

The Senate

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Community Affairs  
References Committee

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Commonwealth Contribution to Former Forced Adoption  
Policies and Practices

February 2012

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# **Recommendations**

## **Recommendation 1**

**8.46** The committee recommends that a national framework to address the consequences of former forced adoption be developed by the Commonwealth, states and territories through the Community and Disability Services Ministers Conference.

## **Recommendation 2**

**9.56** The committee recommends that the Commonwealth Government issue a formal statement of apology that identifies the actions and policies that resulted in forced adoption and acknowledges, on behalf of the nation, the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.

## **Recommendation 3**

**9.57** The committee recommends that state and territory governments and non-government institutions that administered adoptions should issue formal statements of apology that acknowledge practices that were illegal or unethical, as well as other practices that contributed to the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.

## **Recommendation 4**

**9.58** The committee recommends that apologies by the Commonwealth or by other governments and institutions should satisfy the five criteria for formal apologies set out by the Canadian Law Commission and previously noted by the Senate Community Affairs Committee.

## **Recommendation 5**

**9.76** The committee recommends that official apologies should include statements that take responsibility for the past policy choices made by institutions' leaders and staff, and not be qualified by reference to values or professional practice during the period in question.

## **Recommendation 6**

**9.81** The committee recommends that formal apologies should always be accompanied by undertakings to take concrete actions that offer appropriate redress for past mistakes.

## **Recommendation 7**

**9.85** The committee recommends that a Commonwealth formal apology be presented in a range of forms, and be widely published.

## **Recommendation 8**

**10.58** The committee recommends that the Commonwealth, states and territories urgently determine a process to establish affordable and regionally available specialised professional support and counselling services to address the specific needs of those affected by former forced adoption policies and practices.

## **Recommendation 9**

**10.59** The committee recommends that the Commonwealth fund peer-support groups that assist people affected by former forced adoption policies and practices to deliver services in the areas of:

- promoting public awareness of the issues;
- documenting evidence;
- assisting with information searches; and
- organising memorial events;

And that this funding be provided according to transparent application criteria.

## **Recommendation 10**

**10.60** The committee recommends that financial contributions be sought from state and territory governments, institutions, and organisations that were involved in the practice of placing children of single mothers for adoption to support the funding of services described in the previous two recommendations.

## **Recommendation 11**

**11.36** The committee recommends that the Commonwealth should lead discussions with states and territories to consider the issues surrounding the establishment and funding of financial reparation schemes.

## **Recommendation 12**

**11.43** The committee recommends that institutions and governments that had responsibility for adoption activities in the period from the 1950s to the 1970s establish grievance mechanisms that will allow the hearing of complaints and, where evidence is established of wrongdoing, ensure redress is available. Accessing grievance mechanisms should not be conditional on waiving any right to legal action.

## **Recommendation 13**

**12.33** The committee recommends that

- all jurisdictions adopt integrated birth certificates, that these be issued to eligible people upon request, and that they be legal proof of identity of equal status to other birth certificates, and

- jurisdictions investigate harmonisation of births, deaths and marriages register access and the facilitation of a single national access point to those registers.

#### **Recommendation 14**

**12.36 The committee recommends that:**

- All jurisdictions adopt a process for allowing the names of fathers to be added to original birth certificates of children who were subsequently adopted and for whom fathers' identities were not originally recorded; and
- Provided that any prescribed conditions are met, the process be administrative and not require an order of a court.

#### **Recommendation 15**

**12.104 The committee recommends that the Community and Disability Services Ministers Conference agree on, and implement in their jurisdictions, new principles to govern post-adoption information and contact for pre-reform era adoptions, and that these principles include that:**

- All adult parties to an adoption be permitted identifying information;
- All parties have an ability to regulate contact, but that there be an upper limit on how long restrictions on contact can be in place without renewal; and
- All jurisdictions provide an information and mediation service to assist parties to adoption who are seeking information and contact.

#### **Recommendation 16**

**12.114 The committee recommends that the Commonwealth provide funding to extend the existing program for family tracing and support services to include adoption records and policies, with organisations such as Link-Up Queensland and Jigsaw used as a blueprint.**

#### **Recommendation 17**

**12.115 The committee recommends that the states and territories extend their Find and Connect information service to include adoption service providers.**

#### **Recommendation 18**

**12.116 The committee recommends that non-government organisations with responsibility for former adoption service providers (such as private hospitals or maternity homes) establish projects to identify all records still in their possession, make information about those institutions and records available to state and territory Find and Connect services, and provide free access to individuals seeking their own records.**

#### **Recommendation 19**

**12.123 The committee recommends that the Community and Disability Services Ministers Conference, in consultation with non-government organisations that had responsibility for adoption services and hospitals, agree on and commit to a statement of principles for access to personal information, that would include a commitment to cheaper and easier searches of, and access to, organisational records.**

**Recommendation 20**

**13.9 The committee recommends that the Commonwealth commission an exhibition documenting the experiences of those affected by former forced adoption policies and practices.**

# Chapter 1

## Introduction

1.1 On 15 November 2010, the Senate referred to the Community Affairs References Committee an inquiry into former forced adoption policies and practices. The motion covered more than just the terms of reference for the inquiry:

(1) That the Senate:

(a) acknowledges the recent apology given by the Western Australian Parliament to those mothers whose children were removed and given up for adoption from the late 1940s to the 1980s; and

(b) notes that policies and practices resulting in forced adoptions were widespread throughout Australia during that time.

(2) That the following matters be referred to the Community Affairs References Committee for inquiry and report by 30 April 2011:

(a) the role, if any, of the Commonwealth Government, its policies and practices in contributing to forced adoptions; and

(b) the potential role of the Commonwealth in developing a national framework to assist states and territories to address the consequences for the mothers, their families and children who were subject to forced adoption policies.

1.2 Originally intended to report by 30 June 2011, the large volume of submissions and the complexity of the subject led the committee to seek extensions for its work, first to 21 November 2011, and then to 29 February 2012.

1.3 The committee advertised the inquiry online and in a national newspaper, as well as writing to a range of governments, organisations and individuals, inviting submissions. The committee ultimately received submissions from 418 individuals and organisations, including large volumes of archival material from some of them. The committee also obtained and published a range of additional information, correspondence, and answers to questions placed on notice with witnesses. The submissions and other evidence published are listed in Appendix 1. The committee also has files of correspondence that it has considered, but has not published.

1.4 The committee held ten public hearings, visiting every capital city except Darwin. The hearings and witnesses are listed in Appendix 2. The committee also made use of a range of documentary records, discussed later in this chapter.

### *Treatment of evidence*

1.5 An inquiry into a topic such as forced adoption elicits sensitive evidence that can raise a range of issues for the committee and for the witnesses. The committee had to decide how to handle documents provided to it. The main principles that the committee was concerned to apply were:

- Not accepting material that did not bear on the committee's terms of reference;
- Observing the Senate's requirements for the protection of witnesses;
- Not prejudicing individuals' capacity to pursue legal action;
- Not intruding on the privacy of either witnesses or third parties; and
- Not publishing material that could affect individuals unless it was relevant to the inquiry.

1.6 The main consequences were that the committee acted to ensure:

- protection of the privacy of individuals, through keeping submissions confidential or withholding the name of the submitter or witness if they asked;
- protection of the privacy of third parties, through the removal of some names, dates and places from submissions or evidence; and
- that private records of individuals, such as hospital records, birth certificates and adoption papers, were not published.

1.7 While much of this private evidence was not published, it was still considered by the committee and helped inform its understanding of the issues.

1.8 Copies of some key documents were provided by several different witnesses. In those cases where the committee believed it to be in the interest of the inquiry to accept these, it accepted just one copy of the document.

### **The language of adoption**

1.9 Adoption is a difficult subject to write about in a manner acceptable to everyone affected by it. Forced adoption even more so. Mothers who were forced to give up children for adoption generally reject the terms 'birth mother' or 'biological mother', and some reject 'natural mother'. The preferred term is often simply 'mother'. However, this may be unacceptable to an adoptive mother who has raised a child. The same applies to fathers. In a similar way that many submitters to the inquiry find the term 'relinquishing mother' insulting and inaccurate, many adoptive parents reject the term 'adopters'.

1.10 Some people who did not grow up with their natural mothers and fathers also raised the issue of language with the committee. People who were born in 1950s–70s, and are now middle aged, do not appreciate being referred to as 'adopted children'. Others do not favour the term 'adoptee' either.

1.11 The committee sought to write in an unbiased way that clearly differentiates between the parties to adoption. In doing so, the committee needed to balance its awareness of the sensitivities of language with its need to communicate to a wide audience that includes people who have no prior knowledge of the issues discussed in this report.

1.12 Wherever possible in this report, the committee has used the term 'mother' to refer to a person who has given birth to a child. However, in situations where further clarity is needed, it has used the terms 'natural mother' and 'adoptive mother' to make a distinction between these parties. Similar distinctions are drawn between 'natural fathers' and 'adoptive fathers', and 'natural parents' and 'adoptive parents' where necessary.

1.13 The committee has used the terms 'baby' and 'child' when describing adoption processes concerning babies and children. However, when referring to people who were adopted and are now adults, the committee has used the term 'adopted person'.

1.14 The committee appreciates that there may be some people who will remain dissatisfied with the language of its report, but has identified this approach as the best possible balance between sensitivity for individuals and clarity for a wider audience.

### **The scope of this inquiry**

1.15 This was an inquiry into the Commonwealth contribution to former forced adoption policies and practices. The nature of the Commonwealth's role is the subject of subsequent chapters. The committee wishes to begin by explaining the subject of its inquiry and how it has approached its report.

1.16 Adoption is 'the legal process which permanently transfers all the legal rights and responsibilities of being a parent from the child's birth parents to the adoptive parents'.<sup>1</sup> For some adoptions, the adoptive parents are people known to the child, and may be relatives of the child. These are referred to as 'known' child adoptions. Of the other adoptions, some are of Australia children (local adoptions), while others are intercountry adoptions. In Australia in 2009–2010, there were 412 adoptions, of which 129 were 'known' child adoptions, 61 were local adoptions, and 222 were intercountry adoptions.<sup>2</sup>

1.17 Adoption as it is now understood is a peculiarly twentieth century phenomenon. Modern adoption essentially did not exist until the late nineteenth century. It became widespread only in the mid-twentieth century and has since been in rapid decline. A short account of how adoption worked during the period of concern to the committee is found later in this chapter. Chapter 2 examines in more detail the evolution of adoption during the early part of the twentieth century and the social circumstances in which it took place.

1.18 This inquiry was about **forced** adoption. This committee has not been asked to examine adoption practices other than in the context of force or coercion. This

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1 New South Wales Department of Families and Community Services, *Adoption*, [http://www.community.nsw.gov.au/parents\\_carers\\_and\\_families/fostering\\_and\\_adoption/adoption.html](http://www.community.nsw.gov.au/parents_carers_and_families/fostering_and_adoption/adoption.html) (accessed 21 November 2011).

2 Australian Institute of Health and Welfare, *Adoptions Australia 2009–10*, AIHW, Canberra, December 2010, p. 44.

inquiry began with the premise, set out in the referring motion, that policies and practices resulting in forced adoptions were widespread throughout Australia in the post-war period. The committee believes it to be incontrovertible that forced adoption was common. It occurred when children were given up for adoption because their parents, particularly their mothers, were forced to relinquish them or faced circumstances in which they were left with no other choice.

1.19 There were many different ways in which forced adoption occurred. Chapters 3 and 4 relate the accounts presented to this committee. These accounts ranged from experiences of being physically shackled to beds, to social workers failing to advise mothers of government payments that may have been available to support them to keep their child. Some people who were adopted as a result of forced adoption, and who gave evidence to this inquiry, reported painful childhoods living with their adopted families, sometimes including experiences of abuse.

1.20 This inquiry was about **former** forced adoption. Australian adoption law and practice changed rapidly from the late 1970s to the early 1990s, mirroring rapid social change in that period. Almost all the issues that were raised with the committee concerned adoptions that took place between the late 1950s and the mid-1970s. The committee did not, in general, consider current adoption law and practice. However, many submitters argued for changes to current adoption laws and practices, and the committee did consider these in the context of the second part of its terms of reference, namely any 'potential role of the Commonwealth in developing a national framework to assist states and territories to address the consequences for the mothers, their families and children who were subject to forced adoption policies'. In the final chapter, the committee also reflects on lessons to be learned from past adoption practices that may be relevant to current policy challenges.

1.21 Because this inquiry has focussed on events that took place 35 to 50 years ago, it has made extensive use of accounts provided by parents typically in their 50s to 70s, and of adopted people now in their 30s or 40s. The committee acknowledges the long period of pain and frustration that many people have experienced in seeking recognition of the issues they have raised, and the suffering they have experienced.

1.22 The time that has elapsed since the events in question has had consequences for the availability of evidence. The committee heard of cases where records had been lost or destroyed over the intervening period.<sup>3</sup> There are almost certainly no officers responsible for policy and administrative practices in the 1960s still working in government agencies. Some institutions involved in adoption during the period in question no longer exist. The committee examined a range of legislation, submissions and archival documents to help it understand past practices. The material is described later in this chapter, and its use is most relevant to Chapter 6 and 7, which review the development of uniform adoption laws in the early 1960s.

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3 For example, Uniting Care Wesley Adelaide Inc and Uniting Church of South Australia, *Submission 376*.



1.23 This inquiry was about the **Commonwealth's contribution** to former forced adoption policies and practices. Adoption has been, and remains, a responsibility of the state and territory governments, and the relevant laws are state and territory laws. The operations of state and territory laws, state and territory-funded organisations, and private organisations operating under state or territory jurisdiction, are outside the scope of this committee's work, but inevitably emerged as issues during the inquiry.

1.24 The Commonwealth's role has generally been indirect, but not insignificant. The committee paid particular attention to two areas of concern. First, the Commonwealth has since the 1940s taken primary responsibility for providing a range of social security benefits. Eligibility for these benefits has affected the options available to parents, particularly single mothers, if they have been considering whether to keep a new baby or surrender him or her for adoption. This is considered in Chapter 5. Second, the Commonwealth took a lead role in reform of adoption laws in the 1960s, even though it was not directly responsible for those laws. This is reviewed in Chapters 6 and 7.

1.25 Notwithstanding the Commonwealth's limited direct role in adoption, it has in the past taken a leadership and coordination role on this and other matters of national significance. The committee was asked to examine what role the Commonwealth should play in helping the states and territories to address the consequences of past forced adoption practices. The importance of a national framework is discussed in Chapter 8. Chapters 9 to 12 focus on each of the four main areas of concern to people affected by past adoption practices:

- the need for recognition and an apology;
- specialised support services;
- access to information and records, and the laws that regulate information and contact; and
- the question of compensation.

1.26 Before turning to issues specific to forced adoption, the committee wishes to place it in the context of adoption generally, in post-war Australia.

## **Adoption in Australia**

1.27 The NSW Law Reform Commission defines adoption as:

Adoption is a legal process by which a person becomes, in law, a child of the adopting parents and ceases to be a child of the birth parents. All the legal consequences of parenthood are transferred from the birth parents to the adoptive parents. The adopted child obtains a new birth certificate showing the adopters as the parents, and acquires rights of support and rights of inheritance from the adopting parents. The adopting parents acquire rights to guardianship and custody of the child. Normally the child takes the adopters' surname. The birth parents cease to have any legal obligations towards the child and lose their rights to custody and

guardianship. Inheritance rights between the child and the birth parents also disappear.<sup>4</sup>

1.28 For the purposes of this inquiry, 'forced adoption' means adoption where a child's natural parent, or parents, were compelled to relinquish a child for adoption. The nature of this force is described in later chapters.

1.29 The majority of submissions received by the committee were from mothers who related their personal experience of a 'forced adoption'. In general, these mothers were young unmarried women at the time of the child's birth. The committee has not heard from married women who felt compelled to place a child for adoption.<sup>5</sup> There were very few submissions from young unmarried women who successfully resisted pressure to place a child for adoption.<sup>6</sup> The committee also received few submissions from private adoption agencies, medical professionals, welfare officers, or counsellors.

### *Numbers of adoptions*

1.30 Many submitters to the inquiry testified that adoption was common during the post-war period and that large numbers of people have been affected by adoption. Typical figures referred to have included 'approximately 40 000' between 1965 and 1972,<sup>7</sup> 'over 250 000' over the period covered by records,<sup>8</sup> and 'over 200 000 babies taken'.<sup>9</sup> Dr Daryl Higgins noted that:

Inglis (1984) claimed that, in Australia, more than 250 000 women have relinquished a baby for adoption since the late 1920s. Although she did not describe the basis for this calculation, it is one that has been widely cited since.<sup>10</sup>

1.31 From 30 June 1969, nationwide adoption data has been available, collected by the Standardisation of Social Welfare Statistics Project (WELSTAT), the Australian Bureau of Statistics (ABS) and the Australian Institute of Health and Welfare (AIHW).

1.32 The data show that the number of adoptions in Australia peaked in 1971–1972, when 9798 adoptions were recorded. Four years later this number had halved to

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4 NSW Law Reform Commission, *Review of the Adoption of Children Act 1965*, Issues Paper No. 9, 1993, para 2.1.

5 Though there was one submission from a married woman who was separated from her husband.

6 For example, *Submission 32*.

7 Mrs Barbara Maison, *Submission 14*.

8 VANISH Inc., *Submission 160*.

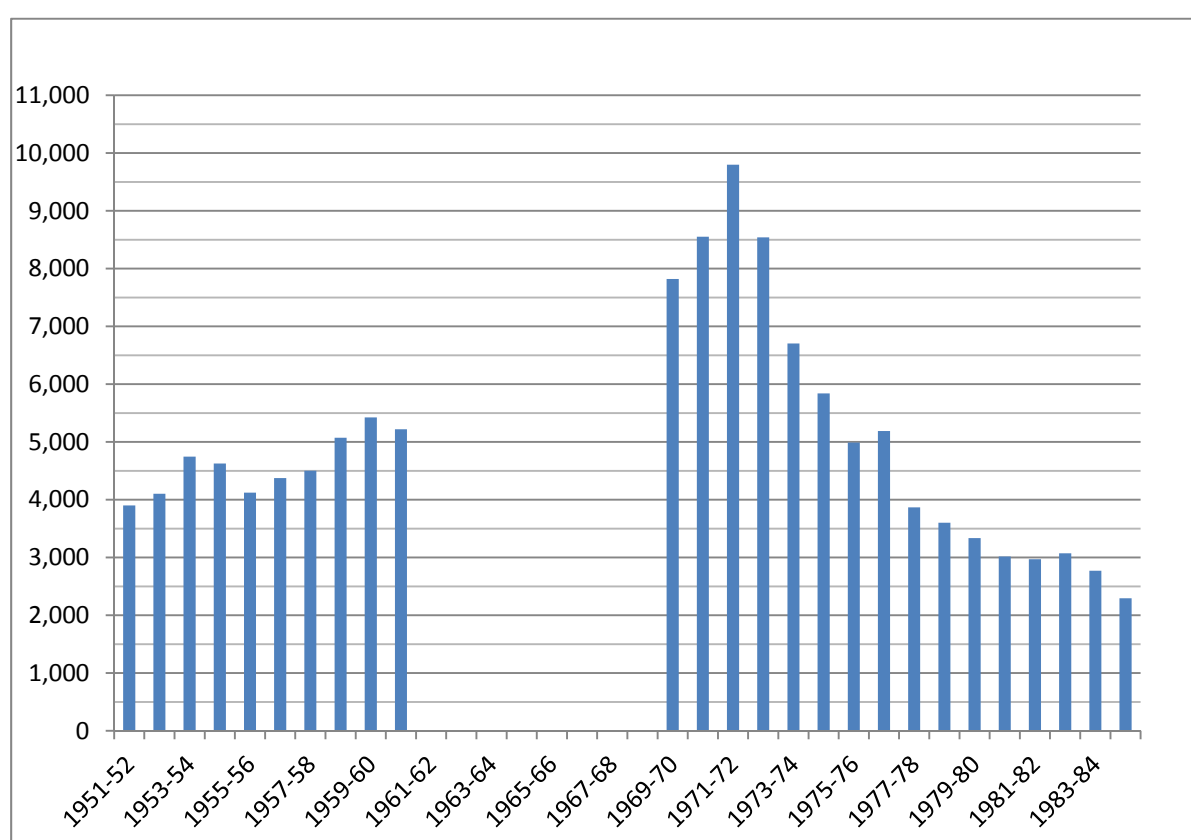
9 Ms Christine Cole, *Submission 223*.

10 Daryl Higgins, *Impact of past adoption practices: Summary of key issues from Australian research: Final Report*, March 2010, Australian Institute for Family Studies, citing K. Inglis, *Living mistakes: Mothers who consented to adoption*, Allen and Unwin, North Sydney, 1984.

4990. By 1979–1980 the number of adoptions had again dropped to one third (3337).<sup>11</sup> By 2009–2010 there were only 412 adoptions recorded throughout Australia.

1.33 Although national data was not gathered prior to 1969, the committee extracted some figures from files held by the National Archives of Australia (NAA).<sup>12</sup> These figures are for years up to and including 1960. While there remains an eight-year gap in the data from 1961 to 1969, once the archival figures are combined with AIHW-collated data,<sup>13</sup> they provide the most complete record to date of adoption statistics in Australia, and are summarised in Figure 1.1. The full set of figures, from all sources, is reproduced in Appendix 4.

**Figure 1.1—Numbers of adoptions in Australia 1951–1985**



11 Australian Bureau of Statistics, *Family Formations: Adoptions*, <http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/c14cbc586a02bfd7ca2570ec001909fc!OpenDocument> (accessed 18 March 2011).

12 In particular NAA, A432 1966/2404 Part 2, *Uniform Adoption Legislation*, draft letter to the Attorney-General, 11 July 1963, folio p. 49, digital p. 326; NAA, A432 1961/2241 Part 2, *Uniform Adoption Legislation—Material prepared by the States*, Number of Adoptions in Each State During Period 1951–60, folio p. 134, digital p. 91; State of Victoria: Summary of Adoption Orders made from 1939–1960, digital p. 59.

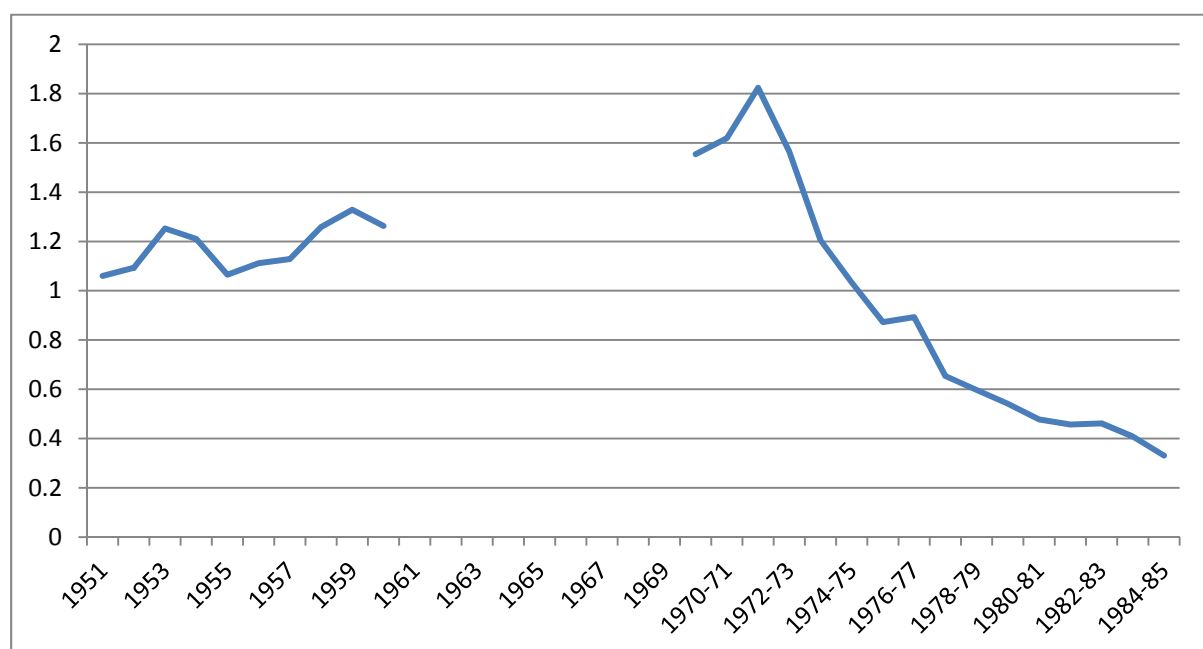
13 Australian Institute of Health and Welfare, *Adoptions Australia 2004–2005*, *Child Welfare Series No. 37*, 2005, Table 1, p. 5; Australian Institute of Health and Welfare, *Adoptions Australia 2009–2010*, *Child Welfare Series No. 50*, December 2010, Table A.1, p. 43.

1.34 These figures show a steady rise in the numbers of adoptions through the 1950s, though with a hiatus in 1955–56, perhaps reflecting interruptions to the administration of the process as governments and the public absorbed relevant implications of the *Mace v. Murray* High Court decision, which was delivered in March 1955.<sup>14</sup>

1.35 Combining the data above with an assumption that adoption numbers increased at a uniform, steady pace from 1962 to 1969, suggests that the number of adoptions between 1951 and 1975 was between 140 000 and 150 000. Total adoptions from 1940 (the first year for which the committee found records) to the present day would be well in excess of 210 000, and could be as high as 250 000. The committee concluded that all of the estimates of numbers quoted above, both from submitters and from Inglis's 1984 study, appear roughly accurate.

1.36 The period from 1950 to 1970 was also one of rapid population growth. Once that growth is taken into account, the *rate* of adoption (as distinct from the absolute *number*) increased by a more modest degree than the graph above would suggest. Nevertheless, it did significantly increase from the 1950s until 1971. Figure 1.2 shows the *rate* of adoptions per 1000 Australians aged 20–49 (the age group from which almost all adopting parents were drawn).

**Figure 1.2—Rate of adoptions in Australia 1951–1985**

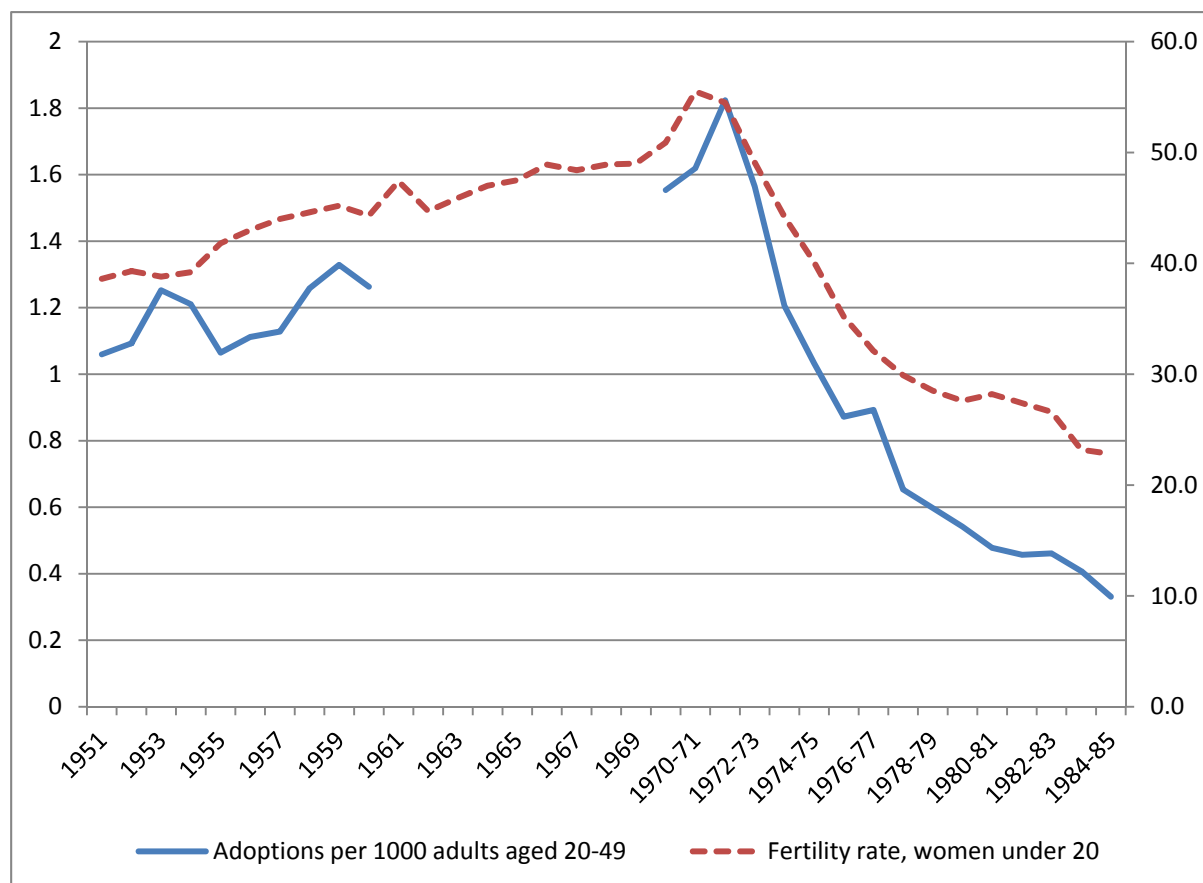


1.37 The rapid decline in adoption after 1971–72 was very closely correlated with a rapid decline in births amongst women generally, and amongst teenage women in particular. This decline, which began in 1970, is shown in Figure 1.3 below, which compares rates of adoption with rates of births to teenage women. While there is a

<sup>14</sup> *Mace v Murray* (1955) 92 CLR 370.

clear relationship between the two, there is a range of possible causes. It may have been influenced by the effective legalisation of abortion, or by the widespread introduction of family planning advice and contraception (both of which occurred around 1969 and 1970). Other factors such as the economic circumstances of mothers may have also played a role, although the introduction by the Whitlam Government in 1973 of the Supporting Mothers Benefit did not occur until two years after the rate of adoption started to plummet. This benefit is discussed further in Chapter 5.

**Figure 1.3—Rates of adoption and teenage fertility, 1951–1985**



1.38 Adoptions were commonly arranged for the babies of single mothers; the women who gave evidence to this committee were unmarried at the time they gave birth. The committee located little evidence on the prevalence of the adoption of children of single mothers during this period. Royal Women's Hospital Victoria indicated that from the 1950s to the early 1970s, between 15 and 30 per cent of births to single mothers resulted in 'hospital arranged adoption'.<sup>15</sup> However, adoptions were often arranged by other organisations, so the total proportion would have been higher, with a figure closer to 60 per cent quoted for 1968.<sup>16</sup> The New South Wales

<sup>15</sup> *Submission 399*, p. 4.

<sup>16</sup> This dropped to 40 per cent in 1972 and 20 per cent in 1975. Janet McCalman, *Sex and Suffering: Women's Health and a Women's Hospital*, Melbourne University Press, Melbourne, 1998, p. 342. See also Royal Women's Hospital, *Submission 399*, p. 83.

Parliamentary Committee recorded that in 1972 (the peak for adoptions in that state), there were 4564 adoptions, representing about 46 per cent of births to unmarried women.<sup>17</sup> However, a small number of adoptions would have been of babies of married women, so the actual percentage could have been lower. The figures for Victoria are similar.<sup>18</sup>

1.39 While there are some reliable figures for numbers of adoptions, it is impossible to estimate the number of *forced* adoptions which have taken place. The data does not indicate when or why a child was placed for adoption, nor does it indicate whether the birth parent(s) willingly consented to the adoption. Similarly, there are no statistics on the number of adoptions in which a court dispensed with a mother's consent. The lack of consistent pre-1969 data compounds the problem of determining how many forced adoptions have taken place in Australia.

### ***Adoption law***

1.40 In Australia, adoption law is entirely the product of legislation: the common law did not allow parents to voluntarily relinquish guardianship and custody rights during their lifetimes.<sup>19</sup> Accordingly, there are Acts, Regulations, policies and practices for each Australian jurisdiction.

1.41 At the Commonwealth level, the Constitution does not grant the Australian Government a specific power to make laws relating to adoption, except in relation to the territories.<sup>20</sup> Accordingly, adoption law is the province of the states and, since the passage of self-government acts in 1978 (Northern Territory) and 1988 (the ACT), the territories.

1.42 Adoption legislation was first introduced in Western Australia in 1896.<sup>21</sup> This was later followed by Tasmania in 1920, New South Wales in 1923, South Australia in 1925, Victoria in 1928, the Northern Territory and Queensland in 1935, and the Australian Capital Territory in 1938.<sup>22</sup>

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17 NSW Legislative Council, Standing Committee on Social Affairs, *Releasing the Past—Adoption Practices 1950–1998—Final report*, Parliamentary Paper Number 600, December 2000, pp 218, 220.

18 Royal Women's Hospital, *Submission 399*, pp 111–112.

19 SM Cretney, *Principles of Family Law*, 5th edition, Sweet & Maxwell, 1990, p. 657.

20 Section 122 of the Constitution. The Australian Government is however responsible for intercountry adoptions under various constitutional heads of power. For example, the marriage power (section 51(xxi)), the immigration and emigration power (section 51(xxvii)) and the external affairs power (section 51(xxix)).

21 *Adoption of Children Act 1896* (WA).

22 *Adoption of Children Act 1920* (Tas); *Child Welfare Act 1923* (NSW); *Adoption of Children Act 1925* (SA); *Adoption of Children Act 1928* (Vic); *Adoption of Children Ordinance 1949* (NT); *Adoption of Children Act 1935* (Qld) and *Adoption of Children Ordinance 1938* (ACT).

1.43 State and territory legislation has undergone revision in the intervening years, most notably with the passage of uniform adoption laws in the mid 1960s<sup>23</sup> and subsequent amendments to those laws, particularly in the 1980s and 1990s.<sup>24</sup>

### *Adoption practice*

1.44 As described above, the highest numbers of adoptions took place during the 1950s–70s. Owing to a range of social and economic factors, many children of single mothers were raised by adoptive parents. The committee received extensive evidence from women on their adoption experience at that time, as well as some submissions from others involved in adoption. From this evidence the committee was able to assemble a picture of typical adoption practices of the period.

1.45 A young single woman who fell pregnant often spent much of her pregnancy away from her own home. While some women did continue to live with their parents during the pregnancy, many were sent some distance away, often interstate, to preclude prejudice or judgement from the local community. In some cases, relatives made a spare room available; in many cases young pregnant women were housed in group accommodation settings. Most of the group accommodation facilities, or 'homes', were owned and operated by religious organisations. This was consistent with the extensive involvement of religious organisations in social welfare prior to the Commonwealth Government's social security reforms of the 1970s.

1.46 In many cases, religious organisations that offered accommodation for young single pregnant women concurrently arranged adoptions. Babies were often 'matched' with parents of the same—mostly Christian—denomination as the organisation. State and territory law regulated the way in which consent to adoption could be made and taken. The law also stipulated basic requirements that adoptive parents were obliged to satisfy. In practice, however, the taking of consent and choosing of adoptive parents was routine and informal; a case of obtaining a signature and progressing down a waiting list. Community expectations were that the children of young unmarried mothers would be available for adoption, and that married couples who wished to adopt a child would be able to do so.

1.47 Women who spent their pregnancies at home or with relatives usually had some contact with a social worker prior to giving birth in a hospital. In residential 'homes', this role was often undertaken by a religious person such as a nun. Evidence indicates that social workers and religious sisters almost always recommended adoption to single mothers and women's files would be marked accordingly. This

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23 *Adoption of Children Ordinance 1965 (ACT); Adoption of Children Act 1965–66 (NSW); Adoption of Children Ordinance 1964–1967 (NT); Adoption of Children Acts 1964–1967 (Qld); Adoption of Children Act 1966–67 (SA); Adoption of Children Act 1968 (Tas); Adoption of Children Act 1964 (Vic); Adoption of Children Act 1896–62 (WA).*

24 *Adoption Act 1988 (Tas); Adoption Act 2000 (NSW); Adoption Act 1988 (SA); Adoption Act 1984 (Vic); Adoption of Children Act 1994 (NT); Adoption Act 2009 (Qld); Adoption Act 1993 (ACT) and Adoption Act 1994 (WA).*

extended to a note such as BFA—baby for adoption—being made on the hospital file at admission. The children of unmarried mothers were removed at birth and sometimes kept on a separate floor to their mothers until adoptive parents took them home. Social workers, the religious, and occasionally doctors and nurses, took consents and arranged adoptions routinely and as a matter of course. Mothers often returned to their families after the birth—whether from a hospital or a 'home' where birthing facilities existed—and were expected to continue with education or work as they had previously. No mention would be made of the pregnancy. Any boyfriend or fiancé (or 'putative father' as they were formally referred to in documentation) who attempted to remain involved would be discouraged, sometimes being barred from access to the hospital, the mother or the baby. Fathers almost never played a role in giving consent for adoption, and mothers were discouraged from formally identifying them.

1.48 The adoption processes of the 1950s and 1960s reflected the 'clean break theory' popular at the time. This theory holds that the best outcome for both the mother and child is achieved when the child is adopted at birth and no further contact occurs between them. Supporters of the clean break theory cited the importance of early and uninterrupted bonding between an adopting mother and the baby. They also cited the social stigma and disgrace of single motherhood affecting both the 'unmarried' mother and the 'fatherless' child. A clean break would supposedly allow both parties to forget about the past and forge a life free from stigma.

1.49 The clean break theory affected many stages of the adoption process. Women in 'homes' were discouraged from discussing their pregnancies. No option other than adoption was presented to the young mothers. Few were allowed to see their children after birth. Birth certificates were re-issued in the adoptive parents' names and strict rules governed access to information. The idea was that the child would in as many respects as possible (and from the earliest practical age) be raised as though he or she were the child of the adopting family.

### **Previous relevant inquiries**

1.50 New South Wales and Tasmania have conducted parliamentary inquiries into past adoption practices, the former for the period 1950–1998 and the latter for the period 1958–1988.<sup>25</sup>

1.51 The New South Wales parliamentary inquiry was undertaken by the Legislative Council's Standing Committee on Social Issues. It commenced in 1998 and reported in December 2000. Its terms of reference were:

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25 NSW Parliament, Standing Committee on Social Issues, *Releasing the Past, Adoption Practices 1950–1998*, Report No. 22, Parliamentary Paper No. 600, December 2000 and Parliament of Tasmania, Joint Select Committee, 1999, *Adoption and Related Services: 1958–1988*.



- 1) the professional practices in the administration and delivery of adoption and related services, particularly those services relating to the taking of consents, offered to birth parents and children in New South Wales from 1950 to 1998;
- 2) whether adoption practices referred to in clause one involved unethical and unlawful practices or practices that denied birth parents access to non adoption alternatives for their child; and
- 3) if so, what measures would assist persons experiencing distress due to such adoption practices.<sup>26</sup>

1.52 Although mandated to examine the period up to 1998, its focus was on the period prior to passage of the *Adoption Information Act 1990*.

1.53 The Tasmanian parliamentary inquiry was conducted by a Joint Select Committee appointed on 22 April 1999 and reported on 5 October that year.<sup>27</sup> Its terms of reference were:

- (1) The past and continuing effects of professional practices in the administration and delivery of adoption and related services, particularly those services relating to the taking of consents, offered to birth parents in Tasmania from 1950 to 1988.
- (2) Whether the practices referred to in part (1) involved unethical and/or unlawful practices or practices that denied birth parents access to nonadoption alternatives for their child.
- (3) If so, what appropriate and practical measures might be put in place to assist persons experiencing distress due to such practices?<sup>28</sup>

1.54 Both committees concluded that past adoption practices had caused considerable pain and suffering, particularly for parents who were pressured into surrendering children for adoption. Both concluded that there was a need for greater specialised support for people affected by these past practices. Both concluded that access to records needed to be improved. The New South Wales inquiry concluded that there had been a range of practices that were unethical or unlawful; the Tasmanian committee was unable to reach a conclusion in this area 'on the basis of conflicting or insufficient evidence'.<sup>29</sup>

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26 NSW Parliament, Standing Committee on Social Issues, *Releasing the Past, Adoption Practices 1950–1998*, Report No. 22, Parliamentary Paper No. 600, December 2000, p. iv.

27 Parliament of Tasmania, *Legislative Council Votes & Proceedings*, No. 42, 5 October 1999, item 3.

28 Parliament of Tasmania, Joint Select Committee, 1999, *Adoption and Related Services: 1958–1988*, p. 13.

29 Parliament of Tasmania, Joint Select Committee, 1999, *Adoption and Related Services: 1958–1988*, p. 11.

1.55 Although there has been no parliamentary inquiry in Western Australia, the government of that state in October 2010 became the first and to date only Australian government to apologise to women, their children and families affected by past forced adoption practices.<sup>30</sup> Apologies relating to adoption practices are discussed further in Chapter 9.

### **Other current inquiries into adoption**

1.56 In March 2010,<sup>31</sup> Dr Daryl Higgins of the Australian Institute of Family Studies (AIFS) completed a review of the available literature regarding past adoption practices. The AIFS report to the Department of Families, Housing, Community Services and Indigenous Affairs found:

There is a wealth of material on the topic of past adoption practices, including individual historical records, analyses of historical practices, case studies, expert opinions, parliamentary inquiries, unpublished reports (e.g., university theses), as well as published empirical research studies. They include analyses of both quantitative and qualitative data, gathered through methods such as surveys or interviews.

Despite this breadth of material, there is little reliable empirical research. To have an evidence base on which to build a policy response, research is needed that is representative, and systematically analyses and draws out common themes, or makes relevant comparisons with other groups (e.g., unwed mothers who did not relinquish babies, or married mothers who gave birth at the same time, etc.).<sup>32</sup>

1.57 The AIFS is continuing its work in this area, through the National Research Study on the Service Response to Past Adoption Experiences.

1.58 Monash University is currently conducting a four year study on the social and political history of adoption in Australia. The History of Adoption project is being funded by the Australian Research Council and will conclude in late 2012. However, the submission from Monash University does not refer to the project or any interim findings.

### **Examination of records by this committee**

1.59 Parliamentary committee inquiries rely overwhelmingly on the provision of material by witnesses in the form of written submissions, Hansard evidence given at hearings, and the supply of additional documents. However, in this particular inquiry

30 Kim Hames, WA Deputy Premier, Ministerial media statement, 7 September 2010, <http://www.mediastatements.wa.gov.au/Pages/WACabinetMinistersSearch.aspx?ItemId=133968&minister=Hames&admin=Barnett> (accessed 5 February 2012).

31 Amended April 2010.

32 Daryl Higgins, *Impact of past adoption practices: Summary of key issues from Australian research*, March 2010 (amended 30 April 2010), Australian Institute for Family Studies, p. 3.

these resources were supplemented by additional research undertaken by the committee.

1.60 During the course of the inquiry the committee examined a range of historical documents. These included files related to adoption policy and practice held by the National Archives of Australia (NAA). The committee also received information from NAA regarding the use made of these files by government agencies since December 2001.<sup>33</sup> It showed that no Commonwealth agency had accessed relevant archival files between 2001 and 2011.<sup>34</sup>

1.61 The committee also examined a range of other archival documents of potential relevance to the committee. A number of records held in the University of Melbourne Archives relate to the operations of the Australian Association of Social Workers (AASW) and the Australian Association of Hospital Almoners (which the committee understands later became the Medical Social Workers Group within AASW). These organisations represented professionals who were intimately involved in the process of adoption.

1.62 The four sets of AASW and Hospital Almoner records that were examined were numbered as 1972.0026, 1981.0098, 1983.0080 and 1990.0024. The four series comprised 62 boxes of material in total. Access to these record series was restricted, requiring the permission of the AASW for their examination, and the committee thanks the AASW for its assistance in this regard. The committee also examined record series 1986.0123, which comprises the records of notable social worker Teresa Mary Wardell.

1.63 One particular record series held by University of Melbourne Archives has tighter restrictions on access than others. That record series, number 1972.0026, comprises 18 boxes, most containing patient case files from the Almoners Department of Royal Melbourne Hospital. Access to these case files is restricted for privacy reasons. An inquiry participant raised with the committee the question of whether there were adoption records amongst these files.

1.64 The committee negotiated access to these files with AASW and the University of Melbourne Archives, on the basis that it was not seeking information about, and would not make any copies or notes in relation to, named individuals. The committee's intention was, rather, to determine whether the files contained adoption records, and if they did, whether those records might provide insights into almoners' advice or guidance given to women during pregnancy and adoption.

1.65 The committee examined 114 individual patient files from two boxes of records. The boxes were sampled at random but covered the full range of time periods

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33 Letter from Dr Stephen Ellis, Acting Director-General NAA to the committee, Ref 2011/3010, 19 October 2011.

34 Email from NAA to the secretary of the committee, 25 October 2011.

represented by the records. None of the patient files pertained to pregnant women, and therefore none of the records contained information relating to adoption. The committee infers that either the records that have ended up in this archive did not come from a part of the hospital system that included maternity wards, and/or that the hospital's Almoners Department did not work in those wards.

1.66 The committee examined other historical publications, including the annual reports of the Queensland Branch of the AASW. These were reviewed as they were the only series of annual reports of an AASW organisation in the National Library that covered the period relevant to this inquiry. Annual reports from 1956 to 1970 inclusive were reviewed. Other reports examined included annual reports of the NSW Institute of Hospital Almoners and the Royal Melbourne Hospital Almoner Auxiliary from a similar period. The committee also reviewed articles published in the Australian Journal of Social Work from the 1960s onwards.

1.67 The committee examined the annual reports of the Commonwealth's Director-General of Social Services, compiled between the 1940s and the early years of the 1960s, stored at the National Library of Australia. These reports were reviewed to obtain information about the availability of payments to single mothers. Eligibility criteria were examined, as were any indications of policy initiatives pertaining to the Child Endowment Payments, the Maternity Allowance, the unemployment benefit and Special Benefit payments. The annual reports contained very little policy information and the eligibility criteria were not clear from these documents.

1.68 Additionally, the committee reviewed past newspaper and magazine articles from the 1950s, 60s and 70s so as to better understand prevailing societal attitudes and values relating to adoption and single mothers. The articles were sourced from Trove's online database, hosted by the National Library of Australia. Newspapers examined included Melbourne's *The Argus*, *The Sydney Gazette*, *New South Wales Advertiser*, *The Hobart Town Courier*, *The Monitor* (Sydney), *The Mail* and *The Advertiser* (Adelaide), the *Townsville Daily Bulletin* and *The Australian Women's Weekly*. These articles proved insightful. They demonstrated that child adoptions were relatively common and that adoption practices generated widespread community discussion. Information was prevalent for the 1940s and 50s; however due to copyright legislation, the availability of information for the 1960s and 70s was much more limited.

1.69 Several individuals and organisations, such as Ms Brenda Coughlan, Ms Christine Cole and Origins SPSA Inc., between them provided a large number of primary source documents. These included newspaper and magazine articles about adoption practices, professional journal articles from the period, state departmental manuals and other documents, and past parliamentary speeches related to adoption topics. The committee is grateful to these inquiry participants for ensuring some material came to the committee's attention that would not otherwise have been accessible.

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## **Evidence given by submitters**

1.70 The committee has taken into account all the evidence given to it by submitters, witnesses and all who provided it with other material. It has given equal consideration to evidence received from every individual and organisation.

1.71 The committee acknowledges that those affected by forced adoption are a diverse group of individuals, many of whom have experienced great trauma. The committee is aware that there are deep divisions amongst this group, and has been made aware of specific allegations of bullying behaviour in relation to a range of people and organisations. While those accused have not accepted these allegations, the committee was deeply concerned by the suggestion that some people affected by forced adoption are not being heard, and not being respected. The committee was disturbed that those who were already traumatised by events in their past may have been subject to further emotional damage and distress. The committee's major concern is that all people who wished to contribute to the inquiry process are certain that their views have been heard with respect.

## **Acknowledgements**

1.72 Hundreds of people affected by forced adoption practices gave evidence to this committee. In doing so, many gave their accounts for the very first time. They may not have told their friends before, and some had not previously felt able to tell their families of their experiences. The committee thanks all of these people for their work, their courage and their commitment to supporting the examination of this painful subject. While the issue of access to information and records will be discussed later in this report, the committee wishes to acknowledge here the difficulties faced by many submitters in obtaining full and timely personal records. Given the committee's own experience seeking to obtain information about this period in our country's recent past, it knows how challenging the road has been for individuals who have fought to obtain the records that would allow them to put together a picture of the decisions made about themselves, their parents and their children.

1.73 The committee thanks the National Archives of Australia. In particular it acknowledges NAA's swift response to the committee's request to make more of the relevant Commonwealth files available online through its program of digitising records. These files are not individual personal records, but departmental files relating to adoption policy and law. The NAA's cooperation has meant that many of the file records referred to in this report are now available over the internet to anyone who wishes to pursue the subject further.

1.74 Several Commonwealth agencies provided important information through answers to questions on notice, and the committee is particularly grateful to the Department of Education, Employment and Workplace Relations for the archival research reflected in its answers to questions, and the provision of archived copies of staff manuals. The committee thanks the Parliamentary Library for its work locating historical legislation, as well as assisting with other research and advice.

1.75 The committee extends its deepest gratitude to everyone mentioned above, as well as the other individuals and organisations who have assisted along the way, without all of whom this inquiry would not have been possible.

## Chapter 2

### Attitudes towards adoption

2.1 The previous chapter showed that the numbers of adoptions in post-war Australia was far higher than it is today. In fact, widespread adoption was a phenomenon confined to the mid-twentieth century.

2.2 This chapter examines societal views about adoption from the early twentieth century to the 1950s and 60s. In the early twentieth century, adoption was considered primarily as an alternative to institutional care. In the post-war period, adoption became much more widely accepted and supported as a social policy, and the number of people wishing to adopt increased dramatically. Strong societal support for adoption in the 1950s and 1960s was one factor in the fostering of an environment in which unmarried women were separated from their children.

2.3 The committee rejects the claim that forced adoptions took place as an inevitable result of the conservative societal attitudes of the 1950s to 1970s. It will discuss this issue further in Chapters 7, 8 and 9. This chapter provides a background to social attitudes towards adoption during the early part of the twentieth century in order to understand why adoption became so prominent during the 1960s.

#### **Early twentieth century: adoption as an alternative to institutionalisation**

2.4 In response to juvenile poverty, child abandonment and the petty crime necessitated by such poverty, nineteenth century policy makers suggested that destitute children should be institutionalised. The argument held that if such children were housed, fed and educated for employment, they would have no need to commit crimes.<sup>1</sup>

2.5 Orphanages and children's homes were opened across Australia as part of a wider trend also evident in the United Kingdom (UK), United States of America (USA) and Canada. However, conditions in institutions were poor. As the public became increasingly aware of the plight of these children, calls were made for the better regulation. In New South Wales for example, the public became outraged at the rates of abuse, and, following a Royal Commission in 1874, many institutions were closed. Child protection laws were introduced and initiatives were sought to better ensure the welfare of institutionalised children. However, this opposition to institutional care was relatively short-lived, and by the early twentieth century institutions once again regained their former popularity. Child adoptions were not common because it was generally believed that institutionalised and abandoned

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1 John F. Fogarty, 'Some aspects of the early history of child protection in Australia', *Family Matters*, vol. 78 (2008), p. 54.

children came from 'inferior' backgrounds. Under the laws of the time they were also ineligible to inherit property.<sup>2</sup>

2.6 In Australia, harsh attitudes towards destitute children began to change during the early twentieth century. These changes appear to have been consistent with the introduction of child protection laws, first legislated in the USA during the first half of the nineteenth century, and followed soon after by the UK. The legislative and attitudinal changes in the USA and UK established a new international discourse, which helped pave the way for similar changes in Australia:

The story of change over time is a slow, uneven and frustrating one. It starts with the assertion of absolute authority by the father and a denial of the right of the state to interfere. It ends with a wide range of powers—legislative, judicial and administrative—to protect children and advance their welfare, aligned with social, economic and educational services designed to advance the safety and wellbeing of families and children.<sup>3</sup>

2.7 In the USA and UK, the early twentieth century witnessed a move away from the institutionalisation of children, to the more permanent option of adoption.

2.8 In Australia, deinstitutionalisation was not so straightforward. Australia was slower in adopting child protection legislation, and severe economic downturns towards the end of the nineteenth century greatly increased rates of poverty and the numbers of destitute families. Consequently, increasing numbers of children whose parents were poor were placed into orphanages:

The increasing tendency was to place children in orphanages, industrial schools and other largely private and religious institutions. But this proved disastrous, as the level of care was shocking even by the standards of those times—described in a NSW royal commission in 1874 as 'a legalised gateway to hell'. Increasing public agitation led to the gradual demise of these institutions...

It is a typical irony of child protection that resort to institutions on a large scale re-emerged in the 1920s and again in the 1950s with the same cycle of abuse.<sup>4</sup>

2.9 In the early twentieth century, adoption practice was influenced by eugenics theory, which was prominent at the time.<sup>5</sup> Adoptive families went to extraordinary

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2 John F. Fogarty, 'Some aspects of the early history of child protection in Australia', *Family Matters*, vol. 78, 2008, p. 54; John Ramsland, *Children of the Back Lanes: destitute and neglected children in colonial New South Wales*, University of New South Wales Press, Kensington, 1986.

3 John F. Fogarty, 'Some aspects of the early history of child protection in Australia', *Family Matters*, vol. 78, 2008, p. 54.

4 John F. Fogarty, 'Some aspects of the early history of child protection in Australia', *Family Matters*, vol. 78, 2008, p. 57.



lengths to ensure that their newly adopted baby was of a good 'genetic background', while specialists warned prospective parents to do proper genetic checks before adopting children.<sup>6</sup>

2.10 Due to prevailing attitudes, many children from what were regarded as 'genetically poor' families were taken from their parents and placed into institutional care, where they were taught and trained according to 'proper' eugenic practices. Children born to poor families and single mothers were particularly vulnerable. Henry Goddard expressed views typical of professionals at the time:

[T]his results in such families refusing to take these children, then we must provide for them in colonies. Charitable organizations, even the state, can well afford to do that rather than run the risk of contaminating the race by the perpetuation of mental and moral deficiency...

It is neither right nor wise for us to let our humanity, our pity and sympathy for the poor, homeless, and neglected child, drive us to do injustice to and commit a crime against those yet unborn.<sup>7</sup>

2.11 During this period, babies were only reluctantly adopted by families. In a 1957 article, Dr R.J. Reid wrote that:

Twenty or thirty years ago, agencies had to go out and recruit adoptive parents for white infants; they had to try to 'sell' the country on adoption. Attitudes toward illegitimacy, toward bringing children of different 'blood' into the family set up strong barriers to adoption.<sup>8</sup>

2.12 As a result of genetic concerns, many organisations would not allow adoptive parents to take custody of a child before the child was one year of age. Hospitals and charity organisations argued that this was the only way adopting parents could be assured of the genetic quality of their adopted children. Indeed, it appears that acceptance of adoption 'would not have been possible without the 'guaranteed product' which the scientific nursing of new babies' homes was able to provide.'<sup>9</sup>

2.13 Dr Reid wrote that:

Agencies were convinced and attempted to convince the public that they could guarantee them a perfect child; that by coming to an agency adoptive parents could be sure that the child was without physical, emotional, or

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5 S. Swain and R. Howe, *Single Mothers and their Children*, Cambridge University Press, Cambridge, 1995, pp 138, 140, 188.

6 Ida R. Parker, *Fit and Proper?: A Study of Legal Adoption in Massachusetts*, Church Home Society, Boston, 1927, pp 19–20, 69.

7 Henry H. Goddard, 'Wanted: A Child to Adopt', *Survey* 27, 1911, p. 1006.

8 R.J. Reid, 'Principles, values and assumptions underlying adoption practice,' *Social Work*, vol. 2, no. 1, 1957, p. 24.

9 S. Swain and R. Howe, *Single Mothers and their Children*, Cambridge University Press, Cambridge, 1995, p. 132.

mental defect; that his heredity was sound and adopting a child was a far less risky procedure than having one normally.<sup>10</sup>

2.14 However, despite 'quality assurances' there still remained some resistance to the idea of adopting children born to single mothers. A. H. Stoneman wrote in 1926:

By far the greatest problems and dangers connected with adoptions centre around illegitimacy. The large proportion of adopted children always has been and still is of illegitimate birth. Ignorance of essential facts is the great peril in most adoptions of illegitimate children. The children are born in mystery and disposed of permanently while still too young to show signs of future capacity.<sup>11</sup>

2.15 Following World War II, society changed substantially. There were many more widows and single mothers and infertility rates dramatically increased. This new social landscape significantly influenced societal attitudes towards the poor and destitute. Children from impoverished backgrounds were no longer regarded as possessing a 'poor genetic background' and adoption was favoured over institutionalisation. Adoption numbers spiked during the post-war years, particularly during the 1950s and 1960s.

