER 1992
- FRIDAY 18TH DECEMBER 1992
- TUESDAY 9TH FEBRUARY 1993
- THURSDAY 25TH FEBRUARY 1993

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

Appendix 2

- (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*
-

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*
-

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 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.