

LEGISLATIVE COUNCIL
Question on notice

Tuesday, 18 August 2015

3347. Hon Robin Chappie to the Attorney General.

I refer to the Birth Certificate Registration 28190/1886 (Jane Ring) and the photograph entitled, "Aboriginal Jane - Birth Certificate" which may be found at <http://www.robinchapple.com/qdata>. This certificate was requested by a relative family member in 2013. A certificate was issued on 2 September 2013, and records the Mother as "Jane". The family member who requested the certificate re-visited the Births Deaths and Marriage (BDM) office on 12 November 2013 and was advised that the word "Aboriginal" had been removed as it may cause offense. He inquired about how he could get a certificate that had not been redacted and was requested to complete a statutory declaration stating that he would not be offended if the word "Aboriginal" appeared on the certificate. He subsequently completed a statutory declaration and was issued with a certificate dated 12 November 2013 that records the Mother as "Jane (Aboriginal)". I ask:

- (a) why does the BDM Registrar issue certificates with the removal of the word "Aboriginal" (or variations such as "Aborigine" or "Aboriginal native");
 - (b) is the redaction of the word "Aboriginal" from BDM certificates occurring at the direction of the Registrar in accordance with section 57(2) of the *Births Deaths and Marriages Registration Act 1998*;
 - (c) if no to (b), what is the reason for the redaction and who authorised it;
 - (d) if yes to (b), how has it been determined by the Registrar or any other authorising body that the appearance of the word "Aboriginal" on BDM certificates is "offensive";
 - (e) what advice, if any, is provided about the redaction of the word "Aboriginal" to those requesting the certificates;
 - (f) where the word "Aboriginal" (or similar terms) appears on handwritten event registrations, is this being entered into the Western Australian Registry (WARS) database;
 - (g) what is the archiving procedure for the event registrations that have been entered into the WARS database;
 - (h) is there a Native Title Access Policy to BDM records;
 - (i) if yes to (h), where is the policy document;
 - (j) if no to (h), why not;
 - (k) if no to (h), what access do Native Title Representative Bodies (NTRB) have to BDM records;
 - (l) if no to (h), what access do State Solicitors Office (SSO) researchers have to BDM records; and
 - (m) if there is differential access to BDM records for NTRB and the SSO in relation to Native Title Determination Applications, how does this affect the State's standing as model litigant?
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Answer

- (a)-(e) Depending on the year of registration, there were a number of data items collected for births that are not formally printed on certificates including but not limited to, child's gestation period, delivering Doctors name, birth weight, parent's year of arrival in Australia if bom overseas and Aboriginality. It is not practical to document and identify all the different data items not included on certificates since 1841 as they vary considerably in what details are printed.

Information on Aboriginality was formally collected by the Registry in the 1980s, with persons able to self-identify their Aboriginality. The Birth Registration forms states that Aboriginality is collected for statistical purposes only and will not appear on birth certificates

Accordingly, the word "Aboriginal" (or other similar word) is not generally reproduced on duplicates certificates unless it cannot be easily redacted.

I am informed that a person's Aboriginality in certain historical records prior to the 980s, have been recorded in derogatory terms. While the word "Aboriginal" *per se* is not considered to be offensive, expressions considered by the Registrar to be offensive, are so are redacted from certificates pursuant to section 57(2) of the *Births, Deaths and Marriages Registration Act 1998*.

Furthermore, I am advised that the Registry is often requested, by applicants, to re-issue a certificate to exclude reference to Aboriginality.

- (f)-(g) An image of the original paper-based register is kept in the database.

- (h)-(j) In about June 2006, the Registry and representatives from such interested agencies, now known as the Land, Approvals of Native Title Unit of the Department of the Premier and Cabinet, State Solicitor's Office, Department of Indigenous Affairs and the National Native Title Tribunal discussed and developed an approach to coordinate research access to Registry records for Native Title Representative Bodies (NTRBs).

A Native Title Access Agreement was developed but only two NTRBs executed the agreement.

In December 2010 the access arrangements approved under the Agreement were discontinued following a review of the Registry's practices regarding physical access to sensitive information by external agents and the public generally. This was in light of increased expectations around information security and heightened community expectations around the security of personal records, particularly identity information. Also, neither of the NTRBs which signed the Agreement had requested access to records or visited the Registry pursuant to the Agreement.

- (k) NTRBs may seek access to records as agents of individual Aboriginal persons who otherwise satisfy the requirements for access to records. If NTRBs are not acting for individual Aboriginal persons in this way, they have the same general capacity to access records as other members of the public or government agencies, apart from the State Solicitor's Office (see the answer to part (l) below).

- (l) The State Solicitor's Office has access to BDM records pursuant to an Access Agreement entered into March 2012.
- (m) If the State seeks to rely upon any BDM records as part of litigated proceedings, the State is required to either provide or make available to interested parties copies of the relevant records. The State's standing as a model litigant is not affected by the differential access held by the State Solicitor's Office.

A handwritten signature in cursive script, appearing to read "Christopher". The signature is written in black ink and is centered on the page.

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- (m) if there is differential access to BDM records for NTRB and the SSO in relation to Native Title Determination Applications, how does this affect the State's standing as model litigant?

Answer

- (a)-(m) Please refer to Legislative Council Question on Notice No. 3347.