### **Post-war period: clean break theory**

2.16 Following the atrocities of World War II, eugenics fell out of favour. The preoccupation with genetics was abandoned, and a greater focus was placed on the environmental and behavioural aspects of family life and the raising of children. This shift in focus was developed in part from the scholarship of Sigmund and Anna Freud. Freudian developmental theory encouraged adoptions and argued for the early separation of mothers from their babies. This philosophy has come to be known as the 'clean break' or 'blank slate theory', and represents a significant departure from earlier eugenic practices of 'scientifically' nursing babies for at least the first year of their lives.<sup>12</sup>

2.17 Developmental psychologists premised their beliefs on the long-held notion that a child is a 'blank slate' as a newborn. They argued that the personality and intelligence of an individual is determined by environment, not genetics. The prevailing theories advocated that the psychological and financial qualifications of a

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10 R.J. Reid, 'Principles, values and assumptions underlying adoption practice,' *Social Work*, vol. 2, no. 1 (1957), p. 25.

11 A. H. Stoneman, 'Adoption of Illegitimate Children: The Peril of Ignorance,' *Child Welfare League of America Bulletin*, vol. 5 (February 1926), p. 8.

12 However, the influence of eugenics prevailed to some extent into the 1950s. This was seen most strongly in the resistance to adopting 'mixed-race' children and the brutality experienced by the Stolen Generation.

married couple were superior to those of single mothers and impoverished families.<sup>13</sup> Therefore, placing the child in an adoptive home within the earliest possible timeframe was the primary way of safe-guarding the welfare of the child.<sup>14</sup>

2.18 In the post-war era, white married couples with secure incomes represented the ideal family unit and were regarded as more or less the only ones capable of providing appropriate levels of care for children.<sup>15</sup> Should a family not conform to the ideal, institutionalisation was believed to have been the most beneficial solution:

The post war period was an era in which the institutionalisation of children in orphanages, foster care and adopted families was believed to benefit both the children and the community in which they lived...Should a mother fall outside of the norm because of poverty, skin colour or single parenthood, then society saw her as unfit and her children as neglected. She was not helped to keep them [her children] nor indeed was it believed that the members of her extended family were appropriate carers.<sup>16</sup>

2.19 Developmental and behavioural ideas after World War II had an immense impact on the institutionalisation and adoption practices of the time. Families and single mothers became particularly vulnerable to the 'well-meaning' philosophies of psychologists, almoners and social workers:

Children's requirements were categorised as an all-round mix of physical, mental, social and emotional needs, and despite contemporary maternal deprivation theories, the desire for a neglected child to be with her mother was overridden should her environment be perceived as inadequate. So keen were welfare officers to use their model of the two-parented white suburban home that they removed children because they were half-caste or illegitimate, because there was little food in the cupboard or because not all the children in the family had the same father—first to an institution in the early post-war years and later to another family home. If a child's living conditions were less than perfect, it was believed that she or he was better

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- 13 There were numerous articles discussing the increased incidents of babies being surrendered by families who could not afford to buy a house, cf. 'Housing crisis "Forces Adoptions"', *The Sydney Morning Herald*, 27 August 1951, p. 3; "'No houses, so they sell their babies," she says', *The Argus*, 27 August 1951, p. 1. These theories have collectively become known as 'family romances'.
  - 14 Ironically, the same theories held that infertility signalled, among other characteristics, neurosis. 'Sigmund Freud (1856–1939)', *The Adoption History Project*, University of Oregon, available online at: <http://pages.uoregon.edu/adoption/people/SigmundFreud.htm> (accessed 10 September 2011).
  - 15 K. Inglis, *Living Mistakes: Mothers Who Consented to Adoption*, Allen & Unwin, North Sydney, 1984, pp 6–9.
  - 16 C. Jones, 'Adoption—a study of post-war child removal in New South Wales', *Journal of the Royal Australian Historical Society*, vol. 86, no. 1 (2000), p. 51. For more information on statistics cf. *A Report Prepared for the Board of Directors by the Department of Social Work, the University of Sydney*, Sydney 1961, Burnside Presbyterian Homes for Children Archives, Report no. 2, BRC1/145, Appendix I, p. 2.

off with adopted or foster parents, for at least then they could be socialised into the proper ways of morality and hygiene.<sup>17</sup>

## 2.20 According to Inglis, single mothers were the most affected:

During the 1960s most children made available for adoption were the children of unmarried mothers. A harshly punitive atmosphere surrounded her, in contrast to the social approval adoptive parents were more likely to gain. They were generally seen to be acting in an altruistic or charitable way in taking on a child often seen as flawed in some intrinsic way by the 'irregular' nature of its conception and birth.<sup>18</sup>

2.21 Collectively, attitudes during the 1950s and 1960s towards adoptions, young single mothers and impoverished families indicate a general intolerance of individuals and families who did not fit the idealised family unit.<sup>19</sup> This intolerance appears to have coalesced with a general entitlement mentality advocating the 'right' of all legitimate couples to have children. This powerful mix of intolerance and sense of entitlement appears to have partly manifested itself in the adoption practices of the era, encapsulated by the belief that if children were born to people of 'low moral standard' or poverty, they should be adopted by infertile couples of better social standing so as to ensure the best interests of the child were being looked after.<sup>20</sup>

2.22 Attitudes towards the children of unmarried mothers changed significantly following the decline of eugenics thinking. The child was no longer the subject of disdain; indeed, surrendered babies from all backgrounds, with the exception of mix-race children and children with a disability,<sup>21</sup> were in demand across Australia. According to newspaper and magazine articles of the day, demand for babies far outstripped the number being surrendered. Scorn and disdain were re-directed towards the unmarried mother.<sup>22</sup> This appears to have prominent in some areas of the medical

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17 C. Jones, 'Adoption—a study of post-war child removal in New South Wales', *Journal of the Royal Australian Historical Society*, vol. 86, no. 1, 2000, p. 51.

18 K. Inglis, *Living Mistakes: Mothers Who Consented to Adoption*, Allen & Unwin, Sydney, 1984, p. 4.

19 For a definition of this idealised family, cf. R.L. Harris, 'Medical Aspects of Adoption', *Proceedings of a Seminar held on Friday, 3<sup>rd</sup> February, 1967*, Department of Child Welfare and Social Welfare, Sydney, p. 15. For tensions between the ideal family unit and the actual structure of family, cf. C.V. Baldock, *Australia and Social Change Theory*, Novack Publishing, Sydney, 1978, pp 108–110.

20 'Should unwed mother give up her child' in *The Sydney Morning Herald*, 15 July 1953, p. 9; 'Vote on Baby Adoption' in *The Sun Herald*, 29 November 1953, p. 9. On the importance of a good environment, see also D.F. Lawson, 'The Anxieties of Pregnancy', *The Medical Journal of Australia*, vol. 2, no. 5, 1960, p. 166.

21 'Babies for the Brave', *Western Mail*, 25 November 1954, pp 4–5. See also various articles on this topic in *Australian Journal of Social Work*, vol. 20, no. 1: Aspects of Adoption, 1967, pp 16–24.

22 S. Swain and R. Howe, *Single Mothers and their Children*, Cambridge University Press, Cambridge, 1995, p. 140.

profession. In summarising general attitudes towards unmarried mothers, a 1973 journal article written by Dr. Ferry Grunseit, from the Children's Department at the Prince of Wales Hospital in Sydney, wrote:

In New South Wales most unmarried mothers... are more likely to be poor, undernourished and of low intelligence, if not actually retarded.<sup>23</sup>

2.23 This kind of attitude was exhibited by other medical professionals, such as Dr Donald Lawson of the Royal Women's Hospital, Melbourne. Dr Lawson remarked during an address in 1959 that:

The prospect of the unmarried girl or of her family adequately caring for a child and giving it a normal environment and upbringing is so small that I believe for practical purposes it can be ignored. I believe that in all such cases the obstetrician should urge that the child be adopted...The last thing that the obstetrician might concern himself with is the law in regard to adoption.<sup>24</sup>

2.24 However, there appears to have been a mismatch between the disdain felt towards single mothers and the high demand for their relinquished babies. In a rare show of support, a reader wrote to *The Australian Women's Weekly* stating her admiration for unmarried mothers whose babies are surrendered for adoption, because adopted children brought happiness to the lives of childless couples.<sup>25</sup>

2.25 With these considerations in mind the purpose of adoptions appeared to have shifted. According to Jones and Swain:

Adoption was devised as a solution to the growing number of ex-nuptial children in institutional care and...it was gradually accepted as an answer to the problem of protecting the child and punishing the unfit mother.<sup>26</sup>

### **Post-war period: adoption practices**

2.26 Adoption practices in the USA, UK and Australia were fundamentally premised upon the work of the eminent British psychologist, psychiatrist and psychoanalyst, John Bowlby, who himself was deeply influenced by the work of

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23 F. Grunseit, 'The adoption of infants and the role of an adoption advisory clinic in New South Wales', *The Medical Journal of Australia*, vol. 1 (1973), p. 854.

24 Dr Lawson gave the 1959 R.D. Fetherston Memorial Lecture entitled, 'Why be morbid? Paths of progress in the control of obstetric infection, 1931 to 1960'. *Medical Journal of Australia*, vol. II, No. 5 (1960), pp 165–166.

25 'Letters from our readers: Unmarried mothers', *The Australian Women's Weekly*, October 1955, p. 10.

26 C. Jones, 'Adoption—a study of post-war child removal in New South Wales', *Journal of the Royal Australian Historical Society*, vol. 86, no. 1, 2000, p. 51 and S. Swain, 'Adoption: Was it Ever Thus?' in Phillip and Shurlee Swain (eds), *To Search for Self: the experience of access to adoption information*, Federation Press, Sydney, 1992, p. 2.

Freud.<sup>27</sup> Bowlby's pioneering work on 'attachment theory' (with the help of Mary Ainsworth) paved the way for policies and attitudes that permitted the enforced early separation of mothers from their newborns.

2.27 The World Health Organization (WHO) commissioned Bowlby to prepare a report, entitled *Maternal Care and Mental Health*, which WHO then used in the formulation of its key adoption and mental health policies.<sup>28</sup> The report was translated into 14 different languages, with the English paperback edition selling 400 000 copies.<sup>29</sup> In his report, Bowlby wrote that:

Nothing is more tragic than good adoptive parents who accept for adoption a child whose early experiences have led to disturbed personality development which nothing they can now do will rectify. Very early adoption is thus clearly in the interests also of the adoptive parents. Moreover, the nearer to birth that they have had him the more will they feel the baby to be their own and the easier will it be for them to identify themselves with his personality. Favourable relationships will then have the best chance to develop.<sup>30</sup>

2.28 The beliefs advocated by Bowlby and his predecessors in relation to character and personality development resulted in the clean break approach of many adoption agencies in Australia. In a 1947 article, a correspondent for the Cairns Post reassured its readers that '[s]tate controlled adoption in Queensland is a clean break,'<sup>31</sup> while an article in the *Australian Women's Weekly* considered it reassuring that if a mother was in an institution that mandated breast-feeding, she would only see her baby for a little while; and if a mother was in an institution which had bottle feeding, she never saw her baby at all.<sup>32</sup>

2.29 Evidence suggests that by 1954, community pressure on single mothers to surrender their babies was intense. An article in *The Argus* newspaper highlighted this pressure, stating that in many cases, the young mother may have been subjected to

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27 For more information on John Bowlby and his influence on adoption practices, cf. R. Bowlby and P. King, *Fifty Years of Attachment Theory: Recollections of Donald Winnicott and John Bowlby*, Karnac Books, London, 2004; I. Bretherton, 'The Origins of Attachment Theory: John Bowlby and Mary Ainsworth', *Developmental Psychology*, vol. 28, no. 5 (1992), pp 759–775.

28 J. Bowlby, *Maternal Care and Mental Health: a report prepared on behalf of the World Health Organization as a contribution to the United Nations programme for the welfare of homeless children*, World Health Organization, Geneva, 1952.

29 I. Bretherton, 'The Origins of Attachment Theory: John Bowlby and Mary Ainsworth', *Developmental Psychology*, vol. 28, no. 5 (1992), p 761.

30 J. Bowlby, *Maternal Care and Mental Health: a report prepared on behalf of the World Health Organization as a contribution to the United Nations programme for the welfare of homeless children*, World Health Organization, Geneva, 1952, p. 69.

31 'Brisbane Notes', *Cairns Post*, 2 October 1947, p. 7.

32 'Our legitimisation laws need drastic revision: innocent babies deserve a better chance in life', *The Australian Women's Weekly*, 8 March 1947, pp 19–21.

threats and bribes to surrender her baby and left with no opportunity to discuss her feelings with an objective and disinterested professional.<sup>33</sup>

2.30 In a paper presented in 1965 to the Ninth National Conference of the Australian Association of Social Workers, Mary Lewis, a social worker, outlined best practice in the relinquishment of babies.<sup>34</sup> Ms Lewis' comments indicate that the official 'best practice' approach enshrined in legislation appeared to have been in direct conflict with common practices in many agencies:

[M]any agencies...have punitive, illegal and harmful rules regarding the unmarried mother's inalienable right to physical contact with her child... [S]ome agencies refuse to allow the unmarried mother to see her child, nor do they tell her the child's sex.<sup>35</sup>

2.31 The committee examines potentially unethical or illegal actions towards unmarried women in Chapter 9.

2.32 The social attitudes in favour of adoption meant that by the 1950s, there were more couples wishing to adopt a child than mothers wishing to relinquish their child. During the early 1950s, prospective adoptive parents waited for up to six months to adopt a baby girl and a couple of months for a baby boy.<sup>36</sup> By the early 1960s, however, 'waiting times' had grown significantly. Waiting times varied amongst the states, and many had separate 'waiting lists' for Catholic and Protestant parents. During the uniform law process of the early 1960s (discussed in Chapter 6), data was collected from the states on the status of waiting lists and waiting times. The NSW data is presented below for illustrative purposes.

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33 'Hundreds of parents are asking... "Is our baby safe?"', *The Argus*, 15 May 1964, p. 11.

34 "'People are different' (Social Work and Social Norms)' *Australian Association of Social Workers Ninth National Conference Proceedings*, Adelaide, August 1965, p. 112. Best practice was again highlighted by Sister Mary Borromeo in 'The Natural Parents', *Australian Journal of Social Work*, vol. 20, no. 1: Aspects of Adoption, 1967, p. 13.

35 "'People are different' (Social Work and Social Norms)' *Australian Association of Social Workers Ninth National Conference Proceedings*, Adelaide, August 1965, p. 112.

36 S. Gowrie-Smith, 'Guidelines for a happy adoption', *National Times*, 12–17 April 1971.

**Figure 2.1—NSW Waiting Times for Adoption at June 1961<sup>37</sup>**

<b>Approximate waiting times</b>	<b>Boys</b>	<b>Girls</b>
Protestant	3 years	4.5 years
Roman Catholic	6–9 months	14–20 months
<b>Approved applicants to the Department</b>	<b>for Boys</b>	<b>for Girls</b>
Protestant	367	392
Roman Catholic	58	76
<b>Applicants awaiting approval</b>	<b>for Boys</b>	<b>for Girls</b>
Protestant	647	813
Roman Catholic	127	144

2.33 It is clear from the NSW example above that adoption was relatively widespread in the early 1960s. Although adoption was regarded as acceptable, there were many discontented groups lobbying the government for fairer legislation. The committee will examine the social attitudes expressed during the uniform law process of the 1960s in Chapter 7. In Chapter 8, the committee will address the shifting attitudes towards single mothers and in support of open adoptions.

2.34 In this inquiry, the committee received compelling and distressing evidence from parents who bore the brunt of the practices and prejudices of the post-war period. They experienced the punitive attitudes directed toward unmarried mothers, and the result for many was the loss of a baby whom they had wished to keep. Their experiences, and those of other families members affected by the experience (particularly the children who were adopted), are the subject of the next two chapters.

37 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from NSW Social Welfare Under Secretary Thomas to AGD Secretary Yuill, 9 June 1961, folio pp 42–43, digital pp 27–28.



# Chapter 3

## The experience of forced adoption

**A mother whose child has been stolen does not only remember in her mind, she remembers with every fibre of her being.<sup>1</sup>**

### Introduction

3.1 These chapters seek to recount the experiences of submitters to the inquiry who were subjected to forced adoption first hand, either as a mother, a father, an adopted person or a family member. Most submissions to the inquiry have been received from mothers whose babies were removed from them against their wishes. While common themes have emerged amongst the accounts, the committee recognises that each individual's experience was different:

We have to keep in mind that there is a great diversity of experiences of birth mothers and that their personal fates vary depending on the year in which they relinquished their child and in the state in which they relinquished their child.<sup>2</sup>

3.2 Many accounts have been given in the thousands of pages of submissions to the inquiry, and hundreds of pages of transcripts from the committee's hearings. The evidence and submissions that have been provided for public release are available on the committee's website. The committee acknowledges the many other accounts that have been given confidentially or received by the committee as correspondence.

3.3 The committee also acknowledges the many people who were affected by forced adoption but could not contribute to the inquiry. For some, reliving the traumatic events of the past by writing a submission was too difficult. Tragically, others have taken their own lives, sometimes as a result of mental illness caused by the trauma of their experience of forced adoption. The committee offers its condolences to every person who has lost a friend or family member to mental illness as a result of this trauma.

There are a lot of people that are not here today because they have killed themselves. I have two suicides in my own family from all of this.<sup>3</sup>

3.4 These two chapters are about forced adoption and therefore do not seek to relay accounts of other forms of adoption, for which the committee notes there are a range of both negative and positive experiences. The committee did provide a number of stakeholders with the opportunity to provide alternative views about adoption, but with few exceptions, these opportunities were not taken up.

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1 Ms Charlotte Smith, Private capacity, *Committee Hansard*, 20 April 2011, p. 118.

2 Dr Trevor Jordan, Jigsaw Queensland, *Committee Hansard*, 27 April 2011, p. 53.

3 Ms Leonie Horin, *Committee Hansard*, 20 April 2011, p. 110.

3.5 The committee acknowledges that for many mothers and adopted people, the telling of their accounts in submissions and/or in hearings has been painful and difficult:

To be telling your story of such a horrific event and trauma takes a huge amount of emotional effort. People have to go back and relive all their experience to put it down on paper so that someone can read it and say, 'Oh, that was pretty nasty.' We have done this many times over.<sup>4</sup>

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Despite my joy at having this amazing opportunity to express myself, I have found the task of collecting thoughts and of writing very difficult, disturbing, distressing and depressing. I apologise that this declaration probably jumps around and may be disjointed and difficult to make sense of, but it's the best I could do.<sup>5</sup>

3.6 Despite the difficulty of reliving very traumatic events, many submitters emphasised the need for an acknowledgement that the experiences they had were real. The culture of secrecy that surrounded adoption throughout the period in which the clean break theory was prominent meant women carried their experience as a secret from even their closest friends and families.

3.7 Historian Janet McCalman recorded the experience of a nurse who moved from a busy city labour ward to a hospital in a quiet country town:

It was quiet and there was time to talk and I found that women over seventy, who might have been coming in for gynaecological problems, would say, 'You're a midwife?' 'Yes.' 'Well I lost my baby years ago' and it was the first time that they'd plucked up the courage to talk about it, because you had the time to sit there. And those women have suffered all their lives—they've never forgotten it. It's a real myth to say that it's all over and done with.

It's never over and it's never done with and it ruins their lives. It ruins their family lives – their ability to rear their families. They admit it themselves when you get them sitting down – that they could have been better mothers. They were always looking for the children that went – the child that was given up.<sup>6</sup>

3.8 Ms Brenda Coughlan has stated to the committee on a number of occasions the importance of the truth becoming known:

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4 Mrs Lily Arthur, Origins SPSA Inc, *Committee Hansard*, 29 April 2011, p. 29.

5 Mrs Bernadette Wallman, *Submission 175*, p. 1.

6 Cited in Janet McCalman, *Sex and Suffering: Women's Health and a Women's Hospital, The Royal Women's Hospital, Melbourne 1856–1996*, Melbourne University Press, Melbourne, 1998, p. 278.

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The unique opportunity for the truth to be told can be provided by the many mothers that have remained standing to fight for justice.<sup>7</sup>

3.9 Other submitters considered that public recognition of past events is important:

We need to be respected in this country's history as mothers who had their babies taken forcibly from them for no other reason than to satisfy the ideals of others. We need to be respected in this country's history as mothers who were unjustly abused, betrayed and punished by all governments, hospital staff, welfare workers, religious hierarchies and society because of their inhumane, obscene prejudice towards us.<sup>8</sup>

3.10 While reliving past trauma has been difficult for submitters, one positive result of the inquiry is that some submitters have experienced a sense of catharsis as a result of speaking about these events, in some cases for the first time. Mrs Barbara Maison sent the committee a supplementary submission which expressed reflections on her experiences during the inquiry process:

Attending the Inquiry hearings, writing submissions, hearing of others' lives has been truly cathartic and therapeutic and as I have been blessed with a rewarding relationship with my son, I do not feel so completely alone any longer having hardened and despite my deep grief superficially manifesting in other ways, I feel calm and rational and can now get on with my life, albeit over 50 years since 'that' most horrific period in my life.<sup>9</sup>

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I want to thank you for holding this inquiry, because for 40-odd years I lived with the shame of having a child out of wedlock. I was silenced by my family and by my community. You have made me become a better person, and because you are here I have been able to speak out in public about this for the first time, and you have respected me, when I have never had any respect or felt that I had any respect from my own community. Thank you.<sup>10</sup>

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In all these years, I have never had a Doctor or Psychologist who recognized the effects of forced adoption...they seemed to want to find a different reason for my despair...it was never dealt with adequately and it is only since I joined the Facebook page 'Australian Inquiry into Forced Adoption' that I have found some relief from my pain...finding others that understand has been my unfulfilled need since 1969...

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7 Ms Brenda Coughlan, *Submission 19*, p. 84.

8 June Smith, *Committee Hansard*, 20 April 2011, pp 33–34.

9 Ms Barbara Maison, *Submission 14*, attachment 4, p. 1.

10 Ms Robin Turner, *Committee Hansard*, 16 December 2011, p. 14.

An analogy I posted on that site as a response to the relief I felt in finding out that there is an Inquiry...it's like being buried alive...I've been clawing the lid of the coffin trying to get out, and someone has just lifted the lid off for me...and I'm gulping fresh air...<sup>11</sup>

3.11 This chapter recounts the experience of forced adoption. It first addresses mothers' experiences of pregnancy, at home, in the community and at maternity homes. It continues by recounting mothers' experiences of childbirth at hospitals and the consent taking process (or lack of). The following chapter addresses the experiences of adopted people as children, and then the ongoing challenges for mothers, adopted people and other family members that have lasted long after the event.

### **Mothers' experiences of pregnancy in maternity homes**

3.12 Most mothers who made submissions to the inquiry were unmarried at the time of their pregnancy, and were sent to maternity homes for some or all of this time. In many cases, the decision was made by their parents:

But because his four grandparents, rather than braving the shame and whispers, preferred to save face and give him away; despatch him to a life with strangers. So I was sent to an unmarried mothers' home to wait for our son's birth.<sup>12</sup>

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My mother became hysterical, when she realized I was pregnant, she was bereft about the neighbours the relatives, and the church members, finding out, her daughter was pregnant out-of wedlock...I had to hide in the house, she had contempt for me...It was decided that I go to a home for unmarried mothers, 'for a few weeks' so I would not been seen by others who would make judgement.<sup>13</sup>

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[My father] took me to Windang police station and told them what was going on, I think he was hoping I would tell them who the father was. In those days carnal knowledge was a crime. My father got angrier and angrier he punched me in the face in front of the police who did nothing, about an hour later a lady came to the police station and took me home and told me to pack a bag.<sup>14</sup>

3.13 Mrs Beverley Redlich was not informed by her parents that she would be leaving; she believes she was administered sleeping pills by her mother and recounts waking up in the car on the way to a maternity home:

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11 Name withheld, *Submission 256*, p. 9.

12 Ms Barbara Maison, *Submission 14*, pp 3–4.

13 Ms Marilyn Murphy, *Submission 150*, p. 2.

14 Mrs Colleen Ewen, *Submission 40*, p. 1.

In 1965 I was sent to 'Carramar' Church of England Home for Unwed Mothers...I did not go there on my own freewill. I was woken that morning apparently I must have been drugged by my mother with a sleeping pill or similar, as I did not come around til I was shaken awake by a Preacher...As we were parked in the driveway facing a two storey older style building I asked him, 'Where are we?' and he said, 'This is a home for girls who are pregnant like you to stay til they have their babies'. I was terrified as he led me to the door to be met by a stern looking woman who led me inside. Fear has caused me to forget the finer details of what exactly happened next but I vaguely remember being taken upstairs to a room where I would stay til my baby was born...<sup>15</sup>

3.14 From witnesses' accounts, it appears that it was expected that women would stay in maternity homes, with little contact with their families or friends, for the duration of their pregnancies. Ms Christen Coralive, who considered staying in a maternity home, explained that employees attempted to prevent her from leaving after she was interviewed there:

In 1974, when I was 20, I was in a relationship. I found out that my partner was abusive, so I went to the social worker at the Royal Women's Hospital in Carlton and asked for a safe place to stay for a week or two until my baby was delivered. She directed me across the road to St Joseph's Receiving Home in Carlton. I was interviewed by a nun and I told her that I just wanted a safe place to stay for a week. I didn't mention anything about relinquishing my child. She startled when I mentioned that I had a vehicle. Luckily, it was parked right out the front. She told me to stay where I was and that she would go and get some help, despite the fact that I'd said I didn't really need help with a light overnight bag. Off she went, and I stood in that office momentarily, but my instinct kicked in. Lucky it did, because I bolted. I had two big beefy orderlies chasing after me. I got to my car just in time to lock the doors. They tried very hard to prevent me from leaving.<sup>16</sup>

3.15 Some submitters noted that they were not allowed to use their real names at maternity homes. This appears to have been particularly so at homes operated by religious organisations:

On my arrival at St Joseph's, I was told I needed a false name for my stay there. My daughter was subsequently registered with this name as her mother's.<sup>17</sup>

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15 Mrs Beverley Redlich, *Submission 112*, p. 1.

16 Ms Christen Coralive, *Committee Hansard*, 26 October 2011, p .9.

17 Ms Judith McPherson (read by Ms Jennie Burrows), *Committee Hansard*, 28 September 2011, p. 53.

At the home I was told to take another name, that of a Saint, as I could not use my real name, in case one day I should meet a fellow inmate, socially or in the street, who might recognise me.<sup>18</sup>

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To start off we had to have an alias name. It was considered for privacy reasons. We were treated like criminals.<sup>19</sup>

3.16 For many submitters, the initial loss of their real name was a precursor to further loss of empowerment owing to conditions at maternity homes.

### ***Conditions at maternity homes***

3.17 The committee heard that many mothers had their possessions removed, were prevented from having any outside contact with people who may have supported them, were made to work without pay and were subjected to constant pressure to give their babies up for adoption.

I went to the Salvation Army in Sydney and was placed into a home for old women where I and several other unmarried pregnant girls did most of the work there under the orders of the matron, some Salvation Army women, and a cook.

I worked in the kitchen and it was hot, hard work. One of my tasks was to scrub the floor until one day the cook told me to use a mop as I was having difficulty getting down to do it. I had almost finished when Matron came in and said 'What is she doing with a mop? I want to see her on her hands and knees before our precious lord!' Matron came in as I was scrubbing it and said 'That's better; down on her hands and knees where she belongs.' This is just one example of how we were treated there.<sup>20</sup>

3.18 Some submitters suggested that maternity homes appropriated women's benefits, while women were also expected to work to support the operations of the hostel:

I have a vague memory that there seemed to be a seamless process of signing girls up for government benefits to pay for the accommodation with the Salvation Army. However we also had to 'voluntarily' work in the kitchen and the hospital laundry, daily, right up until we went into labour to cover whatever costs there were. This kept the private wing of the hospital running as well as the part set up for adoptions. The work in the laundry was physically demanding, lifting wet sheets, hanging them out, taking off and folding them and washing and drying and ironing laundry for the hospital. It felt like a kind of penance. In recent years, I have occasionally passed what then was the Medindi Maternity Hospital and it generates a

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18 Anne Burrows, *Submission 138*, p. 1.

19 Ms E. Mittermayer, *Submission 221*, p. 1.

20 Name Withheld, *Submission 114*, p. 1.

deep sadness in me and an odd feeling that it was a Dickensian tale about somebody else.<sup>21</sup>

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When you got upstairs your clothes were taken from you and your money was taken from you. You were totally isolated. You were allowed no phone calls, no contact with anybody outside.<sup>22</sup>

3.19 Many witnesses described being forced to perform manual labour to an extent that would certainly not be expected of pregnant women today. As well as working for no pay, Ms Kate Howarth reported that food and accommodation standards were poor:

For the next four months I was put to work in the hospital kitchen and laundry, for six and a half days a week, working an eight hour split shift. There was no payment for the work I did; it was said to cover my 'keep' while I was confined and awaiting the birth of my child. The accommodation provided by the hospital was overcrowded and squalid.

The food supplied was inadequate for the needs of a pregnant girl and resulted in malnutrition that resulted in considerable hair loss and dental problems due to a lack of calcium in the diet.<sup>23</sup>

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When I was at Elim [a maternity home in Hobart] I worked and never saw any money. They reckoned there was a wage. I do not think anyone saw it. I cleaned floors, I was working in the laundry and I was also working in the labour ward, cleaning up after the mothers had their babies. I saw some terrible things happen in there. Every time I hear something about adoptions, it comes back to me. It tears me apart. At the last one, I could not tell them everything because I was afraid. If only people knew what really happened in there. These people are right: it was a terrible place. It was a house of horrors.<sup>24</sup>

3.20 Some maternity homes included facilities to allow women to give birth onsite. The committee heard that in these homes, pregnant women were engaged in ancillary tasks to assist in the operation of the maternity ward:

We were given a tour of the labour ward, and our tour guide told us we had been chosen by God to provide babies for childless couples. After being told we were worthless for so long, I think it was small comfort. We were set to work in the laundries and other areas. I had to sit in the autoclave room rolling up cotton balls into swabs from a long roll of cotton. Some girls got the job of erasing the names from the paper bags put over the feeding bottles for the babies in the nursery so they would be used again.

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21 Ms Margaret Bishop, *Submission 358*, p. 1.

22 Ms Robin Turner, Apology Alliance, *Committee Hansard*, 28 September 2011, p. 56.

23 *Submission 235*, p. 1.

24 Ms Evelyn Mundy, *Committee Hansard*, 16 December 2011, p. 43.

The girls recognised the names of some of the babies as being from their friends who had already delivered.<sup>25</sup>

3.21 Many submitters explained that the experience of isolation and the demands of unpaid work were accompanied by extreme pressure in favour of adoption.

*Adoption as the only choice*

3.22 Many mothers and other witnesses indicated to the committee that the information provided on options other than adoption was poor or nonexistent, while adoption was constantly pushed as the 'right thing to do'. The committee heard several times of the way in which unmarried women were encouraged not to think of the baby as their own. This was deeply distressing for some submitters:

Living in the home for 4½ months was a very impersonal, detached experience for me. No-one on the staff made the effort to befriend me or offer me any support or counselling and this feeling of isolation from everything and everybody pervaded the whole institution. I felt totally alone. At no time was I invited to discuss my pregnancy, to talk about my future or my child's future. The emphasis was always on adoption being what was 'best for the child' – 'if you love your baby then you will give it up for adoption'. There was never any acknowledgment that to relinquish my child would be a major loss for me and for him. I was not treated as an expectant mother but rather encouraged to think of my baby as not being mine but belonging to some perfect deserving married couple.<sup>26</sup>

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I'd lie in bed every night with my arms wrapped around my baby inside of me knowing that I would never hold him after birth. I'd feel his feet and hands through my own stomach as he moved around, knowing that I wasn't ever going to feel them after he was born. I'd talk to him and tell him that I would find him again one day and that I and his father loved him and always would. I'd pray to God every night for him to send [someone] to get me out of there and show me a way to keep my baby, but no one did. I'd think of running away, but where would I run to, who would I run to. It was clear to me that no one in my family was going to help me.<sup>27</sup>

3.23 Despite a lack of any information about alternatives to adoption, some submitters had already decided that they would not give up their babies for adoption. As Ms Joy Goode explained:

Throughout my months at St. Mary's there was no information forthcoming on what was to come. Not from the Matron, her assistant or from the Doctor who visited. We were never asked about our plans for the future—it became apparent early that their foregone conclusion was that we were to adopt our

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25 Name withheld, *Submission 95*, p. 1.

26 Ms Ann Allpike, *Submission 157*, p. 1.

27 Name withheld, *Submission 250*, p. 2.



babies out. My thoughts were that I was the one carrying the child—he was my child—no one could dream of taking him away from me—I already loved him—we had already bonded—I talked to him and I sung songs to him and I 'patted' him—I already loved him! I told him of our future plans. If only I had known what was ahead.<sup>28</sup>

3.24 While adoption was not discussed at maternity homes such as that at which Ms Goode stayed, other submitters recounted severe emotional and physical pressure to have their children adopted. Ms Howarth was given a form in relation to consent to adoption on admission to a maternity home:

In 1965 I was 15, unmarried and pregnant. I was taken to St Margaret's Hospital in Sydney. On the day of my admission I was given a document to sign which I realised was to relinquish my son for adoption. At no time before I was given this document to sign was I told alternatives to adoption or any of the financial and material assistance which I now know was available to me and which was my entitlement at law to be told about before any document was produced...

The treatment that I was subjected to before, during and after the birth of my son was tantamount to torture while the hospital administrator tried to get my consent for adoption. This included threats, intimidation and sleep deprivation. On 26 December 1965 I was discharged from the hospital because I refused to sign the consent. I was 15 years old, eight months pregnant, homeless and with less than £20 to my name.<sup>29</sup>

3.25 Submitters who did not complain about their physical treatment at maternity homes nonetheless felt emotionally pressured into adoption:

I was about five and a half months pregnant when I went to Carramar...

I don't have any complaints about the day to day treatment we received at the home; however we were subjected to intense propaganda, aimed at having us relinquish our babies. The most common line being: if we *really* loved our babies we would give them away, to a proper two parent family.<sup>30</sup>

3.26 Mrs Lizzy Brew explained to the committee that it was decided that her child would be adopted on the second day she spent in such a home, without her advice, and without her being consulted by a social worker:

I went into a maternity home on 2 April 1975. Someone marked my child for adoption on 3 April 1975, the very next day. I did not see a social worker for four months. My records will substantiate that.

We were solicited, basically. I did not ask to have my child placed for adoption. We were solicited for our babies. They went out after us, and that was forbidden by law. They were not allowed to do that. So to mark

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28 Ms Joy Goode, *Submission 241*, p. 2.

29 Ms Kate Howarth, *Committee Hansard*, 29 April 2011, p. 58.

30 Name withheld, *Submission 248*, p.8.

someone's file secretly like that was illegal. Who marked my child for adoption? I still do not know, but someone looked at me and said, 'That will be good. We will have that baby for the Smiths.'<sup>31</sup>

3.27 As well as the constant pressure to have their children adopted, some submitters reported that they were physically and/or emotionally abused at maternity homes.

### *Abuse by staff*

3.28 Submitters have reported very poor treatment at such maternity homes by the doctors, nursing staff and members of religious orders:

I had many medical tests during my pregnancy and couldn't help but feel that I was there for the training of student doctors and nurses. I was pushed and prodded and found my stomach covered in bruises and from one examination was left bleeding from my vagina. I tried to resist upon one examination, but was forcibly pushed back onto the table, being told, 'this is your punishment for what you have done! You have to endure this so that the doctors can practice and be experienced for a real life situation!' One nurse even told me, 'You don't care about your baby, if you had, you wouldn't have fallen pregnant and ended up here annoying all of us. You will do as you are told!'<sup>32</sup>

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I used to hear girls crying and screaming at night, then would stop after a few minutes or so, I realised then what was happening...one young girl, I remember her name...she had a black eye...<sup>33</sup>

3.29 In maternity homes operated by religious organisations, submitters recounted being berated for becoming pregnant. The committee heard that expectant mothers were made to feel ashamed of their pregnancy:

In the [...] office I was told by the [...] what an evil girl I was, that I could never be a proper mother to my baby and the Sisters of St Joseph would help me give my baby to a real mother. I was harangued for some considerable time and felt my throat burn in my efforts not to cry. Suddenly the [...] banged her clenched fists down on her desk, making me jump, screaming at me why won't you cry?<sup>34</sup>

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Life in Holy Cross was harsh, punitive and impersonal. A pall of shame and disapproval covered everyone. It was common to hear girls called 'stupid',

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31 Mrs Lizzy Brew, Origins SPSA Inc, *Committee Hansard*, 29 April 2011, p. 31.

32 Ms Judith Burkin, *Submission 116*, p. 2.

33 Ms Helen Walker-Mcready, *Submission 246*, pp 1–2.

34 Anne Burrows, *Submission 138*, p. 2.

'foolish', 'wicked' and 'sinful'. What struck me in the beginning of my time there was that all of the girls seemed cowed and abnormally quiet.<sup>35</sup>

3.30 Poor treatment extended in some cases to both physical and emotional abuse including rape:

I had a child in 1964. I was at Waitara unmarried mothers home and I had my child at the Mater Hospital at North Sydney...I did not want to put my child up for adoption. I was at Waitara for three months. I was treated very badly, even though I had cousins who were Mercy nuns in the same order there. I was treated very badly by the doctor who was supposed to be looking after us at Waitara. As a matter of fact, I was raped six weeks before Peter was born by the doctor who was supposed to be looking after me.

I was informed by the doctor himself that I was a nice, good Catholic girl and that I would have maybe 11 more kids and I would be back at Waitara the following year to give them another one. I have since found out that the sister who was at Waitara, [...], used to put all our names in an exercise book and she used to have a bet to see which one of us would be back the following year. My name was in her little exercise book when she died and it said. 'Therese will be back to have twins or maybe triplets.'<sup>36</sup>

3.31 The majority of submitters to this inquiry recounted spending their pregnancies in maternity homes. However, those who remained at home also reported unfavourable treatment from their own families and constant pressure to place their children for adoption.

### **Mothers' experiences of pregnancy at home and in the community**

3.32 The attitude of the communities in which mothers lived affected even those who were not sent to maternity homes. The committee received evidence that social conditions in the 1950s, 60s and 70s were hostile to unmarried mothers:

We had a situation where women who became pregnant outside of a marital relationship fundamentally had three options. One was a shotgun wedding, one was an illegal abortion and one was adoption. There were no benefits or supports to enable women to keep their children with them. When one looks at some of the other literature...the state of orphanages and children's homes through the 1940s, 1950s and 1960s was pretty shocking.<sup>37</sup>

3.33 Many submitters explained the stigma attached to single parenthood and its expression in abuse of unmarried pregnant women:

At the time (1977) there was enormous social stigma associated with birth out of wedlock and there was in fact a strong social under-current of

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35 Mrs Margaret McGrath, *Submission 190*, p. 4.

36 Ms Therese Pearson, Origins Newcastle, *Committee Hansard*, 28 September 2011, p. 57.

37 Ms Marie Coleman PSM, *Committee Hansard*, 28 September 2011, p. 1.

pregnant single girls not being [considered] fit to raise children. During this period I was verbally abused in the street and shunned.<sup>38</sup>

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The way in which I was spoken to during my pregnancy and the abuse that they inflicted by putting me down and making me feel wrong—someone said a slut or whatever—the whole implication of being unmarried and pregnant was a terrible legacy from a society that was damned sure of getting my kid; they did not care how.<sup>39</sup>

3.34 The committee heard from several submitters who described the additional pressure felt by unmarried pregnant women outside major cities:

I became pregnant in a country town and the father was not prepared to help me. I knew my parents, especially my mother, would never cope with the shame of having an illegitimate grandchild so I decided to go to Sydney and have the child there.

Her last words to me as I was leaving were 'If you don't have that child adopted, you can never come home again.'<sup>40</sup>

3.35 In an attempt to avoid the 'stigma' of pregnancy outside marriage, many mothers were sent to relatives' houses or maternity homes interstate during their pregnancies. This added to the challenges that parents and adopted people faced, and continue to face, when seeking information or contact with each other.

Also, mothers were often sent to other states to have their babies in order to protect them and their families from public shame, so many adoption experiences span more than one state.<sup>41</sup>

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There was a diaspora of pregnant women being shipped all over the countryside. To get them out of the town and move them.<sup>42</sup>

3.36 Ms Angela Brown described the experience of staying in a maternity home, and continuing to experience discrimination and embarrassment. Many submitters told of the embarrassment of being forced to give police information to enable them to charge their partners with 'carnal knowledge':

If we went into the shops for personal items we were only allowed to go in twos, so as not to upset the home owners in the area who had complained about us 'walking the streets in our state', we were a large blot on their

38 Mrs Louise Greenup, *Submission 101*, p. 2.

39 Ms Spring Blossom, *Committee Hansard*, 20 April 2011, pp 121–122.

40 Name withheld, *Submission 114*, p. 1.

41 Ms Evelyn Robinson, *Committee Hansard*, 26 October 2011, p. 13.

42 Mr Roy Legro, *Committee Hansard*, 20 April 2011, p. 188.

pleasant society and the church did not want any trouble. Shop keepers commented that we were from the local 'baby factory'.

They had the police come and talk to us and have my boyfriend charged. I had to make a statement and described a 'typical sexual encounter'.<sup>43</sup>

3.37 The committee heard that family members were particularly disapproving and provided little or no support, fearing a loss of their reputation:

Early in 1970 I found that I was pregnant. As an unmarried woman who had just turned 21, this was a most distressing time for me. I knew of other women who were unmarried and pregnant; they suffered discrimination, public humiliation, their children were referred to as bastards they were branded as illegitimate. I knew that my child and I faced an uncertain future...

My father said to me that if I kept my child, I would not be welcome at home or in the family. I was forbidden to have further contact with P.

My parents feared that I would bring disgrace, shame and ridicule and this would damage the family reputation. They worried that my siblings would be taunted about having an illegitimate (bastard) child in the family. It all had to be kept a secret. I was to be banished from home and immediate family members for the duration of the pregnancy and faced being shunned and excluded from the family if I went against the wishes of my parents.

Such were the times, vulnerable pregnant and unmarried woman were at the mercy of social criticism and ridicule. They were socially isolated and treated harshly. At a time when the mother most needed love, compassion and emotional support, she and her child were cast aside by society in general, and manipulated by the adoption system.<sup>44</sup>

3.38 Some young mothers' families took extreme steps to hide their daughter's pregnancy from society. One submitter recounted that her mother advised her to wear a corset during her pregnancy and was hidden in a wardrobe or in bed when guests visited:

As the pregnancy progressed my mother advised me to wear a boned corset. As I grew bigger, the corset threads were tightened with pressure down the opening in the back. This was to disguise the growing baby bump. Sometimes I felt I could barely breathe with the baby pressing on my lungs and ribs...

I remained at home when not at work for the remainder of the five months. Visitors would call in to see my parents. Dinner parties were held at home. I would be asked to hide in my mother's wardrobe while visitors were entertained. I was not to be seen. On my birthday a Christmas party was held at home for friends and relatives to enjoy. The baby was due any day. I remained in my bed throughout the whole evening. Story told to guests, I

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43 Ms Angela Brown, *Submission 402*, p. 1.

44 Name withheld, *Submission 142*, p. 1.

was unwell and too sick to join in. My bladder was so painful wanting to urinate after a few hours; I almost passed out with the pain. The toilet could not be visited should someone see my bulging, pregnant stomach. I waited until everyone had gone home.<sup>45</sup>

3.39 Many submitters noted that such social isolation and stigma was experienced to a much greater degree by unmarried mothers rather than fathers:

In 1963 I found myself pregnant to a long time boyfriend, apparently I committed a crime the way I was ostracised by my mother, she would not converse with me give any advice on the subject. When Dad wasn't around I got called a few choice names when I was needed to do certain things at home. A few weeks later I was dismissed from my workplace as the shearers were due and then a few weeks later on shearers were due at home and I was soon bundled off elsewhere before I was sent to a home for unmarried mothers, not in my home state just in case I was recognized and ruin the family name, so away to Victoria for the last 4 months. It was bad enough being pregnant and shunned by my own mother and boyfriend that I was to be married to but then to be packed off to a different state into a home with about forty to fifty strangers. It's amazing that it was the girl that had done the wrong, never was the male treated the way we were, the girls were the sluts, street girls etc. The social stigma, attitudes and family shame back then were unbelievable and to think that one's own family banished their own flesh and blood for being human I will never understand and will never forgive.<sup>46</sup>

3.40 Other families addressed the stigma of unmarried pregnancy in other ways, for example, by pretending that their daughter's child was their own child, or their own adopted child:

My mother was a silent witness to her daughter's upbringing by her parents (and this raises too many issues)...

I don't wish to disparage my grandparents I truly love them and the love they had for us but they were misguided in their ideas and it cost so many.<sup>47</sup>

3.41 The committee heard that attitudes of families to unmarried pregnancy also extended to the wider community, including employers and health professionals.

### ***Access to work and financial support***

3.42 As well as from families, witnesses also recounted poor and unsupportive treatment by employers. Ms Evelyn Robinson, author of several books on the experiences of mothers and adopted people, explained to the committee that women frequently lost their jobs when their pregnancy became known:

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45 Name withheld, *Submission 255*, p. 1.

46 Kaye, *Submission 167*, p. 1.

47 Name withheld, *Submission 195*, p. 2.

Many of them were sacked from their jobs because they were pregnant, and they would not be re-employed as an unmarried mother...In the mid to late sixties, very few people would employ an unmarried mother. Many people would not provide accommodation to a single mother with a child. So financial support was crucial to many people.<sup>48</sup>

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In the meantime the owner of the hairdressing salon where I had been indentured as an apprentice hairdresser, offered to pay all costs if I would agree to an abortion. I blankly refused, choosing motherhood over my hairdressing career.<sup>49</sup>

3.43 In addition, many submitters reported not being informed of any financial assistance available to them. Those who were in a position to seek and find further information found other obstacles placed in their paths (conditions for obtaining government welfare support are discussed further in Chapter 5). Ms Christen Coralive recounted the humiliation she endured at a welfare office:

I was already under duress, frightened and alone. At that time, I was not advised by the social worker that there was financial assistance available to me. This information was kept from me, and therefore there was no other option for me at that time.

To follow-up on the money issue, I approached the Council of Single Mothers and Their Children, which had just got started, I think, and I was told that there was money available from them. But when I approached Centrelink, or whatever they called themselves in those days, I was told that there was no money for six months. So then I had to approach the state welfare department for money, and that was one of the most humiliating experiences that I have ever had. I remember that there were very specific questions as to the sexual nature of my relationship with my baby's father, including how many times we had had sexual relations, where and when. I refused to fill in those questions. I was mortified and left the office penniless. Luckily, I had worked through my pregnancy, so I did have some savings. We lived in poverty.<sup>50</sup>

3.44 Other submitters have recounted encountering grossly unethical behaviour when visiting trusted professionals such as psychiatrists and doctors:

After this disastrous visit the Social Worker sent me to a psychiatrist. I don't remember discussing my pregnancy or my plight with him. I told him that I was eight months pregnant and alone in Sydney and confused about what I should do. I was astonished by his response, which was, 'What are your sexual fantasies?'

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48 Ms Evelyn Robinson, *Committee Hansard*, 26 October 2011, p. 16.

49 *Submission 109*, p. 2.

50 Ms Christen Coralive, *Committee Hansard*, 26 October 2011, pp 9, 11.

It was probably in the first week after the birth that a tall distinguished looking doctor wearing a very expensive kind of suit was ushered into my room by a midwife (she left the room) and stood opposite me whilst I was sitting on the edge of the bed. After I told my story very briefly, and I asked him 'what was wrong with me, where had I gone so wrong' the psychiatrist made the following remarks, 'You must have enjoyed the fucking that created your baby, all those sperm exploding against the walls of your vagina!' He then concluded his visit by saying that I was 'emotionally immature'.

Interview over. I was left with the feeling that he intended to make me feel powerless afraid and anxious; he had indeed succeeded if that was his objective. There was no advice or compassion. He had violated my rights to feel understood to seek information, to be reassured by a health professional postnatally and as I felt so shocked and stunned that a doctor could speak with a patient in that manner, I have never disclosed this experience to anyone in past 43 years up until recently, as it was too painful, confronting and unbelievable.<sup>51</sup>

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On every occasion that I went to see him [her doctor], he told me to take off all my clothes no matter if it was for an internal examination or simply to take my blood pressure. I didn't understand why it was necessary to undress for this but didn't question any of it, thinking that perhaps it was what every pregnant woman had to do. I remember being very embarrassed by it and really didn't know how to broach the subject with my mother or anyone else.

On two occasions when taking my blood pressure, he sat beside the examination table and positioned my arm so that the back of my hand rested in his crotch. On the second occasion he did this, I raised my arm but he casually pressed it downwards until it was again resting in his groin. I blush even now at the memory of it and am angry that he took advantage of my inexperience and angry at myself for not having said something to him about it or told anyone.<sup>52</sup>

3.45 In summary, women who made submissions to the inquiry recounted a pregnancy marred by systematic disempowerment. The committee heard that such disempowerment was reinforced by families, employers, society, religious communities, health professionals and at maternity homes.

Defeated, vulnerable, lost and alone, I really felt I had no rights. I felt this because it was what I was told and they made sure that there was no way I could find out any differently. A nun told me that I was a minor and the decision was not mine. She said it was for my father to decide. I believed all the lies I was told.<sup>53</sup>

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51 Name withheld, *Supplementary Submission 202*, p. 1.

52 Mrs Margaret McGrath, *Submission 190*, pp 6–7.

53 Ms Judith Hendriksen, Private capacity, *Committee Hansard*, 1 April 2011, p. 9.



## Mothers' experiences of birth and hospitals

3.46 After a difficult experience of pregnancy either with their families or at a maternity home, many submitters recounted still worse experiences at hospitals. At early visits to hospitals, women had already experienced discrimination based on their marital status. As Ms Darelle Duncan explained:

I admitted to being unmarried...

The hospital social worker was a formidable woman and she did not feign to hide her disdain for me. She said I had to go to the Department of Child Welfare to arrange the adoption of my child. She provided no alternatives. Further, she insisted I was not to use my medical benefits allowance for an intermediate ward as I had to go to the public ward where 'girls like me went'. When I asked about pre-natal classes she told me they were not for me, they were for 'married couples'.<sup>54</sup>

3.47 The assumption that the children of unmarried mothers would be adopted was reinforced by mothers' experiences of birth.

### *Baby for adoption*

3.48 The committee heard evidence that the files of unmarried mothers were marked 'baby for adoption' or 'BFA'. While this may have occurred in cases where mothers had explicitly stated that they did want their child adopted, the accounts below would indicate that such an acronym was written on the files of most unmarried women:

The hospital files of single pregnant girls files were often marked 'BFA' assuming that the child of an unmarried mother would be adopted long before consent was taken and even if the mother had advised that she was keeping her child.<sup>55</sup>

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In my research study I interviewed women from all states and they all had very similar stories: once you were in the hospital it was like a conveyor belt—it was immediately assumed if you were unwed that your baby would be taken for adoption.<sup>56</sup>

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My file is marked UB negative, which is the same thing as BFA. It stands for 'unmarried baby negative'.<sup>57</sup>

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54 Ms Darelle Duncan, *Submission 192*, p. 2.

55 Ms Barbara Maison, *Submission 14*, p. 1.

56 Ms Christine Cole, Apology Alliance, *Committee Hansard*, 1 April 2011, p. 41.

57 Ms Robin Turner (assisted by Ms Christine Cole), Apology Alliance, *Committee Hansard*, 29 April 2011, pp 43–44.

My medical records have 'BFA' stamped on them...even though I had said from the start I wanted to keep my baby. So it's clear to me they had the adoption of my child as their intention all along.<sup>58</sup>

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The 3rd report...[s]tates I have had a very positive pregnancy and am very determined to go through with the adoption.

Across the top of my medical records is written Carramar.....BFA<sup>59</sup>

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I had no intention of giving him up for adoption, I had purchased his crib, bedding and basic baby needs, but ended up suffering from toxemia and was put into hospital early and kept sedated – from the moment I arrived I was referred to as 'BFA' which I now know means 'Baby for Adoption'.<sup>60</sup>

3.49 The marking of an unmarried mothers' file in such a way likely influenced her later treatment while giving birth as well as during post-natal care.

### ***Experiences giving birth***

3.50 The committee received submissions indicating that women who were unmarried were treated differently at maternity hospitals from women who were married:

During my two days of labour I was isolated and left in pain for long periods of time. Nurses glared at me with cold contempt when I asked for help, and laughed together in front of me making derogatory comments about my 'unwed status'.<sup>61</sup>

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I do not remember how the nurse knew I was unmarried, maybe I told her, I couldn't see it being a problem as I had parental support and knew very little about the practice of adoption. However, from that moment on her attitude changed and she treated me as if I was less than human.<sup>62</sup>

3.51 Many submissions emphasised the attitude taken by nursing staff was one of disdain and judgement:

I was treated inhumanely. A nurse even told me the pain I was experiencing was punishment for getting pregnant before marriage. I was ignored and left alone with the contractions until the birthing began. I had no idea what to

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58 Ms Linda Eve, *Submission 159*, p. 4.

59 Ms Jan Stewart, *Submission 316*, p. 1.

60 Mrs Julie Noble, *Submission 362*, p. 1.

61 Ms Rosemary Harbison, *Submission 92*, p. 1.

62 Ms Margaret Nonas, *Submission 1*, p. 3.

expect. They shouted at me, and then pushed a gas mask onto my face. They made comments about me, but didn't talk to me at all.<sup>63</sup>

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There was no one, not one person for so many hours as I screamed until I could scream no more—finally a nurse appeared as I called for God to help she said words that will stay with me forever, 'He won't help you—this is what you get for getting pregnant'. I am now 64 years old and still cannot say those words without crying. I felt so hopeless and thought no one can help me now if God can't.<sup>64</sup>

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At approximately 6.30am I was in a great deal of pain and asked the same nurse how much longer I had to go, she had just examined me so would have been aware of my progress. Her answer was that I had all day to go yet and just to shut up and get on with it. I gave birth less than 2 hours later with the blankets piled over my face and a needle jabbed into my shoulder immediately upon giving birth. This needle contained Stilboestrol to dry up my breast milk.<sup>65</sup>

3.52 The committee heard that this lack of appropriate care extended to the actual time of labour:

I do remember that when the time came, to give birth, I was locked inside a small room where linen was kept. I was told to lay on a bench made of wood, where they folded the linen and bandages. There was nothing over the bare wood. Many times a Nun would come into the closet and give me a needle in the bottom, without speaking to me except to move over. When the pains became unbearable they took me to a room and proper bed, where I was given strong oxygen through a mask. My legs were raised, in what I now know were stirrups, and I gave birth. I was torn badly in the birthing. The baby was put next to my head behind a curtain and cried non-stop. When I asked 'was that my baby crying'? I was told 'yes', nothing more. I listened to my baby cry for a long time before the Doctor arrived and angrily told the Nuns to take my baby away.<sup>66</sup>

3.53 Many submitters described being tied to a bed whilst delivering their babies. Others explained that a pillow or sheet was placed over their heads, preventing them from seeing their babies at birth:

The screams of the other girls giving birth tied to a bed with bruises and bleeding arms next door to where six of us lay awake and listen in great fear of what torture was ahead.<sup>67</sup>

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63 Ms Linda Eve, *Submission 159*, p. 1.

64 Ms Joy Goode, *Submission 241*, pp 1–2.

65 Ms Margaret Nonas, *Submission 1*, p. 3.

66 Ms Sandra Parker, *Submission 322*, p. 1.

67 Name Withheld, *Submission 365*, p. 1.

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I first knew something was wrong when a pillow was placed over my face during the birth, so that I couldn't see the child during the birth.<sup>68</sup>

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Certainly by 1963 the practice of hiding the baby from the mother giving birth was well-established. The sheet went up on cue. The drugging was mandatory for unmarried women, as was the stilboestrol administration, the binding of the breasts, and in my case, the shackling to the labour ward bed.<sup>69</sup>

### ***Lactation suppressants and breast binding***

3.54 The accounts of many mothers include being given various drugs including sedatives, and drugs to inhibit milk production. The committee heard evidence that mothers whose babies had been identified for adoption were administered with lactation suppressants and/or had their breasts bound to suppress milk production.

