

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.**

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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.

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

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

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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
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 - Coonamble Family History Group, Hon Secretary, G Chambers
 - Cruickshank, E
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- Donohoe, J H
- Dougherty, A W
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- Eade, P M
- Emery, L
- Evans, D M
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- Flood, E
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- Gardner, K A
- Genealogical Society of Queensland Inc, Hon Secretary, A Budd
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- Genealogical Society of Tasmania Inc, Hobart Branch, Hon Secretary, A Hay
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- 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
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- Harvey, N E
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- Holohan, N
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- 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
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- 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
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- 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
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- Murphy, C
- Mutch, MLC, Hon S B

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 - Nepean Family History Society Inc, Hon Secretary, K E Radford
 - Nepean Family History Society, A Simpson
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 - 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
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 - Shoalhaven Family History Society Inc, J V Sweet
 - Shoalhaven Family History Society Inc, H Thorne
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 - 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 McCorrison
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- Stafford, D J
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- Sturt, D & G

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- Taylor, G E & M L
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- Thomson, B
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- 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