About this time my milk 'came in', which I had not been expecting and a nurse arrived to bind my breasts (very) firmly with a big calico cloth held tightly with a big safety pin. This 'binder' was changed and rebound daily.<sup>70</sup>

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I awoke three days later to find my breasts so tightly bound that I had trouble breathing. This procedure was done to suppress my milk production and I feared that my son had already been taken. My hysteria and distress was observed by another woman in the public ward and she called for a nurse. Consequently, my son was finally brought to me. He had lost a noticeable amount of body weight compared to the child presented to me in the labour ward—so much so that I hardly recognised him. He was screaming and clearly in distress.<sup>71</sup>

3.55 Many submitters identified the drug *diethylstilboestrol* (DES) as being most commonly administered for this purpose:

I am angry that I cannot get a list of my medications, because I have a second born daughter who I believe is suffering from the long effects of Stilboestrol. I know I was given medication in the hospital to dry up my milk and I was fed medication when I left the hospital. I have no memory other than one or two tiny incidents of those four days. I believed I had been taken home the next day but I was there for four days.<sup>72</sup>

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68 Mrs Madeleine Schwer, *Submission 642*, p. 1.

69 Ms Jan Kashin, *Submission 93*, p. 8.

70 Ms Allison Bosley, *Submission 63*, p. 4.

71 Ms Kate Howarth, *Committee Hansard*, 29 April 2011, p. 58.

72 Ms Suzanne MacDonald, *Committee Hansard*, 1 April 2011, p. 43.

3.56 Some submitters consider that DES was administered specifically to unmarried mothers. However, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists' website notes that DES was used in Australia predominantly between 1946 and 1971, 'to prevent miscarriage and avoid pregnancy complications'.<sup>73</sup> Information on the website indicates that DES was prescribed to pregnant women; there is no indication it was administered on the basis of marital status. DES was withdrawn in 1971 following the discovery that exposure *in utero* was linked to the development of vaginal tumours.<sup>74</sup> In addition, people who took DES themselves have experienced higher rates of breast cancer.<sup>75</sup> The RANZCOG and National Health and Medical Research Council (NHMRC) have published health information for both groups.<sup>76</sup>

3.57 Other submitters noted a range of other medications were administered for purposes other than suppressing lactation:

As the night wore on, I was given several drugs, I have my medical records; among the drugs were barbiturates and an anti-psychotic.<sup>77</sup>

3.58 The committee received a submission from a former trainee nurse and midwife which suggested that drugs were administered to women after birth as a matter of care. The submitter refuted the suggestion that unmarried women were deliberately 'drugged', and defended the use of lactation suppressants:

Another witness complains of being given medication to dry up her milk. Did she want to end up with engorged breasts with possible abscesses on her nipples? If she was not feeding her baby, how else was she to stop lactating? She could have taken the natural route over many days but it is manifestly obvious that the nursing staff meant to help her, not hinder her...

She would have been given a drug to assist in expelling the placenta but in all, her 'drugged' state could simply be a reaction to the traumatic events pre and post delivery. Birth experiences are individualistic. One size does not fit all. There was no sinister conspiracy to cause her any harm of that I am sure. If she was given a sedative after birth, she probably needed it.<sup>78</sup>

3.59 The committee accepts that there may have been instances of malpractice in relation to the administering of drugs to unmarried women. Nevertheless, the

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73 Royal Australian and New Zealand College of Obstetricians and Gynaecologists, *Diethylstilboestrol\_DES\_Exposure in Utero (C-Gen 8)* College Statement, Current: March 2010 (hereafter 'RANZCOG DES statement 2010'). <http://www.ranzcog.edu.au/womens-health/statements-a-guidelines/college-statements/491-diethylstilboestrol-des-exposure-in-utero-c-gen-8-.html> (accessed 14 February 2012).

74 RANZCOG DES statement 2010.

75 RANZCOG DES statement 2010.

76 See RANZCOG DES statement 2010.

77 Ms Margaret Nonas, *Submission 1*, p. 3.

78 Name withheld, *Submission 413*, p. 2.

committee also understands that a variety of medications were prescribed to women after childbirth, mostly administered by medical staff to both married and unmarried mothers.

3.60 However, the issue of medication is related to that of consent to adoption. While sedatives may well have been prescribed to both unmarried and married women, it was by and large the unmarried women who were subsequently asked to sign a legal document consenting to their baby's adoption. While lactation suppressants may have assisted in the physical recovery of a mother who was not breastfeeding, many mothers have explained to the committee that such medications (or breast binding) occurred before any consent to adoption was requested. The issue of consent is discussed in more detail in the following chapter.

### *Different medical treatment*

3.61 In addition to the administration of drugs, some submitters also suggested that poor medical treatment was afforded to unmarried mothers. Ms Maree Laird explained:

Well, of course the only cause of bleeding was found to be due to their negligence, a combine dressing [a type of dressing for wounds] found in the vagina—it was left there during or immediately after the birth.<sup>79</sup>

3.62 The committee heard from Ms Robin Turner that the birth of her baby was delayed for the convenience of hospital staff, who later treated her in a threatening manner:

As I was the only woman in the labour ward, they sought permission from Professor [...] to push my baby back up through the birth canal to delay the birth so they could go to the ball. They kept me on IV pethidine until he was born, eventually, on the Thursday night before Mothers Day, at 13 minutes past eight. I ended up with septicaemia...

They told me, 'If you intend to keep your child, you will have to come up with the money to pay for his surgery. If you do not sign the papers and you do not have the money, he will be left in a cot in the corner to die.'<sup>80</sup>

3.63 Ms Carmel Ipock explained that she believes that an Rh<sub>o</sub>(D) Immune Globulin injection would have prevented her baby's death. In addition, the news of her baby's passing was delivered to Ms Ipock in an insensitive manner:

I returned home to stay with my mum and it was never talked about again. As it happened, a few weeks later a letter came from Newcastle hospital. Thinking it was just some routine paperwork, I opened it only to find that it was to tell me that my son had passed away on 20 October. The letter said:

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79 *Submission 20*, pp 8–9.

80 Ms Robin Turner (assisted by Ms Christine Cole), Apology Alliance, *Committee Hansard*, 29 April 2011, pp 42–44.

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Cause of death I. (a) Cardiac failure (b) Congenital heart lesion. Duration of last illness. II. Respiratory distress Syndrome (days).

When I look back on it now I realise just how cruel and insensitive it was. There was no warning or counselling—just a letter. I have other paperwork. I believe that the reason that child died was that I am in the Rh negative blood group and I was not given the anti-D needle, which apparently I was supposed to have been given after the birth of my first child. I was never given that, so I believe that is why that child died.<sup>81</sup>

3.64 Another witness recounted an instance of a baby passing away and the mother continuing to receive advice that the baby had been adopted.

[T]he trauma experienced by unwed natural mothers which is incomparable and unequal to any other trauma as well as the trauma mothers later suffered when learning of their angel's premature death before adoption and their burial without permission in unmarked graves or under a false name. My latter comment is made in memory of Christopher.<sup>82</sup>

3.65 The committee also heard from a mother who recounted that unmarried mothers were subject to a sexually transmitted diseases test and held in hospital until the test results returned:

A venereal disease test would be taken from all single mothers and sent to the Brisbane laboratories. It would be available in a period of five to seven days in the city, but it would take a fortnight for the results to reach the regional hospitals, so the mothers would be forcibly kept in hospital for a fortnight, when in fact they wished to leave with their babies. If the test was positive, they would not take the baby for adoption but, if it returned negative, the consent taker would visit to take the consent...

They must have drugged me up so heavily. I did not understand. Why didn't they just discharge me and let me go? When I got this letter I realised the reason they were keeping there was so that the VD test could come back, and it took two weeks to come from the laboratories in Brisbane. That letter confirmed what I did not even imagine. I wondered for 40 years and did not know. I have only had this for the last couple of years.<sup>83</sup>

3.66 One of the most marked ways in which unmarried women were treated differently from married women was the restriction on unmarried mothers from seeing or touching their babies.

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81 Ms Carmel Ipock, ARMS Western Australia, *Committee Hansard*, 1 April 2011, p. 48.

82 Ms Brenda Coughlan, *Committee Hansard*, 20 April 2011, p. 85.

83 Ms Linda Bryant, Origins Queensland Inc., *Committee Hansard*, 27 April 2011, pp 40, 46.

***Restrictions from access to babies***

3.67 The committee heard from many mothers who did not know and were not informed that their babies had been marked for adoption, and only found out when their babies were removed immediately after birth.

When I had my child she was removed. All I saw was the top of her head—I knew she had black hair. I begged, I pleaded and I did everything—'Please can I see her.' 'No, you can't. She's marked for adoption.' Those were the words. I did not know what that meant at the time, but of course I do now.<sup>84</sup>

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My son was born shortly after and whilst being stitched up the baby was placed across the room with the two midwives moving from side to side to taunt me from seeing my baby. I asked to have my baby and was told 'that was not possible' as I was classified as BFA 'baby for adoption'. I told them I was keeping my son [and was] told 'we will see'...

I went to the nursery to get my baby and was told I was not to have admittance to the nursery. After lunch I returned to the nursery and proceeded to walk straight to my baby, I was physically held back, the nursery door was locked and a social worker called. I was told not to make any trouble, you have no right to be here and to return to my bed, I made several unsuccessful attempts to get into the nursery to be with my baby.<sup>85</sup>

3.68 The practice of removing babies at birth from unmarried mothers was deeply distressing to many submitters. The committee heard many accounts of babies being taken despite their entreaties that they did not want their babies to be adopted. Mothers who were unmarried explained that they were restricted from seeing or touching babies in spite of multiple requests and attempts to gain access.

The really major disaster of history is the separation of a mother and an infant at birth. This experience of abandonment is the most devastating event of life. It leaves babies emotionally and psychologically crippled.<sup>86</sup>

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I was devastated when she was wrenched from my arms. No one spoke to me as my baby vanished from my sight. I had not yet been forced to sign an adoption form.<sup>87</sup>

3.69 The committee has received submissions from former midwives commenting on the issue of restricting mothers' access to their babies. One former midwife explained that many nurses felt compassionately towards young unmarried women, and cared for them more than their own families did.

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84 Ms Linda Bryant, Origins Queensland Inc., *Committee Hansard*, 27 April 2011, p. 46.

85 Ms Linda Ngata, *Submission 17*, p. 1.

86 Ms Suzanne MacDonald, *Committee Hansard*, 1 April 2011, p. 36.

87 Ms Rosemary Harbison, *Submission 92*, p. 2.



The reason that young unmarried girls (who were intending to have their child adopted) were not encouraged to see or care for their babies in hospital was out of kindness. It was considered to be an extra trauma for them, had they bonded with the baby, to have it taken from you a few days later.<sup>88</sup>

3.70 However, another former midwife described a sense of 'shame and remorse' after seeing a television program about mothers whose children had been adopted in the 1960s and 1970s. Ms Annie Florence's submission noted that while at the time she and her colleagues had thought they were doing the right thing for the mothers and children, her opinion changed after hearing the distressing stories of affected women on the broadcast program:

Nurses were shown espousing the virtues of adoption—the hospital Matron was shown giving details of the criteria of the 'perfect adoptive parents'. I was absolutely stunned and appalled as I realised that I was one of those nurses (not in the actual film) but I had been a nurse working at the Royal Women's Hospital in Melbourne at exactly the time depicted in the program. I related and relived every incident that was depicted on the old film footage. Yes, we had taken babies from their mothers at birth, without them holding or even seeing their child. The mothers were then admitted into wards without their babies and ostracised in many different ways, finally being discharged about one week later, never having seen or held their baby or the 'new' parents who had adopted their baby.

The babies stayed in the nurseries in the hospital waiting to be adopted, sometimes for months, their only contact being with the nurses such as myself who cared for them on a daily basis. Needless to say we become very fond of these babies, however it wasn't the same as being cared for by their mother.<sup>89</sup>

3.71 Mothers explained that they were prevented from seeing their babies by being locked out of nurseries and in some cases physically held back from seeing the babies they had given birth to. Ms Judith Hendriksen expressed the clarity of her memories surrounding her repeated attempts to gain access to her baby:

My second request to see my baby is the most vivid memory I have from my time there after giving birth. We were in the bathroom where the toilets and showers were. 'It's not your baby,' the nun told me. 'It's not my baby?' Well, this was interesting. While I was standing there milk was leaking from my breasts...[t]hen she proceeded barbarically to tightly wrap the binding around my breasts.

My third and last attempt asking to see my baby was in the morning before my father came to take me home. A nun told me yet again, 'It's not your baby. You have your whole life in front of you. Just get on with your life and forget it.' Three times on three different days I asked to see my little

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88 Mrs Audrey Allitt, *Submission 412*, p. 2.

89 Ms Annie Florence, *Submission 36*, p. 1.

daughter before I left St Anne's. Three times I was denied, for it had been calculated my precious baby, that I carried there in my womb, was for the joy of others.<sup>90</sup>

3.72 This pain was felt keenly by some mothers who, after having had their babies taken from them against their will, shared wards with married mothers who were allowed to hold and feed their babies:

My baby was taken from my bedside and placed all alone in a nursery. I was forbidden to see him or go in the nursery. I was then left for several days sitting on a bed in a ward full of married mothers who were allowed to have their tiny babies next to their beds. They were able to hold their babies, cuddle them and feed them whilst I sat and watched and cried.<sup>91</sup>

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Over the next several days I continuously begged to see my baby. All my requests were denied with the staff saying 'It's best that you don't see the baby.' They added an extra cruelty by placing me in a ward with married women caring for their babies. This was a torture that I could not escape.<sup>92</sup>

3.73 Submitters recounted that not having had the opportunity to see their babies, many mothers were then requested to sign a consent to adoption.

## Consent

3.74 This inquiry is about forced adoption. As such, most of this section on women's experiences of consent to adoption relates to some element of force. The committee heard accounts from women who gave consent without being advised of their options, who gave consent under duress, who revoked consent and were not given their baby, and in some cases, who reported not giving consent at all.

3.75 Some submitters recounted giving consent to adoption because the resistance from their families and wider society was too great to resist:

I was 18 years old but I think my emotional maturity level was about 14 years old. I did what all the other girls did in my situation. I will feel forever sad and sorry that I didn't have the gumption or strength of character to be able to stand up for myself and my daughter. This is how you felt. You were so bad, so troublesome, so undeserving. What would a frightened, downtrodden and shamed young girl have to offer her child, where would she start? I could not fight my family or the society's values at that time. I was also emotionally distressed that my relationship had also broken up in such awful circumstances.<sup>93</sup>

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90 Ms Judith Hendriksen, *Committee Hansard*, 1 April 2011, p. 9.

91 June Smith, *Committee Hansard*, 20 April 2011, p. 34.

92 Ms Robyn Cohen, *Submission 91*, p. 3.

93 Name withheld, *Submission 404*, p. 2.

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It was 1977 I was only 15 years old, a child myself when I let them take my son away. I was not sure, not capable and certainly not in command of the situation, I had experienced the pain of birth both physically and mentally in a naïve and cruel way, two months before the due date. I had no pre natal class, no idea or understanding of what to expect or what was to happen when I went into labour. My memory of this experience is rather minimal, surrendering to a situation I was never to have control of.<sup>94</sup>

3.76 The committee also heard from mothers who gave consent to adoption because they believed there was no other option.

### ***Informed consent***

3.77 Many submissions to this inquiry noted that consent to adoption was given in the context of a complete lack of alternative information. The committee heard from a number of mothers who were not advised of their entitlements, such as their entitlement to revoke consent, or their entitlement to access welfare payments.

I have spoken to hundreds over the years and I have never met one natural mother who lost a child through adoption who was given any alternative other than adoption or who mentioned the financial support. I literally have had contact with hundreds myself. Some I have never met but have had contact with.<sup>95</sup>

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The majority were not told, a fact that was known to the almoners and social workers of the times, was that there was a Special Benefit to apply for, that was available to assist a mother to bring up her child.<sup>96</sup>

3.78 Other submitters recount not being told the contents or effect of the form that they were signing. Ms Susan Treweek explained that at the time of her child's birth, she was unable to read, and was not told the form in front of her was a consent to adoption:

The midwife came to me while I was being stitched up and handed me papers. They knew that I could not read. They handed me the papers and said I must sign the registration of birth.<sup>97</sup>

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The following week I had a visit at my place of work from the child welfare officer...and he told me that my child had tonsillitis and asked me to sign consent papers so she could have an operation when it became necessary, I

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94 Name withheld, *Submission 340*, p. 1.

95 Ms Judith Hendriksen, *Committee Hansard*, 1 April 2011, p. 9.

96 Ms Barbara Maison, *Submission 14*, p. 1.

97 Ms Susan Treweek, *Committee Hansard*, 27 April 2011, p. 45.

was soon to find out that the papers I had signed were to make my child a ward of the state I had been tricked by the child welfare officer, and once again he at no time gave me any idea that I had options available to help me.<sup>98</sup>

3.79 Another submitter recounted that the consent form was placed under another form so as to hide its contents from her:

On the fifth day, I needed to sign a piece of paper giving permission for a blood test for my daughter. The paper was folded and underneath two signatures were required. The underneath piece of paper was a relinquishment form.<sup>99</sup>

3.80 The previous section noted that drugs were administered to women following the birth of their baby. Many submitters explained to the committee that at the time their consent form was signed, they remained under the effect of analgesic or sleep inducing medication:

And until I accessed my hospital records for my period of confinement at the hospital, I was not aware that the adoption marketeers obtained my consent for adoption within 3 days of my confinement rather than the statutory 5 days prescribed in the legislation. I also learnt that my signature was obtained shortly after I had been given some potent analgesia which makes a complete mockery of any concept of informed consent.<sup>100</sup>

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Because you are in such a distressed state—you have been drugged up and you do not know what is going on—you are virtually brainwashed or a prisoner that has been tortured, and you signed.<sup>101</sup>

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With four powerful people surrounding me and in my very distressed, drugged, emotional state, I agreed to give my child his 'better life'. At no time was I told that there was financial assistance to keep my child, or told that there was a time period in which I could still get my baby back.<sup>102</sup>

3.81 In some cases of the parents of mothers may have been deliberately misinformed.

In 1983...I then spoke to my mother about it for the first time since 1968 and I was shocked at what she told me. She said she had a call from a woman from the department and she had told her that as much as I wanted to keep my baby, it was not possible, because I was not 16 it was illegal for

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98 Mrs Glenys Campbell, *Submission 249*, p. 2.

99 Ms Christen Coralive, *Committee Hansard*, 26 October 2011, p. 9.

100 Mrs Hannah Spanswick, *Submission 2*, p. 2.

101 Ms Linda Bryant, Origins Queensland Inc., *Committee Hansard*, 27 April 2011, p. 46.

102 Ms Margaret Nonas, *Submission 1*, p. 3.

me to keep my baby and that she had to come down to the hospital on the Wednesday to sign, because I was only 15, they required her signature as well. She could not understand why she didn't sign anything and why they let her sit in the waiting room for hours.<sup>103</sup>

3.82 While some submitters were not informed about options other than adoption, others were more overtly pressured into signing consent forms.

### ***Consent under duress***

3.83 Many submitters recounted the extreme pressure they were placed under in hospital to give consent to adoption.

The social worker had never forgiven me for 'tricking' her, as she called it, in the hospital, and she kept saying that it was only a matter of time before I went to court. I told her that I had changed my mind, and that I was going to keep my baby. She slapped me across the face and said that I had made life very hard for her because she had a lovely couple lined up for my daughter. She went on to tell me that she would get my baby in the end, but that I should be ashamed because I had stopped her from being adopted by the best 'parents' since my baby was no longer a newborn and, therefore, not as attractive to prospective adoptive parents...

Her physical abuse of me was carried out in front of the policewoman who did absolutely nothing about her actions.<sup>104</sup>

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The social worker from the Catholic Adoption Agency came to visit me 3½ days after my son was born to sign the papers. I understand the legal requirement was 5 days. I was miserable with the 'baby blues' and alone and the social worker reiterated to me the wonderful couple waiting for him and followed this with my shortcomings. I was made to feel I was in no way good enough to care for my own child and he would have a much better life without me. I had made a mistake and this is how I should make up for it. No other representatives were present to support me – just the social worker and I. The biggest regret of my life is that she bullied and brain washed me into signing that paper. 29 years later and I still cannot fully take in how it happened.<sup>105</sup>

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My third son was born in May 1970 at Crown Street in Sydney...

Everybody just seemed to want to get their claws into you: Oh, she's an easy target.' This was written on my papers when I received them 28 years later, by a social worker who had known me for about three months of my life:

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103 Mrs Janette Lord, *Submission 29*, pp 2–3.

104 Ms Janice Konstantinidis, *Submission 90*, p. 11.

105 Name withheld, *Submission 313*, p. 2.

This is her third confinement and there have been no lasting relationships with any of the Birth Fathers, she is a girl of average to low average intelligence. She seems a sad and directionless girl, lacking ability to make close associations.<sup>106</sup>

3.84 The committee heard that people whose role it was to take consent did so in a coercive manner and without a discussion of any other options:

She did not warn me of 'dire future regret' if adoption is being considered. She withheld information about alternative options or available government assistance. Her menacing and aggressive manner escalated until she achieved her goal of forcing me to sign the form. The adoption consent was not voluntary or informed.<sup>107</sup>

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I was led into this room and, to be honest, I cannot remember. I know I signed the consent because that is my signature, but I do not remember much. I just remember that I was crying a lot. I was absolutely distraught. This man was very angry at me. ... He said, 'I'm sick of coming up here, girlie. You sign this consent now.'<sup>108</sup>

3.85 Ms Janice Konstantinidis told of being harassed by social workers on a daily basis while she was still in intensive care due to complications following the birth of her daughter.

During my stay in hospital, I had daily visits from social workers who bullied me about my refusal to sign the adoption papers that they brought with them each time. These visits tired and upset me. I had no idea about my rights. In fact, I probably did not know what the word meant. I knew nothing of the laws that regarded me as a minor, or my rights as it related to adoption. When all was said and done, I was in no state to sign any documents, even if I wanted to. I was stressed beyond comprehension. I was given Valium to help to control my anxiety so that the doctors could get my blood pressure under control.<sup>109</sup>

3.86 A common theme that emerged in many submitters' accounts was the assertion of consent takers that adoption was in the best interests of the child:

Many mothers were advised that the way to demonstrate that caring was to allow an adoption to take place.<sup>110</sup>

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The emphasis was always on adoption being what was 'best for the child'—'if you love your baby then you will give it up for adoption'.<sup>111</sup>

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106 Ms Carmel Ipock, ARMS Western Australia, *Committee Hansard*, 1 April 2011, p. 48.

107 Ms Rosemary Harbison, *Submission 92*, p. 1.

108 Ms Linda Bryant, Origins Queensland Inc., *Committee Hansard*, 27 April 2011, p. 46.

109 Ms Janice Konstantinidis, *Submission 90*, p. 9.

110 Ms Evelyn Robinson, *Committee Hansard*, 26 October 2011, p. 13.

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I was told that if I loved my child the best option was to give him up for adoption because, number one, I was unmarried, I could not provide for him and give him the life that he needed. I thought that if I kept him then I did not love him.<sup>112</sup>

3.87 The advice that adoption was in the best interests of the child was often accompanied by advice that a married couple deserved a child and would give the child a better future:

[A]ccording to her there were many nice, deserving *married* couples who, by some tragedy of nature were unable to have a child of their own. Luckily for me, one of these couples would deign to accept my baby, bring it up as their own and give it all the benefits of a 'proper' family life. My future child would be eternally grateful to me for providing him/her with this wonderful opportunity and would have a far better life than I could ever hope to provide...she painted a rosy picture of the adoption procedure by which my child would be matched as closely as possible with one of these hypothetical couples. Then, through my unselfish and loving act, they would all be miraculously transformed into the perfect family unit.<sup>113</sup>

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On the fourth morning I said to my doctor that I wanted to keep my baby, he left the room and returned with the matron, the head sister and another woman, who carried paperwork. I was told I was selfish to want to keep my child, if I loved him I would want him to have two parents and a better life than I could give him.<sup>114</sup>

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During the period of my maternity in 1963 I was indoctrinated with the advice that if I loved my baby I would give it to a married couple.<sup>115</sup>

3.88 Another threat reported by submitters was that if mothers did not consent to their baby's adoption, the child would become a state ward:

My baby was pulled from my arms screaming and taken away. I was told I was a useless mother who could not even feed her child. A few hours later the hospital administrator returned and again applied the threats and intimidation to get consent to adopt out my son and I refused. When all attempts to get my signature for adoption failed, the hospital administrator told me that since I was a homeless girl my baby would be taken by child

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111 Ms Ann Allpike, *Submission 157*, p. 1.

112 Mrs Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, pp 29–30.

113 Ms Jacalin Sherman, *Submission 74*, p. 1.

114 Ms Margaret Nonas, *Submission 1*, p. 3.

115 Mrs Elizabeth Edwards, *Submission 124*, p. 2.

welfare and placed into an institution if I did not agree to have him adopted.<sup>116</sup>

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She abused her position of authority to intimidate me, stating that I was 'unfit' and had no right to raise 'the child.' She threatened that if I did not sign, 'the child' would become a Ward of the State.<sup>117</sup>

3.89 Some mothers remember being restricted from seeing their babies and informed that they could do so after they signed adoption papers. This promise was then met to varying degrees:

On the fifth day I was called into a back office to sign papers. When I refused to sign I was told that if I signed I would be able to see my son and hold him. After I signed that offer was taken off the table. I was then told that I was too young, there was no help and that I would be a bad mother and my baby would never forgive me.<sup>118</sup>

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The papers were signed illegally within four or five days of the birth. I was refused access, the usual story. In fact, they got me to sign by saying I could see the baby as long as I signed the papers. So I was allowed to see her. I was shut in a cupboard where there was no chair. It is a strange feeling to stand in a dark place holding a baby. You just stand there and think, 'What am I doing?' It is weird.<sup>119</sup>

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I was bullied and refused the right to even see my little girl until I had signed the adoption papers. Even after the trauma of having to sign my baby over to strangers, I was only permitted to see her from a distance of about six feet.<sup>120</sup>

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During this time in hospital I was prevented from seeing my son until I had signed the adoption consent. Then I was allowed to see him through glass for a brief moment.<sup>121</sup>

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The government-paid social workers refused us any access to our babies until adoption consent forms had been signed. I refused to sign.<sup>122</sup>

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116 Ms Kate Howarth, *Committee Hansard*, 29 April 2011, p. 58.

117 Ms Rosemary Harbison, *Submission 92*, p. 1.

118 Ms Linda Ngata, *Submission 17*, p. 1.

119 Ms Lynne Devine, ARMS Western Australia, *Committee Hansard*, 1 April 2011, pp 45–46.

120 Ms Margaret Whalan, *Submission 16*, p. 2.

121 Ms Darelle Duncan, *Submission 192*, p. 2.

122 Ms Patricia Large, Adoption Loss Adult Support, *Committee Hansard*, 27 April 2011, p. 27.



3.90 Pressure to consent to adoption extended even to situations in which the parents of the mother supported her keeping her baby:

After much discussion with my parents, they agreed to support my decision not to put my child up for adoption. Nothing more was said about the subject. On the Thursday, 3rd of October, 1968 my son was born, as I was keeping him, he was placed in my arms. I bottle fed him, kissed and cuddled him and spoke to him about our lives together and was counting the days when we could go home. On the Monday a woman from Department of Children Services came in to see another girl in the ward, she noticed me, went outside and came back a little while later and spoke to me about adoption, I told her, 'my son is not up for adoption' she said, 'well, we will see about that, and that she was going to ring my mother', I told her, 'my mother supports my decision', she then left.

On Wednesday, 9<sup>th</sup> October she returned and took me into a room and badgered me for hours...she went on and on and got very angry with me as I would not sign.<sup>123</sup>

3.91 Mrs Lisa McDonald explained that she had the full support of her parents, but that both she and her parents were pressured into agreeing to her son's adoption:

[W]hat had happened was that my parents had come to the hospital and had tried to go up to the nurses and into the ward where the babies were kept to see if they could get their grandson and bring him to me. What I did not know was that my parents were escorted out of the hospital by security staff and told that, if they came back, they would be arrested. I asked my mum why she never told me any of this, and she said she simply did not want to hurt me.

I will make this clear: my parents did not want me to give my son up for adoption. The social workers told my parents they had no right to the child whatsoever. Back then, because of my family's working class background, you did not really argue with any government authority. If you did not have the money for a lawyer you simply did not know your legal rights. So my parents were also manipulated by the system, which preyed upon that part of my not having a very good open communication with my parents. When my mum said that they would keep him and raise him and would give him back to me when I was ready, they were told that they were being selfish because that would rob me of my teenage years. I was told that if I took up my parents' offer then I was being selfish because they had already raised their child.<sup>124</sup>

3.92 Some women, due to a combination of circumstances, such as personal connections with hospital staff, successfully maintained custody of their children.

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123 Mrs Janette Lord, *Submission 29*, pp 2–3.

124 Mrs Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, pp 29–30.

Nevertheless, Ms Coralive explained that the pressure for her to consent to adoption continued all the way to the exit of the hospital:

A week later I attended the Royal Women's Hospital, with a \$2 plastic gold ring on, mumbling about how my partner was interstate and would be back soon. That didn't fool them. They tried all their tactics. As soon as my daughter was born she was separated from me. I was drugged. I came to the next morning in a ward. The other mothers were brought their children. When my baby didn't appear I started making lots of very loud noises. A bit of coincidence kicked in, then. One of the sisters had grown up in the same small community as me and she ensured that my daughter was brought to me. For five days I was subjected to an enormous amount of pressure. I left the hospital the next day. They carried my daughter all the way to the exit. At the last minute the sister handed me my daughter and said, 'Happy April Fools' Day!' It was 1 April. My daughter is a very successful woman today and the mother of my two granddaughters.<sup>125</sup>

3.93 In the course of her doctoral research, Ms Christine Cole interviewed two mothers who were able to keep their children due to family support:

I found that in the case of two who participated. They both had the support of their parents, but immediately after the birth they were injected with stilboestrol and it was only because the grandparents came in and absolutely went bananas in the hospital and threatened legal action that they were able to get their grandchildren out of the hospital with their daughters.<sup>126</sup>

3.94 Dr Trevor Jordan, of Jigsaw Queensland, supported this idea that parental support was a factor in mothers' ability to leave the maternity hospital with their babies:

Those that did not come within that influence were those who already had strong family or financial support or circumstances were such that they were not under duress to relinquish their child.<sup>127</sup>

3.95 However, as indicated from some of the above accounts, the committee was also made aware of many cases in which mothers experienced their children being removed from them despite parental support. As Ms Brenda Coughlin explained:

I pay tribute to my Dad who died in my arms months after the birth of my daughter. My dad never recovered from the grief, pain and suffering he and I endured following the loss of his first granddaughter.<sup>128</sup>

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125 Ms Christen Coralive, *Committee Hansard*, 26 October 2011, pp 9, 11.

126 Ms Christine Cole, Apology Alliance, *Committee Hansard*, 1 April 2011, p. 41.

127 Dr Trevor Jordan, Jigsaw Queensland Inc., *Committee Hansard*, 27 April 2011, p. 57.

128 Ms Brenda Coughlin, *Submission 19*, p. 3.

3.96 Ms Coughlin's submission also noted that many mothers who unwillingly consented to their child's adoption in the 1950s–60s were unaware of their right to revoke consent.<sup>129</sup>

### ***Revocation of consent***

3.97 Prior to the development of model adoption legislation in the 1960s, in every jurisdiction apart from Victoria, consent could be revoked at any point before the adoption order was made.<sup>130</sup> Victoria introduced a 30 day revocation period for consent in 1958, and the other states and territories did so between 1965 and 1968. However, the committee heard from many submitters that mothers were not made aware of their ability to revoke consent.

I did not know at that time that I was the legal guardian of our child. I could have revoked that consent had I known there was an option! But we were never told and never knew for nearly 40 years. The lies of omission that came from those who were there to help those in need!<sup>131</sup>

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I would never have given up my child. I said I had changed my mind the following day after signing, but as soon as the matron said, 'You've signed,' she just took the baby away and never said a word to me. Also, from 1962 on, we were granted £7 2s 6d, an unmarried mothers benefit here in Western Australia. I have never found a mother who was ever told about it.<sup>132</sup>

3.98 Ms Christine Cole explained that married mothers were given information about how consent could be revoked, whereas she had received completely different treatment:

In 1969, three months after I had my baby taken—drugged to the eyeballs, with pillows on my face, held down by three nurses—this same woman had had an affair; she was by this time married. She had an affair while the husband was in Vietnam. She was given a pamphlet on how to revoke the consent, while she was still pregnant, in case she decided to relinquish, because the husband did not want to accept somebody else's child...<sup>133</sup>

3.99 Many submitters reported that their 'legal rights' were not explained to them at the time consent to adoption was requested of them:

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129 Ms Brenda Coughlin, *Submission 19*, pp 96–97.

130 See Chapters 7–8.

131 Ms Barbara Maison, *Submission 14*, pp 3–4.

132 Ms Shirley (Esme) Moulds, ARMS Western Australia, *Committee Hansard*, 1 April 2011, p. 52.

133 Ms Christine Cole, Apology Alliance, *Committee Hansard*, 29 April 2011, pp 39–40.

Consent to my adoption was given without information of my legal rights. I gave birth to my child [in] September 1974 at Royal Prince Alfred Hospital Sydney.<sup>134</sup>

In NSW in 1974, mothers had a legal entitlement to revoke consent within 30 days.

3.100 Even when mothers were aware of their right to revoke consent, some received misinformation about their child's whereabouts:

After being in hospital for a week I assumed I had 30 days to change your mind so I went to Family Service [...] Hobart and they told me my baby was already adopted out to a family. Recently I received the adoption papers that state he was not adopted out straight away and was in a foster home for a number of months.<sup>135</sup>

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His grandfather told him that a week after he had been born he went back to the orphanage to get him and was told that it was too late, he had already gone. I think that is a fairly common story, where relatives or the actual mother went back to get their children and were told they had gone—before the 30 days was even up.<sup>136</sup>

3.101 The committee heard accounts of women who were informed of the 30 day revocation period, but told incorrect information about its application:

Finally she told me that I could not take my child home with me as I could not prove to the department that I could support him and that if I signed I would have 30 days to find a job, then I could take him home, I then signed...

I returned to the ward and asked for my baby but they gave me a sedative instead, I don't remember the next two days and I don't remember the bus trip home.

A few weeks later I found a job on a property as a nanny and they were quite happy for me to have my baby there and supplied me with a room with a sleep-out to act as a nursery. Now all was set, I had met all the requirements, and I was well within the 30 days. I rang the hospital and told them I was coming to get my son and if they could make the necessary arrangements for his return. I was informed that I had misunderstood that I only had 30 days if they had not found suitable adoptive parents and that I was too late.<sup>137</sup>

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134 Ms Janette Mills, *Submission 60*, p. 1.

135 Ms Janet Kaye, *Submission 51*, p. 1.

136 Ms Aleisha Woodward, *Committee Hansard*, 27 April 2011, p. 66.

137 Mrs Janette Lord, *Submission 29*, pp 2–3.

3.102 Many submitters described not being aware of their right to revoke consent to an adoption. However, others explained that they had never signed a consent form in the first instance.

### *Illegal removal of children*

3.103 Some submitters explained to the committee that no consent form existed in relation to their child's adoption:

When my son went, I was given a hospital release form. I signed that and waited all day to take my son home—it was a Friday—and they said, 'He's already gone for adoption; you'll have to go to the department.'

When I went to the department on the Monday, they would not admit that they had seen my son or known anything about my case. They had no paperwork, and they knew nothing.

I went to the police, and the policeman said to me, 'Go back to the hospital, get some form of paperwork to say you've had a baby and come back.' I went to the hospital, and the hospital denied I had ever been a patient at their hospital...I spent that whole month after my son went desperately trying to prove that I had had a baby.<sup>138</sup>

3.104 In a related manner, other submitters recounted being given false information about where their baby was by social workers:

The social worker told me that [Ms Konstantinidis' baby] was no longer at the house in Lansdowne Crescent and that there was nothing that I could do about it. She told me that she was sorry, but that my father had gone over her head and had threatened them all with court action.

I screamed at her and ran all the way to Lansdowne Crescent to the house where I had last seen [...]. I went to the door of the house. The woman to whom I had handed [...] days earlier told me that the baby had been taken away by her adoptive parents. I said that I did not believe her because I could hear crying. I tried to get past her, but she stopped me and said that I must leave or she would call the police. I left.<sup>139</sup>

3.105 The committee heard allegations that signatures on consent forms were forged. Ms Cassandra Cooke believes her signature was falsified, and has sought advice from handwriting experts:

When I had my child, in '62, the child was not legally adopted. The signature was a forgery. She was at Scarba [Welfare House] at the time; we put her there for a short period after I came out of hospital. I had three handwriting reports that proved that it is definitely a forgery.

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138 Ms Patricia Large, Adoption Loss Adult Support, *Committee Hansard*, 27 April 2011, p. 32.

139 Ms Janice Konstantinidis, *Submission 90*, p. 14.

They changed the signature down the bottom from 1964 to 1962 and then realised that it was not signed. When they did put through the adoption two years later they changed it, and the handwriting expert picked that up.<sup>140</sup>

### ***Rapid adoption***

3.106 The committee was alerted to instances of 'rapid adoption'. This generally referred to the process whereby a married woman whose child had been stillborn was offered a child for adoption in its place. The committee heard evidence that a corollary of this practice was that some single mothers were informed that their baby had died, when in fact the child had been taken for a 'rapid adoption' process:

I was staying in waiting at Crown St Hospital I come into labour. They gave me needle and drug me up in the labour ward, the next minute I didn't know where I were, I woke up at a place which was for unmarried women at Lady Wakehurst...

[They] gave me some more drug and told me I have given birth to a still-born, I was so drugged up I couldn't remember having a baby. I stay at Lady Wakehurst a week and sister told me I had to sign this form to be discharged, which I sign...

Years later this boy who was a man age 29 years of age knock on my door, he ask me was my name Valerie Wenberg I said yes, well he told me I had a baby at Crown St Hospital that he was my son.<sup>141</sup>

3.107 The committee heard Ms Leonie Pope's account of the experience of her mother taking her for inoculations, only to be later informed she had died:

She was told, 'I'm sorry but your baby is now dead.' When she asked for my body to be returned to her she was told that I had already been disposed of. The truth of it was that I was actually in that hospital and I remained there for six months before I was later moved on to a children's home on the north side of Brisbane.

I was later fostered to a member of staff who was working in that hospital. She became my adopted mother and had actually nursed me while I was in the hospital.<sup>142</sup>

3.108 Evidence given to the committee suggested that this practice extended to the swapping of babies, whereby the parents of a recently stillborn child—not having intended to adopt—were offered (or given) a substitute baby to replace their own dead infant:

The doctor told women that their babies had died at birth, he was swapping birth certificates and mother's names... 'We'll just swap them'. This was a big

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140 Ms Cassandra Cooke (assisted by Ms Christine Cole), Apology Alliance Australia, *Committee Hansard*, 29 April 2011, p. 40.

141 Ms Valerie Linlow, *Submission 15*, pp 1–2.

142 Ms Leonie Pope, Stolen Generations Alliance Inc., *Committee Hansard*, 27 April 2011, p. 23.

practice that went on at Vacluse Private. It went on constantly at Vacluse Private.<sup>143</sup>

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I found out much later that they had two adoptive parents lined up (a woman [who] had given birth to [a stillborn] son in the same hospital...) and Ngala also had adoptive parents lined up, so there was this tug of war over my daughter. Ngala thought my daughter should be taken back there and the nuns were insisting 'the child' was to stay there.<sup>144</sup>

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There are other odd things where very clearly a private doctor in a private hospital was caring for a married woman. One instance sticks in my mind where she had had a number of still births. At the same time he was also caring for a mother who was in the babies home—not in the babies home, the mother was staying in the receiving home. So he arranged for the baby of the single mother to be given to the married woman who had had a number of still births. I imagine that was not an adoption. That was not anything; that was just a substitution. That is in the record. I just happened to find that one day when I was looking for something else.<sup>145</sup>

3.109 Many submitters to the inquiry explained that they had no choice at all in relation to their child's adoption. This lack of choice was particularly apparent in the submissions from mothers who became pregnant in circumstances such as while a ward of the state.

### *Mothers in different circumstances*

3.110 The committee heard from some mothers whose personal situations were quite different from others who contributed to the inquiry. These include mothers who were in foster or institutional care and mothers whose forced adoption experiences were more recent.

### *Mothers in foster or institutional care themselves*

3.111 Some mothers who submitted to the inquiry were in foster care themselves, wards of the state or otherwise institutionalised at the time of their pregnancies. These mothers experienced particular pressure to have their children adopted:

At the age of 16 years old I fell pregnant and still being under the state care was put into the Salvation Army Boothville [Mothers' Hospital]...

I was allowed to see her and nurse her when I could because of this I was sure they knew I wanted to keep her, but it wasn't to be. Early January 1963 they told me to go into this small room where they brought my baby girl, I

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143 Mrs Pru Murphy, *Committee Hansard*, 20 April 2011, pp 124–125.

144 Ms Marilyn Murphy, *Submission 150*, p. 4.

145 Ms Jenny Glare, MacKillop Family Services, *Committee Hansard*, 20 April 2011, pp 81–82.

had named her [...] they said I had to say goodbye to her. I couldn't believe it. I begged and cried for them not to take her away from me, and I do not remember signing a paper to say I was giving her up. I cried for days but no one seemed to care. I had no one to defend or stand up for me, this was just so wrong and have never been able to trust people even to this day.<sup>146</sup>

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I did 10 years out at the Goodna mental asylum...

They gave me ECT right up until I was 5½ months pregnant. They tried to force the Royal Brisbane Hospital to abort my son at five months. The letter that came back from the hospital said that they would not take part in this...

I was taken back to the institution where I was again placed in the maximum security ward with no access to a phone or the outside world. I kept asking to see my son and what had happened to him, if he was all right. I was constantly told he was fine...

When you are in a mental institution, an asylum, you have no rights at all. How can these people accept a mother's signature on an adoption form when the mothers do not even have the right to vote or to sign legal documents?

A number of months later when I kept asking, I was told that I would never see him again and that he had been adopted out; I could not be a mother because I had been institutionalised far too long and would not be let out.<sup>147</sup>

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We also have worked with a number of women whose children have been earmarked for removal at birth—women who themselves have grown up in foster care, often in very disruptive foster care arrangements. They have been in many, many foster placements, have themselves become pregnant and had their child earmarked for removal at birth, perpetuating that terrible disruption of attachment. That mother never has a good life, and the children similarly face a number of challenges.<sup>148</sup>

3.112 One adopted person described how her mother had been forced to give her up for adoption because she had physical disabilities:

I was born at the Salvation Army Home in West Hobart...My mother was deaf and dumb and was told at my birth that I had died. My mother's sister told me this, the reason was that she was taken advantage of at an approximate age of 25, her parents did not want to help look after me so shortly after I was born they sent my mother in to an Institution...where she resided for nearly fifty years, it was there that I found her during her latter years and my husband and I were able to do a lot for her, she had had no

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146 Ms Fay Roberts, *Submission 382*, pp 1, 3.

147 Ms Susan Treweek, *Committee Hansard*, 27 April 2011, pp 45–46.

148 Ms Kathryn Rendell, National Council for Single Mothers and their Children, *Committee Hansard*, 26 October 2011, p. 21.



visitors in all that time and was a capable person, she was allowed to visit the township of New Norfolk and also helped with housework. She should never have been put there but in those days that is what they did with people who...had slight disabilities.

One day on one of my visits to her, she pretended she had a baby in her arms and was rocking, then she pointed to me and pointed to the sky. I knew what she was asking me and I shook my head and pointed back to me, she burst into tears and was sobbing and hugged and hugged me. It was a very emotional moment, she must have wondered all those years what really happened.<sup>149</sup>

3.113 Unmarried mothers who also had a disability or mental illness were doubly disadvantaged—and may continue to experience that disadvantage. The committee is concerned about the forced adoption of children of these women, many of whom may not have had the opportunity to submit to this inquiry. The committee notes that safeguarding the reproductive choices of women such as these, including the choice to have and keep a child, remains a policy issue of continuing concern.

#### *More recent accounts*

3.114 The committee received a submission from a small number of mothers whose children were adopted in the 1980s:

No-one told me. They told me that there was nothing available, that I would have to get a job and that, if I did give it to my parents, I was putting financial pressure on my parents as well. I signed it and then my son was put up for adoption....

If I had been called up before a judge and that judge had said, 'Did you make this under any duress?' my answer would have been yes...

I was 15 [in 1981]. I was never told my rights. I never had any legal representation.<sup>150</sup>

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In 1987 I lost my son through the royal women's hospital. ... I think that the way they get babies now—and they got my baby—is through more subtle and legally clever ways....

My son was taken out of the room to be cleaned. When he was returned I asked for my son to be passed to me so I could hold him. They did not comply. My son was sucking and I told the nurse that I wanted to breastfeed my son and I asked her to pass my son to me. She then argued with me and told me it was not a good idea....When I went to see my son, who was in another nursery, my access was obstructed by a nurse arguing

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149 Name withheld, *Submission 344*, p. 1.

150 Mrs Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, pp 33–34.

that she would give her two children up for adoption because they were not worth it and that they were a trap.<sup>151</sup>

3.115 The number of adoptions declined rapidly through the 1970s, but the practice was still more common in the 1980s than it is today. The committee was advised of a New South Wales Health Commission circular issued in 1982, which warned health employees that preventing a mother from seeing her child upon request could be a breach of the state's adoption laws.<sup>152</sup> The fact that it was believed necessary to issue such a directive in 1982 suggests that hospital practices were still not always fully compliant with laws that were by this time seventeen years old.

## **Conclusion**

3.116 This chapter has recounted the experiences of submitters to the inquiry during pregnancy and birth. It has described the way in which unmarried pregnant women were disempowered both in maternity homes and in the community. It has recounted their experiences at hospital giving birth and receiving different treatment from married mothers. It has also explained the pressure on unmarried mothers to have their children adopted, and the way in which consent to adoption was taken (or not taken). The next chapter will address what happened next: the experiences of adopted people, and the ongoing effects of forced adoption on the lives of adopted people and their natural mothers, fathers and other family members.

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151 Ms Kim Taylor, *Committee Hansard*, 29 April 2011, p. 67.

152 Origins SPSA Inc., *Supplementary submission 170 (k)*, p. 111.

# Chapter 4

## Effects of forced adoption

**I believe that every adoption begins with loss and that those who are adopted experience this loss and those who lose children to adoption experience this loss.<sup>1</sup>**

### Introduction

4.1 Forced adoption did not only affect mothers who were compelled to have their children adopted, but also fathers, husbands, subsequent children, the adopted people themselves and their adoptive families. This chapter provides a summary of the long-term impacts of forced adoption as described to the committee during the course of this inquiry. It first addresses the experiences of adopted people, then mothers, and finally others who were affected including fathers and siblings.

### The experience of adopted people

4.2 Some adopted people indicated in their submissions that their adoptive parents cared for them very well:

I wish to state right here and now that I categorically feel no hatred or bitterness towards my birth or first adoptive families!!!! I feel happy and content and believe that I ended up with the family I needed to care for my special needs as a child, and then raised me up to be kind, caring, loving, forgiving man that I am today!!!!<sup>2</sup>

4.3 Others stated that they have no wish to maintain a relationship with their natural parents. However, many adopted people who submitted to this inquiry recounted damaging and painful experiences of their childhoods, and/or ongoing struggles with self-identity as well as seeking to meet or build a relationship with their birth parents. The committee emphasises that it is documenting the experiences of those who have submitted to this inquiry, rather than seeking to characterise the experience of adoption more generally.

### *Childhood experiences*

4.4 Most adopted people who submitted to this inquiry did not have positive experiences with their adoptive parents, or at school. Views were put to the committee on the nature and extent of vetting of prospective adoptive parents throughout the 1950s, 60s and 70s. These concerns are highlighted by accounts where adopted people were treated badly or abused. Some witnesses described being privately adopted by people who had hospital or legal connections:

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1 Ms Evelyn Robinson, *Committee Hansard*, 26 October 2011, p. 13.

2 Mr John Rutherford, *Submission 136*, pp 1–2.

The Senior Social Worker, Mrs [...] was a close personal friend of my adoptive family. She ultimately became one of my god mothers. Mine was a private adoption, engineered by staff at Crown Street Women's Hospital. My adoptive parents were in their early 40's at the time of my adoption and probably deemed too old by authorities to adopt through those channels.<sup>3</sup>

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My adoptive mother was able to access the adoption system due to her father's status and his ties with the judiciary and men of influence at that time. Had she undergone a psychological screening process, it is extremely unlikely that she would have been given a dog, let alone two motherless children in need of nurturing and understanding.<sup>4</sup>

4.5 Even when adoptive parents were approved by the relevant authorities, many submitters recounted painful experiences in the homes of adoptive families. An anonymous submitter described being called names by cousins and later experiencing sexual abuse:

Having lost the most important person—or more specifically, lost a crucial part of myself, I was then taken into a family that didn't look like me, didn't think like me, didn't smell like me and didn't know how to love me. The date of my adoption coincided with their annual holidays so they initially placed me in the care of a friend of the family for three weeks until they returned from their holidays. I was passed around like a puppy.

My adoptive family met my physical needs and provided me with a good education. But my emotional welfare was different. To my adoptive mother, I was a constant disappointment. Although I desperately turned myself inside out to make her love me, I never measured up. I just wasn't what she wanted. This led to a second injury—the pain of the rejecting, overly critical parent. I was compared unfavourably with my cousins, particularly another adoptee in our extended family. I was called swear word names (including bastard) and was constantly set up and tricked due to my naivety and desperate need for love. My primary years were tearful ones.

Although my adoptive father was kind, I was sexually abused by him and later by other people while I was in the care of family members. In my teens, my adoptive mother began to call me 'Slave' and later my adoptive father also called me that until, in adulthood, I told them to stop.<sup>5</sup>

4.6 Reflecting the experiences of several adopted people who made submissions, Ms Laurie Watkins explained that she did not feel as though she belonged with her adoptive family:

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3 Ms Margaret Watson, *Submission 98*, p. 6.

4 Ms Josephine Yeats, *Submission 168*, p. 2.

5 Name withheld, *Submission 314*, p. 2.

I was raised in a home where my parents were present but I have no memory of them being there. I do not have happy memories growing up in this family. I never felt I belonged to my adoptive family.<sup>6</sup>

4.7 The committee heard several accounts of emotional, physical and sexual abuse. Abusers in some cases included adoptive parents and families, teachers and neighbours:

I am an adoptee who was abused and exploited by the adoptive parents. I was working in charcoal pits from the time I was five. I have memories of beatings with a belt, being suffocated by my adoptive father, set alight by my adoptive father and kicked with heavy work boots.<sup>7</sup>

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My true mother was told to give me away because it was in the best interests of the child, so why was I given to monsters who treated me as a slave, tortured me as discipline and lied to me all my life? They believed I was their natural child in such a state that they gave their own medical background as my own medical history. They also allowed me to be sexually assaulted by a neighbour from the ages of two to eight.<sup>8</sup>

4.8 In other cases, submitters described the consequences of the death of one of their adoptive parents, or the adoptive parents' divorce. Many adopted people described the irony of being raised by a sole adoptive parent when the reason their natural mother had been forced to consent to adoption was that she was unmarried:

My adopted mother died in 1977 [when submitter was 14] and my adopted father was an alcoholic and abandoned me. Better off not being with my natural mother?<sup>9</sup>

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I was often so lonely and confused after my adopted mum's death.

Another very bad belting was just over eight months after being in the USA. I failed for a third call to 'spring' out of bed to his calling...[o]n the third return to my bed room he literally dragged me out of bed, loudly reprimanding me for my disobedience and not giving me (as usual) a chance to explain that I felt ill and he laid into me with that dreaded belt...

I remember a time after returning to Australia at age 14. I was being belted so hard and so many times, I remember the belt wrapping around my neck once. During my adoption I still spent most of the time in boarding schools and church hostels homes.<sup>10</sup>

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6 Ms Laurie Watkins, *Submission 356*, p. 1.

7 Ms Kerri Saint, White Australian Stolen Heritage, *Committee Hansard*, 27 April 2011, p. 37.

8 Ms Vikki Lewis, *Committee Hansard*, 29 April 2011, p. 59.

9 Mr Dan Lancaster, *Submission 295*, p. 1.

10 Mr Wayne Lewis, *Submission 408*, p. 3.

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Did they divorce five years after my adoption? Yes....

Was I plunged into poverty again living with a single mother? Yes.<sup>11</sup>

4.9 The committee heard that the societal stigma about unmarried parenthood and adoption affected adopted people as school children:

I had this best friend who, for years, I went to school with. I would pass her house on my way to school. I would pick her up. We would walk to school together, play together and come home together...I loved Cheryl's mother. I just adored her. I asked her to be my sponsor. She met my adoptive mother, who informed her that I was adopted. When I came on the Monday to pick up Cheryl for school, Cheryl's mother answered the door, said that Cheryl had gone to school and I was to never have anything to do with Cheryl again.<sup>12</sup>

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I vividly remember getting teased at school by children saying 'your parents aren't your real parents' and how awful that was for me to bear although being feisty I did stand up for myself but inside I felt so very different and scared. Yes they love me! Surely they must— isn't that why they chose me?<sup>13</sup>

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The teachers at school treated me exactly the same way, 'She's a ward of the state. We'll penalise her. She's a gimp. Look at her.' It continuously went on.<sup>14</sup>

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I lived in a small central Victorian town where everyone [knew] everything, so when I attended the local primary school I [was] teased you're not a real (my adopted surname) your mums not your real mum, your real mum didn't want you. I would go home crying I can still remember that to this day.<sup>15</sup>

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I was a quiet and shy child who did not make friends or socialise with other children. I was teased and bullied right through primary school and can remember living in a state of constant fear and confusion. I lived in a dream world, as the real life existence I had just didn't feel right. Nothing in my life seemed to make any sense and my adopters ignored my distress.<sup>16</sup>

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11 Ms Leanna Brennan, *Submission 209*, p. 3.

12 Ms Isabell Collins, *Committee Hansard*, 20 April 2011, pp 104–105.

13 Angela, *Submission 50*, p. 4.

14 Mrs Pru Murphy, *Committee Hansard*, 20 April 2011, pp 124–125.

15 Name withheld, *Submission 287*, p. 1.

16 Name withheld, *Submission 237*, p. 1.

4.10 The kind of experience relayed in this evidence was shared at one hearing by one of this committee's youngest ever witnesses:

I did not really know I had a sister...It is very depressing and saddening that I did not develop bonds with my siblings. It is incredibly difficult to make friends at school and camps because of it all. I was bullied and had my lunch money stolen at school. When I got on the bus it was ten times worse.<sup>17</sup>

4.11 The committee also heard from adopted people with poor childhood experiences due to spending time in institutions.

### *Children in institutions*

4.12 The committee received accounts from adopted people who were placed in institutions as children. Some of these people were adopted after having remained wards of the state for some time.

He put me into the Alfred Hospital, where I lived until I was 2½ years of age. From there I was put out on the street to become a ward of the state, because he would not give up parentis or whatever it is. I had to wander the streets with a little suitcase and a teddy bear until the police came to pick me up. They then put me into the Melbourne City Mission, where I lived until I was 12½...

[In] the schools I was prodded and probed, especially when the school doctors came around. 'It's okay. She's a ward of the state. We can do what we like.'<sup>18</sup>

4.13 The committee heard several accounts of horrific childhoods spent in institutions and orphanages. Some submitters described being the subject of medical experiments or drug trials whilst living in such places:

One thing I found was that living in that orphanage was like the book called *Lord of the Flies* and that is what it was like. When you lived in that place it was dog-eat-dog...

One of the things they [older girls in the orphanage] said to me was they made me promise that no matter what happened I was to stay alive. And that is because some of the boys actually suicided in that place. It was pretty hard....

There were medical experiments carried out on us as well when I was in the orphanage. That is something that I have asked quite a bit about, too, trying to get an explanation because I can remember that my brother volunteered, being the great hero that he was, because they bribed us all the time with food. I did not like food. The idea was that they wanted us for medical experiments. He would just go into hysterics any time he got a needle. This

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17 Miss Gabrielle Mittermayer, *Committee Hansard*, 29 April 2011, p. 56.

18 Mrs Pru Murphy, *Committee Hansard*, 20 April 2011, pp 124–125.

was when we left there. I was volunteered in the end because it was such a big money spinner that they volunteered us all, so I was part of those experiments too. I do not know what they were. I remember the one on polio.<sup>19</sup>

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Hundreds of us were treated in this way. I left the St Joseph's Foundling Hospital at the age of six weeks. There were procedures carried out on me before the adoption went through at eight months in which no consent was obtained from my mother. It was actually about growth hormone and infertility treatment.<sup>20</sup>

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I was given Hepatitis C when I was in the institution because of the non-sterile procedures they used, which I have been very ill with and will probably kill me within the next five to ten years.<sup>21</sup>

4.14 Many submitters explained that the difficulties experienced in childhood, whether experienced at an institution or with unsupportive adoptive parents, continued into adulthood, manifesting in different ways.

### ***Ongoing effects of adoption***

4.15 Many adopted people who submitted to the inquiry recounted the ongoing negative effects of their adoption, including struggles with identity, mental and physical health:

As a direct result of adoption I have found difficulties with trust of others, self-esteem, confidence, relationships and being a mother myself. I have sought counselling or therapy at six times though my adult life, roughly once in each decade. However there is no counselling available specifically for adoptees, to assist them with the issues of adoption which involves more than loss.<sup>22</sup>

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I still to this day struggle with expressing and understanding what adoption means for me. A few years ago I was diagnosed with post-traumatic stress disorder and I have recently, since doing my submission, had panic attacks and believe that I now have general anxiety disorder.<sup>23</sup>

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19 Mr Michael Bamfield, Care Leavers Australia Network, *Committee Hansard*, 20 April 2011, pp 48–54.

20 Mr Michael O'Meara, *Committee Hansard*, 27 April 2011, pp 49–52.

21 Ms Susan Bryce, *Committee Hansard*, 29 April 2011, p. 122.

22 Mrs Elizabeth Hughes, *Submission 59*, p. 2.

23 Ms Angela Barra, *Committee Hansard*, 29 April 2011, pp 59–60.



To strip a mother of her baby is a cruel, cruel act. But to leave a baby alone is another. And that's how I am, alone. Feeling as if I do not have the capacity to love, because it took me a long time to learn it.<sup>24</sup>

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My life has been a rollercoaster ride of emotional trauma; indescribable fear; uncertainty; anxiety; self-sabotage in so many ways; physical ill-health; alcoholism; depression; anger at a level of rage at many points in certain phases; inability to deal with many aspects of disappointment; a feeling of abandonment within friendships and work relationships (far too often); and a variety of other emotional challenges which never made sense at a conscious level.<sup>25</sup>

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I believe that being an adoptee has profoundly affected my life in negative ways. I believe that all choices I have made in my life have been directly influenced by my primal wound that I have carried for my life and only just begun to recognise.<sup>26</sup>

4.16 One adopted person explained the long-term effects of childhood abuse:

This involved—through my childhood, through puberty and into adulthood—my being petrified and fearful of anyone in a senior position or with any perceived power over my life, my future and my general existence. It has held me back, stopped me growing and ensured that I have lived a life frozen. The memories have not faded or stopped haunting my sleep. The effects on my development still linger, proving that their torment still works. The pain, the anguish and the suffering are still companions, triggered by a simple word or look. It is all still truly 24/7 for me. My biggest fear of the many, though, is that I will never be just me.<sup>27</sup>

4.17 The committee heard that the experience of adoption has extended to difficulties faced by adopted people in relation to hereditary illness:

I got sick over there because I do not have access to my family medical history. Doctors wrote it off as an undiagnosable illness. I had no way of knowing how long I am going to be sick for and no way of getting well enough to try to rebuild my life and get some semblance of financial survival.<sup>28</sup>

4.18 Many adoptees explained that not knowing who their natural parents were as children, or still not knowing, made developing a sense identity very difficult. Others

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24 Ms Gemma Dore, *Submission 267*, p. 2.

25 Mr Phil Evans, *Submission 277*, p. 1.

26 Name withheld, *Submission 201*, p. 1.

27 *In camera Committee Hansard*, 2011, extract published by agreement of the committee.

28 Mr Erik Spinney, *Committee Hansard*, 29 April 2011, p. 2.

recounted difficulties connecting emotionally with adoptive families or people more generally, and continue to live in fear of abandonment:

As for me, being separated from my parents and being brought up by strangers left me with identity confusion, a sense of not fitting, of being a fraud, an inability to maintain relationships and a belief that I was unlovable.<sup>29</sup>

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Given away at birth, I was stripped of my innate identity, my intrinsic heritage and formally given a new name and family. I grew up with a profound sense of duality—of being part of a family and yet very much separate from them.<sup>30</sup>

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Being removed from my mother's body after birth traumatized me. Having my identity removed—my entire story about who I was—shattered my sense of self. Having a partial and meagre false identity attributed to me kept me in a state of traumatic confusion throughout my childhood to the current day.<sup>31</sup>

4.19 An anonymous submitter described the difficulty of learning she was adopted well into adulthood:

I found out I was adopted when I was 46yrs old. The pain of rejection was strong and so was the pain of finding my mother only to be rejected again. This rejection was caused by the great stress and trauma she had suffered in losing me as an infant. No longer was I the baby she remembered but a fully grown woman whom to her was a complete stranger. All of the memories she had hidden in her subconscious were brought to her mind and she was in great distress. I almost lost her because of this but somehow through great determination we have managed to have a relationship. I cannot stress enough how it is to lose one's identity at such a late age and then find family most of whom rejected me. If I had not been taken from my family I would have known my siblings, my grandparents, my aunts and my uncles and my cousins.<sup>32</sup>

4.20 This lack of connection was raised in the context of adopted people whose adoptive parents came from a different culture to their birth parents:

[She] at [that] point told me of another secret she had held and that was that my biological father was aboriginal! And that a social worker had told her that if I was born with any 'colour' to my skin I wouldn't be taken by a 'good family', so the information on my file states my biological father to be very

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29 Ms Charlotte Smith, *Committee Hansard*, 20 April 2011, p. 118.

30 Mr Thomas Graham, *Submission 148*, p. 1.

31 Name withheld, *Submission 346*, p. 1.

32 Name withheld, *Submission 231*, p. 1.

fair skinned! (Wow that explained a lot of my connection to the aboriginal culture).

I have always suffered from depression and raising four children hasn't been easy. I have taken Zoloft for many years to keep me from falling in a heap. I was always scared to tell my doctor the depths of my thoughts and an inbuilt fear of social workers for fear of having my children taken from me. My research has led me to believe that I suffer a form of post traumatic stress disorder...

I am now 45 and live with anxiousness, insomnia, bi-polar and major loss of culture issues. I feel as if a part of me is missing and I'm trying to get on with life find a job and turn my life around but for me that cannot be done until recognition of my trauma, loss of identity and culture are addressed.<sup>33</sup>

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I am a Lost Bird or Split Feather. This is name given by the American Indians to persons who were removed from their people and adopted out. I am a late discovery adoptee who was unable to meet his true mother and only knew his true father for thirteen short months before his death. However, I will not regale you with stories of the emotional turmoil and near nervous breakdown that occurred whilst seeking out and meeting true family.<sup>34</sup>

4.21 In some cases, adopted people feel they do not fit in with their adoptive parents' culture, but are not welcomed by people from their birth parents' culture:

I went back home to my people in Canada. When we go back home we are not welcome because we cannot name our parents and our lineage. We are still outcasts and outsiders.<sup>35</sup>

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At the age of 50 years I still do not belong. I live my life in constant fear of abandonment and rejection, the very first emotions that I felt as a newborn child. How can I ever overcome this and function to some degree of normality? How do I keep living this lie? I do not know who I am supposed to be. My true identity was stolen, manipulated and distorted, and I had no say in this. I was raised by people of a completely different culture than my true heritage and I still to this day do not fit in.<sup>36</sup>

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Another thing that Link-Up finds sometimes is that the no-contact statements that were put in place at the time of the adoption are actually not the wishes of the birth parent. They were the wishes of the authorities that were taking the child away. There was an idea that if they severed the

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33 Name withheld, *Submission 338*, p. 5.

34 Mr Murray Legro, *Submission 81*, p. 1.

35 Mr Erik Spinney, *Committee Hansard*, 29 April 2011, p. 2.

36 Ms Vikki Lewis, *Committee Hansard*, 29 April 2011, p. 59.

relationship completely, the child would never know their Indigenous parentage.<sup>37</sup>

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There are misconceptions about what happened within my adoptive family: 'She was brought up by whitefellas. She had it all. She was rich. What does she want?' The assumptions that they put on me at times were very brutal, very cruel.<sup>38</sup>

4.22 As with many policies that cause disadvantage in Australia, Aboriginal and Torres Strait Islander people were affected by the experience severely, because of the effects of cultural loss. They were also subject to a layer of official secrecy: not only a denial of their original individual parents, but an additional official desire to suppress racial and cultural identity.

*Adopted people with supportive adoptive parents*

4.23 Some submitters explained that despite positive childhood experiences as children of adoptive parents, they have experienced challenging periods in their adult lives that they relate to their adoption:

She was supportive of me finding my birth mother and would have liked to have met her herself.

My mother also told me that I was a very unsettled baby, who could not be left, she strongly believed that my mother must have gone through a lot of emotional turmoil and that possibly I had suffered in the womb due to her stress...

I believe these circumstances have affected me in my life. I have been an anxious person during my life and continue to be troubled by what happens around me personally. My Story will never have closure for me if I cannot meet my birth mother or have a picture or something more than I have now. Who do I look like? What were the influences in my mother's life? What was she passionate about? What sort of person is she? What sort of family did/does she come from? Then there is my biological father what about him and his family?<sup>39</sup>

4.24 Mrs Ruth Orr, who explained that her adoptive parents and family had been 'loving and caring', described feeling an urge to find her birth mother as an adult. However, when Mrs Orr did identify her birth mother, she learned that she had passed away at a young age:

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37 Mrs Rosemary Rennie, Link-Up Queensland, *Committee Hansard*, 27 April 2011, p. 14.

38 Ms Heather Shearer, Stolen Generations Alliance, *Committee Hansard*, 26 October 2011, pp 14, 29.

39 Mrs Jenny Marshall, *Submission 379*, p. 1.

I understand the social and economic environment in 1967 was vastly different to what it is today...[b]ut I always thought in the back of my mind that if [my mother] really wanted me she would have kept me.

I didn't feel any great sense of urgency to find [my mother] I'd registered with agencies such as Jigsaw and [she] had never registered to find me. Upon receiving my paperwork I was also told that [my mother] had not registered to find me. This reiterated my own belief that [my mother] didn't want me in 1967 and didn't want to know me now either. My life continued and I put the envelope away in a safe place, sometimes taking it out to go over the details again that I had already committed to memory.

But it gnawed at me. I wouldn't think about it for months at a time but it was always there. I wanted to know who [my mother] was. I wanted to know where my fair skin, blonde hair and blue eyes came from. I wanted to know why she gave me up for adoption.

By mid 2010 it had started to become a bit of a problem. I would try not to think about it but it wouldn't go away. With the support of my beloved husband, I decided to try and find [my mother]. I was worried about it and said at one stage 'What if she has died and I don't get to meet her?' Even at the time of saying this I didn't really believe [she] would have passed away. She would only be in her early 60's. It took about 10 minutes on 'Google' to find [her]. [She] was listed on her husband's family tree. [She] was born in October 1948 and passed away a week after her 49th birthday in October 1997. I was devastated. I couldn't believe [she] had died 13 years ago. 49 was so young. The grief that hit me was overwhelming and took me by surprise. I felt that I had totally lost [my mother] again.<sup>40</sup>

#### 4.25 An anonymous submitter described the reaction she had when her own children were born given her knowledge of her own birth:

I went on to marry the man that is now my husband, and we have three children together. When my first child was born, I experienced a lot of problems settling him. I felt extremely anxious, and was always worried that something was going to happen to him or that I would lose him. I was very uncomfortable having to deal with the nurses at the hospital when he was born, and felt very defensive...there is no logical reason why any of my children would be removed from my care, so I can only conclude that my problems at the time of my firstborn child's arrival were some kind of reaction to the circumstances of my own birth and removal from my mother's care.

I have contacted my natural mother by mail several times over the years, and most of the time she has replied. I have found that my experience as a mother gives me a better perspective on her situation, and has helped me to understand her better. She told me in her last letter that she hasn't ruled out the possibility of contact, but that she couldn't bring herself to make contact with me still at that stage. That was around 2004, and my next letter did not receive a reply. She would be around 61 years old, her other children are

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40 Mrs Ruth Orr, *Submission 394*, pp 1–2.

both in their thirties, and probably have children of their own, and I am now 42 years old. I wrote another letter to her today, simply giving her my current address and phone number. The remembrance of these things is making me feel very emotional lately, and I'm finding it difficult to hold onto hope of ever meeting the woman who gave birth to me. But now I have another reason to hope, because my children have a right to know their flesh and blood as much as I do.<sup>41</sup>

4.26 The committee heard from witnesses that the experience of being adopted, whether by an abusive or supportive adoptive family, has long-term effects on adopted people's lives. The next section will address the long-term effects of adoption on birth mothers.

### **Ongoing effects on mothers**

4.27 The committee heard that forced adoption has long-term effects on mothers and their later relationships with partners and subsequent children. Many submitters noted that the secrecy surrounding adoption at the time had the effect of postponing the recognition and treatment of trauma.

### ***Effects of concealment***

4.28 The committee heard that the secrecy surrounding pregnancy of unmarried women continued after they had given birth. Many submitters recounted being told to 'go home and forget about it'.

Then you were not given counselling; you were simply told to go home and get on with your life: 'Forget it, you're young, you can have other children.'<sup>42</sup>

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I never informed my brothers or my father about what happened at Waitara [being raped in a maternity home]. Like nearly everybody here, we were told to get on with our lives and forget about it.<sup>43</sup>

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I had to go home and act like nothing had happened, the story for my absence from home was I had a nervous breakdown in an interview recently the interviewer laughed at the silliness to choose nervous breakdown as more acceptable [than the] birth [of] a beautiful daughter.<sup>44</sup>

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41 Name withheld, *Submission 397*, pp 5–6.

42 Mrs Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, p. 29.

43 Ms Therese Pearson, Origins Newcastle, *Committee Hansard*, 28 September 2011, p. 57.

44 Ms Lynette Kinghorn, *Submission 8*, p. 1.

I went back to my parent's home. They had moved to a new neighbourhood so that the new neighbours would never know what had happened to me. I was very depressed for at least 6 months. I had no motivation to do anything and I was confused and bewildered by what had happened to me and my baby. It was never allowed to be spoken about at home. It was as if none of it had ever happened yet I knew that it had because I had all of the memories which kept playing round and round in my head.<sup>45</sup>

4.29 An anonymous submitter recounted that the adoption of her child took place without discussion, and that her mother's disappointment about her pregnancy never dissipated:

I feel the disappointment my mother showed to me for the rest of her long life and my feeling of not being worthy of her love has been a big weight to carry all my life.<sup>46</sup>

4.30 Tens of thousands of adoptions took place in Australia in the 1950s, 60s and 70s, and many mothers consider that their children were taken by force. Nevertheless, some women recounted feeling completely alone in their experience. The wider secrecy surrounded unmarried pregnancy made the topic taboo for discussion:

I always felt different from everybody else. I thought I was the only one this had ever happened to. I could be in a roomful of people and be so alone and upset. I would leave the room, go to another room where I was in private and bawl my eyes out, and then I would walk back into the room as if nothing happened, because it was my private pain that I was not allowed to speak about. I was silenced, told to go home and forget it ever happened. By jingo, you cannot do that.<sup>47</sup>

4.31 Ms Kathryn Rendell recounted her experience of a complete lack of community support after her child was adopted:

Back home in my community there was no opportunity to grieve, no counselling and no sympathy. The attitude was that it was all in the past. During the first year of my child's life, I seriously contemplated suicide. The reason I made the decision to live was the thought that I might one day see my daughter.<sup>48</sup>

4.32 The committee heard of the lasting impact on mothers of having to keep the birth of their child secret:

I think it is the secrecy that went with it which is really hard to understand now. Sometimes very elderly mothers have said to me, 'Every time I go to the supermarket and I see a young mum, probably a single mum pushing the baby around the supermarket, I think how lucky you are because I had

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45 Ms Cherry Blaskett, *Submission 353*, p. 4.

46 Name withheld, *Submission 265*, p. 2.

47 Ms Maureen Melville, *Committee Hansard*, 29 April 2011, p. 64.

48 Ms Kathryn Rendell, *Submission 184*, p. 2.

to keep it such a secret that I got pregnant. And look now the government even gives you money if you have had a baby.' It is that secrecy that is very profound and has lasting consequences on people.<sup>49</sup>

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When I was reunited with my mother and heard her story it was truly devastating for me to hear, particularly when I heard about how she tried to find me for years and years. She never really recovered from being made to relinquish me and it affected her whole life from then on, even though she kept it a secret from almost everyone.<sup>50</sup>

4.33 In some cases, the secrecy around adoption led women to blame other factors for their unresolved depression. Ms Linda Eve recounted how her bouts of depression finally ceased after she reunited with her daughter:

I had bouts of depression for years which led to several suicide attempts which I didn't associate with losing my daughter to adoption until after our reunion when the bouts of depression, (which I eventually recognized as unresolved grief) finally stopped...26 years after they had started.<sup>51</sup>

4.34 In other cases, mothers described deliberately repressing painful memories:

I have blocked out a lot of things because I was so traumatised.<sup>52</sup>

4.35 Another submitter described how she had sought to repress the memories of her experience of forced adoption so that she can function on an everyday level:

It is with great difficulty that I write about my experiences for a number of reasons. Firstly, due to the necessity of bringing to the surface the many memories and emotions I have tried to keep contained for all these years.

Secondly, I have limited recall surrounding that time: some memories have surfaced over past years; some very sad and hurtful memories; and some that to this day I cannot believe took place and I continually try to push back so that I can simply go on with life.<sup>53</sup>

4.36 Part of the repression of memories of forced adoption may relate to the fact that many women have never seen their now adult children.

### ***Relationships with children***

4.37 Some mothers explained the sorrow of never having met their children.

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49 Ms Jenny Glare, MacKillop Family Services, *Committee Hansard*, 20 April 2011, p. 84.

50 Ms Charlotte Smith, *Committee Hansard*, 20 April 2011, p. 117.

51 Ms Linda Eve, *Submission 159*, p. 4.

52 Ms Betty Mills, *Submission 366*, p. 2.

53 Ms JB (nee Williams) *Submission 373*, p. 1.



My son will be 42 years of age in January 2011, I have been totally deprived of a relationship with him, never having been able to celebrate birthdays or important holidays with him. I constantly think and imagine what his life would be like; whether he married and whether I have grandchildren.<sup>54</sup>

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That day I saw my baby for the first and last time...

I thought about going to the police but, felt so helpless and worthless. How could I be right and all the adults, including the authorities be wrong.

I have never seen my son again.<sup>55</sup>

4.38 Some submitters recounted searching for their children to no avail:

It took 3 years just to obtain ward files for myself and my siblings. However without spending huge amounts of money I do not have it seems I will never be able to obtain information of the welfare of my daughter or leave information for her, so she knows she was not given up willingly.<sup>56</sup>

4.39 In contrast, many mothers who have met their children recounted the difficulties of building a relationship with them, having met them for the first time when those children were now adults:

I am a very lucky person to have a wonderful family, a wonderful husband, but every day I live with guilt because I did not buck the system or fight. I made a decision a long time ago that I was not going to live with that guilt because I get one shot at this to be with my son, the two boys that I have had since, two stepchildren and the six grandchildren I have had altogether. I try all the time to build a relationship with Joshua and his family, and I am lucky: it works. I go and stay up there and he comes and stays here. But I see him hurt. As a man he said to me, 'Mum, come out and have dinner with me.' He said, 'Just tell me why again.' And this is for people who it is working for. This is where it is really good and easy.<sup>57</sup>

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I have been in contact with my son for four years now, but it is a very fragile relationship. You are constantly wary about what you do and say. I live with a little fear inside of me that if I do or say the wrong thing he will go and he will break all contact with me.<sup>58</sup>

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54 Ms Juliette Clough, *Submission 12*, p. 1.

55 Ms Judy M., *Submission 205*, p. 9.

56 Ms Deborah Snelson, *Submission 292*, p. 2.

57 Mrs Louise Greenup, *Committee Hansard*, 29 April 2011, p. 69.

58 Mrs Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, p. 29.

Many of our children will have nothing to do with us. Our children now have children of their own and gaze at them and wonder in anger how we could have given them away for no-one would make them give away their child. This is part of the ongoing trauma for many mothers. We have lost so much.<sup>59</sup>

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I tracked my daughter down as soon she turned 18. We met, a euphoric moment. My other children met her—a great day. We had telephone and letter contact for a while, though the APs [adoptive parents] were putting pressure on her, the emotions rising...

I discovered that my adoption was illegal as were many others. I told my daughter and the adoptive parents became very defensive and hurt. Contact was soon cut off.<sup>60</sup>

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Today my son blames me for giving him up, and I did not even give him up, because I did not even know I had him. I did not know he was born. They told me he was dead. I will never forgive those people as long as I live. I would never in my life forgive them.<sup>61</sup>

4.40 Some submitters recounted the distress of seeing their adult children suffering from the effects of their adoption and feeling helpless to assist them in their pain:

He said he always knew she was not his mother & he ran wild & had a breakdown, so at twelve years of age, they put him in a caravan in the backyard. Rather than give his mother back to him, or even asking him why he was screaming out for help...

This was, after aching and wishing and dreaming about him every day for thirty six years, so amazingly painful I felt physical pain all over my body for days. I screamed and cried for as long also.

I was now in fear of my own baby, and this was far too much for me to realise and step forward and deal with. How could I change him, you can't train a man as you would your baby?<sup>62</sup>

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If I had help when our reunion was set up I am sure the outcome could have been different. I believe she was given counselling, but, I was left to flounder. (She had had a difficult relationship with her adoptive mother) How does one know how to handle such a situation, I tried, I loved her so

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59 June Smith, *Committee Hansard*, 20 April 2011, p. 33–34.

60 Mrs Gabrielle McGuire, *Committee Hansard*, 29 April 2011, p. 6.

61 Ms Valerie Linlow, Origins SPSA Inc., *Committee Hansard*, 29 April 2011, p. 27.

62 Ms Juanita Ellis, *Submission 259*, p. 2.

much, but that was not enough the damage had been done a long time ago. And, nothing was going to change that.<sup>63</sup>

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I attempted to support my son as an adult with disabilities on a financial level as he was neglected in his adoptive placement and now my son is diseased. I had the opportunity to care for him for about six months before his death.<sup>64</sup>

4.41 The committee heard from submitters who explained the further trauma they experienced when the relationship with their adult child disintegrated. Ms Linda Graham explained how this led to attempts at suicide and an obsession with adoption:

I became hostile with family members' incapacity to empathise, particularly those family members who knew what had happened to me. I was angry that they were allowed to keep their children. I do not think that I have ever had the opportunity to tell any of them exactly what happened, one because I would become extremely agitated and emotional in the telling and thus wouldn't get very far, and two because they would inevitably try to distract me from the memories to placate me or try to see a silver lining or become annoyed and angry with me for dwelling on the past. Also there was some blame on my part attributed to my mother who had exposed me in my vulnerability to social workers and their systematic removal of babies from unwed mothers and that was not acceptable to my siblings. To support me in my pathological grief was to side with me against my mother and that was never going to happen.

I isolated myself from my family. Not being able to make them understand was excruciating for me and my anger and volatility was intolerable for them. I then began the process of mourning the loss of them in conjunction with the loss of my son for the second time.

I used to be driving in my car and imagine myself swerving off a cliff or into a tree. I tried to commit suicide on two occasions. The thing that prevented me succeeding was the concern that my son may feel responsible for my death. He was already carrying the responsibility of his adopters' fulfilment, as parents and I did not wish to add to that burden.

I became obsessed with adoption related literature, films, television programs, documentaries and I would cry for all the people [a]ffected by adoption. My social circle became even smaller as my conversation revolved around adoption and nothing much else. I threw myself into counselling and research but by the time the NSW Parliamentary Inquiry came to a close, I was exhausted and ill. When the findings of the Inquiry, that some practices of adoption were unethical and illegal were revealed I suffered a mental breakdown.<sup>65</sup>

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63 Name withheld, *Submission 352*, p. 2.

64 Name withheld, *Submission 208*, p. 2.

65 Ms Linda Graham, *Submission 258*, pp 21–22.

### *Lasting effects of trauma*

4.42 Many mothers explained the continuing effects of post-traumatic stress disorder (PTSD), and other mental illnesses such as depression. Other mothers described ongoing emotional damage, and feelings such as anger and disbelief that cannot be resolved.

4.43 The committee heard that the reliving of trauma can be triggered by a number of factors. Many submitters explained that they are reminded of their own children whenever they see mothers and babies in the street:

I never forgot him I was always looking and wondering if he was alive or dead. From then on every time I saw a baby, little boy and even a grown up in the street, I would look to see if I could recognise him, these memories have never faded.<sup>66</sup>

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I felt the extreme pain of forced separation then. It was very difficult being around others with babies. When I was in Queensland visiting, I was always looking around wondering if my child was near me. The grief never went away or ever will go away.<sup>67</sup>

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I suffered from nightmares, flashbacks, I had panic attacks, I felt like vomiting every time I saw a baby or heard one cry when I was out shopping or when I saw or heard one on TV.<sup>68</sup>

4.44 The committee heard that birthdays and other anniversaries are particularly difficult times:

Nothing could take away the love I felt for my baby and still do. Birthdays, Christmas and Mothers Day were always difficult and remain so. I hoped that she was loved, well, happy, well treated and I wanted her to know that I loved her and I wouldn't have given her up had I had a choice.

I was silent and ashamed for eighteen years because it was not to be spoken of because of the stigma attached to unmarried mothers. I was not able to imagine a picture of her because I did not know her sex.<sup>69</sup>

4.45 Many submitters lamented the lost opportunities and the feeling that their whole lives would have been different if their children had not been adopted:

The separation from my son immediately after his birth continues to have a huge impact on our lives and should not ever have happened.<sup>70</sup>

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66 Ms Carolyn Brown, *Submission 238*, p. 4.

67 Ms Margaret Collins, *Submission 269*, p. 2.

68 Name withheld, *Submission 18*, p. 2.

69 Ms Margaret Singline, *Submission 355*, p. 2.

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I'm sure my life would have been a lot different, had I been informed and given a choice by the social worker. Who even had the gall to write 'not a pretty baby' about my daughter in her file!

For me it was an emotional horror story and still is.<sup>71</sup>

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I have no feelings left today for anyone. It seems I have weaved my way through life since 1963 and 1964 in a trance. I am 70 years of age and I still see my girls as babies and time stopped in my mind as though I never lived a life...<sup>72</sup>

4.46 The committee heard that the effects of forced adoption have had a severe and continuing effect on the lives of mothers. In many cases, the experience of trauma at a young age has affected the mothers over their whole life:

The pain never goes away, that we all gave away our babies. We were told to forget what happened, but we cannot. It will be with us all our lives.

It has affected us in so many ways, by getting married so early, married, children, divorced. We are all trying to find or avoid that [which] will never be filled.<sup>73</sup>

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As a consequence of the inhumane treatment I have received, I have suffered a lifetime of grief and pain, crying every day for my son, and the loss of him. I married briefly but was unable to maintain this relationship due to the psychological damage and trauma caused by this event. I was told to go away and carry on with my life but have been unable to do so, I never remarried nor had any other children.<sup>74</sup>

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I was told to go home and get on with life. I have had 20 years of psychiatric therapy for severe depression and panic attacks, I still take medication to this day.<sup>75</sup>

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This terrible experience of humankind from the Salvation Army has made a black cloud over me all my life.<sup>76</sup>

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70 Mrs Lorraine Hassett, Private Capacity, *Committee Hansard*, 26 October 2011, p. 25.

71 Teresa, *Submission 11*, p. 2.

72 Ms Teri Hay, *Submission 263*, pp 1–4.

73 Ms Kim Lawrence, *Submission 268*, pp 3–4.

74 Ms Janet McHugh, *Submission 265*, p. 3.

75 Ms Thelma Adams, *Submission 393*, p. 1.

76 Mrs Susan Evans, *Submission 270*, p. 2.

4.47 An anonymous submitter described the compounding effects of trauma, including regular panic attacks, an inability to leave the house and difficulties with finances:

I have lived with PTSD since 1969...my husband and children have been a great support to me...and every time I have contemplated ending it all, the thought of hurting them prevented it. With PTSD, when a stressful situation arises, I have a panic attack, and am bombarded with thoughts of inadequacy at my inability to take control of the situation, and my dependency on others. This brings on feelings of worthlessness and I start to think that everyone would be better off without me around...I have lived with the fear that one day I mightn't be able to talk myself out of it....I have been to the brink many times...one day I fear I'll fall over the edge...

I can't begin to tell you the negative effect it has had on my life, the life of my parents and siblings, my husband and children....and even my friends....and then the most severely affected....my first-born....

There have been financial ramifications also...my earning ability was diminished by my poor emotional health which is directly resultant on forced adoption....we have been a single income family for most of our 31 years because I have been reclusive almost to the point of Agoraphobia...for which I sought Psychological treatment....apart from the fear of leaving my 'safe place' and dealing with people, I had a fear of leaving my children and going out to work as I felt I would be abandoning them to the care of others...my husband worked so hard that at 50 his back went on him, we were forced into Bankruptcy....we couldn't afford Insurance...we are now on Newstart Allowance because the wait to see a specialist is 2–3 years...when we get a diagnosis on paper, Centrelink will then consider a disability pension and carer's allowance...in the meantime we struggle to make ends meet...

The stress of this exacerbates the effects of PTSD.<sup>77</sup>

4.48 As well as mothers, the committee also heard from fathers and other family members who were affected by forced adoption.

### ***Impacts on fathers***

4.49 The committee received a small number of submissions from fathers whose then-girlfriends were compelled to have their children adopted. Mr John Hughes, who was threatened with police action when his then-girlfriend became pregnant, recounted how the experience of forced adoption has affected his own life:

I was going to visit her but was again warned never to go near her again by her father and a male friend who threatened assault and more should I see her, so naturally I kept my distance so as not to cause any more trouble than I had already brought on [her].

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77 Name withheld, *Submission 256*, pp 9–10.

I was never at any time asked what I would like to do in regards to marriage or parenthood so with no options in any way nothing more happened, never given any documents to sign or authorise any actions which I thought was strange as I was the girl's father but felt very disappointed that maybe she would never know that.

This predicament caused me great stress and anxiety in future years and I went through a bad time with alcohol abuse and generally did not take care of myself as I now regret I should, but I'm sure this would be nothing compared to what [the mother] went through in her pain and anguish with a situation that was in no way her fault but only she and my daughter were put through these issues and pain.<sup>78</sup>

4.50 Mr Dallas McDermott explained that he and his mother had searched for forty years for his daughter.

As a direct consequence of being completely shut out of my child's adoption and welfare, I and my mother (the child's grandmother) have suffered a lifetime of living grief. It was the South Australian government's policy to withhold all information. My mother and I searched endlessly for the whereabouts of my daughter and were thwarted at every attempt. My mother (the child's grandmother) searched till her dying day often in tears—she had an inner feeling that the child was being mistreated. After 40 years I finally had contact with my lost daughter and it was true she was mistreated by her adoptive mother and abused by their son. There was corruption involved—the woman who adopted the child was deemed unfit but the person organizing everything at Macbrides confinement hospital managed to bypass regulations. It has left my daughter with mental and emotional scars that can never be healed. I am unable to write any more as it is too emotionally painful.<sup>79</sup>

4.51 Mr Cameron Horn noted that he provided a personal submission to the NSW Parliamentary Inquiry, and that fathers—as well as mothers—whose children were adopted against their wishes continue to experience a sense of loss and injustice:

Natural fathers of children lost to adoption, however, remain the 'silent dispossessed'...

So it is timely, in fact overdue, that there should be an examination of relevant laws, adoption industry practice and historical (contemporaneous) social attitudes to these dispossessed fathers, to see if in fact, there is any evidence of indictable behaviour by adoption workers, against fathers in the process of securing a child for adoption.<sup>80</sup>

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78 Mr John Hughes, *Submission 104*, p. 2.

79 Mr Dallas McDermott, *Submission 163*, p. 1.

80 Mr Cameron Horn, in Origins SPSA Inc, *Supplementary Submission 170 (j)*, pp 4–5.

4.52 Mr Gary Coles' submission recounted the exclusion of the fathers' name from birth certificates and cited anecdotal evidence that social workers avoided seeking the father's name so as to simplify adoption processes:

This sequence of interference may leave the lingering impression that the father did not care enough about his child to insist that his name be recorded on the original birth certificate. This perception may be picked up later by the searching adopted person, when they discover a birth certificate with but one birth parent name, that of the mother. It is no wonder then that so many adopted persons are apprehensive about finding their birth father. He is unknown, in all senses. In many circumstances, where the birth father's name is not recorded on the original birth certificate, it is the birth mother who controls both the revelation of his identity and the possibility of a reunion between father and child. Again, the birth father is disempowered. The above evidence confirms that many birth fathers have been treated harshly by past adoption practices. The legacy for these men is enduring pain and a peripheral role in post-adoption narratives. It is appropriate that the disenfranchisement of birth fathers be acknowledged in a formal apology made by the federal parliament.<sup>81</sup>

4.53 The committee also received submissions from mothers which suggested that fathers were not allowed to visit them at maternity homes, and that their names were not listed on birth certificates even at mothers' request.<sup>82</sup> The hostility frequently experienced by fathers extended to the highest levels. During law reform discussions in the 1960s, outlined in detail in Chapter 7, the West Australian Department of Child Welfare observed:

The Department sees no reason why the man who has sired a child for which he cannot provide a proper family life should have any rights in its future (except to pay for its maintenance until proper family life is available to it by adoption).<sup>83</sup>

### *Impacts on other family members*

4.54 The committee heard that forced adoption also affected family members of both the natural parents and the adopted person. The committee heard from other children (now adults) of mothers who had experienced forced adoption first-hand:

I was 19 when I found out about my brother. That was only seven years ago. For 19 years, my mother kept her first-born child a secret from her subsequent children. For 19 years I thought I was her eldest...

I also suffer from the knowledge of a brother lost (I always wished for an elder brother growing up) who I will probably never meet (I have his photo

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81 Mr Gary Coles, *Submission 143*, pp 1–2.

82 For example, Ms Jennie Burrows, *Committee Hansard*, 28 September 2011, pp 60–61.

83 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States, Adoption—from the Welfare Viewpoint*, WA briefing paper, folio pp. 8–10, digital pp. 243–245.



on my desk), and of course the pain that has come from being raised by someone who has been psychologically and emotionally traumatised from having her baby removed from her and going through the mistreatment that it entailed.<sup>84</sup>

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The damage done to my mother was serious and permanent and she never recovered. It has been the main cause of much of my family's disintegration and those of us along with it.<sup>85</sup>

4.55 Mrs Lisa McDonald described the effect that the news that one of his siblings had been adopted had on her youngest son:

I could not break the news to my other two children; my doctor did that. They were relieved because with me crying they thought I was dying of cancer, then they found out they had another brother. I did not think about the implications that they would feel behind it. They could not understand the government would do that. My youngest thought that maybe they could come and do that to him. It took a lot to get around that.<sup>86</sup>

4.56 An anonymous submitter recounted the difficulty of growing up with a mother who had experienced forced adoption and meeting her older sister in her early twenties:

Our parents mourned the loss of their baby throughout their lives. Feeling pressured to relinquish their baby to adoption and a 'better life', our Mother felt remorseful, guilty and ashamed. She found it difficult to maintain relationships with family members including her parents, husband, siblings, friends, colleagues and most importantly her 'OWN' children, resulting from the fear of agonizing pain associated with the loss of her beloved baby. She became overprotective of us, her 'own' children for fear of losing us. She suffered an anxiety disorder and a nervous breakdown from longstanding grief related to her sense of loss....

I would begin to question my place within the family. This is not an easy feeling to describe, instead of being the third child I had suddenly become the fourth child; my place had been taken from me. For someone already suffering from a low self esteem the impact of this experience is felt at a far more devastating level. To illustrate, one example would be our family tradition that the first daughter was to inherit our mother's engagement ring whilst the second daughter was to inherit our grandmother's engagement ring, my rite of passage was now in question and I still don't know how to ask the question, where do I stand?

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84 Ms Emily Wolfinger, *Submission 78*, p. 1.

85 Mr Steve Deliloucas, *Submission 384*, p. 5.

86 Mrs Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, p. 30.

It took me two seven year periods of being estranged with my mother to finally understand that her distrust was not personal, she was unable to trust anyone. When I was 36 years old I asked my Mother, 'So what you are saying is that you don't trust me?' After further conversations with her, I was able to conclude that she no longer trusted anybody due to the abuse she endured at the hands of those whom she most trusted to take care of her, including her Mother, Father, Doctor and Nurses (which were considered sacrosanct in those days).<sup>87</sup>

4.57 In addition, the husband of a woman whose eldest child had been adopted explained that her search for her daughter and her anger at her daughter's adoption affected him and their sons as well:

Before I married my wife, her mother advised [me] that she had already had a child, which had been adopted...

After a number of years we moved to Sydney and we were living there when the laws were change[d] in Western Australia and my wife could express an interest to make contact with her child.

This she did and once she had made contact and found out that she had had a daughter, and more importantly what had happened to her child, life became very difficult not only for me, but also for our sons.

Her whole personality changed, not only because she built a wall around her in respect to her child, including my role but she also became very angry with the system that had deprived her of having a daughter.<sup>88</sup>

## Conclusion

4.58 Many parents have recounted the long-lasting and extreme experience of trauma that has resulted from their children being adopted against their will. The painful, sometimes disastrous effects of forced adoption hurt the mothers, but also rippled outward through families. The committee heard that some adopted people endured harsh treatment as children, and experience continued issues with identity, self-esteem and belonging. For fathers and other family members the complex consequences of forced adoption continue to be experienced.

4.59 The witness accounts given as evidence to this inquiry greatly disturbed the committee. Most significantly, they point to ongoing health and welfare problems that need to be addressed. The committee will in later chapters return to the important question of how governments and other institutions should respond to the ongoing effects of forced adoption. First, however, this report examines in more detail the first part of its terms of reference: the Commonwealth's role in this policy area. The next chapter will examine one of the reasons why unmarried women were under such

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87 Name withheld, *Submission 194*, pp 2–3.

88 Name withheld, *Submission 283*, p. 2.

pressure to have their children adopted: the lack of sufficient government benefits to support them to raise their children themselves.



# Chapter 5

## Commonwealth role: social security and benefits system

### Introduction

5.1 The financial circumstances of many of the relinquishing mothers was reported to be one of the key factors in the decision making process which led to the adoption of their children. As such the question of whether the Commonwealth social security apparatus provided financial options to enable otherwise unsupported mothers to keep and raise their children is central to establishing the Commonwealth's role in former forced adoption policies and practices.

5.2 Monash University's submission explained why social security benefits are such an important consideration:

[T]he Australian social security context has important bearing on adoption in that it can create or severely delimit choices available to individuals, primarily single mothers, with respect to their capacity to care for their children. Through successive social security regimes, the Commonwealth government effectively regulated which types of individuals were considered eligible to form families and which types of families were considered worthy of preservation by restricting access to support to certain categories of individuals and their children. While single mothers were eligible for the Commonwealth Maternity Benefit, introduced in 1912, they were generally excluded from the expanded social security benefits introduced from the 1940s... While single (unwed) mothers could, in some circumstances, access unemployment, sickness or special benefits, and, from 1964, Commonwealth-subsidised state payments for mothers who were ineligible for the widows' pension, these provisions were less well known; and, in any case, offered a lower level of security than that available through a Commonwealth pension.<sup>1</sup>

### Commonwealth constitutional head of power (s 51(xxiiiA))

5.3 In 1901, the Constitution granted the Australian Government power to make laws for the peace, order and good government of the Commonwealth with respect to invalid and old age pensions.<sup>2</sup>

5.4 However, between 1901 and 1946, the Australian Government legislated more broadly across a range of social services, relying upon the spending power in Section 81 of the Constitution:

#### Consolidated Revenue Fund

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1 Monash University, *Submission 37*, p. 2.

2 Section 51(xxiii) of Australia's Constitution.

**81.** All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

5.5 The Pharmaceutical Benefits Case (1945) raised doubts about the constitutionality of social services legislation passed in this manner.<sup>3</sup> This led the Chifley Government and the Menzies Opposition to agree to confirm the constitutionality of the legislation by amending Section 51 of the Constitution.

5.6 On 28 September 1946, the 1946 Australian Referendum was held. It asked the question:

Do you approve of the proposed law for the alteration of the Constitution entitled 'Constitution Alteration (Social Services) 1946'?

5.7 The question was carried with 54.39 per cent of votes cast in favour.<sup>4</sup> Section 51(xxiiiA) was duly inserted into the Constitution granting the Australian Government power to make laws with respect to:

(xxiiiA) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances.

5.8 The *Social Services Consolidation Act 1947* was then passed, amalgamating social services legislation into the *Social Services Act 1947*. That Act ceased on 1 July 1991 to be replaced by the current *Social Security Act 1991*.

## **Commonwealth social security legislation**

5.9 Beginning as early as 1912, the Australian Government provided five forms of financial assistance to mothers: the maternity allowance; child endowment; special benefit;<sup>5</sup> widows' pension; and supporting mother's benefit, all of which are described below.

### ***The maternity allowance***

5.10 In October 1912, Parliament passed the *Maternity Allowance Act 1912*. It provided for a one-off £5 lump sum payment for the birth of a live or 'viable' child but only one allowance was payable where more than one child was born at one birth.<sup>6</sup> At

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3 *Attorney-General (Vic); (ex rel Dale) v Commonwealth* (1945) 71 CLR 237.

4 Australian Electoral Commission, *Referendum dates and results 1906–present*, [http://www.aec.gov.au/Elections/referendums/Referendum\\_Dates\\_and\\_Results.htm](http://www.aec.gov.au/Elections/referendums/Referendum_Dates_and_Results.htm) (accessed 24 March 2011).

5 Available under the *Unemployment and Sickness Benefits Act 1944*.

6 *Maternity Allowance Act 1912*, ss. 5(1).

the time this represented almost twice the average of the minimum weekly wage across Australia.<sup>7</sup>

5.11 The allowance was neither means tested nor subject to tax, and was presented by the Hon. Andrew Fisher PC, Prime Minister and Treasurer as an anti-poverty measure:

[M]any women go through the most trying period of their lives, ill-fed, ill-clad, ill-equipped, without assistance, and with nothing left to them but a proud spirit—a proud womanly spirit, and good luck to them. We intend to put a little between them and dire poverty, without degradation...When this Bill becomes law a woman will know, and everybody acquainted with her will know, that there is £5 awaiting her...That this proposal will relieve misery, I have not the shadow of a doubt.<sup>8</sup>

5.12 No restriction was placed on the eligibility of unmarried women for maternity allowance<sup>9</sup> and there was no character test:

There is no qualification whatever. Each and every one stands on the same level, must make application on the same form, and apply for the money in the same way.<sup>10</sup>

5.13 The provisions of the Act were amended several times from 1926 to 1978. For example, an income test was introduced in 1931 and repealed in 1943.<sup>11</sup> There were also several changes to the structure and levels of the maternity allowance including an increase to £15 for the first child in 1943.

5.14 The *Maternity Allowance Act 1912* was repealed in October 1978, so that no maternity allowance was payable for births occurring on or after 1 November 1978.<sup>12</sup>

### ***Child endowment***

5.15 In March 1941, a national scheme of child endowment was introduced. The *Child Endowment Act 1941* provided for the payment of an endowment at the rate of 5 shillings (s) per week to all children under the age of sixteen years, in excess of one child in each family. The scheme covered families, children residing in private

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7 Vamplew, W., *LAB 116-123, Minimum Weekly Wage of Male Adults, Colonies and States, 1891-1984, Australia's Historical Statistics*, Fairfax, Syme and Weldon Associates, p. 155.

8 The Hon. Andrew Fisher PC, Prime Minister and Treasurer, *House of Representatives Hansard*, 24 September 1912, p. 3323.

9 However, the maternity allowance (as well as child endowment, the widows' pension and supporting mother's benefit) was not payable to all women. Exclusions initially included 'Asiatics and Aboriginal natives of Australia, Papua or the islands of the Pacific'. See *Maternity Allowance Act 1912*, ss. 6(1)(2).

10 The Hon. Andrew Fisher PC, Prime Minister and Treasurer, *House of Representatives Hansard*, 24 September 1912, p. 3322.

11 *Financial Emergency Act 1931* (No. 10 of 1931) and *Maternity Allowance Act 1943* (No. 16 of 1943), respectively.

12 *Social Services Amendment Act 1978* (No. 128 of 1978). The allowance was re-introduced on 1 February 1996 albeit in a different form.

charitable institutions and children boarded out by the states.<sup>13</sup> The marital status of the parents was not a factor in the payment of the benefit.

5.16 Child endowment was payable from 1 July 1941 and the claim of a parent or guardian had to be based on actual responsibility for maintenance and not on a natural relationship.<sup>14</sup>

5.17 The child endowment was not subject to a means test, was not regarded as income for personal income tax purposes, and was to be absolutely inalienable. It was introduced during a time of hardship and, it was stressed, for the benefit of the child:

[T]he Government has formed the definite view that the circumstances of war make the measure I introduce today even more necessary and appropriate than in time of peace...[It is imperative] that the most urgent needs of the community have first claim on the reduced national income available for civil purposes. Child endowment will help to ensure that the exigencies of war do not take away from our children necessary food and clothing.<sup>15</sup>

5.18 There were numerous changes to the provisions of the *Child Endowment Act 1941* from 1942 to 1976. For example, in 1950 eligibility for the endowment was extended to the first child in a family.<sup>16</sup> From June 1976, the child endowment was replaced by family allowance.<sup>17</sup>

### ***Widows' pensions***

5.19 In May 1942, the government introduced the *Widows' Pensions Act 1942*. The Act resulted from the findings of an inquiry conducted by the Commonwealth Joint Committee on Social Security, which reported:

It has long been recognized both in Australia and other countries that widows with dependent children are in a particularly unhappy position...In the majority of cases the widows are without private means and must therefore work for a living in default of outside assistance. In that case they deprive their children of essential parental care and supervision. In caring for their children widows are performing a national service, and are entitled to community assistance both for themselves and for the one child not covered by child endowment.<sup>18</sup>

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13 The Hon. Harold Holt MP, Minister for Labour and National Service, *House of Representatives Hansard*, 27 March 1941, pp 340–341.

14 The Hon. Harold Holt MP, Minister for Labour and National Service, *House of Representatives Hansard*, 27 March 1941, p. 342.

15 The Hon. Harold Holt MP, Minister for Labour and National Service, *House of Representatives Hansard*, 27 March 1941, p. 338.

16 *Social Services Consolidation Act 1950*

17 *Social Services Legislation Amendment Act 1982*

18 Joint Committee on Social Services, *Interim Report*, 24 September 1941, p. 8.



5.20 The pension was introduced from 30 June 1942 with three different categories of eligible widows. The first category—Class A—comprised widows maintaining at least one child under the age of 16 years. The other two categories applied to widows without dependent children.

5.21 For Class A widows the maximum rate of pension was £1 10s per week, subject to automatic quarterly review based on movements in the retail price index ('C' Series).<sup>19</sup>

5.22 The Act broadly defined the term 'widow':

It has been decided to include as widows, de facto widows, a woman who is not legally named, but who lived on a bona fide permanent domestic basis for the three years immediately preceding the death of the man with whom she lived; a deserted wife who has taken legal action against her husband for desertion; a woman who has been granted a divorce and has not remarried; and a woman whose husband or de facto husband is an inmate of a hospital for the insane.<sup>20</sup>

5.23 Under this criterion unmarried mothers were not entitled to this benefit unless they could prove they had been in a domestic relationship for three years.

5.24 The provisions of the Act were amended many times from 1943 to 1983, most notably by the *States Grants (Deserted Wives) Act 1968*. This Act provided for mothers who did not fit the definition of 'widow' and were therefore not eligible for a widow's pension:

Broadly, they are deserted wives during the first 6 months of desertion, wives during the first 6 months of the husband's imprisonment, deserted de facto wives and de facto wives of prisoners and other unmarried mothers.<sup>21</sup>

5.25 In the Second Reading Speech, the then Minister for Social Services, the Hon. Mr William Wentworth MP described how women within the scope of the *States Grants (Deserted Wives) Bill 1968* had previously sought financial assistance from state and territory governments. However, the availability and level of assistance varied across the jurisdictions:

The aim of this legislation is to provide incentive for a more uniform level of assistance, with the Commonwealth sharing half the cost involved...The determination of eligibility and the rates of assistance will remain the responsibility of each State, but the Commonwealth expects that the

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19 There is a useful table depicting increases in the widows' pension from July 1942 to November 1982 at <http://www.fahcsia.gov.au/about/publicationsarticles/research/occasional/Documents/op12/sec8.htm#tbl14> (accessed 3 February 2012).

20 The Hon. Mr Edward Holloway MP, Minister for Social Services and Minister for Health, *House of Representatives Hansard*, 14 May 1942, pp 1239–1240. Note that not all women were eligible for a pension: 'aliens' and certain 'Aboriginal natives' were excluded.

21 The Hon. Mr William Wentworth MP, Minister for Social Services, *House of Representatives Hansard*, 2 May 1968, p. 1060.

existing practice of the States in making individual hardship the test of eligibility for assistance will continue, and that the States will in general raise benefit payments approximately to the level of those payable to a class A widow under Commonwealth legislation.<sup>22</sup>

5.26 In 1969–1970, Commonwealth expenditure under the *States Grants (Deserted Wives) Act 1968* amounted to \$1.9 million. In 1972–1973 that expenditure had increased to \$9.7 million.<sup>23</sup> This assistance operated in tandem with another benefit provided by the Australian Government under the *Social Services Act (No. 3) 1973*.

### ***Special Benefit***

5.27 Another benefit utilised to assist lone parents, although not designed specifically for the purpose, was Special Benefit, introduced under the *Unemployment and Sickness Benefits Act 1944*. In response to questions on notice asked at the committee's hearing in Adelaide on 26 October 2011 the Department of Education, Employment and Workplace Relations (DEEWR) informed the committee of how the benefit operated.

5.28 According to DEEWR, the benefit was paid to those people who:

by reason of age, physical or mental disability or domestic circumstances or any other reason were unable to earn a sufficient livelihood for themselves and their dependents. In determining whether hardship was present, the Director-General of Social Services was impelled to give consideration to:

- Whether the claimant had any money;
- If without money, the circumstances which led to this situation; and
- The time elapsed since the claimant had money available to themselves.<sup>24</sup>

5.29 The benefit was paid at the discretion of the Director-General of Social Services and 'the maximum rate for this benefit was the same as for unemployment or sickness benefit'.<sup>25</sup> An example of who could claim the benefit was given by the Minister who introduced the Bill in 1944:

[T]he Government envisage Special Benefit would be claimed by people in particular circumstances, such as a young woman who was required to

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22 The Hon. Mr William Wentworth MP, Minister for Social Services, *House of Representatives Hansard*, 2 May 1968, pp 1060–1061.

23 Parliament of Australia Parliamentary Library, Social Policy Group, *Social Security Payments for People Caring for Children, 1912 to 2006*, 5 July 2006.  
[http://www.aph.gov.au/library/pubs/online/special\\_partb.htm](http://www.aph.gov.au/library/pubs/online/special_partb.htm) (accessed 16 February 2012).

24 Department of Education, Employment and Workplace Relations (DEEWR), answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

25 Commonwealth Social Services booklet, March 1961, p. 10.

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withdraw from the labour force to remain at home to care for aged or disabled parents.<sup>26</sup>

5.30 Throughout the years, the categories of people (including unmarried mothers) who received Special Benefit widened as specific circumstances of hardship arose.<sup>27</sup> Following its introduction in July 1945, Special Benefit was payable to unmarried mothers under a range of specific circumstances. Such circumstances included (but were not limited to):

- Deserted wife or husband in prison for less than six months (not in receipt of state assistance);
- Not qualified for Widows' Pension Class A or Supporting Mothers' (Parents') Benefit (due to six month qualification period or residency requirements), with no recent employment history and unable to qualify for Unemployment Benefit or Sickness Benefit;
- Widows' Pension or Support Mothers' Benefit claimant experiencing hardship during assessment and determination period;
- In immediate hardship during the seven day waiting period for Unemployment Benefit;
- Under the minimum age (16 years) for Unemployment or Sickness Benefit;
- Ex-nuptial confinement up to 12 weeks prior and 6 weeks after the birth of a child (from 1968-69) [emphasis added];
- Expectant mother under 16 years (from October 1973) [emphasis added];
- Obligated to cease work to care for a sick dependent child.<sup>28</sup>

### *Supporting mother's benefit*

5.31 In May 1973, a new benefit was created—the supporting mother's benefit—to take effect from 3 July 1973:

The classes of women to whom the new benefit will be payable under this Bill are unmarried mothers, including deserted de facto wives and de facto wives of prisoners; and (b) married women not living with their husbands (deserting wives) or wives who have been separated for various other reasons, provided that the women be living with, and have the custody, care and control of a child (or children) of whom they are the mothers. These women are those who are not at present eligible for a widow's pension under the Social Services Act and who, with their children, have been

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26 Bill payment for all carers of aged or disabled was introduced by the Commonwealth Government in November 1985.

27 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

28 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

subject to discrimination in the level of assistance available to them in the past.<sup>29</sup>

5.32 The supporting mother's benefit was payable at the same rate and subject to the same means test as the Class A widow's pension. At its inception, the supporting mother's benefit maximum rate for one child under six was \$32. This gradually increased to \$64.95 in May 1978 and \$95.25 in November 1982.<sup>30</sup>

5.33 The benefit was payable from six months after birth of the child or separation, whichever was later. In the interim, the states and territories, together with the Commonwealth, under the *States Grants (Deserted Wives) Act 1968* were responsible for providing financial assistance to mothers. Not all mothers received this provisional assistance:

There will...be some women who will become eligible to the supporting mother's benefit who have not received state assistance because they would have been excluded by the state means tests.<sup>31</sup>

5.34 The *States Grants (Deserted Wives) Act 1968* did not achieve uniform financial assistance for Australian mothers. To address this and other anomalies, the Australian Government proposed that, in future, all cash social welfare payments be made by the Commonwealth:

At the present time, pensions and benefits from the Australian and State government authorities are complicated and confused by their conflicting means testing for benefits, by anomalies and by a perplexing range of benefits which have developed in a spasmodic way. If the Australian Government assumes responsibility for all personal benefit payments it will relieve the States of these financial programs which they often find to be beyond their resources.<sup>32</sup>

5.35 The *States Grants (Deserted Wives) Act 1968* was repealed from 30 June 1982, at which time the six month qualifying period for the supporting mother's benefit was also repealed.

5.36 The supporting mother's benefit was subsumed into the supporting parents' benefit from 10 November 1977, then the sole parent pension from 1 March 1989 and then the parenting payment (single) from 20 March 1998.

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29 The Hon. William Hayden MP, Minister for Social Security, *House of Representatives Hansard*, 22 May 1973, p. 2382.

30 Department of Families, Housing, Community Services and Indigenous Affairs, *Occasional Paper No. 12, Family Income Supplement*: <http://www.fahcsia.gov.au/about/publications/articles/research/occasional/Documents/op12/sec8.htm#tbl14> (accessed 24 March 2011).

31 The Hon. William Hayden MP, Minister for Social Security, *House of Representatives Hansard*, 22 May 1973, p. 2383.

32 The Hon. William Hayden MP, Minister for Social Security, *House of Representatives*, 22 May 1973, p. 2383.

## Availability of information on Commonwealth social security benefits

5.37 Many women who gave evidence to this inquiry felt that they were not advised of all the information on available financial support through the Commonwealth social security benefits system.

5.38 A number of submitters believed that there was no other option available to them than adoption, and this was on purely financial grounds. The committee received comments that cited the lack of information as a key factor in their decision to relinquish their child:

For unmarried, pregnant women adoption was assumed to be the only possible path because of lack of financial and other support;<sup>33</sup>

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I was given no information about financial support available to help me keep my baby. I was given no choices other than adoption;<sup>34</sup>

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No alternatives to adoption were given to me by the department of community welfare. I was not provided with information of any sort of foster care or financial assistance for unmarried mothers.<sup>35</sup>

5.39 Other women have suggested that there was sufficient financial support available and that they were deliberately misled and that information that would have broadened their options was kept from them:

[T]he adoption industry systematically lied to unsupported mothers about their rights, their options, financial assistance and legally available alternatives that would enable them to keep their babies or to at least allow free and informed decision to be made as the law decreed.<sup>36</sup>

5.40 This sentiment was echoed by other witnesses:

Whether or not the mothers' consent was informed of the availability of financial assistance and other aids to help her keep her child or of the known potential for long-term mental health issues associated with adoption are considerations that take on serious implications when examined as omissions relative to the gross breach of common law parental rights constituent with the unauthorised removal of the child at birth.<sup>37</sup>

At no time before I was given this document to sign was I told alternatives to adoption or any of the financial and material assistance which I now

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33 Benevolent Society, *Committee Hansard*, 29 April 2011, p. 17.

34 Ms Robyn Cohen, *Committee Hansard*, 16 December 2011, p. 17.

35 Ms Margaret Singline, *Committee Hansard*, 16 December 2011, p. 20.

36 Origins Victoria, *Committee Hansard*, 20 April 2011, pp 17–18.

37 Origins SPSA Inc., *Committee Hansard*, 29 April 2011, p. 25.

know was available to me and which was my entitlement at law to be told about.<sup>38</sup>

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I was not given information on financial assistance that would enable me to keep my son.<sup>39</sup>

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No-one told me. They told me that there was nothing available, that I would have to get a job and that, if I did give it to my parents, I was putting financial pressure on my parents as well.<sup>40</sup>

5.41 An internal report to the Commonwealth Department of Social Security circa 1957 raised concerns about the availability of information about benefits:

Special Benefits and publicity. Attention has been drawn to the fact that precedents to special benefits are not realised by the public and so cases can be cited of great hardship suffered unnecessarily.

e.g. a girl in a country town found actually starving, did not know she was eligible for a special benefit. Perhaps in the distribution of social services booklets, all post offices should have a copy in a conspicuous place for use by the public...It is the right of all citizens to be made fully aware of benefits for which they may be eligible.<sup>41</sup>

5.42 The NSW Legislative Council's Standing Committee on Social Affairs also reported in 2000 that they had heard similar evidence regarding the advice given to mothers:

One of the main concerns raised by mothers who participated in this inquiry is that they were not properly advised about the availability of income support and other alternatives if they chose to keep their babies. Even if information was provided, many say they were told the level was insufficient to support themselves and their child. A large number of mothers have indicated that the failure of adoption professionals to provide them with complete and accurate advice about alternatives to adoption was a critical factor in their decision to relinquish their child.<sup>42</sup>

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38 Ms Kate Howarth, *Committee Hansard*, 29 April 2011, pp 58–59.

39 Ms Laraine Murray, *Submission No. 77*.

40 Ms Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, p. 33.

41 University of Melbourne Archives, 86/123, Report – Child Endowment, item 8/3, p. 21.

42 NSW Legislative Council, Standing Committee on Social Affairs, *Releasing the Past—Adoption Practices 1950–1998—Final report*, Report No. 22, Parliamentary Paper No. 600, December 2000, p. 35, para 3.63.

## Analysis of the benefits available

5.43 One key question that arises from the description of the Commonwealth benefits potentially available to mothers is whether they would have provided enough support to allow an otherwise unsupported mother to raise her child.

5.44 The Child Endowment and the Maternity Allowance provided support to mothers regardless of their financial circumstance, although racial criteria were applied. As discussed previously in this chapter Child Endowment was a regular payment of 5s per week paid to those who had responsibility for maintenance of a child regardless of their natural relationship. To put this figure into perspective the average weekly wage was around \$10,<sup>43</sup> so the child endowment benefit represented only 5 per cent of the average weekly wage and was therefore far from sufficient for an unsupported mother to provide for herself and her child.

5.45 The Maternity Allowance was also not means tested. It was a substantial sum at the time of introduction, representing almost twice the average of the minimum weekly wage. However it was a one off payment and therefore could not contribute significantly to the ongoing maintenance of a mother and her child.

5.46 The availability of Special Benefit for otherwise unsupported mothers has been difficult for the committee to quantify due to its highly discretionary nature. The Act did not explicitly exclude unmarried mothers from receiving it, however the committee received evidence that they did not generally receive this benefit.<sup>44</sup>

5.47 DEEWR provided statistical information about recipients of special benefit from 1964 to 1981.<sup>45</sup> The figures show that the recipients of Special Benefit were overwhelmingly women. They provide some breakdown of the types of circumstance under which the recipients were eligible for this benefit. There is no category specifically for unmarried or single mothers. However, at least prior to 1968, it can be inferred from the available data that only a small proportion of the approximately 2000 women who received the benefit at some point during the year could possibly have been single mothers. In 1964, for example, the main category in the data that might have included single mothers<sup>46</sup> was 'other'. The number of recipients was just 180, and this may have included men receiving it for reasons completely unrelated to supporting children. When this small number is contrasted with the number of adoptions in that year (likely to have been around 6000), it is clear that special benefits were highly unlikely to have played a role in supporting single mothers.

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43 ABS, *Average weekly earnings, Australia, 1941 to 1990*, cat. no. 6350.0

44 See for example, June Smith, *Submission* 83, as well as the statistics provided by DEEWR in their answer to question on notice, 26 October 2011 (received 9 December 2011), Attachment E, discussed in the next paragraph.

45 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), Attachment E.

46 The category 'woman caring for sick parent, relative or child' could have included a single mother caring for a sick child, but this would not be relevant to the discussion here, as it would only have been available while a child was ill.

5.48 The 1965 Department of Social Services instruction manual for Unemployment, Sickness and Special Benefits describes the circumstances where Special Benefit should not be paid. Under the section, 'Women deserted by husband without just cause for less than six months', it specifically states that:

Benefit should not be granted where the claimant would not be eligible for a pension after she had been deserted for six months.<sup>47</sup>

5.49 This excludes unmarried women who would not meet the three year criterion required to be considered a de facto relationship under the *Widows' Pension Act 1942*, thereby excluding a great many of the mothers whose children were adopted. The Department also required that any claims about the length of time a couple had spent together before the 'desertion' 'be substantiated by statements from three other reputable citizens'.<sup>48</sup>

5.50 The procedure set out in the manual gives the impression that the Commonwealth's guidelines would have inhibited receipt of Special Benefit to unmarried mothers.

5.51 One of the submitters to the inquiry, June Smith, commented specifically on this issue:

According to the legal criteria, under the Social Services Act for payment of Special Benefit, single mothers would have been eligible for payment, though not one mother received this payment until two years prior to the introduction to the Single Mothers Benefit when payment was finally made to them. Although the criteria for Special Benefit had not changed in any way since 1947!<sup>49</sup>

5.52 The committee examined records held by Melbourne University Archives that belonged to Ms Theresa Wardell, a prominent social worker of the 1950s, 1960s and 1970s. Ms Wardell was contracted by the Commonwealth in 1957 to do a study of aspects of how adequately Commonwealth benefits, including Special Benefit, were providing support for children.<sup>50</sup> Notes made by her during a visit to South Australia poignantly confirm the view that Special Benefit was not available other than temporarily:

Unmarried mother who keeps her child. In great need after 6 wks when [Special Benefit] ceases – she can then go on [Unemployment Benefit] or get a job – if girl under 21 (lower wages) she can't possibly retain child and

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47 DEEWR, answer to question on notice, 26 October 2011, Supplementary Information: Department of Social Services, *Instructions for Unemployment, Sickness and Special Benefit*, October 1958, Issue no. 8 (1965), 2/J/8, p. 66.

48 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), Attachment E.

49 *Submission 83*, p. 7.

50 University of Melbourne Archives, 86/123, Extract of Director General's [of Commonwealth Department of Social Services Social Welfare Branch?] memo to Public Service Board, 1957, file 7/16.



work. These girls usually alone. Other countries give a living allowance for girl to stay at home and care for child. Australia's attitude still a punitive one.<sup>51</sup>

5.53 Ms Wardell's notes from her visit to Queensland were more cryptic but implied unmarried mothers were accessing the welfare system to some degree:

Family Allowance section Miss Clark, counter clerk [ie. Ms Wardell was making notes from a conversation]. Women only interviewers for [Family Allowance] counter. Woman claimants only have ?floor to sit on—many women afraid to talk at the counter in spite of side shields, esp. Unmarried mothers (comment – special room available off counter in [Unemployment Benefit and Special Benefit] section).<sup>52</sup>

5.54 The criteria for the benefit was broadened in 1968 to provide for 'Ex-nuptial confinement up to 12 weeks prior and 6 weeks after the birth of a child',<sup>53</sup> however this was already available under sickness benefit and simply transferred to Special Benefit.<sup>54</sup>

5.55 By way of summary, the Australian Government's social services legislation provided assistance to young unmarried mothers in the form of the lump sum maternity allowance (from 1912), child endowment for a first child (from 1950), supporting mother's benefit (from 1973), and potentially via state and territory grants (from 1968). Only the maternity allowance and the child endowment were universal benefits and therefore available to unsupported mothers.

5.56 The committee heard from commentators who concluded that there was insufficient ongoing support in the form of Commonwealth Social Security benefits before the restrictions on the supporting mother's benefit were removed in 1973:

In terms of the first of the terms of reference, about the role of the Commonwealth, it seems to me that basically from a legal point of view, it was the lack of financial assistance. Prior to 1973 the Commonwealth did not provide any means to enable single women to keep children.<sup>55</sup>

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At the time probably there were the social beliefs in society about single parenthood and the Commonwealth took no responsibility to provide income support in the way of finances for single parents. The majority of

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51 University of Melbourne Archives, 86/123, Notes for South Australia, p. 2, file 8/6, highlighting in original.

52 University of Melbourne Archives, 86/123, Notes for Queensland, p. 2, file 8/6, highlighting in original.

53 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

54 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

55 Adoption Jigsaw, *Committee Hansard*, 1 April 2011, p. 19.

women I believe would be relinquishing because of financial reasons. They really had no choice unless they had family support.<sup>56</sup>

5.57 The Council of Single Mothers and their Children (CSMC) Victoria cited their founder, Rosemary West, who described her experience:

For me, the penny dropped when I was pregnant in 1962 and asked the hospital social worker about social security benefits. She told me that I had broken the rules, and there was nothing for me. Girls like me were threatening the institution of marriage, she said, and if I cared for my child I would give her up.<sup>57</sup>

5.58 Another founding member of the CSMC, Rosemary Keily, is cited in the submission from the Royal Women's Hospital, Melbourne:

In a 1972 submission to the Australian Council of Social Services (ACOSS), Rosemary Kiely argued that 'a single mother who is without family support and who is unable to live cheaply in a housekeeping position is unable to afford independent accommodation at the present rate of benefits'. These restricted financial provisions made self-sufficiency a near impossibility.<sup>58</sup>

5.59 Dr Kathy MacDermott prepared a discussion paper for the Human Rights Commission in 1984 on the *Rights of Relinquishing mothers to Access to Information Concerning their Adopted Children*, and she reached the same conclusion.<sup>59</sup> Likewise, the NSW Parliamentary Committee reported in 2000 that state benefits alone would not be sufficient to sustain a mother and child:

According to a social worker writing in 1968, the Department's allowance did not provide a 'livable' income. Personal knowledge of some of these mothers trying to manage on this allowance has shown that they can only do so if they receive additional help from the voluntary relief-giving agencies such as the Smith Family. If they are trying to manage on their own the only alternative for them is to return to work once they have arranged day care for the child such as a day nursery or a daily minder. Alternatively, they may take a live-in job with the baby which occasionally works out well but which is often full of hazards.<sup>60</sup>

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56 Adoption Research and Counselling Service, *Committee Hansard*, Perth, 1 April 2011, p. 29.

57 Rosemary West, 'How Single Mothers Overcame Discrimination' in E. Baldry and T. Vinson, (eds), *Actions Speak: Strategies and Lessons from Australian Social and Community Action*, 1991, cited in Council of Single Mothers and their Children (CSMC) Victoria, *Submission* 303.

58 R. Kiely, 'Disadvantages of the Present Scheme for Assisting Single Mothers,' in The Council for the Single Mother and her Child (Vic) pamphlet, Melbourne, c.1972, Kiely's emphasis, cited in The Royal Women's Hospital, Melbourne, *Submission* 399, p. 13.

59 Kathy MacDermott, *Rights of Relinquishing mothers to Access to Information Concerning their Adopted Children*, Human Rights Commission, Canberra, July 1984, p. 3.

60 NSW Legislative Council, Standing Committee on Social Affairs, *Releasing the Past – Adoption Practices 1950-1998 – Final report*, Report No. 22, Parliamentary Paper No. 600, December 2000, p. 33, para 3.54.

5.60 The NSW Committee also heard that other barriers were put in place that could prevent a mother accessing benefits:

To qualify for any of the State social welfare allowances, the mother was required to make an affiliation statement, which involved identifying the father of her child. The statement was used by the Department to pursue an action for maintenance either in court or by way of a voluntary agreement. The requirement to name the putative father was a significant disincentive for a woman who might otherwise qualify because she might not want to name him. If the woman was less than 16 years of age, the young woman might not want to expose the putative father to a prosecution for carnal knowledge.

According to a former senior departmental officer, Mr Barry Francis, many women found affiliation proceedings extremely humiliating because they had to provide extensive details of their sexual relationships to a district officer and then in court. If they qualified for this allowance, further embarrassment was likely as they were required to collect their cheques in person from local church or community halls, rather than receive a payment in the mail like many other recipients.<sup>61</sup>

5.61 However this committee received some evidence that when combined, Commonwealth and state benefits may have provided an adequate income for an unsupported mother. Origins NSW submitted an article from 1954 that discussed a variety of Commonwealth and state social security benefits available to 'unmarried mothers':

Unmarried mothers throughout Australia can receive financial assistance before and after their confinement from the Commonwealth Social Services Department. The usual sickness benefit payments are available to these mothers for six weeks before and six weeks after their confinement. The rates are: £1/11 weekly for girls aged 16 to 18 years; £2/0/0 for the 18 to-21-years age group; and £2/10/0 for the 21-and-over group. In addition, if the mother decides to keep her child she can also receive a 5/- weekly payment for it for six weeks after its birth. As well as these benefits, unmarried mothers can claim child endowment of 5/- a week for the first child and the maternity allowance of £15 for the first child. In NSW, under section 27 of the Child Welfare Act an unmarried mother who wants to keep her child but cannot afford to support it may apply to the Child Welfare Department for regular payments.<sup>62</sup>

5.62 The committee did not receive authoritative information about exactly what state benefits were available in each state or territory. However some information that conveyed the national situation is included in the Summary of Proceedings of the

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61 NSW Legislative Council, Standing Committee on Social Affairs, *Releasing the Past – Adoption Practices 1950-1998 – Final report*, Report No. 22, Parliamentary Paper No. 600, December 2000, p. 33, para 3.55.

62 *The Australian Women's Weekly*, 'Should she surrender her baby?', 8 September 1954, p. 26, viewed 20 September 2011, <http://nla.gov.au/nla.newsarticle46448400>, cited in Origins SPSA Inc., *Supplementary Submission 170 (h)*, p. 54.

Ninth Annual Conference of Administrators of Child Welfare held in Canberra in 1968. This records a discussion of State Administrators on the issue of means testing of social welfare benefits for 'deserted wives and certain other categories of "widows" unmarried mothers etc. to uniform rates based on the Social Service pension payable to A class widows'.<sup>63</sup>

5.63 The context of the discussion was around whether the Commonwealth would fund 50 per cent of the costs involved in the states increasing their social welfare benefits to this category of people. The states and territories reported on how they means tested their social welfare benefits to this group:

- South Australia—Allows nothing in the bank. Assistance given is to relieve destitution only.
- Northern Territory—Some allowance is made where there is money in the bank if it can be demonstrated that it is needed for something else.
- New Guinea—No assistance is given when there is a disclosure of assets.
- Queensland—Up to \$400 is allowed in a bank account.
- Western Australia—Allows some money in a bank account.
- Tasmania—The supplementation of income with some welfare assistance is possible.
- Victoria—Will allow up to \$600 where there is one child and additional for extra children.<sup>64</sup>

5.64 While this does not provide details on the amounts that were available from states and territories for social welfare for mothers and their children, it does paint a picture of inconsistency in state welfare provision across the country.

5.65 The Australian Association of Social Workers (AASW) Journal published a submission to the Commonwealth Minister for Social Services lobbying for support for mothers who could not receive the Widows Pension on various grounds including being an unmarried mother. The submission summarised the availability of state benefits to otherwise unsupported woman who did not meet the Commonwealth criteria for benefits:

In all States the amounts paid vary considerably and are usually dependent upon the deserted wife being without adequate income or savings, being responsible for the care of her children. In some cases additional assistance is available, subject to the means test for that item, including milk, school books, handouts of clothes, etc. In some States all medical bills are paid for the mother.<sup>65</sup>

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63 Summary of Proceedings of the Ninth Annual Conference of Administrators of Child Welfare held in Canberra in 1968, provided by Origins SPSA Inc., *Supplementary Submission 170 (h)*, Fourth attachment, p. 28.

64 Summary of Proceedings of the Ninth Annual Conference of Administrators of Child Welfare held in Canberra in 1968, provided by Origins SPSA Inc, *Submission 170, Part Four*. p. 28.

65 Australian Association of Social Workers, *Australian Journal of Social Work*, May 1967, p. 21.

5.66 The submission also highlighted that receiving benefits from the States would disqualify a mother from receiving Special benefit from the Commonwealth:

In all States (except Victoria) deserted wives are entitled to receive State assistance, and for this reason forfeit eligibility to receive Special Benefit.<sup>66</sup>

*Committee view*

5.67 The committee received no evidence from unmarried mothers who did receive Special Benefit for the purposes of raising a child, so cannot presume to know whether or not the provision of the benefit was a long term solution for an unmarried mother. If it were an ongoing payment then perhaps it would have provided enough income to support both the mother and the child, However if it was accessed under the same conditions as sickness benefit, which was a time-limited benefit for the duration of the confinement, then it would not have been adequate. The only remaining option for an unsupported mother would then have been to access state benefits, which differed across the country.

5.68 The committee understands and agrees that various benefits and allowances from both the Commonwealth and some of the individual states, when combined, would have provided a reasonable amount of short-term funding to an unsupported mother. However the AASW submission to the Commonwealth suggests that receiving state assistance was an automatic bar on receiving Special Benefit, the only benefit that didn't explicitly exclude unmarried mothers. The figures quoted in the article supplied by Origins NSW do not appear to offer the ongoing financial support that would have allowed unsupported mothers to keep their babies. The article also refers to benefits available in New South Wales, which may not have applied in other states.

5.69 The committee believes that information provided to mothers during and immediately following the birth of their child was in some cases woefully short of what should have been available. There is insufficient evidence to allow the committee to determine whether the failure lay at the national level or whether it was a result of inadequate practices in hospitals and other state- or privately-run institutions.

5.70 Regardless of the quality of the information, however, the committee concludes that there was not appropriate government funding available to mothers prior to 1973 that would have provided the ongoing financial support necessary for mothers to keep their babies if they lacked any private source of income or family assistance.

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66 Australian Association of Social Workers, *Australian Journal of Social Work*, May 1967, p. 21.



# **Chapter 6**

## **Commonwealth role: development of model legislation**

### **Introduction**

6.1 In Australia, adoption legislation falls within the jurisdiction of the states and territories. Prior to the 1960s, the states, and the Commonwealth on behalf of the territories, drafted and enacted adoption legislation separately from each other. However, during the period from 1961 to 1964, the Commonwealth and states held discussions about model adoption legislation. A variation of the model legislation was subsequently implemented in each state and territory between 1964 and 1968.

6.2 This chapter examines how adoption legislation changed in the period between 1896 and 1968. It first summarises the key purpose of the original adoption acts enacted by the states. Secondly, it examines the impetuses for model legislation and its development during the 1960s.

6.3 As model legislation was developed as a legislative response to a legal recognition problem, this chapter does not address adoption practice more broadly. Issues that arose during the drafting of model legislation, which the Attorney General's Department referred to as 'social welfare' issues, including consent, record keeping and the operation of adoption agencies, are discussed in Chapter 7. Instead, this chapter focuses on involvement of the Commonwealth in the development of model adoption legislation.

6.4 The Commonwealth does not have constitutional ability to legislate on adoption. The Commonwealth's legislative role was therefore limited to responsibilities of the Attorney-General and his Department, the Attorney-General's participation on the Standing Committee on Attorneys-General (SCAG), and the administration of the Commonwealth territories. While the Attorney-General of the early 1960s, Sir Garfield Barwick, was not the first person to suggest model adoption legislation, his advice to the Prime Minister to seek the states' support of the proposal, and the mechanism of SCAG, helped the model adoption bill to come to fruition. The Attorney-General's Department provided secretariat services and arranged meetings between the states to discuss the model bill. While the Commonwealth was technically responsible for adoption in its territories, it had minimal resources and the territories had very small populations. In the ACT, the administration of adoption was delegated to NSW authorities and in other territories very few adoptions took place. This chapter concludes that the Commonwealth's role in the development of model adoption legislation was primarily one of coordinating the relevant state parties in order to bring the bill to completion.

## Initial adoption legislation in Australia

6.5 Anecdotal evidence suggests that informal adoption was taking place in the states and territories of Australia from the 19th century. The first state to enact adoption legislation was Western Australia, which passed the *Adoption of Children Act* (WA) in 1896. This was a relatively short act which formalised adoption arrangements by introducing Supreme Court-issued Adoption Orders. The Act set out basic particulars in relation to an adoption order, including permissible parties to an adoption, the legal effect of an order, and the court procedures to be followed.<sup>1</sup>

6.6 Other states enacted similar legislation during the early part of the 20<sup>th</sup> century. The relevant acts and ordinances were:

- *Adoption of Children Ordinance 1938 (Cth)*<sup>2</sup> (regulated adoption in ACT)
- *Adoption of Children Ordinance 1935 (Cth)* (regulated adoption in NT)
- *Child Welfare Act 1936, Part XIX Adoption of Children (NSW)*
- *Adoption of Children Act 1935 (Qld)*
- *Adoption of Children Act 1925 (SA)*
- *Adoption of Children Act 1920 (Tas)*
- *Adoption of Children Act 1928 (Vic)*
- *Adoption of Children Act 1896 (WA)*

6.7 The court issuing adoption orders varied between the jurisdictions. In Victoria, a County Court issued most adoption orders, in Tasmania, a police magistrate. Queensland was the only state where courts did not make adoption orders; the authority was granted to the Director of the State Children's Department.

## *Effect of the adoption order*

6.8 The nucleus of the adoption legislation in all jurisdictions was to establish and define a legal relationship between the adopted child and his or her adopted parent, and (for the most part) extinguish the legal relationship between the child and his or her natural parents. The *Adoption of Children Act (WA)*, for example, formally made the adopted child:

[F]or all purposes, civil and criminal...to be deemed in law to be the child born in lawful wedlock of the adopting parents.<sup>3</sup>

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1 Audrey Marshall and Margaret McDonald, *The Many-Sided Triangle*, Melbourne University Press, Melbourne, 2001, p. 19.

2 The relevant ordinances in other Commonwealth territories were: *Adoption of Children Ordinance 1932–1936 (Cth)* to apply to Norfolk Island, and *Adoption of Children Ordinance 1951–1959 (Cth)* to apply to Papua New Guinea.

3 *Adoption of Children Act 1896 (WA)*, s. 7.



6.9 All acts and ordinances across the states and territories defined the legal relationship between the adopted child and adopting parents, and stipulated certain rights and responsibilities. The formalisation of a legal relationship between these parties assisted them in their everyday interactions with the law. All acts and ordinances prescribed that the child should take the surname of the adopting parents. The Queensland legislation specifically noted that the right to consent to the marriage of the child became a right of the adopting parents.<sup>4</sup> These types of provisions assisted adopted children and their parents to avoid practical difficulties in everyday administrative tasks such as completing government forms.

### *Inheritance*

6.10 The status of adopted children with respect to inheritance was an important legal matter defined in each act and ordinance. In several states, the rights granted to adopted children did not extend to property inheritance. In NSW, SA, Tasmania and WA, adopted children were not considered next-of-kin with respect to inheritance rights in cases where an adoptive parent died intestate (that is, without having made a will). However, in these states, children retained next-of-kin status if their natural parents died intestate.<sup>5</sup>

6.11 In the ACT, NT and Queensland, the legal situation was essentially the reverse. Adopted children were considered next-of-kin to their adoptive parents, but could not inherit property if *a relative* of their adoptive parents died intestate. In a complementary manner, adopted children could not inherit property from intestate natural parents, but could do so if a relative of their natural parents died without making a will.<sup>6</sup>

6.12 The effect of the Victorian legislation on property rights was different from all other jurisdictions. It completely extinguished the legal relationship between the adopted child and his or her natural parents.<sup>7</sup> Thus next-of-kin rules applied as if the adopted child were the natural child of his or her natural parents. The only specified caveat was that property rights were not affected in instances when a person had died intestate before the enactment of the legislation.<sup>8</sup>

6.13 The issue of property inheritance was important because prior to the introduction of adoption law, it was assumed that only natural children could automatically inherit property from relatives who died intestate. Victoria, and to some

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4 *Adoption of Children Act 1935 (Qld)*, ss. 8(1).

5 However, it is difficult to contemplate many situations in which adopted persons would have actually inherited property from an intestate natural parent, especially if the adopted person was unaware of the identity of his or her natural parents.

6 For example, *Adoption of Children Ordinance 1938 (Cth)*, s. 2.

7 The only specified caveat is that property rights are not affected where a person has died intestate before the enactment of the legislation.

8 *Adoption of Children Act (Vic)*, ss. 8(1)(d).

extent the ACT, NT and Queensland, had also taken the first step towards addressing issues such as what they considered 'the interests of the child', and effecting a 'clean break' between the natural parents and child. These issues were to arise in discussions about model adoption legislation in the 1960s, as states sought to harmonise provisions including those relating to inheritance.

## **Model adoption legislation**

6.14 Adoption acts and ordinances, originating in the early 20th century, varied significantly between the jurisdictions. This section addresses the key drivers for the development of model legislation in the 1960s. The most important issue, as brought to the attention of the Commonwealth, was the recognition of adoption arrangements between the states and territories, and internationally.

## **Impetus for the development of model legislation**

6.15 While this section addresses the impetus for change to adoption legislation during the 1960s, this is not to say that adoption laws and ordinances were static between their original implementation and the 1960s. In fact, quite the opposite was true in most jurisdictions. As an example, the initial *Adoption of Children Act (Vic)* was implemented in 1928, and later changed (either replaced or amended) in 1936, 1942, 1953, 1954, 1955 and 1958. However, the changes to state and territory adoption legislation that took place between 1964–68 were the most significant up to that point because:

- Similar changes were made across all the jurisdictions, based on model legislation that was developed following discussions between the states and the Commonwealth;
- Each jurisdiction amended its legislation or enacted new legislation at the same time, between 1964 (Victoria) and 1968 (Tasmania); and
- The changes were substantial, with an emphasis on the welfare of the child rather than the legal rights of the parent.<sup>9</sup>

6.16 There are many difficulties that arise when looking back in 2012 at the reasons for the development of model adoption legislation in the early 1960s. Many key players are no longer living. The archival records are fragmented and incomplete. The records that do exist contain only glimpses of the views and intentions of legislators and bureaucrats of the time. Records surviving from the Attorney-General's Department files provide an indication of the Department's advice, but not always the official government position. Many of the institutions involved in childbirth and adoption have closed, and many records no longer exist.

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9 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 283.

6.17 However, it is clear that the key issues driving the development of model adoption legislation were related to the recognition of adoption arrangements between:

- Australian states and territories; and
- Australian jurisdictions and overseas.

6.18 First, legislators wanted to facilitate legal recognition of adoption arrangements between the states and territories of Australia. This included related issues such as the desire to enable parents to adopt a child who was living in a different state. In addition, adoption law at the time did not contemplate legal recognition of adoption orders made overseas, or the adoption of a child living overseas by Australian parents. Once it was agreed that recognition of adoptions made in other jurisdictions would be advantageous, it followed that similarity (or uniformity) of state and territory legislation would make sense:

One of the principle drivers for the development of the model laws, it appears from the files, was that the rules of private international law at that stage did not include any ability for adoptions conducted overseas to be recognised in Australia. In addition, because of the way adoptions were conducted, there were problems with recognition across jurisdictions within Australia. So it was considered at that time that it was important to deal with the effect of an adoption order both overseas and in Australia and to legislate for that, at the same time recognising...that developing some kind of uniformity in the legislation would be desirable.<sup>10</sup>

6.19 As the impetus for the development of model adoption legislation was the legal issue of recognition, this section is primarily a discussion of the legal issues and formal processes. Debate between the states that took place about the social welfare aspects of adoption is described in Chapter 7.

6.20 In the early part of the twentieth century, there were fewer coordination mechanisms between the states and territories than there are today. Organisations such as the Council of Australian Governments were non-existent, and long-distance travel and communication were much more difficult. Original adoption legislation did not contemplate the recognition of interstate adoptions, however a lack of such provisions was not unusual. Provisions to recognise interstate arrangements of other kinds rarely appeared in other legislation of the period either.

### ***Early coordination on adoption legislation: transmission of documents***

6.21 The first steps taken by the states towards model adoption legislation were amendments made to some state adoption acts in the early 1940s. The amendments provided for the transmission of adoption orders when a child was adopted in a state other than his or her state of birth. Therefore, the state where the child was born could note the adoption on its registry of births, deaths and marriages.

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<sup>10</sup> Ms Kerri-Ann Smith, Attorney-General's Department, *Committee Hansard*, 28 September 2011, p. 3.

6.22 The committee understands that the first instance of such a change appeared in a set of 1940 amendments to the *Adoption of Children Ordinance 1938 (Cth)*. One of the newly-inserted paragraphs allowed the Minister to make arrangements with Ministers of other states and territories about the exchange of adoption orders for registration when either a child was born in the ACT and adopted interstate or vice-versa.<sup>11</sup> In response to this insertion, the Secretary to the WA Registrar-General wrote to the Commonwealth Registrar-General in March 1940 to ask if it was 'the intention' that the Minister would be making arrangements of this type.<sup>12</sup>

6.23 A response was sent from the Commonwealth Department of the Interior, advising that:

The question of making reciprocal arrangements with the state authorities for the transmission and reception of copies of adoption orders is receiving consideration.<sup>13</sup>

6.24 The consideration of reciprocal arrangements culminated in a letter from the Prime Minister to all State Premiers sent on 27 December 1940.<sup>14</sup> The letter formally advised premiers of the provisions relating to reciprocal arrangements, and requested:

I should be glad if your Government would reciprocate by making arrangements for the transmission to the Minister for the Interior in Canberra of a copy of any adoption order concerning a child born in the Territory and adopted under the law of your State, and for reception from the Minister for the Interior of a copy of any adoption order concerning a child born in your State and adopted under the Adoption of Children Ordinance 1938–40.<sup>15</sup>

6.25 A positive reply from WA indicated that it had made the necessary arrangements and later supplied details of a child born in Canberra who had been adopted in WA.<sup>16</sup> However, the replies from SA, Tasmania, and Victoria indicated

11 *Adoption of Children Ordinance 1938 (Cth)*, ss. 7f(1).

12 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from the WA Registrar General to the Commonwealth Registrar General, 6 March 1940, folio p. 1, digital p. 96.

13 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Commonwealth Registrar General to WA Registrar-General, 26 September 1940, digital p. 93.

14 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Prime Minister to premiers in all states, 27 December 1940, digital p. 74.

15 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Prime Minister to premiers in all states, 27 December 1940, digital p. 74.

16 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from WA Premier to Prime Minister, 10 February 1941, digital p. 69.

that there was no provision in their legislation that allowed them to transmit and receive adoption orders.<sup>17</sup>

6.26 The reply from Tasmania indicated that it would make provision for such arrangements when it next amended its own adoption legislation.<sup>18</sup> Victoria suggested that it would be useful to extend such arrangements to children born in any state or territory and adopted in any another state or territory.<sup>19</sup> South Australia's reply raised the wider issue of the lack of recognition of interstate adoption arrangements more generally:

This seems an opportune time to direct attention to the fact that adoption orders of different States have no binding effect outside those States, and that some form of reciprocal legislation or Commonwealth legislation seems to be justified so that uniformity of registration can be effective, and so the child and the adopting parents concerned can be afforded the privileges the law intended.<sup>20</sup>

6.27 Prime Minister the Hon. John Curtin responded, indicating that while it would be 'desirable' for adoption orders to be recognised throughout the Commonwealth, the constitution did not permit the Commonwealth to enact adoption legislation effective in the states:

[T]he extension of the effect of adoption orders is a matter for action by the States and that the Commonwealth powers can be exercised only in respect of Territories of the Commonwealth and not generally.<sup>21</sup>

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- 17 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*: letter from SA Premier Playford to Secretary, Department of the Interior, 11 March 1941, digital p. 66; letter from Victorian Acting Premier Lind to Prime Minister, 12 February 1941, digital p. 71; letter from Tas Premier Cosgrove to Prime Minister, 23 January 1941, digital p. 72.
  - 18 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Tasmanian Premier Cosgrove to Prime Minister, 23 January 1941, digital p. 72. Later in the same file, a subsequent letter from the Tasmanian Premier indicated that Tasmania could actually make such arrangements by amending its adoption regulations (letter from Premier Cosgrove to Prime Minister, 7 July 1941, digital p. 52.).
  - 19 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Victorian Acting Premier Lind to Prime Minister, 12 February 1941, digital p. 71.
  - 20 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from SA Premier Playford to Secretary, Department of the Interior, 11 March 1941, digital p. 66.
  - 21 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Prime Minister to SA Premier, 2 January 1942, folio p. 89.

6.28 Further, the issue appears not to have been widely discussed amongst Commonwealth Ministers. An internal minute from the Department of the Interior noted that:

the Minister has not yet been informed of the proposal to ask each of the States to introduce legislation to provide for registration of adoption orders.<sup>22</sup>

6.29 Despite a lack of progress on uniform adoption legislation, some states did make amendments to their acts or change their regulations in order to facilitate the transmission of adoption orders to the state of the child's birth (where the child was born interstate). The Acting Premier of Queensland forwarded a copy of its amendment in June 1941 and added:

I am communicating with the other State Governments with a view to uniform legislation being enacted in this respect.<sup>23</sup>

6.30 Similar provisions were added to NSW legislation (1941), in Victoria (1942), and the Tasmanian rules (1941). While South Australia wrote indicating it would consider such legislation in the next session of parliament, it is not apparent that such legislation passed.<sup>24</sup> At this point, Northern Territory did not yet have an adoption ordinance, and arrangements had already been made in Western Australia.

### ***Early problems with lack of recognition of interstate adoption orders***

6.31 The above amendments contemplated that children born in one state, say, State A, might move to another state, State B, and be adopted in State B. However, this could only take place if the child was already living in State B before the adoption order was made. It was not possible for parents in State B to apply directly to State A to adopt a child.

6.32 The Attorney-General's Department had received letters from ACT residents who wished to adopt children living in NSW. It appears there were more prospective adopters living in the ACT than there were children born in the ACT to parents who wished them to be adopted.

6.33 Correspondence on the topic between the Attorney-General and the NSW Child Welfare Department seems to have been somewhat interlinked with

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22 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, Department of the Interior Brief to the Assistant Secretary, Civic Administration, Adoption of Children Ordinance 1938–40—Adoption Orders, 22 December 1941, digital p. 32.

23 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Queensland Acting Premier to AGD, 18 June 1941, digital p. 55.

24 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from SA Premier Playford to Prime Minister, 14 January 1942, digital p. 21.

correspondence about provisions permitting the transmission of adoption orders. However, as an officer noted, this did not assist ACT parents wishing to adopt children from NSW:

It seems to me that the proposed amending Ordinance and the proposed agreement only provide for the transmission and recording of adoption orders...have no bearing on the more important requirement that residents of the Territory may legally adopt children domiciled in New South Wales.<sup>25</sup>

6.34 A subsequent series of communications between the Commonwealth Attorney-General's Department (AGD), Commonwealth Department of the Interior, and NSW Child Welfare Department, confirm that NSW was considering the issue but do not indicate significant progress.<sup>26</sup> At one point, the Attorney-General's Department noted that the Director of Child Welfare NSW required a report on the suitability of adoptive parents before an order was made. He suggested that a NSW inspector of the Child Welfare Department, when visiting an area of the state close to the ACT, could detour into the Territory to assess prospective adoptive parents.<sup>27</sup>

6.35 AGD considered that it was NSW, not Commonwealth legislation, that needed amending, as per a Department of the Interior internal brief from 12 November 1943:

[T]he Attorney-General's Department advised on the 10<sup>th</sup> December 1941, that there is no provision in the Constitution [under] which the Commonwealth Parliament can legislate with respect to adoption...

6.36 The committee found no further record of communication on the issue until the question of uniform adoption legislation was raised in a letter sent to the Prime Minister by the Country Women's Association Council of Queensland.

### ***Early problems with disparity in adoption legislation across Australia***

6.37 On 17 August 1944, the Country Women's Association Council of Queensland wrote to the Prime Minister, suggesting that adoption legislation be made uniform across the states and territories. The letter notes disparities between state

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25 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, brief from AGD Secretary Knowles to Secretary, Department of the Interior, 26 August 1941, digital p. 47, brief from NSW Director of Child Welfare to the (Commonwealth) Department of the Interior, 12 November 1943, digital p. 11.

26 For example, see NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from the Registrar-General to NSW the Director, Child Welfare Department, 24 September 1941, digital pp 45, 47.

27 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from AGD Secretary Knowles to Secretary of the Department of the Interior, 15 June 1942, digital p. 16.

legislation relating to what authority makes adoption orders, what the succession rights of the child become, and what records are kept and transmitted.<sup>28</sup>

6.38 The Prime Minister's Department referred the letter to the Department of the Interior, which then replied indicating its support for the CWA proposal in light of continued difficulties for prospective adoptive parents in the ACT:

The difficulties mentioned in Mrs. Palmer's letter have been experienced in relation to the Australian Capital Territory due to conditions in legislation of certain States which is apparently incompatible with the adoption of children from such States by persons domiciled elsewhere.

Steps were taken to include provisions in the law of the Australian Capital Territory whereby the Minister could make mutually satisfactory arrangements with the States in respect to the transmission and registration of adoption orders but it is found that this procedure does not go far enough as amendments to State legislation would be necessary to admit full reciprocity and reasonably simple administrative machinery for handling the cases that may arise.

In these circumstances it is the view of this Department that the suggestion made by the Country Women's Association Council of Queensland is a good one and that an attempt should be made to secure the maximum degree of uniformity possible throughout the Commonwealth in relation to this question including simple provisions for dealing with cases where the adopter or adopters and the children have a different domicile.

It is suggested that State Governments be invited to agree to this matter being considered at a conference of Commonwealth and State Ministers with the object of ascertaining whether it would be practicable for agreement to be reached in respect to the law on this subject including provisions for reciprocity and convenient machinery for administrative action.<sup>29</sup>

6.39 It appears that this advice was taken, as the Tasmanian and NSW premiers sent acknowledgements of notice that the issue was to be raised at the next meeting of Commonwealth and State ministers.<sup>30</sup>

6.40 However, the file is thus concluded, and no further detail is available about any 'meeting of Commonwealth of State Ministers'. The next mention of this issue

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28 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Sgd Leila Palmer, State President, Qld Country Women's Association, to the Hon. John Curtin, Prime Minister, 17 August 1944, digital p. 6.

29 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, Department of the Interior Memorandum to the Secretary, Prime Minister's Department, digital p. 4.

30 NAA, A431/1 1949/1537, *Country Women's Association, Queensland. Uniformity in Australian Laws for the Adoption of Children*, letter from Tas Premier Cosgrove to Prime Minister, 14 November 1944, digital p. 3; letter on behalf of NSW Premier to Deputy Prime Minister, 22 November 1944, digital p. 2.



appears in a 1958–59 AGD file. However, in the meantime, several notable, and in one case widely publicised, adoption cases were brought to courts.

### *Adoption cases*

6.41 Perhaps the most widely-publicised adoption case of the period was *Mace v Murray* (1955).<sup>31</sup> Miss Murray was a single mother who initially signed consent to adoption shortly after her son was born, but later withdrew her consent and sought custody of her son. Mr and Mrs Mace were prospective adopters with whom Miss Murray's son had been placed prior to an adoption order being made. After a lengthy legal process culminating in an appeal to the High Court, Mr and Mrs Mace were eventually granted the custody of the child on the basis that Miss Murray's consent could lawfully be dispensed with.<sup>32</sup>

6.42 The case of *Mace v Murray* is significant for a number of reasons. In the first instance, it attracted significant and nationwide publicity. The complex and lengthy legal battle between Miss Murray and Mr and Mrs Mace was reported in major newspapers across Australia and both raised and contributed to public awareness about adoption. This press coverage and related commentary demonstrated polar views about the rights of mothers, children and adopters, as well as exposing limitations of contemporary adoption legislation and practice. The most significant limitation was the failure of adoption legislation to adequately address a situation in which a mother revoked her consent to adoption after the child had already been placed with the prospective adopters. This issue is discussed further in Chapter 7.

6.43 *Mace v Murray* exposed a problem with an aspect of NSW adoption legislation. Such a problem could have been solved in NSW by an amendment to that state's legislation, without any action in other jurisdictions. However, consent provisions were very similar across jurisdictions—except in Victoria—and it is very likely that the case affected the administration of adoptions across Australia. While adoption numbers had been climbing until 1955, there was a 12 per cent fall that year, and adoptions did not exceed pre-case levels again until 1958.

6.44 In addition, the *Mace v Murray* case appeared to cross jurisdictional boundaries, because Mrs Mace took the child to the ACT for a day in order to escape the effect of a NSW court order compelling her to return the child to Miss Murray. While model adoption legislation did not seek to, and did not, change the application of NSW court orders interstate, Mrs Mace's actions contributed to greater public awareness of jurisdictional recognition issues and of the complexity of adoption law more generally. This kind of public awareness, and the high profile nature of the case that was almost certainly brought to the attention of government ministers of the

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31 *Mace v Murray* (1955) 92 CLR 370.

32 *NSW Law Report*, 'Re Murray', vol. 55, pp 88–107.

day,<sup>33</sup> was likely to have contributed to building momentum towards adoption law reform, and potentially, collaborative law reform through model legislation.

6.45 Another potentially significant influence on the reform process was the new Attorney-General's personal experience. Sir Garfield Barwick was elected to Parliament in December 1958 and immediately became Attorney-General in the fourth Menzies government. Barwick had been an experienced barrister and Queens Counsel when, in 1953, he represented a woman and her adopted children in an appeal before the High Court.<sup>34</sup> The case concerned the application of provisions of the *Child Welfare Act (NSW)* to adopted children in respect of their capacity to be beneficiaries of a will of a relative of their mother.

6.46 Barwick's client was the beneficiary of a will that allowed her to choose to establish a trust for any children she might have. After the will had been made, the woman adopted two children and, nine years later, established a trust in their favour. At that point, a trustee of the same will brought proceedings against her, claiming that the act's provisions governing inheritance should prevent her from establishing a trust for an adopted child, if that child was adopted after the will was made.

6.47 The provisions of the *Child Welfare Act (NSW)* did not allow adopted children to benefit from any will made prior to the adoption order. The court effectively had to decide which was the decisive legal event: that the woman made a decision to establish the trust *after* the adoption order, or that the will had been made *prior* to the adoption order.

6.48 The legal arguments were technical, and Barwick's client lost. The court decided the critical fact was that the will had been made prior to the adoption order. As a result, the woman's adopted children could not be made beneficiaries on the basis that the Act did not allow adopted children to benefit from a will made prior to adoption.

6.49 Barwick referred to the case during subsequent discussions with the states. His bruising encounter with this area of law may have been one motivation in advancing the review of laws, and archival evidence shows that he wanted the relevant adoption law provisions changed to avoid the result that had ensued.<sup>35</sup>

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33 For example, a brief to the Commonwealth Attorney-General refers to the case as 'the Mace case' without further explanation. The committee therefore assumes that AGD was familiar with the case. NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation—material prepared for Conference*, AGD Minute paper 61/2241, 8 June 1961, folio pp 71–72.

34 *Pedley-Smith v. Pedley Smith* (1953) 88 CLR 177.

35 NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, AGD Minute paper 61/2176: Uniform Adoption Legislation – powers of appointment, digital p. 355.

6.50 The details and judgement of *Bairstow v Queensland Industries Pty. Ltd.* (1955),<sup>36</sup> later described by an AGD officer as 'unfortunate', was filed in full on the Attorney-General's files. It provided an account of a widow who sought to claim damages when her husband was killed in a car accident. While the judge awarded damages to the widow, he found that she could not claim damages for the benefit of her adopted child because the adoption order had been made in another jurisdiction (the UK). Despite the judgement, the Insurance Commissioner subsequently made a payment of £1550 to be held in a trust for the adopted child.<sup>37</sup>

6.51 Again, there appears to have been no practical steps taken to address uniformity in adoption legislation, or amendments facilitating the recognition of interstate or overseas adoptions. However, the issue continued to arise.

6.52 In a later adoption case, the Victorian Solicitor-General wrote to the Attorney-General providing a copy of a recent adoption order on 17 November 1960. The adoption order was made in favour of a couple who usually lived in NSW but had travelled to Victoria and adopted a Victorian child. While the adoption order was made by the Supreme Court, the judge noted considerable difficulty due to a lack of uniform legislation or any provisions providing recognition of adoption orders between states.<sup>38</sup>

### *Continued problems arising from disparity in adoption legislation across Australia*

6.53 Problems continued to arise from a lack of recognition of adoption orders across states and territories. Records indicate that the Attorney-General's Department was sent or referred at least three letters during 1958–59 from constituents in relation to problems encountered by adopting parents of children who were living in other states.<sup>39</sup> One reply from the Attorney-General indicated that:

If I do ultimately conclude that the Commonwealth is unable to do anything I will consider stimulating the States into passing identical laws. This may have some promise, as the States have recently agreed upon a common form of Hire Purchase Act and are now making progress towards a common form of Companies Act.<sup>40</sup>

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36 *Bairstow v. Queensland Industries Pty. Ltd.* (1955) St. R.Q. 335.

37 NAA, A432 1960/2471, *Adoption of Children Ordinance ACT (1938)*, Memorandum for the Under Secretary, Justice Department, 14 December 1955, folio pp 58–59.

38 NAA, A432 1966/2404 Part 1, *Uniform Adoption Legislation*, letter from Victorian Solicitor General to Attorney-General Barwick, 17 November 1960, and attached copy of Judgement of Dean, J. Delivered 22 September 1960, *Re: An Infant*, digital pp 201–209.

39 See for example, NAA, A432 1958/3087, *Possibility of Commonwealth legislation re uniform processes of adoption*, letter from a constituent to the Hon. Hugh Roberton MP, 8 April 1958, digital pp 39–40.

40 NAA, A432 1958/3087, *Possibility of Commonwealth legislation re uniform processes of adoption*, letter from Attorney-General Sir Garfield Barwick, 14 December 1959, digital p. 18.

6.54 Separately, correspondence is noted between the WA Premier's Department and Commonwealth Department of External Affairs in relation to whether or not UK adoption orders were recognised in that state. Advice from the Attorney-General's Department was again sought, with WA ultimately advised:

The need for uniform adoption laws, including uniform rules for recognition of foreign adoptions, is growing steadily, and the Commonwealth has given some consideration to the problem. The Attorney-General authorised me to say that early in the New Year he proposes to take steps to discuss with all states the law of adoption, with a view to considering the introduction of uniform laws on this subject. The Attorney-General is of [the] opinion that the success of the uniform company law and hire purchase meetings suggests that this is the best approach to the problem.<sup>41</sup>

6.55 The reference of the Attorney-General to 'a common form of Companies Act' referred to discussions between state attorneys-general at conferences of the Standing Committee of Attorneys-General. It is very likely that the advice sent to WA about the Attorney-General discussing adoption law with the states was also envisaged to take place at a conference of the committee. The emergence of this committee was one of the reasons that the development of model legislation emerged in the early 1960s, rather than in the 1940s when first suggested. The Standing Committee of Attorneys-General provided an effective mechanism for state attorneys-general to meet and debate issues of legislation.

***First steps towards harmonisation of legislation: Standing Committee of Attorneys-General***

6.56 Following a recommendation of the 1958 *Report from the Joint Committee on Constitutional Review*, conferences of the Commonwealth and State Ministers of Attorneys-General were held regularly between 1959 and early 1961 to consider and develop uniform company legislation.

6.57 The successful passage of the uniform company legislation in 1961–62 in the jurisdictions was the first major achievement of what became known as the Standing Committee of Attorneys-General (SCAG) in August 1961:

There is a standing committee of Attorneys-General of the States and of the Commonwealth which, as I understand it, was given some form of regularity by the Attorney-General (Sir Garfield Barwick). Previously the committee had conducted ad hoc meetings somewhat irregularly. The purpose of that committee has been to achieve uniformity of State legislation on a variety of matters on which the Commonwealth itself could

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41 NAA, A432 1958/3087, *Possibility of Commonwealth legislation re uniform processes of adoption*, 20 September 1960, digital p. 7.

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not act, or thought it could not act. An instance of such a matter was the uniform companies legislation.<sup>42</sup>

6.58 The committee, known as SCAG until September 2011, 'successfully developed uniform and model laws to reduce jurisdictional difference and create national systems.'<sup>43</sup>

6.59 It is clear that the Attorney-General considered that SCAG was the most effective mechanism to discuss uniform legislation. Writing in relation to the process in 1962, Sir Garfield Barwick noted:

I have always considered that the co-ordination of the work necessary to prepare a draft model law of adoption is a matter which is peculiarly one that can best be done by the Standing Committee of Commonwealth and State Attorneys-General. In this regard, I would point out that it was in my capacity as Attorney-General for the Commonwealth that I had brought to my notice quite a number of matters that underlined the necessity for a uniform law of adoption, and also it was in that capacity that I took the initiative in having work commenced on this project.<sup>44</sup>

6.60 A later memorandum designed to brief the then new Attorney-General Sir William (Billy) Snedden on work to date on uniform adoption legislation, reiterates the message that Australian adoption law as it stood in the early sixties did not effectively coalesce with that in overseas jurisdictions:

The rules of private international law relating to the recognition of foreign adoption orders are unsatisfactory, and have caused uncertainty in the recognition in Australia of adoptions overseas. The need to have up-to-date, uniform recognition rules prompted your predecessor to suggest to the States that an attempt be made to achieve uniformity in the whole field of adoption.<sup>45</sup>

6.61 It appears that the combination of the mechanism of SCAG and the continued problems arising from a lack of recognition between the adoption laws of the states and territories prompted the Attorney-General to decide to take action in late 1960.

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42 Sir William (Billy) Sneddon MP, *House of Representatives Hansard*, 19 April 1963, p. 792.

43 It is now called the *Standing Council on Law and Justice* (SCLJ). Attorney-General's Department, *Standing Council on Law and Justice*, <http://www.scag.gov.au/> October 2011, (accessed 14 January 2012).

44 NAA, A432 1966/2404 Part 2, *Uniform Adoption Legislation*, letter from Attorney-General Barwick to Qld Minister for State Children Dr Noble, 9 November 1942, folio p. 12, digital p. 69.

45 NAA, A432, 1966/2404 Part 3, *Uniform Adoption Legislation*, AGD Minute Paper 60/2474, *Uniform Adoption Legislation*, to then new Attorney-General Sir William (Billy) Snedden, 17 March 1964, folio pp –138, digital pp 7–10.

***Agreement to develop a model adoption bill***

6.62 On 13 December 1960, the Attorney-General suggested to the then Prime Minister (Sir Robert Menzies) that he write to the states with a view to advancing the issue:

I am minded to propose to the States a conference of Ministers to be followed by conferences of officers to seek a common form of adoption legislation...<sup>46</sup>

6.63 The Prime Minister agreed, and on 22 December 1960, letters were sent to premiers to seek their response to such a proposal. The letter explained that the Attorney-General had 'in mind for some time' the question of a model adoption bill, and that with the agreement of each Premier, the Commonwealth Attorney-General would pursue the matter with the states' attorneys-general:

Matters at present in mind as suitable for inclusion in a model Bill are the process of adoption, the basis of jurisdiction of courts to make and rescind adoption orders, the status of an adoption order on legal relationships between the natural parents and their child when adopted, the effect of rescission of adoption orders, the recognition throughout Australia of adoptions made in any part of it, the recognition in Australia of foreign adoption orders both local and foreign; and the relationship between adoption and birth registrations. Other ancillary matters will, no doubt, suggest themselves.<sup>47</sup>

6.64 The states replied indicating their agreement with the proposal—although WA noted that it was not committing itself to enacting a uniform bill<sup>48</sup>—and a meeting of Attorneys-General was organised for 29 March 1961.

**Commonwealth role**

6.65 The Commonwealth, under section 51 of Australia's Constitution, has no legislative power to enact or enforce adoption legislation. Adoption legislation is the responsibility of the states, unless the states choose to refer it to the Commonwealth

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46 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, letter from Attorney-General Barwick to Prime Minister Menzies, 13 December 1960, folio p. 50, digital p. 198.

47 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, letter to Prime Minister to all premiers, 22 December 1960, folio p. 53, digital p. 194.

48 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, letter from WA Acting Premier to Prime Minister Menzies, 8 February 1961, digital p. 172.

under section 51 (xxxvii), which they have not done at any point.<sup>49</sup> The Commonwealth was aware of its lack of legislative power with respect to adoption both prior to, and throughout the development of, model adoption legislation. As discussed above, Prime Minister John Curtin indicated to the SA Premier in 1942 that the Commonwealth could not legislate on adoption.<sup>50</sup> This position is repeated in numerous memoranda and briefs in the 1940s, 1950s and 1960s in AGD files.<sup>51</sup> The Commonwealth was well aware that it could not compel the states to develop or enact model adoption legislation.

6.66 However, the Commonwealth did play two main roles with respect to the development of model adoption legislation. The first was the coordination of meetings and correspondence about provisions of model adoption legislation. This coordination was undertaken by the AGD, acting as what would now be considered the 'secretariat' for SCAG. AGD briefed the Attorney-General on many of the legal aspects of the model legislation drafting process, and some of the legal problems that had arisen due to the lack of uniformity of state laws. In the 1960s, as is the case now, the portfolio of the Attorney-General related to law and justice. There is no presupposition that the Department had any expertise on, or provided direction in relation to, the principles behind adoption legislation.

6.67 The other role of the Commonwealth was the responsibility for the administration of the ACT, the NT and other Commonwealth territories. It appears that adoption took place on a very small scale in these territories; when AGD sought to obtain statistics on adoptions from the states it did not seek, nor was supplied with, such data from the Minister for Territories. Prior to self-government, laws of NSW applied in the ACT, but the Commonwealth could make ordinances for the territories that were then administered by the Minister for Territories under section 122 of the Constitution. In the ACT, the Department of the Interior also played an administrative role.<sup>52</sup> The Minister for Territories provided feedback only on the legal technicalities

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49 At the first meeting of Child Welfare Directors in May 1961, the secretary of AGD noted that the Commonwealth Attorney-General was prepared to introduce Commonwealth legislation on adoption if the states wanted, i.e., if the states wished to refer their power to do so. However, Directors considered that their own systems and legislation were preferable, and were willing to seek points of agreement for the purpose of amending their own acts. NAA, A432 1961/2241, *Uniform Adoption Legislation—Material prepared by States*, Uniform Adoption Legislation: Interstate Conference held at Sydney, New South Wales from 29th to 31st May 1961, folio p. 178, digital p. 44.

50 NAA, A431 1949/1537, *Possibility of Commonwealth legislation re uniform processes of adoption*, letter from Prime Minister to SA Premier, 2 January 1942, folio p. 89.

51 For example, see NAA, A432 1958/3087, *Possibility of Commonwealth legislation re uniform processes of adoption*, letter from Attorney-General Barwick to Mrs Power, 15 September 1960, digital p. 8.

52 According to an Administrative Arrangements Order dated 16 February 1962, the Department of the Interior administered the Seat of Government (Administration) Act 1910 and associated legislation relating to the ACT while the Department of Territories administered the NT legislation as well as legislation for the external territories.

of the model bill, but did not have the capacity to provide comment on any other substantial issues relating to adoption arrangements.

### *Commonwealth coordination; state input*

6.68 AGD provided a range of secretariat and coordination services during the development of model legislation. It organised meetings of Ministers and officers.<sup>53</sup> It arranged accommodation for officers coming to Canberra.<sup>54</sup> It sent updates to officers who were absent.<sup>55</sup> AGD prepared draft minutes of these meetings and circulated them. It sent draft versions of the model bill to the states for comment.<sup>56</sup> This section provides examples of these types of activities to illustrate the process of the development of model legislation.

6.69 At the SCAG meeting of 29 March 1961, the states decided to pursue the development of model legislation, and to discuss the issue again at the next meeting on 16 June 1961. In the interim, it was suggested that meetings of child welfare officers should be arranged to debate the social welfare aspects of the bill.<sup>57</sup> In addition, it was later decided that Child Welfare Ministers should be invited to attend the June SCAG discussions on the issue.<sup>58</sup> Due to Chair responsibilities, the Victorian Attorney-General Mr Rylah invited Child Welfare Ministers to attend or send a representative to the June SCAG meeting.<sup>59</sup>

6.70 AGD sought and circulated meeting papers prior to the first meeting of child welfare officers on 29/30 May 1961. On 2 May, AGD circulated a paper from the retiring New South Wales Director of Child Welfare, Mr R.H. Hicks. States were

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53 For example, NAA, A432, 1966/2404 Part 3, *Uniform Adoption Legislation*: letter from AGD Secretary Yuill to Vic Assistant Parliamentary Draftsman and those with equivalent responsibilities in NSW, SA, Qld, WA and Tas, 21 November 1963, digital pp 305–06.

54 For example, NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from WA Child Welfare Department to Secretary Yuill, folio p. 87, digital p. 147.

55 For example, NAA, A432, 1966/2404 Part 3, *Uniform Adoption Legislation*: letter from AGD to WA, digital p. 218; NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation - Material prepared by States*, letter from AGD to Qld, folio p. 124, digital p. 103.

56 See for example, NAA, A432, 1961/2241 Part 3, *Uniform Adoption Legislation*, letter from Qld Private Secretary, Office of the Minister for Justice to Attorney-General Barwick, 27 December 1962, folio p. 57, digital p. 167.

57 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, Memorandum for Secretary, Department of Territories from AGD Secretary Yuill, 19 May 1961, folio p. 96, digital p. 116.

58 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, Memorandum for Secretary, Department of Territories from AGD Secretary Yuill, 7 June 1961, folio p. 107, digital p. 103.

59 NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation - Material prepared by States*, letter from Vic Attorney-General Rylah to Qld Minister for Health and Home Affairs, folio p. 54, digital p. 187.



invited to respond or prepare their own similar papers, and many did.<sup>60</sup> Following, AGD again wrote to the states requesting statistics and responses to a short list of questions.<sup>61</sup> AGD also circulated a detailed questionnaire.

6.71 The 29/30 May meeting was attended by child welfare officers from the states—with the exception of Queensland—and one representative from the NSW AGD. Commonwealth representatives were Mr Gordon Yuill, Secretary, AGD, and Mr L Harvey, Marriage Guidance Officer, AGD.<sup>62</sup> Mr Yuille, acting as Chair of the meeting, noted to the Attorney-General in a brief:

As I felt I was not in a position to contribute authoritatively to the discussions on social welfare policy, I also acted as secretary to the meeting.<sup>63</sup>

6.72 It should be noted that AGD, acting as secretariat to SCAG, was also coordinating discussions on a range of other issues apart from adoption legislation. For example, much of the planning of the model adoption bill took place in 1961. SCAG met six times throughout that year. Minutes show that two of these were devoted to discussions on uniform company legislation, and one to discussions on trade practices legislation.<sup>64</sup> Adoption matters were mentioned for a few minutes at

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60 For example, see NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from AGD Secretary Yuill to Secretary, Children's Welfare Department, 2 May 1961, folio p. 26, digital p. 225. For state responses, see letter from Secretary, SA Children's Welfare and Public Relief Department to AGD Secretary Yuill, 19 May 1961, folio p. 93, digital p. 141.

61 See for example, NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from AGD Yuill to WA Child Welfare Department, 12 May 1961, digital pp 215–216.

62 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio p. 150. Mr Harvey was a psychologist employed by AGD to develop standards for organisations providing marriage counselling under the Marriage Act 1961. (Rosemary McDonald and Peg Pearsall, 1996, *The Australian Association of Marriage and Family Counsellors: Twenty years on*. *Journal of Family Studies* 2(2), p 107). While a draft note on adoption apparently written by Mr Harvey appears on file (NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, digital p. 24), there is no evidence this draft note was ever distributed. There is also no evidence Mr Harvey contributed to any debate on child welfare aspects of adoption.

63 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, AGD Minute Paper ref 61/2241, 'Uniform Adoption Legislation', 8 June 1961, folio p. 153.

64 Minutes of the Conference of the Standing Committee of Commonwealth and State Ministers upon Uniform Company Legislation. Hobart 15–16 February 1961; Minutes of the Meeting of the Standing Committee of Attorneys-General of the States and the Commonwealth, Sydney, 10 November 1961; Minutes of the Meeting of the Standing Committee of Attorneys-General of the States and the Commonwealth, Melbourne, 11 August 1961.

the July and September meetings.<sup>65</sup> Only at the June meeting were provisions of a model adoption bill discussed in detail. This discussion lasted between 11.00am and 12.45pm, while other agenda items included: company law, hire purchase law, interstate enforcement of fines and operation of service and execution of process, a proposed uniform maintenance bill, a business names bill, and control of take-over efforts.<sup>66</sup>

6.73 It appears from the SCAG minutes that discussions on a model adoption bill occupied much less of the attorneys-generals' time in 1961 than issues such as company legislation; total discussion on adoption comprised less than two hours of SCAG's time over the year.

### *Coordination challenges*

6.74 The development of model legislation was at times a difficult exercise. AGD tried to ensure that the process ran as smoothly as possible.<sup>67</sup> Such challenges were also recognised by the Victorian Attorney-General:

One of the problems in relation to interstate co-operation is the delay that is inevitable when seven groups, separated by many thousands of miles, have to agree and I am anxious that the delay should be kept to a minimum.<sup>68</sup>

6.75 Despite such goodwill, each state and territory did have its own systems and processes, and unanimous agreement on adoption was difficult to obtain. For example, a brief to the Attorney-General of 8 June 1961 noted that:

Unfortunately, a lot of this [time] will doubtless be taken up in discussions with the Queensland people, whose attitude seems to be that their legislation has worked well since 1935 and no changes are necessary or even desirable.<sup>69</sup>

6.76 This view appeared to be consistent with that held by the Queensland Minister. A letter from the Queensland Assistant Parliamentary Draftsman to Mr Yuille, dated 14 December 1962, notes that:

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65 Minutes of the Conference of the Standing Committee of Commonwealth and State Ministers to Consider Uniform Law Proposals, Canberra, 27 July 1961; Minutes of the Meeting of the Standing Committee of Attorneys-General of the States and the Commonwealth, Adelaide, 14th to 15th September 1961.

66 Minutes of the Conference of the Standing Committee of Commonwealth and State Ministers to Consider Uniform Law Proposals, Brisbane, 16 June 1961.

67 NAA, A432, 1966/2404 Part 2, *Uniform Adoption Legislation*, Brief from Principal Legal Officer Yuill to Solicitor-General, 4 April 1963, folio p. 32, digital p. 347.

68 NAA, A432, 1966/2404 Part 2, *Uniform Adoption Legislation*, letter from Vic Attorney-General to Qld Minister for Home and Health Affairs, 2 November 1962, folio p. 24, digital p. 356.

69 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by the States*, AGD Minute Paper 61/2241, 8 June 1961, folio p. 152.

[O]ur Queensland [adoption] system is so different from the antiquated systems in other States that all our Minister does whenever he reads any of your communications on adoption is shudder.<sup>70</sup>

### ***Communication with non-government stakeholders***

6.77 When it became known that model adoption legislation was being developed, some stakeholders chose to send correspondence to AGD. (It is likely that more correspondence was forwarded to state governments, but this would be kept in state archives and was not viewed by the committee). Some of these documents were circulated to the states for comment. For example, the Law Society of Western Australia wrote in June 1961 providing its position on uniform adoption law provisions. It appears this, and similar documents, were circulated through the Commonwealth to the other state stakeholders.<sup>71</sup>

6.78 Other correspondents were referred to the states. For example, the Women Justices Association of WA wrote to AGD requesting a copy of the draft bill. The response from AGD reiterated its role as a coordinating body rather than a legislating body:

Adoption of children is not a subject upon which the Commonwealth Parliament has power to legislate. The Commonwealth and the States have joined together in preparing a model Adoption Bill, which it is hoped will be introduced in each State and Territory of the Commonwealth. The Bill has not yet been finally settled, but it is hoped that the drafting will be completed shortly.

Copies of the model Bill will be distributed to each State and you should make your request for a copy of the Bill to the Western Australian Government.<sup>72</sup>

6.79 However, AGD did communicate directly with national organisations, such as the Australian Council of Social Services:

Publicity was given to the proposal for this uniform legislation, and representations were made by a number of welfare organisations, as well as by the Australian Council of Social Services...incorporating the recommendations of eight named member organisations of the Council...<sup>73</sup>

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70 NAA, A432, 1961/2241 Part 2, *Uniform Adoption Legislation—Material prepared for Conference*, letter from Qld Assistant Parliamentary Draftsman to AGD Secretary Yuill, 14 December 1961, folio p. 280.

71 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, letter from WA Law Society to the Secretary, Law Council of Australia, 26 June 1961, digital pp 20–23.

72 NAA, A432, 1966/2404 Part 2, *Uniform Adoption Legislation*, letter from AGD to WA Women Justices Association, 4 March 1963, folio p. 29, digital p. 350.

73 NAA, A432, 1966/2404 Part 3, *Uniform Adoption Legislation*, AGD Minute Paper 60/2474, 17 March 1964, folio pp 138–141, digital pp 349–350.

6.80 The Council, on behalf of its eight member organisations, sent AGD its comments on the issue of uniform adoption legislation on 6 November 1963.<sup>74</sup> AGD responded in 1964, noting that:

[W]ith one major exception [role of agencies], the model Bill incorporates the principles that had unanimous or majority support among the Council's member organisations.<sup>75</sup>

6.81 This did not please ACOSS, which wrote to complain,<sup>76</sup> but no further correspondence on the issue appears to have been sent by AGD.

### *Drafting*

6.82 Responsibility for drafting the model bill was originally vested by SCAG in the NSW Parliamentary Draftsman, Mr H. Rossiter. However, records indicate that Mr Rossiter's responsibilities increased to the extent that he told AGD that he was unable to continue drafting unless expressly directed by his Minister, the NSW Attorney-General.<sup>77</sup> It was subsequently decided that the Commonwealth Parliamentary Draftsman would take over from where Mr Rossiter had left off, drafting the model legislation as an ordinance.<sup>78</sup> It is clear that this happened for the sake of expediency rather than any other consideration.

### *Advice to the Commonwealth Attorney-General*

6.83 As a member of SCAG, the Commonwealth Attorney-General was briefed on the issue of uniform adoption legislation by his department. AGD briefs focus on the key issues for the attorneys-general—provisions for the recognition of interstate and overseas adoption arrangements.

6.84 In the early parts of the process, the Attorney-General considered that interstate recognition of adoption arrangements was the most pressing issue, and should be addressed before a model bill was drafted. The summary of discussion from the Ministerial Conference on Adoption, 16 June 1961, notes that the Attorney-General considered that:

Uniform Adoption Law in Australia was too high an aim to be achieved now. He thought that such arrangements as would permit mutual

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74 NAA, A432, 1966/2404 Part 2, *Uniform Adoption Legislation*, letter from ACOSS to AGD, 6 November 1963, digital pp 317–325.

75 NAA, A432, 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from Attorney-General Barwick to ACOSS Chairman Dr J.G. Hunter, 4 February 1964, folio p. 93, digital p. 62.

76 NAA, A432, 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from ACOSS to AGD, 24 February 1964, folio pp 127–128, digital pp 24–25.

77 NAA, A432, 1966/2404 Part 2, *Uniform Adoption Legislation*, AGD Minute Paper from the Principal Legal Officer to the Solicitor General, 21 May 1963, folio p. 36, digital p. 343.

78 NAA, A432, 1966/2404 Part 2, *Uniform Adoption Legislation*, Brief from AGD First Assistant Secretary to Acting Parliamentary Draftsman, 25 July 1963, folio p. 57, digital p. 318.

recognition of an adoption by all the States for legal purposes a wiser goal at present.<sup>79</sup>

6.85 However, by September 1961, the secretary of AGD prepared a brief that suggested:

Presumably a uniform bill is to be drafted, for circulation and consideration, although I can find no record of any such decision being made. You might wish to raise this question during any discussions on adoption.<sup>80</sup>

6.86 This turn-about could have been because it appeared by this time that states had agreed, or agreed to disagree, on other aspects of the substance of the bill. Following the June SCAG meeting, Sir Kenneth Bailey, Solicitor-General,<sup>81</sup> wrote to Professor Zelman Cowen, then Dean of the Faculty of Law at Melbourne University, noting that 'most of the social welfare policy has been settled',<sup>82</sup> and requesting he comment on the matter of recognition of adoption orders overseas.<sup>83</sup>

6.87 Professor Cowen's subsequent advice was supported by AGD. Professor Cowen indicated that an 'insistence upon a jurisdictional requirement of the domicile of the adoptive parents and the adopted child' could in some cases "disregard practical good sense".<sup>84</sup> The Secretary wrote:

With this view I would respectfully agree. Australia being an immigrant country, the recognition problem is much greater as regards recognition of foreign adoptions in Australia, than recognition of Australian adoptions overseas. And it would seem, on the basis of jurisdictions referred to [New Zealand, England, Canada], that Australian decrees would be generally recognized, at least in the common law countries.<sup>85</sup>

6.88 The minute notes that such a bill should address matters of recognition of adoption orders between states, but also internationally:

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79 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Summary of Discussion at the Ministerial Conference on Adoption in Brisbane on 16th June 1961, folio p. 190, digital p. 10.

80 NAA, A432 1961/2241 Part 2, *Uniform Adoption Legislation—Material prepared for Conference*, AGD Minute Paper 60/2474, 12 September 1961, digital pp 427–434.

81 At this time the Solicitor-General was deputy to the Attorney-General.

82 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, letter from Solicitor-General to Sir Zelman Cowen, 28 June 1961, digital p. 100.

83 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, letter from Solicitor-General to Sir Zelman Cowen, 28 June 1961, digital pp 100–101.

84 NAA, A432 1961/2241 Part 2, *Uniform Adoption Legislation—Material prepared for Conference*, AGD Minute Paper 60/2474, 12 September 1961, digital pp 427–434.

85 NAA, A432 1961/2241 Part 2, *Uniform Adoption Legislation—Material prepared for Conference*, AGD Minute Paper 60/2474, 12 September 1961, digital pp 427–434.

The principal matters outstanding are connected with recognition. Recognition is, of course, bound up with jurisdiction...

All states, except possibly Victoria, appear to have tacitly accepted the recommendation of the officers that the basis of the jurisdiction of an Australian tribunal to make an adoption order should be –

- a) the domicile of the adoptive parents in Australia...<sup>86</sup>

6.89 Such a recommendation was likely to have been made to give Australian parents priority over foreign citizens, due to 'long waiting lists for children'. However, it was raised that the courts should be able to exercise discretion in relation to this matter, such to enable an 'American stationed here to adopt his own illegitimate child'.

6.90 The Attorney-General also received advice on amendment of an aspect of the provisions affecting inheritance of property. On 31 August 1962 the secretary of AGD wrote to Sir Garfield Barwick, asking if he wished the laws to be revised in such a way as to ensure no repeat of the outcome of *Pedley-Smith v Pedley-Smith*, the 1953 High Court case in which Sir Garfield Barwick had appeared as a barrister. The secretary wrote, 'I assume that you would want the law to be altered so that adopted children would automatically be included as "issue", unless the donor of the power specifically excluded adopted children from the object of the power'.<sup>87</sup> The Attorney-General annotated the minute to say that he wished to seek such a change. 'If the law is to be so changed,' the secretary continued, 'it should, I suggest, only [apply] to powers of appointment created after the change in the law'. Sir Garfield Barwick concurred. The model law, and in particular the law in New South Wales (the jurisdiction from which *Pedley-Smith v Pedley-Smith* originated), were changed during the model laws process in exactly this way.<sup>88</sup>

6.91 While this kind of advice was delivered to the Attorney-General, no corresponding advice was delivered in relation to social welfare aspects of adoption. This reflected the portfolio responsibility of the Attorney-General, that is, that his expertise was legal rather than social, and that he attended SCAG rather than any meeting of Child Welfare Ministers. Indeed, the Commonwealth had no minister for child welfare; its responsibilities in the territories were carried by quite different portfolios.

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86 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, AGD Minute Paper 60/2241, Uniform Adoption Legislation, 12 September 1961, digital pp 427–234.

87 NAA, A432 1961/2241 Part 2, *Uniform Adoption Legislation*, Minute paper 61/2176: Uniform Adoption Legislation – powers of appointment, digital p. 355.

88 *Adoption of Children Ordinance 1965 (Cth)*, ss. 33, 34; *Adoption of Children Act 1965 (NSW)*, ss. 35, 36.

### *Administration of the Commonwealth territories*

6.92 As the SCAG coordinating body, the AGD briefed the Minister for the Territories and the Minister for the Interior on the development of the model legislation. Its advice to the two Departments reflected AGD's legal expertise and concerns and did not extend beyond legal issues:

This paper is intended to examine briefly four main topics, which are interconnected and are fundamental to any uniform adoption legislation. They are:-

- (a) the jurisdiction to make and to rescind adoption orders;
- (b) the nature of the status of adoption and its incidents;
- (c) the recognition in a State or Territory of the Commonwealth of adoption orders made:
  - (i) in another State or Territory; or
  - (ii) elsewhere; and
- (d) the effect of recognizing in a State or Territory, the adoption orders referred to in (c).

This paper does not in any way deal with the child welfare aspects of adoption.<sup>89</sup>

6.93 However, it appears from the records that neither the Minister for the Territories nor the Department of the Interior had any practical knowledge of adoption arrangements. In the first instance, the Secretary of the Department of the Interior delegated his role as the Director of Child Welfare under the *Adoption of Children Ordinance 1938 (Cth)* to the NSW Director of Child Welfare. This had the practical effect of NSW authorities arranging ACT adoptions. This arrangement reflected the ACT's scant resources and small population.

6.94 As neither the Minister for the Interior nor the Minister for Territories had the relevant portfolio responsibility, neither was invited to participate on the SCAG nor meetings of Child Welfare Ministers. As such, it fell to the AGD to brief these ministers on the development of model adoption legislation. A draft bill from December 1963 sent to the Secretary of the Department of the Interior noted NSW's role in arranging ACT adoptions:

You will see that it [the adoption bill] confers a number of powers and functions, in relation to this Territory, on the Director of Child Welfare. I appreciate the fact that, under section 7 of the Child Welfare Ordinance, you yourself are the Director, and I am aware that you have delegated your functions under that Ordinance to the New South Wales Director of Child Welfare. Clause 6(2) of the draft Bill would enable you, if you so wished, to make a similar delegation of your powers and functions under the Act...

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89 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, draft paper from AGD Secretary to the Attorney-General, digital pp 140–148.

...The New South Wales Director has indicated to me in the course of informal discussions that he would be willing to prepare the application papers for applications in this Territory...

I should add that the New South Wales Director of Child Welfare has taken part in the discussions on the Bill at all stages. I think I am correct in saying that he agrees generally with the contents of the Bill, with the possible exception of the inclusion of provisions relating to interim orders....<sup>90</sup>

6.95 While AGD sent several briefs to the Minister for the Interior in relation to the model adoption legislation,<sup>91</sup> that Minister appears not to have followed the issue closely. In fact, his Department prepared an amendment to the *Adoption of Children Ordinance 1932 (Cth)*, which applied to Norfolk Island, at the same time as model legislation was being developed. It appears that AGD considered this action counterproductive:

[I]t is proposed to draft a uniform adoption of children law...

I have already written to you on this subject on a number of occasions...

[U]nless you consider some hardship is being caused by the deficiencies in the existing law, you may consider it desirable not to proceed with the present amendments but to await receipt of the uniform bill.<sup>92</sup>

6.96 A departmental brief prepared for the Attorney-General in 1964 noted that 'there is nothing in the comments received from either Department [Department of the Interior; Department of Territories] to suggest that they would wish to make any alterations to the substance of the Bill.'<sup>93</sup> However, in the case of the Department of the Interior, the word 'comments' is used generously. The Department's response, in its entirety, read:

I refer to your memorandum 20th December 1963, your reference 60/2474.

The draft Uniform Adoption Bill is satisfactory for the purposes of this Department. I would appreciate your advice as to further progress in this matter.<sup>94</sup>

6.97 The Minister for Territories was primarily concerned with the legal question of whether the model legislation would be enacted in the form of an ordinance or

90 NAA, A432, 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from AGD Secretary Yuill to Secretary of the Department of the Interior, 20 December 1963, digital pp 181–182.

91 See for example, NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, Memorandum for the Secretary, Department of the Interior, from AGD Secretary Yuill, 7 June 1961, digital p.104; NAA, A432, 1966/2404 Part 2, *Uniform Adoption Legislation*, folio p. 73, digital p. 200.

92 NAA, A432, 1966/2404 Part 1, *Uniform Adoption Legislation*, letter from AGD Secretary Yuill to the Secretary, Department of Territories, 2 August 1961, folio p. 139, digital p. 70.

93 NAA, A432, 1966/2404 p. 3.

94 NAA, A432, 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from Secretary, Department of the Interior, to Secretary, Attorney-General's Department, 17 January 1964, folio p. 74, digital p. 147.



Commonwealth law.<sup>95</sup> The option of an ordinance was much preferred by the Minister.<sup>96</sup> His response to the model bill cited the Constitution in relation to lack of Commonwealth power to make laws relating to adoption, and his own ability to make ordinances 'for the peace, order and good government of the Territory'.<sup>97</sup> Such administrative and legal concerns were the extent of the involvement of the minister.

## Conclusion

6.98 The Commonwealth's role in the process of creating uniform adoption laws in the 1960s was significant in respect of the process, but limited in regard to the content. In terms of the process, it does appear that the Commonwealth initiated a review of adoption laws, arranged for the initial exchange of information, and provided some of the drafting support. It provided little of the substance of documents that were discussed. Even though the Commonwealth had legal responsibility for ordinances governing the ACT and NT, and reform of the ACT ordinance became the vehicle for enactment of the model legislation, the Commonwealth's ministers with responsibility for the territories provided no substantive input to the content of the laws.

6.99 The Commonwealth's interest was very limited regarding the actual content of adoption legislation, seeking only to have particular issues resolved. It wanted adoptions, and documentation related to them, to be recognised between the states and territories, and it wanted overseas adoptions to be recognised in Australia. There is also evidence that the Attorney-General secured a change to how inheritance laws applied in particular circumstances. Beyond these topics, to use the words of the secretary of AGD at the time, it 'was not in a position to contribute authoritatively to the discussions on social welfare policy' and, as the next chapter shows, did not generally do so.

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95 See NAA, A432, 1966/2404 Part 2, *Uniform Adoption Legislation*, Internal AGD Minute Paper 60/2474 to the Assistant Secretary, 10 October 1963, folio p. 76, digital p. 197.

96 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from NT Administrator to Secretary, Department of Territories, 20 December 1963, folio pp 59–60, digital pp 164–165.

97 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from Minister for Territories to Attorney-General, 13 February 1964, folio p. 107, digital p. 48.



# **Chapter 7**

## **Model adoption legislation: social welfare considerations**

### **Introduction**

7.1 The previous chapter addressed the impetus for the development of model adoption legislation, and the role of the Commonwealth in its execution. It showed that the lack of recognition of interstate adoption legislation has caused legal problems from the early 1940s. The Commonwealth and the States, at the recommendation of the Commonwealth Attorney-General, and through the mechanism of the Standing Committee of Attorneys-General, decided to solve this problem in the early 1960s by developing a model adoption bill.

7.2 Once the jurisdictions decided to develop a model bill, the next question was what the bill should look like: what it could change about adoption arrangements and what provisions from existing state legislation it should include, expand upon or omit. This chapter addresses the issues that arose in determining the substance of the model adoption bill. To understand how it was developed, the committee undertook detailed archival research, using the sources outlined in Chapter 1. It built on information provided by the Commonwealth Attorney-General's Department (AGD) in its evidence to the committee and answers to questions on notice, examining in detail the files of that agency for the period of the early 1960s.

7.3 One point that both government and non-government parties engaged with adoption policy issues at that time seemed to agree upon was that there were limitations in the way adoptions were arranged. For example, many people held concerns about the operation of private adoption agencies as well as the placement of children with unapproved adoptive parents. However, there was a range of views amongst society and government representatives about how best to address these types of issues.

### **Preparation for the initial meeting of child welfare officers**

7.4 The attorneys-general were legal experts, not adoption experts. As mentioned in the previous chapter, the attorneys-general decided at SCAG on 29 March 1961 that state child welfare officers should meet to discuss the substance of the bill, and that Child Welfare Ministers would be invited to SCAG in June 1961.

7.5 The terms, 'Child Welfare Minister', 'Child Welfare Department' and 'child welfare officer' are used for ease of reference throughout this chapter, however the names of the equivalent departments varied across the states. Similar responsibilities fell to the Children's Welfare and Public Relief Department in South Australia, the State Social Services Department in Tasmania, and the State Children Department in Queensland.

7.6 As discussed in the previous chapter, the Commonwealth Attorney-General and his Department had relatively little practical knowledge of adoption arrangements. However, officers from state child welfare departments who were involved in adoption arrangements had a much greater understanding of how adoptions worked. Officers from different states agreed upon some issues but in other areas held very different views about what constituted best practice.

### *Hicks' background paper*

7.7 It appears that some discussion took place between the Commonwealth Secretary of the Attorney-General's Department and the Under Secretary of Child Welfare in NSW in relation to obtaining background material on the social welfare aspects of adoption. On 20 April 1961, Under Secretary Mr Richard Hicks wrote:

As promised I am forwarding you by to-day's post twenty five copies of notes on the 'Principles and Practice of Adoption' in New South Wales.

I trust that these will be of some use to you as a starting point.<sup>1</sup>

7.8 This paper is important because it is the most detailed account of the problems in adoption practice—from a social welfare point of view—written by a senior state government bureaucrat in the early 1960s. It summarises many of the aspects of adoption arrangements that the child welfare officers discussed with respect to model adoption legislation. From the records available, the paper also appears to have been the first time that the Commonwealth AGD became formally aware that senior state public servants held serious social welfare concerns about adoption arrangements. While the concerns of Hicks are not necessarily considered to be representative of those of all states, it is likely from subsequent agreement of child welfare officers that several of his concerns were echoed in other jurisdictions.

7.9 Mr Hicks' paper addressed the needs of the mother, adopting parents and adopted child in turn, noted 'deficiencies' in the way adoptions were arranged and made suggestions to improve practice.

### *Needs of the mother*

7.10 The key points made in the paper with respect to mothers relate to consent to adoption. Hicks considered that the mother should first be provided with all relevant information about services—and welfare payments—available that might support her to keep her child. If, after considering this information, she subsequently favoured adoption, she should be made fully aware of the legal consequences of signing consent:

This is not always done in the smaller agencies and mothers have been known to complain...when it is too late, that they were given to understand

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1 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from NSW Under Secretary Hicks to AGD Secretary Yuill, 20 April 1961, folio p. 23, digital p. 228.

that signing consent meant handing the child over to the Child Welfare Department in a revocable contract liable to be terminated...according to their convenience and desires.<sup>2</sup>

7.11 Hicks was convinced that consent should not be taken less than five days after the birth, should be witnessed by a 'disinterested party', and should take the form of a legal document:

Consent to adoption should not be taken too soon after the birth...the experience of motherhood itself may lead the mother to change her mind, parents and relatives are apt to modify their attitudes once the baby has arrived...the unusual psycho-physical state of the mother within a short time after the profound experience of giving birth, to a large extent invalidate a desire expressed beforehand in a vastly different set of circumstances...

The preliminary form of surrender at present used by the Child Welfare Department...is not a consent, not a legal document, never goes before a Court and does not in any way bind the mother legally. In private adoptions...this form is unknown.<sup>3</sup>

#### *Suitability of the adopting parents*

7.12 With respect to adopting parents, Hicks recommended that 'thorough investigation' be undertaken into the suitability of applicants. He noted desirable characteristics relating to health, religious observance, character, financial means, age and motive for adopting a child. Hicks suggested that a person trained in psychology and social work should make the assessments in order to avoid the approval of unsuitable candidates:

It is obviously unsatisfactory if the application is motivated by a desire to hold together a tottering marriage, to give the wife a means of occupying her time at home, or to satisfy morbid, selfish or neurotic urges in one or both of the applicants.<sup>4</sup>

#### *Welfare of the child*

7.13 Hicks considered that 'matching' a child with adoptive parents was extremely important and would give the child the best chance of 'a mutually satisfying and

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2 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from NSW Under Secretary Hicks to AGD Secretary Yuill, 20 April 1961, folio p. 23, digital p. 228.

3 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 22, digital p. 229.

4 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 14, digital p. 232.

lasting parent-child relationship'.<sup>5</sup> He suggested that 'matching' a child as closely as possible with adoptive parents holding characteristics in common—such as education, occupation and to some extent appearance—with his/her natural parents, would promote the interests of the child:

The welfare of the child must be regarded as, beyond question, the paramount consideration.<sup>6</sup>

*Concern about agencies: conflict of interest and waiting time*

7.14 Hicks expressed concern about the lack of public scrutiny of private adoption agencies against the backdrop of increasingly long waiting lists. Hicks noted that the percentage of total adoptions arranged by agencies in NSW grew from 13 per cent in 1947 to 44 per cent in 1960. He considered that, while there may have been merit in private adoptions in some cases, there was also greater potential for 'trafficking and other malpractice':<sup>7</sup>

It is no rare thing for adopting parents previously rejected by the Department on the ground of, for example, age, to apply to the Court privately at a later stage and succeed in adopting a child...<sup>8</sup>

Reputable professional persons in New South Wales have stated categorically that there is a definite activity in regard to disposing of babies for considerations...

Other off-the-record statements have been made to the same effect by doctors and lawyers.<sup>9</sup>

7.15 Hicks also suggested that parties in some cases had made indirect payments or donations—such as to boards or charities, for medical expenses of the mother—that subsequently influenced the allocation of babies.<sup>10</sup> He also noted the potential

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5 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 22, digital p. 229.

6 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 22, digital p. 229.

7 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 17, digital p. 234.

8 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 17, digital p. 234.

9 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 16, digital p. 235.

10 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 16, digital p. 235.

connection that this may have with undue influence on mothers to relinquish their babies to avoid 'legal, social and perhaps religious sanctions which do not in fact operate'.<sup>11</sup>

7.16 To address the issues he had raised, Hicks suggested that a 'single, disinterested adoption tribunal' should be established with a common waiting list. Hicks suggested that if adoptions were centrally arranged through an impartial tribunal, mothers would not be pressed for consent, applicants would all fulfil agreed standards, and the best interests of the child would be served.<sup>12</sup>

7.17 AGD circulated Hicks' paper to the states, and invited them to respond or provide similar papers outlining what they perceived as key adoption issues. In addition, as discussed in the previous chapter, AGD also requested the states to answer questionnaires about adoption and provide adoption statistics.<sup>13</sup>

### **Child Welfare Ministers' goals for model adoption legislation**

7.18 Child Welfare Ministers had a completely different view of what model legislation might achieve from their legal ministerial counterparts. The attorneys-general were in broad agreement about the need for interstate recognition provisions, and enacted such provisions uniformly across jurisdictions.<sup>14</sup> However, state Child Welfare Ministers held different opinions both from the attorneys-general, and from each other, about what the legislation should achieve and how it should be achieved. Some of these divisions were resolved in meetings between state representatives, others were not. As such, the so-called 'uniform adoption legislation' was not enacted uniformly across the states with respect to all social welfare provisions.

### ***Limitations identified by states with respect to previous adoption legislation***

7.19 Adoption and out-of-family care practices in the mid-twentieth century were very different to today. Many more children than today were placed for adoption, and they were amongst large numbers of children separated from their parents for a wide variety of reasons. Some of these became wards of the state or were in state institutions. Most children who were to be adopted out were placed with prospective

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11 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States, Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 15, digital p. 236.

12 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States, Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio pp 11–12, digital pp 239–240.

13 NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from AGD Secretary to Vic Children's Welfare Department Secretary, folio p. 26, digital page 225; State responses, for example, letter from SA Children's Welfare and Public Relief Department to AGD Secretary Yuill, folio p. 93, digital p. 141.

14 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 282.

adopting families, often with little or no screening processes. It was generally not until many months after this placement that adoption formally took place.

7.20 State Child Welfare Ministers, through their departments, provided briefs indicating their views about adoption legislation that AGD circulated prior to the first meeting of child welfare officers. The view that adoption legislation needed considerable amendment was most strongly expressed by the NSW Department, both in Hicks' brief and also in subsequent communication:

[Hicks] very rightly perceived that the real purpose to be served by new and uniform legislation is the eradication of malpractice rather than mere uniformity of legislation...

Mr. Hicks, on the basis of 17 years' experience and accurate knowledge of conditions in New South Wales, found the opportunities for malpractice to lie in:

(a) The difference in the waiting time involved in applications made to the public authority compared with applications made to non-official agencies or resulting from third party or direct placing.

(b) What he considers to be the inevitable results when adoption is (I) used to serve the interests of the agencies themselves and not in principle those of the child (covert child buying, duress, confusion or intimidation of the mother), or (II) subject to the influence of private persons exempt from legal or any other kind of responsibility (doctors or matrons in public and private hospitals, agency representatives, do-gooders and busybodies, etc.)<sup>15</sup>

7.21 The brief from the West Australian Department noted specific issues that had arisen with its adoption legislation:

A decision as to their [the adopting parents'] 'child worthiness' should be made before an infant is placed with them. To place an infant with people who later are found to be unsuitable is harmful to the infant and unfair to them...

At present in W.A. a child may remain as a guardianless foster child or be returned to the reluctant natural mother. This is an important defect in W.A. adoption procedure...

In too many cases a child is placed with prospective adopting parents with the promise that the mother's consent will be given. Its long delay (and often ultimate denial) is inimical to the welfare of the child and unfair to the new parents.

This is the second serious defect in W.A. Adoption law.<sup>16</sup>

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15 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from Children's Welfare Department to AGD Secretary Yuill, 24 May 1961, folio p. 107.

16 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption—from the Welfare Viewpoint, WA briefing paper, folio pp 8–10, digital pp 243–245.



7.22 Similar problems were identified in the Tasmanian Department's brief:

It is considered that there are real defects, from the aspect of social welfare, in all of the present adoption legislation in Australia in that most, if not all of the Acts are concerned only with the legal order of adoption, and do not touch on the important aspect of the placement of the child with a view to adoption, and the events preceding an application for an order.

There should be a responsible control of the process by which proposed adopters are investigated and approved, and children for adoption are placed with proposed adopters.<sup>17</sup>

7.23 The brief from the Victorian Department also asserted that adoptive parents should be approved as such before a child was placed with them. However, Victorian officers were more content with their legislation than their West Australian or Tasmanian counterparts, especially in relation to provisions such as the 30 day revocation period for consent to adoption:

The Victorian Adoption Act (consolidated in 1958) is considered to be sound in its principles, and while still capable of further improvement in ways outlined later, contains a number of provisions to be retained in any construction of uniform law.<sup>18</sup>

7.24 Briefs from the South Australian<sup>19</sup> and Queensland<sup>20</sup> departments did not make suggestions for legislative reform, but were limited to a description of adoption law and practice in their states. In addition, no brief was requested from, or provided by, an administrator of adoption in any of the Commonwealth territories. However, all the states that expressed concern about adoption arrangements, expressed particular concern about one issue: the procedure whereby children were placed in the custody of adoptive parents prior to an adoption order being made. This seemed to be causing two major difficulties:

- First, that the mother might revoke her consent to the adoption after the child had lived for several months with the adoptive parents. Returning the child to the mother was considered to be hard on the prospective adoptive parents and to deprive the infant of stability.
- Second, that prospective adopting parents might be found unsuitable after having custody of the child for some time. This was considered especially bad for the child, because both possible remedies—allowing unsuitable people to

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17 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio p. 45, digital p. 197.

18 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, Vic briefing paper, folio p. 116, digital p. 113.

19 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States* Adoption Section, Children's Welfare and Public Relief Department, Adelaide, SA briefing paper, folio p. 91, digital p. 143.

20 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States* Adoption—Queensland, Qld briefing paper, folio p. 120, digital p. 107.

adopt a child, or making the child a ward of the state—were considered detrimental to the child's interests.<sup>21</sup>

7.25 These concerns were addressed by Child Welfare Ministers in the context of promoting the 'welfare and interests of the child'. The priority in their view was that these difficulties should be solved in such a way as to reduce the potential for an adopted child to be deprived of stability, to live with unsuitable people, or to become a ward of the state.

### **Public debate about adoption law reform**

7.26 As well as government ministers and officers, several commentators, including lawyer and Australian National University academic David Hambly, noted the shift towards considering the rights of the child to be the paramount consideration for adoption legislation. Professor Hambly's journal article published in the *West Australian Law Review* in 1967–68 emphasised the overarching nature of this shift:

A study of the innovations in the uniform Acts is predominantly a study of the changes brought about by the introduction of this cardinal principle [the paramountcy of the rights of the child]. It leads to new restraints upon people who wish to adopt a child and to a curtailment of the rights which were formerly attributed to natural parents.<sup>22</sup>

7.27 While Hambly agreed that adoption legislation should promote the welfare and interests of the child, he considered that the laws enacted after the development of model legislation 'weakened the interests of the other parties, especially the parents, to an excessive degree'.<sup>23</sup> In particular, Hambly referred to the potential for courts to be forced to conclude that a child's interests would be better served living with adoptive parents, because their suitability as parents had already been proved to the court (Couples had to demonstrate their suitability as parents before they could be approved as adopting parents, whereas natural parents were subject to no such test).<sup>24</sup>

7.28 Hambly's contribution to the debate, like other media reports and public discussion outlined below, all provide evidence of an ongoing issue for adoption reformers: properly balancing the rights and needs of the different parties to an adoption.

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21 Returning the child to the mother was not considered as an option on the assumption that she had lawfully consented to the adoption.

22 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 283.

23 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 318.

24 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 316.

### *The clean break theory*

7.29 During the development of the model adoption legislation, legislators thought they were protecting the interests of the child of an unmarried mother via the 'clean break theory'. For example, by ensuring that children had access to inheritance from adoptive families:

In the case of intestacy why should an archaic law deprive an illegitimate child of what every reasonable person now concedes is his right. The time will surely come when the term 'illegitimate' will have no content in law or society, and the sooner the better.<sup>25</sup>

7.30 The clean break theory was a prominent child welfare theory at the time. It held that it was better both for the mother and soon-to-be adopted child if they were separated as early and as completely as possible. That is, both mother and child would fare better economically and socially if the child was adopted at birth, and no further contact occurred.<sup>26</sup> This is sometimes referred to as 'closed adoption'.

7.31 The closed nature of adoption extended to all aspects of it, as illustrated by the following brief from Tasmania:

There should be adequate provision to preserve secrecy, if the adopters so desire. This protection should cover all stages of the process, including the taking of consents; the placement of the child; the application for an order of adoption, and investigations made by any person in respect of the application; the hearing of the application; and the recording of the order by the Registrar-General, including the availability of his records to the public.<sup>27</sup>

7.32 The clean break theory relies upon the presumption that the interests of the child of an unmarried mother was well-served by adoption by a married couple. However, this opinion was not held by all commentators. In contrast, Hambly quoted the report of the UK Departmental Committee which reviewed the adoption law of England and Scotland (the Hurst Committee):

Lastly, we must mention the view, strongly held in some quarters, that it is generally best for a child to be brought up by his natural parents or parent. Quite apart from the possible value of blood tie, we think that the importance of preserving parental responsibility is such that the parents'

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25 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from J.D. Dwyer, Parliamentary draftsman, Tas Attorney-General's Department to AGD Secretary Yuill, 26 November 1963, folio pp 14–15, digital pp 304–305.

26 See M. Iwanek, 1997. 'Healing History: The story of adoption in New Zealand', *Social Work Now*, vol. 8, pp 13–17.

27 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio p. 40, digital p. 199.

claims should not be reduced for the sake of giving greater claims to prospective adopters.<sup>28</sup>

7.33 While the Hurst Committee was British, it appears that similar views were held by some people in Australia. As discussed in the previous chapter, the *Mace v Murray* case spearheaded debate about adoption and the rights of unmarried mothers. One letter to the editor published in the *Sydney Morning Herald* compared Miss Murray's situation to that for single mothers in the UK:

Sir,—If, as the Judge said, in the Murray-Mace baby case, the mother is wayward (or some such thing), would it not be better to let her have the child and the protection of a public institution where some mild corrective treatment may be afforded?

There are homes in England for unmarried mothers where they are taught to be proud of their little ones. To separate mother from child, against the maternal wish, is a new form of Australian justice which one did not think possible in this land of fairness and freedom.<sup>29</sup>

7.34 While the attitude that an unmarried woman might need 'corrective treatment' would be abhorrent to current sensibilities, the letter indicates that even those people who disapproved of unmarried motherhood did not necessarily support adoption as a response. Other letters indicated that members of the public were not only concerned about the rights of the child, but also of the mother:

Sir,—Whilst Mr. Justice McLelland is a just and learned man, he could not possibly know what it means to a mother to have her baby taken from her.

Nor could Mrs. Mace. It's hard enough to bear when it is done by God's will. It is against all natural laws for anyone else to do it.<sup>30</sup>

7.35 In quite a different vein, a writer to *The Advertiser* expressed particular concern about the interests of the adoptive parents:

Sir,—The adoption system is the only way some people who love children and cannot have their own, can hope for the happiness that home and children bring.

From the Joan Murray-Mace case, it appears that a person who has signed the adoption papers can attempt to reverse the issue, with unhappy chaos.

One fact in this case should be outstanding, and that is the shattering blows being dealt to the confidence of people who always took it for granted that, provided their adoption status was reputable, and they met the necessary

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28 Report of the Departmental Committee on the Adoption of Children, Cmd 9248, para. 119, quoted in Professor David Hambly, *Adoption of Children: An Appraisal of the Uniform Acts*, Australian Law Review 1967–68 Volume 281, p. 318.

29 'Perth, Fair play', Letters to the Editor, *Sydney Morning Herald*, Saturday 26 September 1953, p. 2.

30 'Dover Heights, A mother', Letters to the Editor, *Sydney Morning Herald* Saturday 26 September 1953, p. 2.

requirements, they could blissfully proceed with their family life. This is apparently not so.

Is it not high time the Government decided that this case goes beyond the individual, and took action to ensure that people who adopt children, and bring happiness to them as well as themselves, were protected?<sup>31</sup>

### ***Pressure for changes to adoption laws***

7.36 The above letters show that members of the public were not only concerned about the interests of the child, but also those of the natural and adoptive parents. Several letters suggested the *Child Welfare Act 1939 (NSW)* should be amended,<sup>32</sup> and a delegation of women visited the NSW Minister for Education in 1953 to lobby for amendments to the adoption provisions of the act.<sup>33</sup> This lobbying took place in the wake of the initial *Mace v. Murray* decision in the NSW Supreme Court, which had led to community concern about uncertainties in the adoption process. The group, comprising representatives from a number of women's organisations, was led by Mrs. Preston Vaughan, founder and President of the Feminist Club, Sydney.<sup>34</sup> Mrs Vaughan wanted to ensure adoption, where it was the decided course of action, took place as expediently as possible. However, she also appeared supportive of single women who wished to keep their children. She was both critical of the stigma experienced by these women, but also realistic about the prospect of reducing it. Her suggestions for managing this stigma, patronising by today's standards, are notable for omitting the surrendering of a child for adoption:

[The] unmarried mothers' fear that they and their children will have to live under a social stigma could be relived or avoided by:

- \* The mother making every effort to protect the child, even to the extent of moving to a new district.
- \* Community realisation that illegitimacy is no fault of the child.
- \* Compassion of other women in more comfortable circumstances towards the mother and her problem.<sup>35</sup>

7.37 Reporting on the delegation, the *Sydney Morning Herald* outlined aspects of the regime for obtaining a mother's consent. The text reflected concern that mothers not be forced into surrendering their children; it also set out the emerging view, that was made more clear in the adoption law reforms, that the welfare of the child is the paramount consideration:

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31 Mr Keith Chilman, 'Baby Adoption Laws'. Letters to the Editor, *Adelaide Advertiser*, Wednesday 25 August 1954, p. 4.

32 'Sydney, H. Griffin', Letters to the Editor, *Sydney Morning Herald*, Saturday 26 September 1953, p.2.

33 *The Australian Women's Weekly*, Wednesday 7 October 1953, p. 18.

34 *The Australian Women's Weekly*, Wednesday 7 October 1953, p. 18.

35 *The Australian Women's Weekly*, Wednesday 7 October 1953, p. 18.

Consent is not taken if there is any suggestion of indecision or any doubt as to whether the mother has fully considered the matter. In any case, before a consent is taken, the department offers to help the mother to keep her child if she wishes to do so...

### *Three Dangers*

It is the duty of the Child Welfare Department and the Court to protect the child. But the other two parties should, so far as is compatible with the welfare of the child, be protected also. There are, then, three dangers to be avoided:-

- (1) The danger that the child will be deprived, if only temporarily, of a continuing relationship with a mother.
- (2) The danger that the natural mother, through a hasty decision subsequently regretted, will be deprived of her own child.
- (3) The danger that foster parents, through legal delay and the natural mother's change of heart, will be deprived of a child for whom they have developed love.<sup>36</sup>

7.38 Both media reports about the delegation noted the support for a 30 day revocation period for consent to adoption. This approach, already applied in Victoria, was included in the provisions of the model bill. This is discussed further in the next section, which examines the substance of the model adoption bill in more detail. The committee acknowledges that officers and ministers of the time were genuinely concerned about the welfare of children and sought to promote it by amending adoption legislation through the model bill. As earlier chapters showed however, the end result, for some parents and their children, was considerable pain and loss.

## **1960s adoption legislation**

7.39 The legislation enacted in all states and territories (except WA) following the model bill stated that the 'welfare and interests of the child concerned shall be regarded as the paramount consideration'. It was through this lens that social welfare aspects of adoption were legislated. This section seeks to examine, as far as is possible from the available records, the views of the jurisdictions about social welfare aspects of adoption expressed during the drafting of the model legislation. Letters and briefs from states to the Commonwealth Attorney-General and minutes from social welfare officers' meetings in 1961–62 are considered as indicative of the states' initial positions in relation to the issues. The provisions enacted in each states' adoption legislation between 1964–68 are taken to signify the final resolution of each states' view:

- *Adoption of Children Ordinance 1965 (Cth)* (applied to the ACT)
- *Adoption of Children Act 1965 (NSW)*

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36 A Staff Correspondent, 'Should the Adoption Law be Changed?' *Sydney Morning Herald*, 1 October 1953, p. 2.

- *Adoption of Children Ordinance 1964 (Cth)* (applied to NT)
- *Adoption of Children Acts 1964 (Qld)*
- *Adoption of Children Act 1966 (SA)*
- *Adoption of Children Act 1968 (Tas)*
- *Adoption of Children Act 1964 (Vic)*
- *Adoption of Children Act 1896–62 (WA)*<sup>37</sup>

7.40 As discussed above, the overriding themes of the model legislation arose in response to perceived inadequacies in adoption legislation at the time. Three major kinds of problem were discussed in detail:

1. Problems that arose due to the child being placed with prospective adopting parents prior to their approval and when consent to adoption could still be revoked;
2. The risk of adoption 'malpractice' in private adoption agencies; and
3. Legal problems or embarrassment that adopted people might encounter as a result of being required to produce identification documents relating to their birth parents, and/or their adoption being made widely known.

7.41 The first set of issues, which appear to have been considered most problematic, was dealt with through provisions relating to consent, and the required characteristics and approval of adopting parents. The second issue was addressed in specific provisions about private adoption agencies. The third set of issues was thought to be solved through the application of the clean break theory to record keeping. These provisions are discussed in turn below.

## **Consent provisions**

### ***Consent provisions prior to model legislation***

7.42 Consent provisions prior to model legislation were minimal. Each act or ordinance specified whose consent was required before an adoption order could be made, and other provisions specified the circumstances in which such consent could be dispensed with. In most jurisdictions, consent was required to be given by whoever was looking after the child at the time of the application, the child's parent(s), guardian(s), or the Director of the Child Welfare Department (in some states). There would generally be some detail in relation to who must give consent, and in which cases consent could be dispensed with.

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37 Professor David Hamblly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 283.

7.43 Prior to the development of model adoption legislation, consent was required to be given to the child's adoption by specific adopting parents, for example, Miss Smith consented to her child being adopted by Mr and Mrs Brown. This was required in all states except in Victoria which already had *general* consent provisions (discussed below).<sup>38</sup>

### *Revocation of consent*

7.44 In all states except Victoria, consent could be revoked at any time before the adoption order was made.<sup>39</sup> As adoption orders were not usually made by courts at the moment an adoptive parent took unofficial custody of the child, this meant that consent could be withdrawn after the child had lived for several months with prospective adoptive parents. The high profile case of *Mace v. Murray* came about because Miss Murray revoked her consent to adoption, and Mrs Mace did not accept her revocation. However, as the experiences recounted in Chapter 3 demonstrated, many women, especially young unmarried women, had insufficient awareness of their ability to revoke consent and lacked access to the necessary legal support to do so.

7.45 Victoria was the only jurisdiction to specify a consent revocation period in its Adoption of Children Act:

- (5)(b) Any person who has given any such consent may—
  - (i) within thirty days after the giving of such consent sign a revocation thereof in the prescribed form or to a like effect;
  - (ii) within seven days of the signing of such revocation deliver it or by registered letter post it to the registrar of the county court in Melbourne—
 and upon receipt thereof by the said registrar the consent shall be revoked.<sup>40</sup>

### *Dispensing with consent*

7.46 In all legislation, parental consent could be dispensed with for a number of reasons. These reasons included—and many of these appeared across most jurisdictions—if the parent resided interstate, was an unmarried father, was considered unfit for custody, or for another reason the court considered just and reasonable.<sup>41</sup>

7.47 Prior to the uniform adoption laws, there were particular provisions that facilitated *de facto* adoptions. Adoptions sometimes began with the placement of a child with a family other than its mother and father, without any formal legal process, or any government oversight. These placements could subsequently be ratified by a

38 Professor David Hamblly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 291.

39 Professor David Hamblly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 305

40 *Adoption of Children Act 1958 (Vic)*, ss. 5(b).

41 *Child Welfare Act 1936 (NSW)*, Part XIX Adoption of Children, s. 167.



court, even if the natural parents had not agreed to it becoming a permanent arrangement, through dispensing with parental consent. Such provisions appeared in the ACT, Northern Territory, Queensland, South Australian and Victorian laws.<sup>42</sup>

### *Consent given by young mothers*

7.48 Another issue raised in the course of the inquiry was whether consent could be lawfully given by a mother who was underage. There was no reference in any state's adoption legislation to any particular age that a mother should have attained before her consent was valid. Further, minutes from the initial meeting of child welfare officers in May 1961 showed that officers agreed that the consent of the mother should be required whether or not she was over or under the age of 21. It was noted that:

Western Australia raised the question of the consent of the parents of an unmarried mother who is under 21 years, and also that of the putative father. The States felt that these consents were unnecessary.<sup>43</sup>

7.49 A later letter from a Tasmanian parliamentary drafter also mentioned the issue briefly:

Mr. Smith [a state official] is querying whether the consent of a minor is valid. When he discussed this with me some time ago I told him that the law is that generally speaking the consent of a minor is valid so long as he could appreciate what he is doing.<sup>44</sup>

7.50 This was confirmed by evidence given to the committee from a Tasmanian government representative, who indicated 'my understanding is that in all of the acts there has never been a requirement about the age'.<sup>45</sup>

### *Discussion about consent provisions*

7.51 All of the available briefs forwarded by state child welfare officers for distribution prior to the initial conference in May 1961 mentioned the issue of consent. The brief from Tasmania suggested that, while parents who have no prospect of providing a home or parental relationship to their child should not be able to withhold consent to adoption, care should be taken in obtaining the consent of a mother:

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42 The South Australian law was the only one of these to set a minimum time requirement for the child to have lived with the adopting parents before consent could be dispensed with, ss 6(iv).

43 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Uniform Adoption Legislation: Interstate Conference held at Sydney, New South Wales from 29th to 31st May 1961, folio p. 178, digital p. 44.

44 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, The Adoption of Children Bill, Tas comments, folio p. 83, digital p. 138.

45 Ms Jane Monaghan, Tasmanian Department of Health and Human Services, *Proof Committee Hansard*, 16 December 2011, p. 38.

Particular care is needed to ensure that the mother of a child—particularly an ex-nuptial child—is not forced by apparent circumstances or persuaded to consent to an adoption, without knowing fully what alternative there may be, and without knowing fully the significance of what she is doing in consenting to adoption.

It is considered that the consent to adoption in such cases should be taken by a responsible statutory authority, competent to provide the mother with all necessary information as to alternatives, and not having any prejudiced interests.<sup>46</sup>

7.52 The brief from the Western Australian Department, which appears to suggest that the rights of the mother are of less importance than those of the child or adoptive parents, nonetheless recognises her rights as a mother:

This situation has historically conferred upon her [a natural mother] the right to decide—

(a) whether she keeps the child (and against the opinions and wishes of all comers);

(b) whether she will consent to its adoption.<sup>47</sup>

7.53 Attitudes of the period were patronising towards unmarried mothers, and supportive of adoption as a process. Despite this, ministers involved in the uniform law process were, like the officials quoted above, concerned that consent be freely given. The South Australian Attorney-General considered the problem in the context of determining who should be involved in certifying that consent was properly given:

The difficulty arises in some of the country areas. If the onus were put on the local doctor or the matron of the local hospital you might get pressure put on the doctor or the matron by the relatives of the mother.<sup>48</sup>

7.54 Queensland's Minister for Health, Dr Noble, was clearly aware that the widespread use of sedatives during and after labour could create problems for the taking of a legitimate consent. Indeed, he apparently believed that being affected by sedatives would prevent a consent being valid:

A mother who was sedated in the post-natal period might claim that because of the sedation she did not realise what she was doing. This would be a protection [ie. of the mother's rights in any legal action].<sup>49</sup>

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46 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio 45, digital p. 197.

47 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption—from the Welfare Viewpoint, WA briefing paper, folio p. 8, digital p. 245.

48 Transcript of SCAG meeting, 16 June 1961, p. 22.

49 Transcript of SCAG meeting, 16 June 1961, p. 22.

7.55 This concern that mothers should consent freely was not uniformly felt, but was at times firmly expressed as the following exchange between the attorneys-general and health ministers reveals:

HON C. ROWE [New South Wales]: I think all this is tied up with not getting the mother's consent too soon and allowing her time to really make up her mind about what she wants to do.

SIR GARFIELD BARWICK [Commonwealth]: If you leave the child with the young mother too long, it builds itself into the affections of a person who has no chance of looking after it.

HON. C. ROWE: That mother has prior right morally and legally, and I think we should leave it that way.

SIR GARFIELD BARWICK: Everything but the economic ability to look after it.

HON C. ROWE: But I think we must recognise the rights of the natural mother in these matters.

HON. H.W. NOBLE [Queensland]: I think the interests of the child are the first thing to be considered...

HON C. ROWE: I would agree on general principles that the interests of the child should be important, but I hate taking away a mother's rights completely too quickly.

HON. F.H. HAWKINS: But you do not take them away. She gives them away. It is a question of whether you let her take them back.

THE CHAIRMAN [Victoria's Attorney-General Hon. A.G. Rylah]: That is so. She gives them away at a time when, I think it is fair to say, many mothers are not quite capable of bringing sound judgment to bear on the matter.<sup>50</sup>

7.56 The exchange shows that the New South Wales Minister was very concerned about freedom of consent, as was the Victorian Attorney-General, and that these concerns mirror those expressed in the archival records by senior officials from Tasmania and New South Wales.

#### *Who should give consent*

7.57 It was agreed at the May 1961 conference that a formal consent in writing—as witnessed by an officer of the child welfare department or agency, or a Justice of the Peace or Commissioner for Affidavits—should be obtained in writing from

(a) both parents and/or guardian(s), in the case of a legitimate child; and

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50 Transcript of SCAG meeting, 16 June 1961, pp 26–27.

(b) the mother or guardians(s) of an illegitimate child. This should apply whether the mother and/or father are/is over or under the age of 21 years.<sup>51</sup>

7.58 It does not appear that any state contemplated a requirement for consent by the father of an ex-nuptial child. The brief from Western Australia was most scathing of fathers of ex-nuptial children:

The Department sees no reason why the man who has sired a child for which he cannot provide a proper family life should have any rights in its future (except to pay for its maintenance until proper family life is available to it by adoption).<sup>52</sup>

*Period between birth and consent*

7.59 At the May 1961 conference, state officers expressed their opinions about when the mother should be considered capable of giving consent. The Tasmanian officers noted that while it would be best that consent not be valid for some time after the birth of the child, and until the mother knew what her circumstances were, this would cause 'machinery difficulties'. Therefore the Tasmanian officers recommended that seven days be the minimum period between the birth and any consent to adoption.<sup>53</sup>

7.60 Other states had different views. Victoria considered four days was sufficient, NSW did not favour a time period but considered that certification by a fit and proper person (such as a medical professional) be required, and WA and SA were undecided.<sup>54</sup> However, the states did not accept the UK view that the child should not be removed from his or her mother until the age of six weeks.<sup>55</sup>

7.61 At a meeting in June 1961, officers considered the issue again. The states agreed that a mother 'should not be asked for her consent until 'some proper person (such as her medical adviser) has certified that she is fit to give her consent.'<sup>56</sup>

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51 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio p. 144, digital p. 79.

52 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption—from the Welfare Viewpoint, WA briefing paper, folio p. 7, digital p. 244.

53 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio p. 45, digital p. 197.

54 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 19<sup>th</sup> to 31<sup>st</sup> May 1961, folio p. 158, digital p. 66.

55 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Report of the Officers' Conference on the Social Welfare Aspects of Adoption, folio p. 145, digital p. 79.

56 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Summary of Discussion at the Ministerial Conference on Adoption in Brisbane on 16<sup>th</sup> June 1961, folio p. 198, digital p. 11.

7.62 However, medical professionals did not necessarily support this approach. Professor Rendle-Short, Head of the Department of Child Health, Brisbane, wrote to the National Health and Medicare Research Council in February 1964 noting his concerns that the medical aspects of adoption had not been addressed in the version of the draft bill.<sup>57</sup> He noted that '[s]ome aspects of the Bill as it stands are medically controversial (i.e. Section 26 (2)).'<sup>58</sup> It is not possible to ascertain which version of the draft Bill he was referring to, but the two closest versions of the draft Bill filed closest to and before Professor Rendle-Short's letter present themselves as most likely. Section 26 (2) in both versions related to a mother giving consent to adoption within seven days of her child's birth, provided a legally qualified medical practitioner considered her to be in a fit condition to do so.<sup>59</sup>

### *Revocation of consent*

7.63 A 1961 brief from the Victorian Department explained that the 30 day revocation period was not a point upon which that state would be compromising in any discussions on uniform adoption legislation. Victoria explained that it would be desirable for common consent provisions to be adopted, so that children could be placed with adoptive parents interstate.

...a unique provision allows any person executing a consent thirty days in which to revoke the same, failing which the consent becomes legally irrevocable. This overcomes the former insecurity attaching to arrangements and placements for adoption which were capable of upset, and consequent confusion and detriment to the child concerned, by the withdrawal of consent at any time up to the actual making of an Order...

Victoria would not be prepared to relinquish the proven benefits accruing therefrom [ie from these consent provisions].<sup>60</sup>

7.64 Professor David Hambly questioned both the seven day period between birth and consent, and the 30 day period in which to revoke consent, arguing that neither sufficiently upheld the rights of the mother. He contrasted the Australian legislation with the UK position on the issue that 'a mother needs about six weeks to recover

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57 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from Department of Child Health Director, Brisbane Children's Hospital, to Dr. A. Johnson, National Health and Medical Research Council, folio p. 130, digital p. 22.

58 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from Department of Child Health Director, Brisbane Children's Hospital, to Dr. A. Johnson, National Health and Medical Research Council, folio p. 130, digital p. 22.

59 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, draft Adoption of Children bill, 1964, digital p. 79. This is also substantially similar to ss. 26(2) of another version of the draft bill found at digital p. 119.

60 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 99, digital p. 133.

physically and psychologically from the effects of confinement'.<sup>61</sup> Further, Hambly suggested that the courts should 'be given a discretion to allow a consent to be revoked after the expiration of the prescribed period', but notes that such discretion would depend on the paramountcy provision.<sup>62</sup> In other words, the onus would fall on the natural mother to show that returning the child to her would better satisfy the paramount consideration of the act, namely, the promotion of the welfare and interests of the child.

7.65 The issue of consent, and the contrast between Australian and UK legislation, was also mentioned in a 1962 letter sent by St Joan's Alliance International, a Catholic feminist group founded in the early twentieth century, to the Commonwealth Attorney-General in the context of the development of the model bill. It is useful to quote the letter at length because it illustrates a complex view about the rights of mothers and their babies. St Joan's Alliance contrasted the adoption provisions of the NSW Child Welfare Act with those of the UK legislation, in most cases suggesting that the UK provisions were preferable. In particular, UK legislation, upon which the original Australian legislation was based, gave mothers much more time to revoke consent. Organisations such as St Joan's considered such a policy worthy of replicating in Australia:

The young mother, emotionally disturbed before and after her confinement, is in no fit state in the period of sometimes only a week to ten days after her confinement to make such a decision. This applies even in the case of the mother who has been quite definite all along about having her child adopted. A hasty decision may make the mother wonder for the rest of her life whether she has made the right choice, or whether she was stampeded and forced into it. To prevent this, it would seem advisable to set a time (say a minimum of 6 weeks) within which the mother could make up her mind, or revoke her decision if the papers had already been signed. The British Adoption Act (sec. 4, subsection 3a) states: 'A document signifying the consent of the mother of an infant shall not be admissible unless—the infant is at least six weeks old on the date of the execution of the document.' This may not be altogether practical here where the mothers often come from country districts or interstate, and may wish to have the papers signed and their part of the adoption finalised before leaving the hospital; but the six weeks could be given as a time within which the mother could change her mind should she so desire...

A form of consent to adoption should give all details...stating that the mother's consent is in fact voluntary and that her legal rights have been fully explained to her. It has been found in practice that very few unmarried mothers change their minds after the consent has been given for adoption, but the right to do so should be safeguarded...

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61 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 313.

62 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 312.

The adopting parents should have the same consideration, say three months probationary period before the final adoption order is made. Whatever the age of the child at placement, this is sound practice for both child and adoptive parents...For instance some conditions adverse to adoption cannot be detected when the baby is only a few weeks old...Parents can benefit from counselling during the period of adjustment from a responsible agency. The agency during probationary period should be given an opportunity with the child in the home to confirm the rightness of its selection of the placement...

In the British law the time stated is at least 3 months; (sec 2, subsection 6) in the United States the common practice ranges from 6 to 12 months. This provision is not necessarily embodied in the law...

In the case of the child who has been abandoned or left to the care of the state or in an institution, special effort should be made to ensure that he or she should be made available for adoption at the earliest possible moment. Parents for selfish or misguided reasons often withhold consent to adoption for years—the child becoming less and less 'adoptable'...

There should be legal provision for termination of parental rights in the interest of the child where it has been determined that in all probability will not be able to perform their parental duties, but are unable or unwilling to relinquish their child...

In such cases the rights of the child should take precedence over the rights and wishes of the parents.<sup>63</sup>

7.66 There are several ideas that are discernible in the position of St Joan's Alliance:

- that the rights of the young single mother should be protected;
- that it is important that the child and adoptive parents are well-matched; and
- that protection of the child should take precedence in those cases where parents are incapable of providing for their child but refuse to sign consent forms.

7.67 The fact that St Joan's Alliance did not consider the first and third points to be inconsistent illustrates the organisation's view that young single mothers were not necessarily incapable parents. This stands in contrast to claims that, at that time, society as a whole considered young unmarried mothers incapable of providing for their children.

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63 NAA, A432 1966/2404 Part 1, *Uniform Adoption Legislation*, St Joan's International Alliance letter to Attorney-General Barwick, 4 August 1962, folio pp 158–163, digital pp 40–45.

### *Dispensing with consent*

7.68 Hambly had expressed concern about the court having the option to dispense with parental consent if 'there are any other special circumstances by reason of which the consent may properly dispensed with.' This phrase was used in all legislation with the exception of that enacted in NSW.<sup>64</sup> He suggested that giving the court such discretion may leave open the potential for mothers' consent to be dispensed with unfairly. Hambly considered that courts, mindful that the child's welfare and interest were of paramount concern, might feel compelled to 'harshly' dispense with the mother's consent.<sup>65</sup>

### *General consent*

7.69 Some child welfare officers considered that it was poor practice to require consent to be given to adoption by a particular couple or person (specific consent). Meeting minutes from 1963 recorded that:

Most States take the view that particular consents should not be allowed on the ground that (a) they lend themselves to baby-farming; and (b) they enable the natural parent to know who the adopters are. Others take the view that it would be contrary to natural justice not to allow a parent or parents to specify a particular person as the only person who may adopt the child. A compromise would be to allow particular consents in respect of relatives only.<sup>66</sup>

7.70 The suggestion was thus made that consents be made *general* rather than specific. *General consent* gave the department or agency—agencies are discussed later in this chapter—the ability to place the child with any approved parents, for example Miss X consented to her child being adopted by any parents approved and selected according to the law in the particular state.

### *Consent provisions in model legislation*

7.71 Consent provisions were greatly expanded after model legislation was drafted. To use Tasmania as an example, 'Division II—Consents to adoptions' of *the Adoption of Children Act 1968 (Tas)*, spans nine sections and details who must give consent in which cases, what the effect of consent is, instances in which the Court should not accept the consent (i.e. if the consent was obtained by fraud, duress or other improper means),<sup>67</sup> as well as several other details.

64 NSW originally omitted the clause, and later inserted an even wider ranging power for the court to dispense with consent.

65 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 314.

66 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, Uniform Adoption Legislation: Report of Officers, Sydney 2–4 December 1963, folio pp. 20–21, digital pp. 222–233.

67 *Adoption of Children Act 1968 (Tas)*, ss. 26(1)(b).



7.72 In some states, statutory rules complemented legislation. For example, the *Adoption of Children Statutory Rules 1969 (Tas)* prescribed additional details in relation to consent, including the consent form that must be used, who may witness a person signing a consent form, and procedures agencies were obliged to follow after taking consent.<sup>68</sup>

#### *When consent should be given*

7.73 The ACT, NT, Tasmanian and WA acts and ordinances required consent to be given no less than seven days after the child's birth, or before seven days if a 'legally qualified medical practitioner' signed to attest that the mother was in a fit condition to give it.<sup>69</sup> The corresponding period was five days after the child's birth in Queensland, South Australia and Victoria and three days in NSW.<sup>70</sup>

#### *Type of consent*

7.74 The acts and ordinances in each jurisdictions contemplated that *general* consent would be given in most cases, except where consent was given to a relative.<sup>71</sup>

#### *Revocation of consent*

7.75 While some states initially disagreed,<sup>72</sup> all states and territories ultimately incorporated Victoria's earlier provisions allowing a 30 day revocation period for consent to adoption. Consent could thus be revoked up to 30 days after it was given, or until the adoption order was made, whichever was earlier.<sup>73</sup>

#### *Dispensing with consent*

7.76 Those jurisdictions that had made special provision for parents' consent to be dispensed with for *de facto* adoptions removed these provisions. *De facto* adoption was thus made more difficult. Otherwise, provisions related to dispensing with consent were similar to those that had previously applied.

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68 *Adoption of Children Statutory Rules 1969 (Tas)*, Part IV s.15–19.

69 *Adoption of Children Act 1968 (Tas)*, ss. 26(3)(4).

70 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 307.

71 See for example, *Adoption of Children Act 1968 (Tas)*, ss. 22(1)(2).

72 See WA suggestion of 14 day revocation period. NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 29th to 31st May 1961, folio p. 158, digital p. 66.

73 For example, *Adoption of Children Act 1967 (SA)*, ss. 24(1).

## Adoptive parents

### *Required characteristics of adopting parents prior to model legislation*

7.77 All acts and ordinances specified a number of characteristics that adoptive parents were required to demonstrate. In each state and territory, a child could only be adopted by a married couple (in most cases) or by one person (such as in the case of a mother marrying for a second time and her new husband formally adopting her child). In addition, age requirements applied in every jurisdiction. In some jurisdictions, these requirements varied depending on the gender of the adoptive parent and whether the child was male or female.<sup>74</sup> Other jurisdictions did not make provisions regarding the gender of the child, but required both parents to be at least 21 years older than the child.<sup>75</sup>

7.78 Prior to model legislation, approval of adoptive parents took place at the same time as the adoption application, usually when the child had already been taken into the custody of the adoptive parent.

### *Debate about adoptive parents and when they should be approved*

7.79 Several states' briefs from 1961 noted that the investigation and approval of adoptive parents at the time of an adoption order application sometimes produced unsatisfactory results.<sup>76</sup> The brief from the Victorian Department stressed that prospective adoptive parents should be investigated before a child was placed in their custody:

There have been some adoption applications the investigation of which showed the applicants to be quite unsuitable to have or continue to have the custody of the child concerned, but who were granted an Order largely because of the 'fait accompli'.<sup>77</sup>

7.80 At the conclusion of the first meeting of child welfare officers in May 1961, five recommendations were made in relation to the placement of children with adoptive parents. The broad intent of their recommendations was that no unrelated person should have custody of a child without being approved by the Department. Victoria and SA recommended that registered agencies should also be able to approve

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74 For example, *Adoption of Children Act 1896 (WA)*, ss. 3–4.

75 For example, *Adoption of Children Ordinance 1938 (Cth)*, s. 4.

76 See for example, NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio p. 45, digital p. 197; NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption—from the Welfare Viewpoint, WA briefing paper, folio p. 8, digital p. 245.

77 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 99, digital p. 133.

prospective adoptive parents.<sup>78</sup> This proposal, as part of the broader focus on the welfare and interests of the child, was accepted by the other states.

### ***Approval of adoptive parents in model legislation***

7.81 Adoption laws and ordinances enacted following the model bill stipulated that the Director of Child Welfare (or equivalent) became the legal guardian of all children in relation to whom a general consent to adoption had been signed, until an adoption order was made.

7.82 The Director of the Child Welfare Department was also obliged to provide a report to the Court on the following matters before an adoption order could be made:

- (a) the applicants are of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child;
- (b) the applicants are suitable persons to adopt that child, having regard to all relevant considerations, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the applicants, and any wishes that have been expressed by a parent or guardian of the child, in an instrument of consent to the adoption of the child, with respect to the religious upbringing of the child; and
- (c) the welfare and interests of the child will be promoted by the adoption.<sup>79</sup>

7.83 Thus the court was required to be satisfied of the above matters, which were more detailed than previous provisions in some states, *before* adoptive parents took custody of the child.<sup>80</sup> The legislation in some states allowed the court to make interim orders for adoption, however such orders could only be made in favour of people that 'the Court could lawfully make an order for the adoption of that child by those persons.'<sup>81</sup>

## **Private adoption agencies**

### ***Operation of private adoption agencies prior to the model bill***

7.84 In Victoria in the early sixties, all adoptions other than those of state wards were arranged by agencies. In NSW, less than half of adoptions were arranged by

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78 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio p. 146, digital p. 78.

79 *Adoption of Children Ordinance 1965 (Cth)*, ss. 19(1).

80 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 284.

81 For example, *Adoption of Children Ordinance 1965 (Cth)*, ss. 38(3).

agencies. In South Australia, agencies worked with the Department, and in Queensland, Tasmania and WA, agencies had no role in arranging adoptions.<sup>82</sup>

7.85 States had different, and often ardent, views about whether adoption agencies should be allowed to arrange adoptions. This was reflected in legislation enacted both prior to, and after, discussions about a model adoption bill. Prior to the model bill, adoption agencies were legal in Victoria, NSW and South Australia.

### *Debate about private adoption agencies*

7.86 NSW Under Secretary Hicks' brief linked the operation of agencies to 'malpractice' in adoption arrangements. Minutes from the first child welfare officers' meeting in May 1961 demonstrate that officers considered that 'the most crucial stage in the process of adoption is the placement of the child' requiring the expertise of 'qualified and experienced social workers'.<sup>83</sup> The minutes also noted that:

One State representative said there appeared to be abnormally high incidence of delinquency amongst adopted children of a particular age group in his State, which he suspects is the result of bad matching.<sup>84</sup>

7.87 At the conclusion of the first conference in May 1961, NSW, Tasmania and WA still considered that only the department should be responsible for adoptions:

All representatives at the Conference were of the opinion that there was a tendency creeping in which almost could amount to buying and selling of children. Private agencies or individuals have been suspect concerning the favours afforded to various individuals desiring to adopt children...

There is also some suspicion that private groups, who are recognised in the field of adoption, have been trading. The Directors, with one exception, were firmly of the opinion that individual State control was necessary.<sup>85</sup>

7.88 The outlying state with respect to this matter was Victoria. Its brief circulated prior to the meeting painted a positive picture of agencies:

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82 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio pp 146–7, digital pp 145–146; letter from Qld Director of State Children Department Clark to AGD Secretary Yuill, 26 May 1961, folio p. 121, digital p. 106.

83 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio 147, digital p. 77.

84 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio 147, digital p. 77.

85 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Uniform Adoption Legislation: Interstate Conference held at Sydney, New South Wales from 29th to 31st May 1961, folio p. 171, digital p. 52.

In Victoria, any parent (or parents) contemplating the surrender of her child for adoption, is encouraged to approach an appropriate one of the agencies previously referred to. She is there fully advised about community services available to her not only with respect to adoption, but also to enable her to consider retaining her child if that be her desire. She need not, and should not, feel forced by any circumstance to have her child adopted. Voluntary services are available to help her through confinement, to find employment, to care for the child while she is employed, or Governmental financial aid may enable her to care for her child herself.

Should she determine, however, to have the child adopted, the agency is properly equipped, or if not it would refer the mother to one which is equipped, to take the child into care, assess his special needs, and arrange his placement with selected suitable adoptors capable of meeting these needs, to the satisfaction of the interests of all parties.<sup>86</sup>

7.89 Although Victoria was an outlier, it was not alone in its support of non-government agencies. The Australian Council of Social Service (ACOSS) in its submission to the AGD in relation to the model bill supported the role of such agencies. ACOSS, representing eight membership organisations, noted that its organisations unanimously agreed that:

1. Adoptions arranged by individuals over whom the community has no control should be prevented as the community has a responsibility to protect the child and the rights and interests of all concerned.
2. It is an important function of voluntary agencies as well as governmental agencies to provide adoption services.
3. Non-Governmental agencies should be registered in order to ensure their conformity with certain specific standards of practice.
4. The statutory authority responsible for licensing and for setting and maintenance of standards should be representative of both governmental and voluntary agencies...[several other recommendations followed]<sup>87</sup>

7.90 Victoria later noted that such agencies were already well-established and their exclusion was not contemplated in that state.<sup>88</sup> However, this view was not widely held. In 1964, the Commonwealth Attorney-General Sir Garfield Barwick summarised that:

I think I may properly say that the majority of the states take the view that, whilst the agencies can take a real and important part in arranging adoptions, the control of adoption should be exercised by the Directors of

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86 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 99, digital p. 133.

87 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, Australian Council of Social Service, Statement on Uniform Adoption Legislation, folio p. 9, digital p. 310.

88 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, folio pp 198–199, digital pp 10–11.

Child Welfare. On the other hand, one State (Victoria) apparently feels that agencies should be allowed to take a greater degree of responsibility and to perform some of the functions that the Bill gives to the Director. In the two Territories, where the Commonwealth has the responsibility for policy, there are no adoption agencies now, or likely to be for some time, so that the problem does not really arise.<sup>89</sup>

7.91 As mentioned earlier in this chapter, another idea was presented by NSW Child Welfare Under Secretary Hicks in his original brief circulated to the states. His proposal for an 'Adoption Tribunal' included the suggestion that it consist of a Supreme Court judge (to be responsible for legal matters), a psychiatrist and a child welfare expert.<sup>90</sup>

### *Adoption agencies under 1960s legislation*

7.92 Under model legislation passed in ACT, NSW, South Australia, Tasmania and Victoria during the 1960s, authority to arrange adoptions was given to the Director of Child Welfare (or equivalent), and approved agencies.

7.93 This result is somewhat surprising given the considerable opposition to agencies, particularly from NSW officers. However, there had been strong lobbying from the adoption agencies and their representatives. ACOSS had written to AGD in February 1964 expressing its disappointment that private agencies were not contemplated in adoption arrangements in a draft of the model bill (AGD had provided ACOSS with a confidential draft of the bill with the approval of SCAG).<sup>91</sup> Later reviewing this turn-about, Hambly asserted that as the Victorian legislation was the first to be enacted, earlier opposition in other states to private adoption agencies was subsequently tempered.<sup>92</sup>

7.94 However, the conditions with which adoption agencies were to comply in order to gain approval varied by jurisdiction. The acts and ordinances in ACT, NSW and Victoria have similar provisions in relation to private adoption agencies. However, the NSW Adoption of Children Regulations 6–8 included a further three and a half pages of rules for private adoption agencies, relating to: what organisational

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89 Letter from Sir Barwick of 4 February 1964, quoted in NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation—Material prepared by States*, AGD Minute Paper 60/2474, digital p. 348.

90 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 14, digital p. 237.

91 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, Transcript of a meeting of the Standing Committee of Attorneys-General, 23 January 1964, folio p. 86, folio p. 101.

92 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 285.

information must be provided by agencies, and when; who may be employed by the agency; and details about its finances.<sup>93</sup>

7.95 Western Australia continued not to make provision for adoption agencies, but did not expressly prohibit the involvement of third parties. Queensland continued not to allow for either private adoptions or agencies.<sup>94</sup>

## **Record keeping and privacy**

### ***Record keeping and privacy prior to model legislation***

7.96 All pre-1960s acts and ordinances included provisions designed to maintain the privacy of parties to adoption, and also provisions to ensure accurate record keeping. The states and territories made different rules in order to balance these concerns.

7.97 In the first instance, all jurisdictions required the court to furnish the Registrar-General (of the relevant office of Births, Deaths and Marriages) with a copy of each adoption order.

7.98 In ACT, NT, Queensland and SA, the word 'adopted' was written in the margin of the original birth certificate. These jurisdictions kept a separate *Register of Adopted Children*. Entries in the *Register of Adopted Children* were able to be traced to entries in the general register of births, but only by the Registrar-General or his delegate. General members of the public could not view the register, any index relating to such, nor the original birth certificate, without the permission of a court. Instead, people could apply for a search to be made of the *Register of Adopted Children* in order to produce a birth certificate, which would have the same legal effect as an original birth certificate. In SA, however, adopted persons could apply to view their own original records once they had turned 17 years old.

7.99 In NSW, Tasmania and WA, the Registrar-General received records of adoption orders periodically; in WA for example, not less than every six months.<sup>95</sup> In WA, the details of the adoption replaced those on the original birth certificate, which could not be viewed without the permission of a court. In the states of NSW and Tasmania, the legislation itself did not provide further direction on the issue of record keeping, except that the adoption order had to be registered according to the rules of the court (NSW), or the Governor (Tasmania).

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93 Adoption of Children Act 1965 (NSW) Regulations 6–8; Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 307.

94 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), pp 283–289.

95 For example, *Adoption of Children Act 1896* (WA), s. 12.

7.100 The jurisdictions also took slightly different approaches to privacy in court hearings. In Queensland and SA, matters relating to the making of adoption orders were to be heard *in camera* (in private). The legislation that applied in ACT, NSW, NT and Victoria specified that the court could decide if proceedings should be heard *in camera* or in public. The Tasmanian and West Australian acts were silent on this issue.

### ***Debate about record keeping and privacy***

7.101 The Victorian brief from 1961 noted that the 'sealing of the child's previous registration of birth and substitution of one in which he is recorded as the child of the adoptors' was one of the two principal effects of an adoption order.<sup>96</sup> The brief later noted the problem of adoptive parents viewing the original birth certificate of the child for identification, noting that there were some cases of parents 'seeking out a natural mother upon such knowledge, and causing embarrassment to her'.<sup>97</sup>

7.102 A record of proceedings from the May 1961 meeting of child welfare officers considered several issues related to privacy. All states agreed that:

(a) Natural parents should not be able to ascertain the names of the adoptors (except where placed with relatives).

(b) Adopting parents should be able to change the Christian names of the child (surname automatically changed).

[and]

Agreed that normal Extracts, giving date of birth only be issued.<sup>98</sup>

### ***Record keeping and privacy following model legislation***

7.103 Following the development of the model bill, the clean break theory was enshrined to a greater extent in legislation, rather than just being a matter of practice.<sup>99</sup> The theory, as applied to record keeping, meant that a new birth certificate was issued with the adopted parents' details, and the record of the adoption order and the original birth certificate were kept secret. The procedure, as set out in the ACT ordinance and mirrored in other states' acts and regulations, required the Registrar-

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96 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 96, digital p. 136. The other 'principal effect' is listed as 'his being deemed thereafter for all purposes a child of the adoptors and not of his natural parents'.

97 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 96, digital p. 136.

98 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 29th to 31st May 1961, folio p. 162, digital p. 62.

99 NSW Law Reform Commission, *Report 69 (1992) – Review of the Adoption of Children Act 1990: Summary Report*, 16 December 1991, <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R69SUMCHP2> (accessed 22 February 2012).



General to 're-register' the birth of a child when he or she was adopted. Any person who made a search of the register, or applied for a birth certificate, would receive information as it appeared on the re-registered record.<sup>100</sup>

7.104 In much the same way, the original birth certificate, with a notation to the effect that an adoption had taken place, would not be made available to any person unless a court considered such a document was required as evidence.<sup>101</sup> In the ACT, NSW, Northern Territory, Queensland, South Australia and Victoria, the amended legislation also required the Registry of Births, Deaths and Marriages to keep a *Register of Adopted Children*, and an index relating to such. These were also unavailable to public inspection except with the approval of a court.<sup>102</sup>

7.105 The states also agreed that adoption hearings should be held *in camera*, although NSW considered that discretion should be maintained for the judge to open the court if this was in the 'public interest to do so'.<sup>103</sup>

## Offences and penalties

### *Offences and penalties prior to model legislation*

7.106 Prior to 1961, most adoption laws did not establish offences for unlawful adoption practices. The exceptions were Queensland and Victoria. In both states, money could not change hands in relation to an adoption:

It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the Director to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parents or guardian any such payment or reward.<sup>104</sup>

7.107 The penalty in both states was a maximum of £50. In Victoria, it was also an offence for a natural parent to take away a child from the adoptive parents, or to detain the child with such an intention.<sup>105</sup> This offence carried a penalty of two years' imprisonment. In Queensland, non-compliance with any provision of the Act (other than that mentioned above) carried a penalty of £20.<sup>106</sup> This is a relatively small

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100 *Adoption of Children Ordinance 1965 (Cth)*, Regulation 11.

101 For example, to ensure two relatives did not marry. This was also the position under legislation in several jurisdictions prior to the 1960s. *Adoption of Children Ordinance 1965 (Cth)*, Regulation 11(6).

102 *Adoption of Children Ordinance 1965 (Cth)* s. 60.

103 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio p. 139, digital p. 86.

104 *Adoption of Children Act 1935–52 (Qld)*, s. 14(1).

105 *Adoption of Children Act 1958 (Vic)*, s. 8(4).

106 *Adoption of Children Act 1935–52 (Qld)*, s. 22.

penalty compared to the £200 or 12 months imprisonment applied 'for neglecting, ill-treating or exposing children' under the Victorian *Children's Welfare Act 1958*.<sup>107</sup>

### ***Debate about offences and penalties***

7.108 Victoria noted in its 1961 brief that some payments had been exchanged in breach of its Act.<sup>108</sup> At the May 1961 meeting of child welfare officers, all states agreed that sections similar to those in the UK Act relating to the *prohibition of certain payments* and *restrictions on advertising* be incorporated into Australian legislation.<sup>109</sup>

### ***Offences and penalties in 1960s adoption legislation***

7.109 The model bill contemplated nine separate areas of offences in relation to adoption and all of the jurisdictions ultimately passed legislation establishing those offences.<sup>110</sup> These in broad terms included the following:

- Natural parents seeking to remove a child from adopting parents;
- Making or receiving a payment in relation to an adoption;
- Unauthorised persons making adoption arrangements;
- Unauthorised persons publishing an advertisement in relation to adoption services or indicating a willingness to be a party to an adoption;
- Publishing the details of parties to adoption enabling them to be identified;
- Making a false statement in relation to a proposed adoption;
- Impersonating a person from whom consent to adoption was required;
- Presenting a forged consent to adoption; and
- Improperly witnessing a consent.<sup>111</sup>

7.110 Penalties were stipulated for each offence: in most cases the penalty was £200 or imprisonment for three months.<sup>112</sup> (The £200 fine applied the offences against children as described above under the *Children's Welfare Act 1958* (Vic) were unchanged in 1965. However, by 1965, penalties applied to offences in acts for unrelated purposes in Queensland had increased correspondingly. For example,

107 *Children's Welfare Act 1958* (Vic), ss. 71(1).

108 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 96, digital p. 136.

109 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 19<sup>th</sup> to 31<sup>st</sup> May 1961, folio p. 156, digital p. 68.

110 *Adoption of Children Ordinance 1965* (Cth), ss. 46–54.

111 *Adoption of Children Ordinance 1965* (Cth), ss. 46–54.

112 *Adoption of Children Ordinance 1965* (Cth), ss. 46–54.

offences under the *Aboriginals Preservation and Protection Act 1939–46* were penalised by a £50 fine or three months. Similar offences under the replacement *Aborigines' and Torres Strait Islanders' Affairs Act 1965* attracted a penalty of £100 or six months' imprisonment.<sup>113</sup>)

## Discussion

7.111 The previous section examined key provisions of adoption legislation and compared their effect before and after the development of model legislation. Child Welfare Ministers, and their Departments, saw adoption law reform as an opportunity to improve adoption arrangements, and to increase the emphasis on the child's interests and welfare.

7.112 The greatest difficulties identified by the states were those that arose from the practice whereby a child was placed with adoptive parents *before* the adopting parents had been approved, and *before* the mother's consent became irrevocable. In response, all states enacted very similar provisions to ensure that only approved applicants could gain custody of a child, and provided for a 30 day consent revocation period, intended to provide stability for the child as well as to safeguard mothers and give surety to adoptive parents.

7.113 The second major concern of Child Welfare Ministers was the control and operation of private adoption agencies. There was less unanimity amongst the states about the regulation of private adoption agencies. As a result, state legislation following the model bill had different provisions that permitted or regulated private adoption agencies.

7.114 Thirdly, Child Welfare Ministers were concerned about the difficulties adopted people might face legally or personally if they discovered inadvertently that they were adopted. They were also concerned that some administrative or legal processes required the production of documents that would disclose a person's adopted status. This was regarded as problematic because of the stigma at that time associated with having been born out of wedlock. In order to address this problem, provisions were introduced requiring adoption hearings to be heard *in camera*, and requiring the re-issue of birth certificates with the details of the adopting parents.

7.115 However, this chapter has also showed that not only Ministers and public servants, but also non-government agencies and members of the public, recognised that there were problems with how adoptions were arranged. The Commonwealth was involved in these discussions and were aware of the issues and policy options. Provisions of a model adoption bill as debated and decided upon by state Child Welfare Ministers represented one solution to these problems. However, there were certainly other opinions and options for the regulation of adoptions.

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113 *Aboriginals Preservation and Protection Act 1939–1946 (Qld)*, ss. 28, 32; *Aborigines' and Torres Strait Islanders' Affairs Act 1965 (Qld)*, ss. 69(3).

7.116 It was argued in the previous chapter that the attorneys-general considered legal matters relating to adoption because their expertise and interest was in the law. The reforms of the so-called 'social welfare' aspects of the legislation, as discussed by Child Welfare Ministers, were similarly influenced by their particular priorities. It is therefore no surprise that the Child Welfare Ministers considered the 'welfare and interests of the child paramount'.

7.117 The committee recognises the limitations of legislation in addressing an issue that was also controlled to some extent by individuals' circumstances, including family, religion, economic status, and prevailing social mores. Nonetheless, the fact that the UK enacted such different legislation shows that the way forward chosen by the Australian Child Welfare Ministers was not the only possible approach.

7.118 For example, the UK legislation contemplated a six week probationary period in which the child would be in the custody of the adoptive parents before the adoption order was made. This was designed to ensure that the 'match' was suitable for all parties, and gave the mother extra time to consider her consent to adoption. At the May 1961 conference of social welfare officers, SA, Tasmania and Victoria considered that a three month probationary period merited consideration,<sup>114</sup> but the proposal was later dropped and did not appear in any state's legislation.

7.119 Other commentators, such as academics, journalists, women's groups and members of the public, also expressed opinions about how adoptions could be better arranged. Present-day legislation is informed by a range of consultative mechanisms; lobby groups and individuals can email comment to governments, transparency is demanded by the public and it is quite normal for societal views to be divided. Some submitters to the inquiry recounted that 'that's just how it was then' or 'everyone believed that a closed adoption was in everyone's best interest'.<sup>115</sup> The committee is not convinced that this was the case. Certainly, those attitudes were prominent and expressed in public. However, as is the case today, societal views were divided and the remedies to problems of adoption arrangements identified by bureaucrats and legislators represented a single solution, not the only solution, to these issues. As professionals charged with developing policy options, the public servants of the period had responsibility to consider the range of evidence and views available. As representatives of the governments of Australia's states, the ministers took responsibility for making the choices that they did, amongst the options available to them.

7.120 The committee believes that preventing the coercion of mothers into agreeing to adoption was not the primary policy issue that concerned the ministers. However, ministers and officials did want to ensure that such coercion did not take place. This is

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114 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 29th to 31st May 1961, folio p. 163, digital p. 61.

115 For example, see Ms A. Allitt, *Submission 412*, p. 3.

evident from documents recording discussions that took place during the development of uniform adoption laws. It is most obvious through the far more detailed requirements inserted into the acts about what constituted consent, including the requirements that consent be taken a number of days after birth and be properly witnessed. It was also illustrated by the creation for the first time of offences, in relation to intimidation, payments, duress and the improper witnessing of consents.

7.121 Sadly, the evidence received by the committee suggests that these offences were not adequately policed, or the new provisions enforced. In spite of the changes, the committee received accounts from mothers indicating that actions that would have constituted offences under the new legislation continued to occur after the mid-1960s. The committee therefore concludes that the provisions in the model legislation designed to protect mothers were not fully effective in practice.



# **Chapter 8**

## **The need for a national framework**

### **Introduction**

8.1 The committee's second term of reference asks it to contemplate the [P]otential role of the Commonwealth in developing a national framework to assist states and territories to address the consequences for the mothers, their families and children who were subject to forced adoption policies.

8.2 As Chapters 5 to 7 have shown, the Commonwealth had a limited role in adoption policy between 1950 and 1970. Adoption legislation falls within the jurisdiction of the states and territories. Adoption orders in the 1950s–1970s were made, as remains the case, by state and territory courts. In addition, until 1973 the Commonwealth provided limited support for unmarried women through the social security system.

8.3 Regardless of Commonwealth responsibility, the committee heard evidence—summarised in Chapters 3 and 4—that the effects of forced adoption have been long-lasting and far reaching. The committee accepts that there is a need to address the consequences of past forced adoption policies and practices.

8.4 The committee agrees, as foreshadowed by the inquiry terms of reference, that the states and territories are best placed to address the consequences of former forced adoption policies. However, the Commonwealth should play a role in developing a national framework to assist the states and territories to address these consequences.

8.5 This chapter summarises the rapid change in values that has taken place since the 1970s on single parenting and how adoptions should be arranged. It shows that these changes in views were expressed at a national rather than a state level.

8.6 Adoption was just one of an increasing number of policy issues that were taking on national and international dimensions. Mechanisms developed to enable intergovernmental discussions about this growing range of topics, particularly ministerial councils such as the Community and Disability Services Ministers Conference (CDSMC). Between them, the various intergovernmental councils have made and implemented numerous agreements and frameworks.

8.7 The committee considers that the consequences of former forced adoption would be best addressed by a national framework, developed by the CDSMC. The Commonwealth, through its membership of the CDSMC, should play a leadership role in the development of the framework.

8.8 This chapter concludes by summarising what submitters to the current inquiry believed should be included in such a framework. The four major proposals—for a

formal apology, access to support services, reforms to information laws and services, and reparations—are examined further in Chapters 9 to 12.

## **Changes to adoption across Australia**

8.9 The attitudes of Australians towards single mothers and adoption have changed considerably since 1970. This shift towards greater support for single mothers and open adoption happened across Australia—and indeed across the world—at the same time. For example,

- The Commonwealth introduced benefits for single mothers in 1973.
- National Adoption Conferences were held in 1976, 1978 and 1982.
- National lobby groups to support single mothers and to address the harms of adoption practices were established in the 1970s.
- All jurisdictions changed their adoption legislation in the period of 1984 to 1991.

8.10 There was also increasing reference in policy debate and international agreement to rights and to preventing discrimination.

- The Commonwealth signed the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), and later took over primary responsibility for Australia's intercountry adoption programs.

8.11 This section briefly outlines these developments.

### ***Support for unmarried mothers***

8.12 Chapter 5 explained that the *Supporting Mothers' Benefit* assisted single mothers from 1973. This benefit was part of a wider social welfare and health care reform agenda which also included the elimination of sales tax on the contraceptive pill, the introduction of Medibank (now Medicare), legislation to establish the Family Court, the introduction of paid maternity leave in the Commonwealth Public Service, and the first Commonwealth childcare legislation.<sup>1</sup> Academic commentators have described the changed attitudes towards adoption as part of the wider social changes following the rise of feminism:

However, by the 1970s a number of factors, including the complex social changes occasioned by feminism, saw adoption practices come under challenge as the impacts of these policies, on both relinquishing mothers and adopted children, became better understood. The social stigma associated with unmarried motherhood was brought into question and

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1 *Child Care Act 1972 (Cth)*. See, for example, FaHCSIA, *Women in Australian Society—Milestones—1871–1983*, [http://www.fahcsia.gov.au/sa/women/progserv/research/Pages/wia\\_milestones\\_1871\\_1983.aspx#1](http://www.fahcsia.gov.au/sa/women/progserv/research/Pages/wia_milestones_1871_1983.aspx#1) (accessed 23 February 2012).



ultimately reduced, in part as a result of the introduction of the Mother's Benefit for single mothers (1973). This was part of a raft of legislative and administrative reforms made by the Whitlam Government which effectively redefined 'family' in Australian legal practice in the interests of women, children, and diversity. The growing cultural value placed on female agency created a climate in which the stories of unmarried mothers who had been coerced into adopting out their children could be told.<sup>2</sup>

8.13 The 1973 reforms comprehensively demonstrated the national nature of both value changes and policy responses, but they had also been foreshadowed by the Commonwealth's 1968 legislation, which had moved to guarantee nationally consistent welfare benefits for single women. Such reforms demonstrated a significant value change, and a move towards addressing the concerns of single mothers on a national scale.

### ***Lobby groups***

8.14 The increasing empowerment of women, and their determination to eliminate institutionalised disadvantage, was demonstrated by the establishment of women's lobby groups such as the Council of Single Mothers and their Children (CSMC). The CSMC was founded in 1969, and expanded to become a national organisation in 1973:

In late 1969, one of the members placed an advertisement in the *Melbourne Herald* inviting women to a meeting with the intention of forming a new organisation for single mothers. A large group attended, many remained silent, but it didn't take long to determine what their role would be—working within a self-help model with the aim of supporting single mothers as well as advocating Social and Legal Reform...

The National Council for the Single Mother and her Child (NCSMC) was set up in 1973...[a]t the National Conference the following motion was carried unanimously:

*That the aims of NCSMC are best achieved through the operation of a nationally organised body, therefore we move that this organisation continue to function. In coming to this conclusion, it is simultaneously recognised that it is both valid and advantageous to have a national arena of operations.*<sup>3</sup>

8.15 Lobby groups to assist adopted people affected by adoption were established at a similar time, including Adoption Triangle and Adoption Jigsaw. Adoption Jigsaw WA's website provides a brief history of the organisation in that state:

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2 Kate Murphy, Marian Quartly and Denise Cuthbert, *'In the best interests of the child': mapping the emergence of pro-adoption politics in contemporary Australia*, Australian Journal of Politics and History, June 2009.

3 Council of Single Mothers and their Children, *History*, <http://www.csmc.org.au/?q=history> (accessed 24 February 2012). See also, CSMC, *Submission 303*, p. 1.

Adoption Jigsaw was founded in 1978 by adopted adults, birth parents and adoptive parents for the purpose of lobbying for legislative change and more openness in adoption. Some changes came about in 1987, when adopted people were given the right to access records giving information about their birth parents, and in 1994 when birth parents were given similar rights regarding their children. Further changes were proclaimed in June 2003.

Though support and lobbying were Adoption Jigsaw's initial priorities, partial funding from the Department for Child Protection enabled us to expand and professionalise our service, whilst maintaining the level of understanding that only personal, first-hand experience of adoption can provide.<sup>4</sup>

8.16 These groups had branches across different states. For example, Adoption Jigsaw Qld's submission to the inquiry indicates that it has an (inter)national scale but a local focus:

Jigsaw was established in Australia and New Zealand in 1976 and was incorporated in Queensland in 1988. We have assisted over 17 000 people in their search for their biological heritage and many more who were not actively engaged in the process of searching or seeking reunion. Jigsaw Queensland services include:

- Emotional support by phone or email.
- Monthly Support Group meetings for birth mothers, adoptees and an open group for all those affected by adoption.
- Providing Information to assist with individuals with their own search.
- Referral to professionals and other agencies.

Jigsaw Queensland is a non-profit, member-based organisation relying on trained volunteer helpers to provide a range of services to all those affected by adoption. We rely on membership and donations from individuals, business and government to achieve our objectives and to help us provide ongoing services to our members and the community at large.<sup>5</sup>

8.17 The founders of adoption lobby groups in the 1970s considered that national coordination and cooperation would be advantageous. This demonstrated that there were people across Australia who held the same views about adoption and wished to 'join forces' to promote their views nationally.

### ***National Adoption Conferences***

8.18 Significantly altered attitudes towards adoption were also evident at the National Adoption Conferences held in 1976, 1978 and 1982. The first conference in

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4 Adoption Jigsaw, *About Us*, <http://www.jigsaw.org.au/about-us/> (accessed 25 February 2012).

5 Jigsaw Queensland Inc, *Submission 188*, p. 1.

1976 was very significant as it marked the sector's recognition that Aboriginal children were best raised by Aboriginal families.<sup>6</sup>

8.19 A major issue raised during the 1978 conference was access to records. A keynote speaker, Dr John Triseliotis, then Director of Social Work Education at the University of Edinburgh, 'argued that it was essential that adults have access to their origins'.<sup>7</sup> At that time, adoption records in Australia remained relatively closed compared to the situation in Scotland.

John Triseliotis...was able while he was there to address the parliamentary legislative review committee in relation to the rights of adult adoptees. There was by this time all over Australia a loud and insistent voice demanding such reform.<sup>8</sup>

8.20 Papers from the 1978 conference were framed by very different concerns than were evident in the 1960s. For example, the paper provided by the Western Australian group proposed a discussion of five themes, two of which were:

Changing concepts in adoption with particular emphasis on access versus confidentiality, post relinquishment counselling and the issue of rights including those of the putative father.

[and]

Adoption—a middle class phenomenon: A look at the effects of outdated middle class value systems as major determining factors in the adoption process.<sup>9</sup>

8.21 As discussed in Chapter 7, WA child welfare officers expressed views during discussions on model adoption legislation in the 1960s that were very much pro-adoption, and particularly dismissive of birth fathers. The above example from WA social workers in 1978 demonstrates professional opinions almost diametrically opposed to those expressed by child welfare officers in 1962.

8.22 The third conference in Adelaide in 1982 addressed issues for birth mothers, and led to the establishment of the Australian Relinquishing Mothers Society (ARMS) self-help and lobby group in each state.<sup>10</sup> As the SA branch stated:

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6 Anna Haebich, *Many voices: reflections on experiences of Indigenous child separation*, National Library Australia, 2002, pp 214–216. In addition, Ms Christine Cole cites a reference that implies single mothers 'barely rated a mention' at this conference. *Supplementary Submission 223 (b)*, p. 14.

7 Anna Haebich, *Many voices: reflections on experiences of Indigenous child separation*, National Library Australia, 2002, p. 216.

8 Audrey Marshall and Margaret McDonald, *The Many-Sided Triangle*, Melbourne University Press, Melbourne, 2001, p. 41.

9 Workshop Papers prepared by the Western Australian Group, *Evaluation and Research*, Second Australian Conference on Adoption, Melbourne, May 1978, p. 1.

10 ARMS Vic, *Submission 196*, p. 2.

That conference was probably one of the first times in Australia that a group of women separated from their children by adoption came together and compared their stories.<sup>11</sup>

8.23 As well as signalling a changed attitude towards adoption, the three conferences demonstrated the collective will of social workers across Australia to meet and debate issues of relevance to adoption.

### *Law reform*

8.24 Together, the conferences provided an impetus for nationwide lobbying for legislative change away from the clean break theory and closed adoptions, toward open adoptions. In a 1992 article, J. Neville Turner, then President of the National Children's Bureau of Australia and law lecturer at Monash University, explained that each jurisdictions' amendments to adoption legislation enacted across Australia between 1984 and 1991 represented a significant departure from the model legislation of the mid-1960s:

The current trend towards open adoption in Australia was sparked by a series of three conferences in the late 1970s and early 1980s. At these conferences, several papers were delivered emphasizing the harmful consequences of secrecy, which had been the hallmark of 'uniform' legislation passed in every Australian state in the 1960s.

Following these conferences, strong campaigns were waged throughout Australia to have the legislation passed in the 1960s repealed, and to pass new legislation giving parties to an adoption rights to ascertain the true situation. It was recommended that birth parents be provided with a mechanism by which they could trace the adoptive parents of their relinquished children. Likewise, adopted persons should be permitted, and indeed, encouraged to seek information about the circumstances of their birth.

This new 'open' philosophy was first translated into legislation in 1984 in Victoria, following intensive debate and lobbying by interest groups. Now, it has been legislated for throughout Australia. But the legislation varies substantially from state to state.<sup>12</sup>

8.25 State and territory adoption legislation continues to vary between jurisdictions. These differences continue to affect the parties to adoptions that took

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11 ARMS SA, Transcript of speech given at the 8th Australian Adoption Conference, Adelaide April 2004, <http://users.chariot.net.au/~jamiro/arms/paper2004.html> (accessed 23 February 2012).

12 J Neville Turner, Review of the Adoption Information Act 1990 (NSW), July 1992, New South Wales Law Reform Commission Report No. 69. Dr Turner cites the amended acts in each jurisdiction: *Adoption Act 1984 (Vic)*; *Adoption Act 1991 (ACT)*; *Adoption Information Act 1990 (NSW)*; *Adoption of Children Act Amendment Act 1990 (NT)*; *Adoption Legislation Amendment Act 1991 (Qld)*; *Adoption Act 1988 (SA)*; *Adoption Act 1988 (Tas)*; *Adoption of Children Act 1896- 1991 (WA)*.

place under the old 'closed adoption' regimes that were in place before the reforms of the 1980s. This is particularly true regarding access to information and is discussed further in Chapter 12.

### ***Rights and anti-discrimination***

8.26 As the states were contemplating changes to adoption legislation to promote open adoptions and access to information, other developments took place at the Commonwealth and international level. While HREOC was established by the *Human Rights and Equal Opportunity Commission Act 1986*, the organisation had operated from 1981, with lesser responsibilities, as the Human Rights Commission. In 1984, the Commission produced a Discussion Paper entitled *Rights of Relinquishing mothers to Access to Information Concerning their Adopted Children*.<sup>13</sup> The paper was written in response to complaints about 'adoption legislation and practice', and discussed how, in the case of adoption records, the different states' laws balanced the right to privacy and the right to information:

The right of a relinquishing mother to information, particularly identifying information, about her adopted child has to be balanced against the rights of privacy of all the parties to adoption. At present the bearing of these rights on adoption matters is being reconsidered in response to a number of changes in social attitudes to adoption and to ex-nuptial birth. These changes have in their turn foregrounded a number of civil rights issues flowing from adoption, issues bound up with the Declaration of the Rights of the Child and with the Articles of the International Covenant on Civil and Political Rights (ICCPR) relating to privacy, access to information, discrimination on the grounds of status and the rights of the child.<sup>14</sup>

8.27 The discussion paper referred to the potential for actions taken to force unmarried mothers to have their children adopted to be considered discriminatory:

If, for example, a hospital social worker were to put pressure...on single women to consent to adoption because an assumption is made about the capability of single women (as opposed to partnered women) to support a child, or because of an assumption that a single parent would be unable to provide a stable, happy background for the child, then that pressure could constitute a direct discrimination on the ground of marital status.

Similarly, if, once a mother had indicated her interest in the possibility of relinquishing her child, she became subject to any automatically applied rules which denied her access while in hospital to her child or to

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13 Dr Kathy MacDermott, Human Rights Commission, *Rights of Relinquishing Mothers to Access to Information Concerning their Adopted Children*, Discussion Paper No. 5, July 1984.

14 Dr Kathy MacDermott, Human Rights Commission, *Rights of Relinquishing Mothers to Access to Information Concerning their Adopted Children*, Discussion Paper No. 5, July 1984, pp 3–4.

information about her child, that denial could constitute indirect discrimination on the ground of marital status.<sup>15</sup>

8.28 As a discussion paper, the publication concludes with a number of recommended discussion points rather than definitive conclusions. The discussion points include the suggestion that 'the advantages of open adoption be carefully considered', and that 'all these considerations be taken into account in any review of ACT adoption legislation'.<sup>16</sup> Influential in the reform of ACT legislation, the discussion paper was also widely referred to by stakeholders around the country.

8.29 In 1990, Australia ratified the United Nations Convention on the Rights of the Child. The Convention included two articles that could be applied to the issue of adopted people's access to information about their birth parents:

#### **Article 7**

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### **Article 8**

States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.<sup>17</sup>

8.30 Australia's ratification of the Convention was not the main reason for state adoption law reform. However, it provides a further illustration of the value changes that had taken place since the law reform of the 1960s, and of the extent to which this was perceived as a national and international issue, rather than one purely for individual jurisdictions. While the language of a 1961 brief from WA was couched in prioritising the 'rights of the child' over the 'rights' of the natural and adoptive

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15 Dr Kathy MacDermott, Human Rights Commission, *Rights of Relinquishing Mothers to Access to Information Concerning their Adopted Children*, Discussion Paper No. 5, July 1984, p. 45.

16 Dr Kathy MacDermott, Human Rights Commission, *Rights of Relinquishing Mothers to Access to Information Concerning their Adopted Children*, Discussion Paper No. 5, July 1984, p. 60.

17 Office of the United Nations Commissioner for Human Rights, *Convention on the Rights of the Child*, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990, <http://www2.ohchr.org/english/law/crc.htm> (accessed 20 February 2012).

parents,<sup>18</sup> subsequent meeting discussions were not centred on 'rights'. Rather, the language used mentioned the 'interests' of the parties and addressing existing 'shortcomings'. It was the 'welfare and interests of the child' that were to be paramount, not the child's rights.

8.31 However, the UN rights frameworks of the 1970s and 1980s did influence the language of public and government discourse in Australia, which extended to discussions about adoption. For example, the NSW Law Reform Commission's 1992 *Review of the Adoption Information Act 1990* shows the prominence of 'rights' based thinking and language:

**Rights created by the Adoption Information Act 1990**

2.7 The *Adoption Information Act* 1990 represents a major change in the approach taken to confidentiality of information concerning parties to adoptions. The Act was passed in October 1990 and came fully into force on 2 April 1991...

2.9 The rights to information created by the Act are absolute, in that adopted persons cannot legally prevent birth parents from obtaining their amended birth certificates, nor can birth parents prevent the adopted person from obtaining his or her original birth certificate, and the other information specified in the Act.<sup>19</sup>

8.32 Subsequent headings include 'Adopted persons' rights to information', 'Adopted persons' rights to lodge a contact veto', 'Birth parents' rights to information' and 'Birth parents' rights to lodge a contact veto'.<sup>20</sup>

***Intercountry adoption***

8.33 The rights of the child in intercountry adoption were reinforced by the Hague Adoption Convention, which Australia ratified in 1998. Intercountry adoption programs to enable Australian adoptive parents to adopt children from overseas had begun in 1975 as a result of the Vietnam War.<sup>21</sup> However, AGD explained that in the past the states managed particular country programs on a 'lead state' basis (e.g. NSW

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18 NAA, A432 1961/2241 Part 1, Uniform Adoption Legislation - Material prepared by States, WA briefing paper, *Adoption – from the Welfare Viewpoint*, folio p. 8, digital p. 243.

19 NSW Law Reform Commission, *Issues Paper 7 (1992) – Review of the Adoption Information Act 1990*, <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/IP7TOC> (accessed 25 February 2012).

20 NSW Law Reform Commission, *Issues Paper 7 (1992) – Review of the Adoption Information Act 1990*, <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/IP7TOC> (accessed 25 February 2012).

21 Mr Damon Martin, NSW Service Coordinator, International Social Service Australia (NSW Office), *Inter country Adoption in Australia*, January 2009 <http://www.iss.org.au/publications/reports-papers-and-articles/> (accessed 24 February 2012).



managed the Taiwan adoption program; Victoria managed the Philippines adoption program<sup>22</sup> etc):

The department's contemporary portfolio responsibilities relevant to adoption relate to intercountry adoption issues. These arise from Australia's ratification in 1998 of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. At that time, the department's role was limited to ensuring that Australia as a whole met its obligations under the convention and performing minor functions as the Australian central authority. State and territory departments were also designated as central authorities under the convention, and different jurisdictions took the 'lead state' role in managing particular country programs.<sup>23</sup>

8.34 Since 2006, however, AGD has been responsible for intercountry adoption programs:

In 2005, the House of Representatives Standing Committee on Family and Human Services conducted an inquiry into the adoption of children from overseas. A key recommendation of the resulting report was that the Australian government assumed primary responsibility for the establishment and management of Australia's intercountry adoption programs. A specific intercountry adoption branch was created within this department in 2006. The Commonwealth became responsible for strategic leadership and high-level management of Australia's intercountry adoption programs with other countries. State and territory central authorities retained responsibility for all casework.<sup>24</sup>

8.35 AGD also chairs two working groups of state and territory community and disability services officers. These groups address the harmonisation of legislation, fees and administrative procedures for, and alternative models of, intercountry adoption respectively.<sup>25</sup>

### **Why a national framework?**

8.36 The preceding section has shown that since the early 1970s, the discussion of adoption policy has changed. With respect to content, there has been a shift away from closed adoptions towards support for single mothers to keep their children and open adoptions. The natural parents have a stronger voice in policy discourse, and there is

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22 House of Representatives Committee on Family and Human Services, *Report on Overseas Adoption in Australia*, 21 November 2005, p. 42.

23 Dr Albin Smrdel, Acting First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 28 September 2011, p. 1.

24 Dr Albin Smrdel, Attorney-General's Department, *Committee Hansard*, 28 September 2011, pp 1–2.

25 CSMAC, *Membership*, Intercountry adoption, <http://www.csmac.gov.au/membership.aspx#other> (accessed 25 February 2012).



greater recognition of their rights. Finally, adoption policy is predominantly discussed on a national scale, despite remaining state-based law.

8.37 The committee believes that a national framework is justified to address the consequences of former forced adoption. Firstly, the issues surrounding forced adoption are national in scope. Second, a national approach reduces the chance of significant policy inequities that can themselves cause distress for the people affected. This is a reason why both the Community Affairs and Legal and Constitutional Affairs Committees have in the past favoured a national response to the needs of children who were in institutional care: they have seen the poor results of variable state-based restorative action. Third, the mechanisms to discuss adoption are already intergovernmental. The committee is simply recommending that existing work in this area be extended to address a set of issues around past adoption practice.

### ***National scope***

8.38 The committee has received submissions from people affected by forced adoption from every Australian state and territory. In addition, the committee has visited each capital city, with the exception of Darwin. The evidence presented to the committee in submissions and at public hearings showed that the experience of forced adoption was similar and regardless of the submitters' state of origin.

8.39 In addition, the committee heard that the experience itself of forced adoption often traversed jurisdictional boundaries. As recounted in Chapter 3, the social stigma of unmarried pregnancy caused many mothers to be sent away from home to give birth, in some cases interstate. This has exacerbated the difficulties of adopted people and their birth parents seeking access to records while negotiating different regulations in different states. The interstate nature of the experience of forced adoption suggests that a national framework would be more appropriate in addressing its consequences.

### ***Importance of national consistency***

8.40 This is not the first time that the Senate's Community Affairs References Committee has advocated a national approach to addressing significant past injustices. Recommendations from the *Lost Innocents: Righting the Record* report (2001) the *Forgotten Australians* report (2004) and the *Lost Innocents and Forgotten Australians Revisited* (2009) recognised the national dimensions of wrongs experienced by child migrants and children in institutional care, and identified a role for the Commonwealth in rectifying these. The committee, in framing recommendations as a result of both inquiries, considered that the consistent pattern of the issues faced by affected people across the states justified a national approach. The committee considers that the parallel nature of the experiences and consequences of forced adoption across the states provides similar justification.

8.41 In addition, the committee notes that inconsistency in state action can cause inequity and distress to the very people restorative schemes are seeking to assist. In 2004, the committee recommended that a national reparation fund for people who had

suffered in institutional care be managed by the Commonwealth, and funded by contributions from a range of government and non-government parties.<sup>26</sup> However, the Commonwealth Government did not accept this recommendation, and instead, separate redress schemes were established in Tasmania, Queensland, Western Australia and South Australia.<sup>27</sup> New South Wales and Victoria advised the committee that payments were made on a case-by-case basis, and no such scheme was established in the territories.<sup>28</sup>

8.42 The Senate Legal and Constitutional Affairs References Committee examined this disparity between states' redress schemes in its 2010 report, *Review of Government Compensation Payments*. Several submitters to that inquiry expressed the view that redress should be 'dealt with as a national issue' and 'not depend on which state they grew up in'.<sup>29</sup> Other submitters noted the distress experienced by affected parties who found that their own state did not have a redress scheme.<sup>30</sup> In order to avoid a similar situation, the committee is strongly of the view that a national framework to address the consequences of former forced adoption must be implemented in a consistent manner across the states and territories.

### *Continuity in approach*

8.43 The committee considers that a national framework is warranted as it has already been recognised by the jurisdictions that high-level policy in the area of adoption requires a national approach.

8.44 Adoption is currently being discussed at intergovernmental forums in two contexts. The first is intercountry adoption. The Attorney-General's Department explained that the Community and Disability Services Ministers Advisory Council (CDSMAC) monitors the operation of the Commonwealth State Agreement with respect to intercountry adoption:

The 2008 Commonwealth State Agreement for the Continued Operation of Australia's Intercountry Adoption Programs, signed by the Attorney-General and all the state and territory human and community services ministers, sets out the framework for a cooperative scheme for intercountry

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26 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, August 2004, pp 226–228.

27 Senate Community Affairs References Community, *Lost Innocents and Forgotten Australians Revisited*, June 2009, pp 33–34; Senate Legal and Constitutional Affairs References Committee, *Review of Government Compensation Payments*, December 2010, pp 9–15.

28 Senate Community Affairs References Community, *Lost Innocents and Forgotten Australians Revisited*, June 2009, pp 37, 42–43.

29 Senate Legal and Constitutional Affairs References Committee, *Review of Government Compensation Payments*, December 2010, pp 27–28.

30 Senate Legal and Constitutional Affairs References Committee, *Review of Government Compensation Payments*, December 2010, p. 7.

adoption in Australia. The Community and Disability Services Ministers Advisory Council formally monitors the implementation of the agreement and progresses work through several working groups. This department provides a secretariat and chair for the meetings of the Commonwealth, state and territory central authorities as well as the working groups I mentioned. It is through these relationships that this department's work can occasionally intersect with the state and territory central authorities' consideration of domestic adoption issues.<sup>31</sup>

8.45 The second area of existing inter-governmental policy work on adoption is the Enhancing Adoption as a Service for Children Working Group. This group, a body of the Community and Disability Services Ministers Advisory Council, was established in 2008, and is currently undertaking policy review work of direct relevance to the current inquiry, including a review of the National Principles in Adoption. We return to this in the final chapter.

### **Recommendation 1**

**8.46 The committee recommends that a national framework to address the consequences of former forced adoption be developed by the Commonwealth, states and territories through the Community and Disability Services Ministers Conference.**

8.47 Having established that a national framework would be the most appropriate way for the consequences of former forced adoption policies to be addressed, the committee now turns to the substance of the framework, expanded upon in Chapters 9 to 12.

### **Suggested content of a national framework**

8.48 Many submissions to the inquiry addressed the committee's second term of reference. The vast majority of submitters considered that forced adoptions constituted an injustice that should be addressed. However, opinions varied as to what kind of redress would be most appropriate.

8.49 Requests for an apology or similar recognition, and requests for compensation appeared to be intertwined, suggesting that compensation represents a tangible form of acknowledgement. Of those individual submitters who proposed compensation, only six did not also request an acknowledgement and/or an apology. These suggestions are discussed further in Chapters 9 and 11.

8.50 Secondly, a commonly expressed view was that the provision of counselling and mental health care services would be an appropriate way to address the continued pain of former forced adoptions. This is discussed further in Chapter 10.

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31 Dr Albin Smrdel, Attorney-General's Department, *Committee Hansard*, p. 2.

8.51 Thirdly, difficulties accessing information and birth records were raised by many submitters. It was suggested that improving access to adoption records throughout the jurisdictions would assist people affected by former forced adoptions. Access to information is discussed in Chapter 12.

## Chapter 9

### A national framework: apologising for past wrongs

9.1 Many witnesses to this inquiry called for an apology from the Commonwealth government, and from other governments and organisations, for the effects of former forced adoption policies and practices. Some of the organisations responsible for institutions in which adoptions took place have offered apologies, and have recommended that governments acknowledge their own roles in past practices.

9.2 This chapter outlines these calls, discusses some of the apologies offered during this inquiry, and considers the way forward for governments and organisations in recognising and expressing regret for past adoption practices.

#### The need for an apology

9.3 The commonly-held but not unanimous view of submitters was that an apology from governments was a desirable step in reconciliation and healing. This is typical of the views of individuals who gave evidence:

I believe that an apology from the Commonwealth would have a profound and positive effect on the lives of all concerned. For the mothers who were treated with contempt and in many cases, outright cruelty, I think there would be some solace in an acknowledgement that forcing apart mothers and their children was wrong and damaging.<sup>1</sup>

9.4 Organisations representing women affected by adoption practices, such as the National Council of Single Mothers and their Children and Origins Victoria, expressed a similar view:

NCSMC supports a Government led public apology as it serves many purposes. Firstly, it admits that it was pivotal in the causing of lifelong pain, injustice and human damage. However, it also gives voice to a matter that was often forged in silence and shame. The more that Australia is honest about our past mistakes the better adept we become in managing current mistakes, with the aim to prevent future mistakes. But most of all we owe public recognition to the lives that it impacted upon, marginalised, and took away.<sup>2</sup>

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[Origins Victoria recommends t]hat the Australian Federal Government and their agencies issue a full and frank acknowledgment of their unlawful and harmful practices.<sup>3</sup>

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1 Ms Kathryn Rendell, *Submission 184*, p. 3.

2 National Council of Single Mothers and their Children, *Submission 333*, p. 12.

3 Origins Victoria, *Submission 166*, p. 101.

9.5 Those who had experienced other apologies drew on those experiences to advocate for a national apology. This submitter had witnessed the apology made in the Western Australian parliament in 2010:

The Adoption Apology given in the Western Australian Parliament on 19th October 2010 was a very significant day for me and the many thousands of women who have suffered the loss of a child to adoption. The speeches made by the WA Members of Parliament should be read and taken into consideration by the Senate Committee.

It is my sincere hope that the Federal Parliament and every State Parliament in Australia will make a similar apology to that given on 19th October 2010. Nothing can change the past, but a formal recognition of the flawed adoption policies and practices of the past can provide a pathway to healing the lives of the mothers and children and their families.<sup>4</sup>

9.6 Another submitter had experience of an apology from the particular hospital where she had given birth:

Would I like an apology? The hospital has already given one, I believe. My mother has long ago wept and apologized. Shortly after my daughter's birth, the Federal Government introduced supporting mother's benefit alongside a wave of change in social attitudes. But before that, what role did Federal governments have in developing the processes around adoption and the attitudes that suggested that babies could be given up without terrible pain and suffering? For any active role government played, and any omissions by successive governments which denied the rights of mothers and their children, an apology is long overdue.<sup>5</sup>

9.7 A poignant call for an apology was from a nurse who worked at Royal Women's Hospital in Melbourne at the time:

I believe that a national apology to these women, their families and their children needs to be given in recognition of the pain and suffering that they may have experienced through this inappropriate, archaic and unwarranted process. Whilst at the same time an opportunity could be given for staff such as myself, who was involved in the adoption processes, to offer their own personal apology if they so desire.<sup>6</sup>

9.8 Several organisations which had been involved in care for pregnant women, and to varying degrees adoption, also supported a national apology:

[A]s has been the case for those who were part of the 'Stolen Generation' and 'Forgotten Australians' experience, it is important that an official

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4 Name withheld, *Submission 142*, p. 5.

5 Ms Judith Newcombe, *Submission 332*, p. 3.

6 Ms Annie Florence, *Submission 36*, p. 2.

recognition and apology is made on behalf of the Government at both a Commonwealth and State and Territory level.<sup>7</sup>

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[W]e believe there is a specific role for an apology of governments. We have issued our apology in recognition of the role of Catholic organisations in past adoption practices. The Western Australian government has done the same. Others should follow. The place where work on a government-led apology should start is the Community and Disability Services Ministers' Conference. We would be very happy to work with that conference in shaping such an apology and, indeed, the strategy that would need to go with the issue of such an apology.<sup>8</sup>

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There is wide (although not universal) support for apologies by governments at both state and federal levels. We acknowledge the significant contribution of many birth mothers and support groups such as Adult Adoption Loss and Support and the Apology Alliance in advocating for apologies by state and federal governments... A public apology by the Commonwealth Government would also serve to educate the Australian public about past adoption practices.<sup>9</sup>

9.9 Meanwhile, many thought that it is these institutions who should themselves be offering apologies:

NCSMC calls upon the government to request that its own institutions, the nongovernment sector and faith-based institutions, which were all part of the forced adoption system demonstrate acknowledgment and remorse...The service system must publically acknowledge their role and form part of a national apology. The Government's willingness to review and take responsibility for its own actions needs to be accompanied with the decision to ensure that others do the same.<sup>10</sup>

9.10 Some submitters expressed particular views about how an apology should be undertaken, beyond expressing regret for painful past practices. For some it was about specifying what should be apologised for, and who should hear it. Mrs Noble stated that there should be an:

Apology to recognise that forced adoptions took place to meet the needs of infertile couples.

Apology to state that forced adoptions were illegal.

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7 Uniting Care Wesley Adelaide Inc and Uniting Church of South Australia, *Submission 376*, p. 4.

8 Mr Martin Laverty, CEO, Catholic Health Australia, *Committee Hansard*, 28 September 2011, p. 45.

9 The Benevolent Society, *Submission 191*, p. 6.

10 National Council of Single Mothers and their Children, *Submission 333*, p. 13.

Apology to be published in all major newspapers so that it reaches as many adopted children as possible so that they might realise that they were loved by their natural mothers and that they were victims of a crime against humanity and that their human rights were abused by the system.<sup>11</sup>

9.11 For others, it was about commitment to particular actions. VANISH Inc. commented:

In a national apology to the adoption community, there must be an acknowledgment that separation by adoption causes distress; henceforth the Australian Government will dedicate its resources to keeping families together. Any apology needs to confirm that the lessons of the past have been learned; that the Commonwealth's resources are to be redeployed in the name of family integration. At a federal level, this would mean a commitment to phasing out intercountry adoption, as this practice is based on separating a child from their original parents. Without this undertaking, any national apology will be undermined.<sup>12</sup>

9.12 Though opposition to an apology was rare, Origins SPSA Inc. disputed the effectiveness of an apology, unless it was in the context of other actions:

I do not know if the senators are aware that mothers were offered an apology, along with the forgotten Australians, that we rejected. The reason we rejected that was for the simple reason that mothers and adoptees have not had the opportunity of telling their stories. I think that every person that had an inquiry had that opportunity [first] and they got their apology, which is how it should be...

An apology without exposure, redress or accountability for criminal behaviour is not only an insult to an established legal system but also opens the opportunity for other types of criminal activity to occur on a grand scale, such as past adoption practices. Crimes can be perpetrated on victims with the knowledge that, if you can hide your crimes long enough, then you can get away with it.<sup>13</sup>

9.13 Instead, Origins SPSA sought reconciliation and 'to get the truth down on the record'.<sup>14</sup>

### **What constitutes an effective apology**

9.14 In its 2004 report *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care*, this committee considered in depth the issues around the purpose of private and public apologies. The committee will not go over that ground again in this report.

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11 Mrs Julie Noble, *Submission 362*, p. 2.

12 *Submission 160*, p. 5.

13 Mrs Lily Arthur, Origins SPSA Inc., *Committee Hansard*, 20 April 2011, pp 106–107.

14 Mrs Lily Arthur, Origins SPSA Inc., *Committee Hansard*, 29 April 2011, p. 28.



9.15 In its 2004 inquiry, the committee examined and reported on Canadian Law Commission research on the subject. The criteria established through that research are that this committee endorses for any apologies made in respect of past adoption policies and practices:

1. Acknowledgment of the wrong done or naming the offence—many victims want wrongdoers to acknowledge what they did and that it was wrong. They are, in effect, asking the wrongdoers to admit to them that they know they violated moral standards. Such admissions validate the injured parties' moral sensibilities, which were violated by the wrongs done.
2. Accepting responsibility for the wrong that was done—the apologise must demonstrate to the recipient that he or she accepts responsibility for what happened. By accepting responsibility, the apologise helps restore the confidence or trust of the injured party.
3. The expression of sincere regret and profound remorse—the centrepiece of an apology is an expression of sorrow and regret. When the apologise expresses sincere remorse for the wrong committed or permitted to happen, then the person receiving the apology is reassured both that the apologise understands the extent of the injury that was committed and therefore will not allow it to happen again.
4. The assurance or promise that the wrong done will not recur—victims need to be assured that the injury they experienced will not happen to them, or anyone else, again. Where official, public apologies are made, victims also want affirmation from the officials responsible that the mistakes of the past are not repeated.
5. Reparation through concrete measures—following serious wrongdoing, mere words of apology are not enough to repair damaged relationships. Verbal apologies must be accompanied by concrete measures, such as financial compensation, counselling and other measures. These measures help translate the static message of an apology into an active process of reconciliation and healing. Official apologies, in particular, need to be accompanied by direct and immediate actions.<sup>15</sup>

9.16 The committee believes that official apologies should satisfy the criteria outlined above.

### **Apologies to date**

9.17 Prior to this committee undertaking its inquiry, there had been a small number of official apologies made for former adoption policies and practices. The only

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15 S. Alter, *Apologising for Serious Wrongdoing: Social, Psychological and Legal Considerations*, Law Commission of Canada, 1999 cited in *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care*, August 2004, pp 192–193.

apology that has come from a state parliament or government to date was the one moved by the Premier in the Parliament of Western Australia on 19 October 2010. The motion said:

That this house notes —

(1) that with regard to past adoption practices, it is now recognised that from the 1940s to the 1980s the legal, health, and welfare system then operating in Western Australia, in many instances, did not strike the correct balance between the goal of minimising the emotional and mental impact of the adoption process on unmarried mothers, with the goal of achieving what was considered at the time to be in the best interests of the child;

(2) that processes such as the immediate removal of the baby following birth, preventing bonding with the mother, were thought at the time to be in the mother's and the child's best interest;

(3) that this house recognises that in some cases such practices have caused long-term anguish and suffering for the people affected; and

(4) that the Parliament acknowledges that previous Parliaments and governments were directly responsible for the application of some of the processes that impacted upon unmarried mothers of adopted children, and now apologises to the mothers, their children and the families who were adversely affected by these past adoption practices, and I express my sympathy to those individuals whose interests were not best served by the policy of those times.<sup>16</sup>

9.18 This apology generally drew a positive response from those affected by these adoption practices, and many of them commented on it to the current inquiry. For some, it was supported because of its personal significance:

The 'adoption apology' at Perth WA was one of the most significant moments in my life...and trust me I've had a few...and witnessing the truth being spoken out in public, was certainly one of those.<sup>17</sup>

9.19 It was also endorsed as having healing or reconciliatory benefits for people affected:

I was present for the apology in Western Australia and it was enormously powerful. It was a very healing experience and it was very effective. I am speaking now specifically for mothers, but my son who was adopted was there with me and many other adopted people were also there. It was effective for many people whose lives had been affected by adoption separation. It was effective because it was an acknowledgement of what happened. It was very public and therefore it was educational for the community as well. I think a federal apology would also be very powerful and would be a significant part of the healing process.<sup>18</sup>

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16 Legislative Assembly of Western Australia, *Hansard*, 19 October 2010, p. 7881a.

17 *Submission 183*, p. 4.

18 Ms Evelyn Robinson, *Committee Hansard*, 26 October 2011, p. 17.

9.20 Writing after the Western Australian apology, and shortly after this Senate inquiry was established, Marilyn Murphy expressed similar sentiments:

It is now 6 weeks since the Western Australian apology to Natural mothers, I was present on that day in the Western Australia parliament.

I feel exonerated now from a crime I did not commit, a crime that was committed upon myself and [m]y newborn daughter 40 yrs ago.

The Apology exceeded my expectations, and has given me hope that perhaps we are finally endeavouring to right the wrongs of the past in our society.<sup>19</sup>

9.21 The committee is aware of two organisational apologies offered by individual hospitals prior to the current inquiry: Royal Brisbane and Women's Hospital, made on 9 June 2009; and the Sisters of Mercy, St. Anne's Hospital in Perth in March 2010.<sup>20</sup>

9.22 Four organisations have made apologies in conjunction with the current inquiry. The first of these was from Catholic Health Australia sent to the committee on 1 July 2011, and widely publicly reported around 24 July 2011. Their submission said in part:

In 2000, the NSW Legislative Council Inquiry into past adoption practices found these 'past adoption practices were misguided, and that, on occasions unethical or unlawful practices may have occurred causing lasting suffering for many mothers, fathers, adoptees and their families.' We echo that finding.

At this NSW Parliamentary Inquiry, representatives of Catholic adoption services that operated in the 1950s, 60s, and 70s apologised for the practices of that era and the pain felt by some. We echo that apology, and again through your Inquiry say sorry for the role of Catholic hospitals in past adoption practices that are no longer considered appropriate...

Catholic Health Australia would endorse a proposal to establish a national framework to aid those dealing with their post adoption circumstances. [This] should include a single identifiable access point, sufficiently resourced to enable access to records, support with family reunion where possible, counselling for those who seek it, and a fund for remedying established wrongs...The national framework would...find a place for the participation of those community and Church groups with historical involvement in adoption and current capacity to bring healing to those in need.<sup>21</sup>

9.23 The Benevolent Society is a charity that provides a range of social support programs, including some that cater for children and families. During the period of concern to the current inquiry, it operated the Royal Hospital for Women and an

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19 Ms Marilyn Murphy, *Submission 150*.

20 Cited in Barbara Maison, *Supplementary Submission 14 (a)*, p. 3.

21 *Submission 279*, p. 2.

adoption agency at Scarba House, both in New South Wales.<sup>22</sup> On 31 October 2011, it issued the following statement:

While The Royal Hospital for Women had no official role in organising adoptions, we recognise and acknowledge that unmarried women in our care from the 1940s to the 1980s were not always given the care and respect that they needed during this difficult period of their lives and were sometimes coerced to give up children for adoption. We also recognise and acknowledge our involvement in arranging adoptions in the past through the adoption agency we ran at Scarba House.

The Benevolent Society deeply regrets past practices based on policies which, while influenced by societal attitudes of the time, we now know to be deeply flawed and damaging to many unmarried women who gave birth at the hospital.

The Benevolent Society apologises unreservedly for any pain, unresolved grief or suffering experienced by mothers, fathers, adoptees, adoptive parents and their families as a result of the past adoption practices of The Benevolent Society, the Royal Hospital for Women or Scarba Welfare House for Children.

In the context of a society that stigmatised motherhood out of wedlock and did not provide adequate financial, legal and psychological support for unmarried mothers, adoption was widely assumed to be the only possible option for unmarried pregnant women.

We now recognise that great damage has unintentionally been done to people's lives as a result.

We now understand and acknowledge the deep grief that many mothers experienced after the loss of a child to adoption, and the lack of support available to manage their grief.

Through our extensive work with people affected by adoption over the past 20 years as part of our post adoption support services, we understand the intense shame and secrecy that surrounded past adoptions. What was done cannot be undone but, for many, lifting the burden of secrecy is an enormous relief and an important step towards acknowledging the grief they have carried for so many years.

We have been and still are in the position of being able to offer people affected by past practices specialised support to help them with their lives today. We will help anyone affected by past adoption practices to access assistance and support from the Post Adoption Resource Centre in NSW or Post Adoption Support Queensland. Both services provide telephone support, specialist face-to-face counselling, intermediary services to assist individuals approaching birth relatives, and assistance in accessing adoption records.

We respectfully request that this apology be received in the spirit in which it is offered, as part of our commitment to assisting those affected by past

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22 *Submission 191*, pp 1–3.

adoption practices in their lives today and ensuring the mistakes of the past are not repeated.<sup>23</sup>

9.24 When the committee held a hearing in Hobart in December 2012, Major Graeme McClimont appeared on behalf of the Tasmanian Division of the Salvation Army. In the course of evidence, Major McClimont offered a statement of regret in relation to services offered at one of their facilities, Elim Maternity Hospital:

We also recognise that one person may well respond to a situation in a very different way to another, and do recognise that whilst many experienced the service we had to offer in a positive way inevitably others will have the opposite experience. If this occurred as a result of providing maternity services at Elim, we deeply regret it happening. We recognise also that with the passage of time a person may well reflect on the chaos and stress of a former experience and relive again that moment as deeply traumatic, being able to articulate it perhaps for the first time. If this has happened as a consequence of the actions of the Salvation Army at Elim, we deeply regret it.<sup>24</sup>

9.25 Royal Women's Hospital in Melbourne is Victoria's largest maternity hospital and arranged over 5000 adoptions between 1940 and 1987. On 24 January 2011 it made a submission to the current inquiry, which comprised a statement by the hospital's Chief Executive Officer and a research report by academic Professor Shurlee Swain.<sup>25</sup> The CEO's statement said in part:

Professor Swain's report, *Confinement and Delivery Practices in Relation to Single Women Confined at the Royal Women's Hospital 1945–1975*, found no evidence of illegal practices at the RWH and no evidence of hospital-wide policies that discriminated specifically against single mothers. However, it is clear that many single mothers suffered as a result of the practices conducted at the hospital and the attitudes of some of the staff.

The past practices at the RWH, and elsewhere in the nation, were in keeping with social attitudes, available financial support, and medical and social work knowledge and beliefs of the time. Some of these practices, such as the immediate removal of the baby following birth to prevent bonding, were thought at the time to be in the best interests of the mother's emotional and mental health post-relinquishment. Others, such as the belief that a couple was better suited than a single mother to bring up a child, were reflective of both the era's societal attitudes towards illegitimacy and the then extremely limited social and financial support available to single

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23 Benevolent Society, Statement of apology—Adoption at the Royal Hospital for Women and Scarba House, 30 October 2011, [http://www.bensoc.org.au/director/newsandevents/news.cfm?item\\_id=47ABF826BCFCD9B81247C329F89E6577](http://www.bensoc.org.au/director/newsandevents/news.cfm?item_id=47ABF826BCFCD9B81247C329F89E6577) (accessed 12 February 2012).

24 *Proof Committee Hansard*, 16 December 2012, p. 7.

25 *Submission 399*.

mothers. When considered by today's standards, these past adoption practices were clearly misguided.

The Royal Women's Hospital acknowledges that, whatever the intentions and beliefs of the time, past adoption practices caused lasting consequences for many relinquishing mothers, and sometimes also for their children and their extended families.

On behalf of the staff, past and present, of the Hospital, I apologise to every woman who felt she had no choice but to relinquish her baby for adoption while in our care.

I understand that many relinquishing mothers experienced, and continue to experience, feelings of grief, pain, anger, helplessness and loss, and for this I apologise unreservedly.

I also offer an unreserved apology to any adoptees and other family members who have also experienced, and continue to experience, feelings of grief, pain, anger and loss.

I hope the Hospital's efforts towards uncovering our role in past adoption practices, our sincere apologies and our acknowledgement of pain and loss will bring some comfort to relinquishing mothers and their families, and be accepted as evidence of the regret and sorrow we feel for our involvement in past adoption practices.<sup>26</sup>

9.26 The apologies made during the current inquiry drew a range of reactions. The one from Royal Women's Hospital in particular triggered angry correspondence from some submitters to the current inquiry. This section considers how official apologies can effectively acknowledge the wrongdoing, and properly take responsibility for those wrongs. It concludes with some comments about ensuring reparation through concrete measures.

9.27 The discussion uses the apologies made during the current inquiry to help understand the issues involved in making meaningful apologies for past adoption practices. As the following discussion demonstrates, one of the most important issues regarding adoption policy and practice is for governments and organisations to correctly identify what wrong was done at the time. Having named it, they need to acknowledge it without qualification. Otherwise, the integrity of the apology is undermined, and its healing power diminished.

### **What should be apologised for?**

9.28 The first criterion for an apology is that it be an acknowledgment of the wrong done, or 'naming the offence'. This has proven to be difficult in the case of former forced adoption practices.

9.29 The Royal Women's Hospital statement began by noting that the study undertaken for them 'found no evidence of illegal practices at the RWH and no

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26 *Submission 399*, pp 1–2.

evidence of hospital-wide policies that discriminated specifically against single mothers' and insisted that practices 'were in keeping with social attitudes, available financial support, and medical and social work knowledge and beliefs of the time'.

9.30 This kind of claim directly contradicts those of the individuals who gave evidence to the committee and organisations representing people affected by former forced adoptions, such as Origins SPSA and the Apology Alliance. As might be expected, therefore, apologies like the above were sometimes greeted with scepticism, and the statement by Royal Women's Hospital in particular was not well received.

9.31 The apology from Catholic Health Australia differed somewhat, in that it stated that Catholic Health 'echoed' the findings of the NSW Parliamentary Inquiry that there may have been unethical or illegal practices involved. Although Catholic Health Australia later advised that it was 'not aware of any material that substantiates inferences that laws in place at different points in time were not complied with', it accepted that there remain unresolved grievances regarding women's treatment during the consent-taking process.<sup>27</sup>

9.32 However, potentially illegal or unethical actions are not the only things that deserve apology. The Benevolent Society noted these, but also other wrongs:

Adoption practices which were seen at the time to be in the best interests of a child, are now acknowledged as cruel and damaging to both the mother and her child/ren. The apology should recognise that vulnerable mothers were not given the care and respect that they needed during this difficult period of their lives. Due to the secrecy surrounding adoption in the past, birth mothers were frequently forced to internalise their loss and grief, typically being told to 'get over it and get on with their lives'. We now recognise how faulty this belief system was and the damage that these attitudes and practices caused...

Many of the women we now see in counselling report that they were coerced into signing adoption consents or believe that no consent was taken. Many were told they could only see their babies once consent was given. We have also heard reports that mothers were not allowed to leave hospital until they signed consent forms. This practice was unethical and went against legislation which allowed mothers to revoke consent. Many clients we see today were unaware at the time of their right to revoke consent...<sup>28</sup>

9.33 The Benevolent Society went on to recommend:

That the Commonwealth Government issue a formal statement of apology that acknowledges, on behalf of the nation, the hurt and distress suffered by

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27 Correspondence to the committee from Mr Martin Laverty, Catholic Health Australia, 20 October 2011, p. 5.

28 *Submission 191*, pp 6–7.

many mothers whose children were forcibly removed and by the children who were separated from their mothers.<sup>29</sup>

9.34 The committee agrees with the recommendation (and returns to this subject later). However, 'acknowledging' hurt and distress is not the same thing as stating what caused it, and then taking responsibility for that action. One of the principal concerns of submitters was that forcibly removing a child from his or her mother was unethical and illegal, and the committee now turns to this issue.

***Were there any unethical or illegal actions?***

9.35 The committee's evidence from its witnesses consistently questioned whether the actions of hospitals and other institutions were ethical or legal at the time. This is what most participants in the inquiry believed governments and institutions should be apologising for.

9.36 As the statement from Royal Women's Hospital in Melbourne was the most unequivocal in suggesting that there were not illegal or discriminatory policies or practices, the committee reviewed its submissions to identify the kinds of issues raised by witnesses who had given birth at that institution. A range of submissions were relevant, covering the period 1959 to 1974. This submitter, whose name is withheld, was in Royal Women's Hospital in 1959:

On the sixth day a nurse came to my bed and told me that someone wanted to talk to me in a nearby room. I went to this room and I now realise the person in it was a social worker. She started talking to me about my baby son. I can't remember what she said to me except these words; 'I should not have been breast feeding him and I had no rights to him.'

I was extremely shocked, I believed that he was mine. She then placed in front of me some papers and told me to sign them: they were adoption papers.

Numbly I signed them.

As I was in complete shock I returned to my bed immediately, my baby was taken away and a nurse bound my breasts tightly and painfully to dry up my baby's milk.

I never saw my baby again.<sup>30</sup>

9.37 Ms Marigold Halyer provided the account of her sister's experience at RWH in 1960, as her sister has since died:

[T]he relentless pressure on [name withheld], who was a shy and gentle young woman, by the medical and hospital staff at the Royal Women's Hospital in Melbourne, the hospital social worker, and our mother, centred around the injunction that 'if she loved her baby she should give it up to a

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29 *Submission 191*, p. 7.

30 Name withheld, *Submission 28*, p. 1.



married couple who could give the baby everything...' Shame played a big factor in the coercion of my sister. She was not informed of any help she could get if she wanted to keep her daughter, the opposite was the case in all respects.<sup>31</sup>

9.38 June Smith, who lost her son to adoption in 1961:<sup>32</sup>

[M]y son, my beautiful son, was pulled from my arms because I did not want him adopted...I was condemned into silence for decades by the words and deeds of hospital staff at the Royal Women's Hospital Melbourne, I was told in no uncertain terms that I was worthless, that I had disgraced myself to society by being a single mother. I was told my baby would be better off without me. I was told that if I loved my son I would sign consent to adoption and not be selfish and want him to stay with me. I was given drugs. I was treated with contempt by nursing staff. I was never treated with the dignity that was my right as my son's mother.<sup>33</sup>

9.39 Ms Lynette Kinghorn in 1963:

I was taken to the almoner [at Royal Women's Hospital] where it was discussed between my mother and the almoner that my baby would be taken for adoption. I was never given any other option...someone was sent to the hospital from Berry St [a home for expecting mothers] to collect me I ran screaming for help to a sister who had cared for me I was hysterical she put her arms around me and said go home and be a good girl, I was dragged out without my baby screaming it was the worst experience of my life and still is. I still had not signed consent to adoption.<sup>34</sup>

9.40 Ms Rosemary Neil in 1966:

I was taken to the Royal Women's Hospital for the delivery of my baby... [during labour] I asked the staff if they could ring my Aunty but I was told the only person the staff could ring was [at] the [Presbyterian Sisterhood in North Fitzroy], so I was given Heroin I didn't know what it was at the time, I was given other painkillers and I took them all because I didn't want my baby to be born because my baby would be taken from me at birth. Even though I protested and I couldn't see her when she was born, (I believe because of the amount of pain killers I had taken), I wasn't able to push and she was delivered by forceps...

I asked to hold or feed my beautiful baby and was told that because my baby was to be Adopted I couldn't do either, the nurse brought her to the window but I was crying and couldn't see her properly...

[The submitter was eventually persuaded to sign the papers.] On the 29th day after [my baby] was born I took my papers back to the Women's

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31 Ms Marigold Halyer, *Submission 32*, p. 1.

32 *Committee Hansard*, 20 April 2011, p. 33.

33 June Smith, *Submission 83*, p. 10.

34 *Submission 8*, p. 1.

Hospital to take my baby home, I was laughed at and told she wasn't here she had gone to her Adopted family and if I wanted I should go to the Court House, when I asked where it was I was told to look it up in the phone book...<sup>35</sup>

9.41 Spring Blossom described her experience in 1968:

My next stop within the hospital was a visit to a social worker. The social worker was located within the premises of the RWH. It was my desire to question her about what to expect from birth and how to look after my baby. From our first contact, the social worker insisted that I would be unable to look after my child myself, and would have to give him up for adoption if I 'really cared about him'. As I had been raised to respect authority, and the social worker was presented to me as an authority on children and family, her advice caused me great internal conflict and distress. I visited the hospital once a month for physical examinations, and each time I was sent to visit the social worker. She continued to re-affirm her position; that I would be an inadequate mother to my baby, repeatedly using the phrase 'if you really care about your baby, you will give him up'...

I awakened from the birth of my baby very confused and disoriented. I found out later I had been given heroin and pethadine...

I had also been given something to dry up my breast milk...This drug was Diethylstilbestrol. I was informed of this by a sister when I asked why my breasts were unnaturally hard and sore. When she told me I would have no breast milk again, I began to wail as I realized I would not be able to feed my baby. I asked to see him and was told he was being given away for adoption and I could not see him. For three days I asked continually for my baby, and began to cry, beg, and eventually scream when I was denied him. I was told I would be disciplined for being selfish and disturbing the other patients. I was given no information about his progress or well-being. Many years later I received a letter saying that although I had not signed an adoption consent, there is no record of me being asked for, or giving, consent for him to be removed from the hospital. He was taken with no authority, no consent, no permission.<sup>36</sup>

9.42 Ms Christen Coralive in 1974:

A week later I attended the Royal Women's Hospital, with a \$2 plastic gold ring on, mumbling about how my partner was interstate and would be back soon. That didn't fool them. They tried all their tactics. As soon as my daughter was born she was separated from me. I was drugged. I came to the next morning in a ward. The other mothers were brought their children. When my baby didn't appear I started making lots of very loud noises. A bit of coincidence kicked in, then. One of the sisters had grown up in the same small community as me and she ensured that my daughter was brought to me. For five days I was subjected to an enormous amount of pressure. On

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35 *Submission 151*, pp 1–2.

36 *Submission 118*, pp 6–7.

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the fifth day, I needed to sign a piece of paper giving permission for a blood test for my daughter. The paper was folded, and underneath two signatures were required. The underneath piece of paper was a relinquishment.<sup>37</sup>

9.43 The above accounts do not represent all of the submitters to the inquiry who gave birth at Royal Women's Hospital. Other Victorian submitters did not name the institutions at which they gave birth or at which adoption was arranged, while many others are confidential.

9.44 One nurse who worked at Royal Women's Hospital in the 1960s or 1970s, while both remorseful and supportive of an apology, also indicated that staff believed they were acting professionally:

Yes, we had taken babies from their mothers at birth, without them holding or even seeing their child. The mothers were then admitted into wards without their babies and ostracised in many different ways, finally being discharged about 1 week later, never having seen or held their baby or the 'new' parents who had adopted their baby...

I felt very sorry for what I had done even though at the time we believed what we were doing was 'right' for the child and the mother. However I now believe that the process was very cruel, unjust and very dehumanising to both mother and child.<sup>38</sup>

9.45 The committee does not express a view about whether any particular event described by a witness involved an illegal action. However, in light of the evidence it has received in relation to practices at hospitals such as Royal Women's, the committee queries whether the conclusion that it could find 'no evidence of illegal practices at the RWH and no evidence of hospital-wide policies that discriminated specifically against single mothers' may be premature. The accounts of women, who were obviously eyewitnesses to their own mistreatment, must be taken seriously as evidence.

9.46 This committee is not the only body to have considered evidence that laws were broken or rights not respected. The Human Rights Commission's review of the ACT Adoption of Children Ordinance, conducted in 1986, discussed historical trends in adoption. It observed:

Adoption procedures have also largely disregarded the rights of the parent considering relinquishment to be made aware of alternative options to adoption, and to full and disinterested support in arriving at a decision. The many submissions received from natural mothers who relinquished children

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37 Ms Christen Coralive, *Committee Hansard*, 26 October 2011, p. 9.

38 Ms Annie Florence, *Submission 36*, p. 1.

for adoption, describing their unresolved grief and sense of loss, bear testimony to the failure of bureaucratic procedures to protect their rights.<sup>39</sup>

9.47 As noted in Chapter 1, the New South Wales Parliamentary inquiry in 2000 also concluded that practices that were unethical or unlawful may have occurred in some institutions.

### ***Committee view***

9.48 The committee received evidence from hundreds of women who gave birth in hospitals and other institutions between the late 1950s and the 1970s. Overwhelmingly, these women alleged that laws were broken or that there was unethical behaviour on the part of staff in those institutions. The common failings included applying pressure to women to sign consents, seeking consent earlier than permitted by the legislation, failing to get a consent signature or obtaining it by fraudulent means, and denial of reasonable requests, particularly for a mother to have access to her child. As explained in Chapter 7, certainly after new laws were enacted in the mid-1960s, actions of these types would in some cases have been illegal. Other experiences that reflected unethical practices included failure to provide information, and failure to take a professional approach to a woman's care. It is time for governments and institutions involved to accept that such actions were wrong not merely by today's values, but by the values and laws of the time. Formal apologies must acknowledge this and not equivocate.

9.49 The committee believes that governments and institutions need to take a more credible approach to former forced adoption practices. The committee does not express a view about any particular cases, or about the prevalence of illegal or unethical actions, but apologies that deny them altogether lack credibility in the face of the weight of evidence.

9.50 The committee agrees that official apologies should also identify the other key wrongs: that 'vulnerable mothers were not given the care and respect that they needed during this difficult period of their lives',<sup>40</sup> that mothers were poorly advised, that they were stigmatised by professionals and institutions, and that organisations and their staff in positions of authority stood in judgement of these women instead of respecting them.

9.51 The committee has considered the question of what the Commonwealth should apologise for. It was not directly responsible for any of the institutions at which birth and adoption took place. Does this mean it should not make an apology, since neither it nor its employees actually committed the wrongs outlined above?

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39 Human Rights Commission, *Review of the ACT Adoption of Children Ordinance 1965*, Canberra, 1986, pp 3–4.

40 *Submission 191*, pp 6–7.

9.52 For two principal reasons, the committee argues the Commonwealth should offer an apology.

9.53 Firstly, it cannot absolve itself of all responsibility for the system under which adoption took place. In Chapter 7, an exchange involving the Commonwealth Attorney General was quoted. This exchange encapsulated his own view but implicitly also the choice, made by the Commonwealth, not to make readily available to unmarried women those Commonwealth social security benefits extended to other mothers:

HON C. ROWE [New South Wales]: I think all this is tied up with not getting the mother's consent too soon and allowing her time to really make up her mind about what she wants to do.

SIR GARFIELD BARWICK [Commonwealth]: If you leave the child with the young mother too long, it builds itself into the affections of a person who has no chance of looking after it.

HON. C. ROWE: That mother has prior right morally and legally, and I think we should leave it that way.

SIR GARFIELD BARWICK: Everything but the economic ability to look after it.<sup>41</sup>

9.54 The Commonwealth was aware that unmarried women in the 1960s would experience economic pressure to have their children adopted. However, it did not choose to extend Commonwealth benefits to women to enable them to support their children themselves.

9.55 Secondly, the Commonwealth should offer an apology because it is the only institution capable of extending the apology to everyone affected. The Commonwealth's apology to Forgotten Australians was widely accepted, despite the fact that the abuse occurred in institutions that were run by state governments or private organisations. Their experience was nationwide, as was that of those affected by forced adoption. It was a national phenomenon and calls for a national response.

## Recommendation 2

**9.56 The committee recommends that the Commonwealth Government issue a formal statement of apology that identifies the actions and policies that resulted in forced adoption and acknowledges, on behalf of the nation, the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.**

## Recommendation 3

**9.57 The committee recommends that state and territory governments and non-government institutions that administered adoptions should issue formal statements of apology that acknowledge practices that were illegal or unethical,**

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41 Transcript of SCAG meeting, 16 June 1961, pp 26–27.

as well as other practices that contributed to the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.

#### **Recommendation 4**

**9.58** The committee recommends that apologies by the Commonwealth or by other governments and institutions should satisfy the five criteria for formal apologies set out by the Canadian Law Commission and previously noted by the Senate Community Affairs Committee.

#### **Taking responsibility**

9.59 An effective apology involves taking responsibility for past actions. An example was shown by the individual submission from Ms Annie Florence, who sought an opportunity for 'staff such as myself, who was involved in the adoption processes, to offer their own personal apology'.<sup>42</sup> However, it requires a government or organisation to 'demonstrate to the recipient that [it] accepts responsibility for what happened'.

9.60 A common thread that runs through the apologies is that governments and organisations were operating according to the beliefs and best practice of the time. Thus the Western Australian apology included:

[T]hat processes such as the immediate removal of the baby following birth, preventing bonding with the mother, were thought at the time to be in the mother's and the child's best interest.<sup>43</sup>

9.61 The Benevolent Society's statement conceded somewhat more, but still stated that professionals at the time had no understanding that practices might harm the people involved:

The Benevolent Society deeply regrets past practices based on policies which, while influenced by societal attitudes of the time, we now know to be deeply flawed and damaging to many unmarried women.<sup>44</sup>

9.62 The committee is concerned about such arguments that practices 'were in keeping with social attitudes, available financial support, and medical and social work knowledge and beliefs of the time'.<sup>45</sup> Institutions may be perceived as avoiding taking responsibility for their policies and the actions of the staff for whom they were

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42 Ms Annie Florence, *Submission 36*, p. 2.

43 Legislative Assembly of Western Australia, *Hansard*, 19 October 2010, p. 7881a.

44 Benevolent Society, Statement of apology—Adoption at the Royal Hospital for Women and Scarba House, 30 October 2011, [http://www.bensoc.org.au/director/newsandevents/news.cfm?item\\_id=47ABF826BCFCD9B81247C329F89E6577](http://www.bensoc.org.au/director/newsandevents/news.cfm?item_id=47ABF826BCFCD9B81247C329F89E6577) (accessed 12 February 2012).

45 *Submission 399*, pp 1–2.

responsible. Accordingly, the committee considered the question of whether the policies of the period reflected uniformly-held values and best practice.

9.63 There is no question that adoption had widespread institutional support during the period. The issue, however, is what practices were endorsed within this context.

9.64 The committee found historical evidence that suggested that protection of the rights of mothers was a significant concern amongst those involved in adoption law throughout the period in question. This was most evident in some of the material produced during the development of model laws in the 1960s, and documented in Chapters 6 and 7. It is clear from that material that attitudes amongst professionals and staff varied, and that some senior administrators worked to ensure there was no coercion of or pressure applied to mothers. This resulted in laws that explicitly made such actions an offence.

9.65 The social work profession from the late 1950s was supportive of mothers' rights to access their children prior to adoption, to be free of pressure to adopt, and to be informed about alternatives to adoption. Professional social work and child welfare manuals from New South Wales published in the late 1950s were emphatic about the seriousness of adoption as an irrevocable act, and the steps to be taken in explaining the options to a woman considering adoption for her child. These manuals refer to options to assist the mother to support the child, and say 'only when the mother has considered these [options], and still wishes to proceed with the surrender for adoption, should the consent be accepted'.<sup>46</sup>

9.66 In 1965 the Australian Association of Social Work's annual conference included a paper setting out the professional's approach to 'objective service':

There must be no moral pressure brought to bear, no condition laid down when Agency help is offered.

She must be free to see, nurse and/or nurture her baby, whether or not her final plan is adoption.

Many Agencies in this country have punitive, illegal and harmful rules regarding the unmarried mother's inalienable right to physical contact with her child, when she has decided on adoption.

Some Agencies refuse to allow the unmarried mother to see her child, nor do they tell her the child's sex. While this may be done from the best motives, these misguided people should look more carefully into the situation.<sup>47</sup>

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46 Donald McLean, *Children in Need*, Government Printer, Sydney, 1956, p. 53. See also Department of Child Welfare and Social Welfare, *Child Welfare in New South Wales*, undated (estimated 1958); 'Adoption in New South Wales', *Journal of the Department of Child Welfare*, vol. 3, no. 2 (1964), pp 15–16.

47 Mary Lewis, 'Unmarried mothers', *Australian Association of Social Workers Ninth National Conference Proceedings*, Adelaide, August 1965, p. 112.

9.67 Other professional literature from the 1960s indicates that social workers, while possibly accepting the clean break theory, also supported women being given access to their children if they requested it. In 1967 the *Australian Journal of Social Work* included articles by professionals working in the field of adoption that stated 'The natural mother's right to see, handle and nurture her child, if she so desires, often requires protecting'<sup>48</sup> and 'None of us, I think, would deny the natural mother the right to keep her child'.<sup>49</sup> A paper published in the journal of the Australian Institute of Hospital Administrators in 1968 is similarly emphatic, saying the mother 'must be aware of her legal rights and obligations and the whole matter of adoption must be most carefully discussed with her'.<sup>50</sup>

9.68 Society in general may have stigmatised pregnancy out of wedlock, and may have supported adoption. However, these broad prejudices and values are not relevant here. The committee is concerned with the decisions of professionals who led the institutions, or set policies for them. In this regard, the policies and practices espoused by the social work profession were regularly disregarded in the hospitals and maternity homes. The practices complained of by witnesses to this committee, and defended as accepted in that era, were simply not accepted by the social work profession at that time.

9.69 However, at least one professional had a different view. In 1959, Dr D. F. Lawson of the Royal Women's Hospital gave the R.D. Fetherston Memorial Lecture. In that address, he made some startling remarks that carry particular significance when viewed through the lens of the experience of the women who gave evidence to this inquiry:

The prospect of the unmarried girl or of her family adequately caring for a child and giving it a normal environment and upbringing is so small that I believe for practical purposes it can be ignored. I believe that in all such cases the obstetrician should urge that the child be adopted...The last thing that the obstetrician might concern himself with is the law in regard to adoption.<sup>51</sup>

9.70 Dr Lawson's comments are notable because they imply there was an opposing view. Dr Lawson was clearly conscious of these different views, some of them enshrined in law. His call to other professionals not only to disregard the natural mothers, but to disregard the law and pursue adoption for their babies, is an indictment of his professional conduct. But perhaps more importantly, the contrast between the

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48 Sister Mary Borromeo RSM, 'The Natural Parents', *Australian Journal of Social Work*, vol. 20, no. 1 (1967), p.11.

49 N. Mills, 'Who is the Unadoptable Child?' *Australian Journal of Social Work*, vol. 20, no. 1 (1967), p. 20.

50 Ms Pamela Roberts, 'The hospital's responsibility to the unmarried mother and her child', *Hospital Administration*, vol. 16, no. 12, p. 12.

51 *Medical Journal of Australia*, vol. II, no. 5 (1960), pp 165–166.



views of Lawson and his social worker contemporaries (not to mention the law itself) shows that there was not a single settled approach to professional practice at the time.

9.71 Dr Lawson may have been in conflict with medical colleagues in his own hospital. Janet McCalman, in her history of Royal Women's Hospital in Melbourne, documents internal divisions around the treatment of unmarried mothers in labour. These women were treated differently by the obstetricians:

This remains one of the most painful issues in the hospital's history. Those who defend the obstetricians and midwives argue that they were doing what they thought best; those who criticise see cruelty and wilful ignorance...As Australia's largest specialist women's hospital, the Women's should have been a national leader in practising and teaching the new techniques [of obstetrics] by the early 1950s. Instead [anaesthetist Kevin] McCaul found himself fighting an obstetric hierarchy that was deeply conservative and obsessed with the mechanics of labour...One progressive obstetrician later observed that 'there was an attitude that you made her sweat it out a bit more if she was unmarried, and that she could not be respectable if she got married and had a caesarean scar'.<sup>52</sup>

### *Committee view*

9.72 The committee concludes that governments and institutions in the 1960s and 1970s were presented with a range of professional advice about adoption. Little of it challenged adoption as a practice. However, a great deal of it cautioned against placing pressure on mothers to encourage the surrender of babies for adoption, and some of it explicitly drew attention to the requirements of the law, and the risks of it being violated. These protections of mothers' rights contained in laws and professional guidance were often not respected in institutions where those births took place.

9.73 It should be remembered that, while reliable statistics are hard to come by, throughout the period in question about half of unmarried mothers did not surrender their babies for adoption. Adoption was not inevitable, and this must have been well known to the professionals who each year dealt with dozens, or hundreds, of young pregnant women. Actions taken to present adoption as necessary or inevitable not only defied good practice, it defied the everyday experience of these professionals.

9.74 Accordingly, the committee believes state governments and institutions should take responsibility for past actions taken in their hospitals, maternity homes and adoption agencies. The conduct of the period was not the product of some uncontested acceptance about separating unmarried mothers from their babies. It was the product of decisions made, almost certainly at the institutional level, that decided to accept certain professional opinions, and to disregard (to varying degrees) the

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52 Janet McCalman, *Sex and Suffering: Women's Health and a Women's Hospital, The Royal Women's Hospital, Melbourne 1856–1996*, Melbourne University Press, Melbourne, 1998, p. 276.

professional guidance of social workers of the time, and sometimes the manuals of the period. Taking responsibility means taking responsibility for those choices.

9.75 The committee does not dispute that societal values and professional practice were different during the period in question. However, justifying past actions in terms of values or prevailing practice can be seen as avoiding taking responsibility for the policy choices made by institutions' leaders. It also undermines the sincerity of any apology.

## **Recommendation 5**

**9.76 The committee recommends that official apologies should include statements that take responsibility for the past policy choices made by institutions' leaders and staff, and not be qualified by reference to values or professional practice during the period in question.**

## **Reparation through concrete measures**

9.77 The Benevolent Society's statement of apology contained important positive features. In particular, it made clear statements that such events should not be repeated, and offered concrete assistance to those affected. The undertaking to take practical steps to assist those affected by past mistakes is an important one.

9.78 Different people want different measures taken. It is inevitable that an apology for past forced adoption practices will not satisfy every request for reparation. Some have called for the Commonwealth to ban adoption generally or at least intercountry adoption.<sup>53</sup>

9.79 The committee agrees that definite steps should be taken in conjunction with formal apologies. These steps could include, as in the case of the Benevolent Society's apology, offering affected people the opportunity to:

[A]ccess assistance and support from the Post Adoption Resource Centre in NSW or Post Adoption Support Queensland. Both services provide telephone support, specialist face-to-face counselling, intermediary services to assist individuals approaching birth relatives, and assistance in accessing adoption records.<sup>54</sup>

9.80 Catholic Health Australia likewise offered to assist with accessing records. Also significant, however, is for institutions to offer (as did Catholic Health) to

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53 For example, VANISH Inc., *Submission 160*, p. 5, calls for intercountry adoption to be phased out.

54 Benevolent Society, Statement of apology—Adoption at the Royal Hospital for Women and Scarba House, 30 October 2011, [http://www.bensoc.org.au/director/newsandevents/news.cfm?item\\_id=47ABF826BCFCD9B81247C329F89E6577](http://www.bensoc.org.au/director/newsandevents/news.cfm?item_id=47ABF826BCFCD9B81247C329F89E6577) (accessed 12 February 2012).

cooperate with policy processes intended to formulate government responses to assist people affected by former adoption policies and practices.

## **Recommendation 6**

**9.81 The committee recommends that formal apologies should always be accompanied by undertakings to take concrete actions that offer appropriate redress for past mistakes.**

9.82 The next chapters examine various concrete proposals to address the harm caused by forced adoption. The committee believes that every government and institution has a responsibility to match the words of apologies with appropriate actions.

## **Conclusion**

9.83 Several witnesses pointed out that the content of any apology is only part of the story in an area, such as forced adoption, where the circumstances of what happened were shrouded in secrecy and shame. There should not only be an apology; it must also be widely heard and understood. The National Council of Single Mothers and their Children said:

A further outcome of the national inquiry should include greater public awareness and an opportunity for women to finally have their voice heard by the government and their experience publically validated.<sup>55</sup>

9.84 As noted earlier, some submitters specifically insisted that the apology be published, through for example national newspapers, and be made widely known.<sup>56</sup> The committee agrees that wide dissemination of an apology is desirable to help sweep away both the secrecy and the stigma of past adoption practices. It is also desirable that everyone directly involved in past adoptions is helped to understand the circumstances in which they took place.

## **Recommendation 7**

**9.85 The committee recommends that a Commonwealth formal apology be presented in a range of forms, and be widely published.**

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55 National Council of Single Mothers and their Children, *Submission 333*, p. 13.

56 For example, Mrs Julie Noble, *Submission 362*, p. 2.



# Chapter 10

## A national framework: counselling and support services

### Introduction

10.1 Many mothers, fathers and adopted people who made submissions to this inquiry identified the need for access to counselling and mental health support services. Health professionals also told the inquiry about this need. This chapter first addresses the need for counselling, then examines options for service delivery. This chapter concludes that diversity in need would be best addressed by allowing clients a choice of quality service options: counselling, psychological or psychiatry services from professionals trained in post-adoption support, or assistance from peer support groups.

### Need for counselling and mental health support services

10.2 Many submitters to the inquiry articulated the trauma they had suffered as a result of the experience of forced adoption. The way in which this trauma emerged and how it is expressed varied between each individual. For example, some submitters suffer from the periodic, random emergence of emotions such as loss, guilt or loneliness, others experience difficulty forming and maintaining positive relationships, still others have been clinically diagnosed with Post-Traumatic Stress Disorder (PTSD):

I continue to be treated for Complex Post Traumatic Stress Disorder and feel the effects of my adoption every day.<sup>1</sup>

10.3 The submission from International Social Services (ISS) Australia stated that many of their members have unresolved issues of grief and other issues centred on identity:

The majority of our clients are in the 40 years and over age bracket and inevitably this has meant a number of them have been subject to poor past adoption practice and policies including forced adoptions, the promotion of closed adoptions and the maintenance of secrecy. This has left some mothers and fathers with unresolved issues of grief and loss and the need to find out what happened to their son or daughter, or for the person who is adopted to understand what happened and to 'fill in the missing pieces' of their life and identity, something which the majority of us have the luxury of taking for granted.<sup>2</sup>

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1 Ms Josephine Yeats, *Submission 168*, p. 3. See also, Ms Robyn Webb, *Submission 243*, p. 3.

2 International Social Service Australia, *Submission 181*, p. 1.

10.4 The Australian Institute of Family Studies' submission describes the impact of the trauma to mothers resulting from forced adoption and suggests that these impacts are consistent with other forms of significant trauma:

Apart from issues relating to contact/reunion between parents and their children who were adopted, there are other ongoing issues for those affected by past adoption practices, including problems with:

- Personal identity (e.g., the concept of 'motherhood' and self-identity as a good mother);
- Relationships with others, including partners and subsequent children;
- Connectedness with others (problematic attachments);
- Ongoing anxiety, depression and trauma.

These ongoing needs are consistent with the broader theoretical and empirical literature on other forms of trauma, such as the field of child abuse and neglect or sexual assault.<sup>3</sup>

10.5 Other studies conducted into the effects of forced adoptions also indicated that the experience of relinquishing a child is akin to grief reactions to other loss experiences, such as the death of a family member.<sup>4</sup> *Relinquishing Mothers in Adoption: Their long-term adjustment*, noted that other stressful life events compounded the grief of mothers whose children were adopted, in some cases leading to depression and the development of physical and mental illnesses. These stressful life events included changes in residence, family ostracism, and often a distressing pregnancy and birth.<sup>5</sup>

10.6 VANISH Inc's submission described the emotional turmoil experienced by mothers. It noted that a sense of shame and the perceived need to keep her pregnancy and the birth of her baby a secret prevented mothers from going through the necessary grieving processes.<sup>6</sup> Other witnesses also spoke about suppressed grief:

Until my son contacted me, I could not understand why I was feeling like that 15-year-old again or why there was the grief, the trauma.

It was not until I visited ARCS and had extensive counselling that I finally realised that it was because I was not allowed to do it back then. You were never given any option. You were given no support whatsoever. As I continued on through my counselling, I realised how manipulated I was and how I was coerced, because I thought I had literally made that choice all on my own. It was not until I found out that I had not that I then revisited all

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3 Dr Daryl Higgins, *Submission 85*, pp 4–6.

4 R. Winkler and M. van Keppel, *Relinquishing Mothers in Adoption: Their long-term adjustment*, Institute of Family Studies, Melbourne, 1984, p. 7.

5 R. Winkler and M. van Keppel, *Relinquishing Mothers in Adoption: Their long-term adjustment*, Institute of Family Studies, Melbourne, 1984, pp 7–13.

6 VANISH Inc. *Submission 160*, p. 2.

that trauma associated in on top. It was all suppressed down inside and 26 years comes bubbling to the surface, and then trying to deal with it and, not just that but other people, because you still have that fear of shame and being judged and the guilt surrounding it.<sup>7</sup>

10.7 The ongoing nature of the trauma caused by forced adoption, and the consequent need for counselling, are also evident in many submissions:

Whilst in both homes I remember the social workers all telling me how I was not capable of looking after my baby and everyone telling me the baby is better off without me and I was no good. To this day I have no ego it was abused out of me...

It broke my heart when they took my first born from me. I never recovered from the heartache. I've had bad names all my life and now finally am getting some much needed counselling. I cannot cry at all, not even at a funeral or from severe pain.<sup>8</sup>

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[T]he trauma caused me to not fulfil my career, and financial stability in my life, damaged me psychologically with many psychiatric conditions I had, and [am] enduring now.<sup>9</sup>

10.8 While many submitters sought help, not all found it. Some recounted experiences with counsellors or therapists who were not helpful:

However, therapists deny there is any pain from the loss of a child forcibly taken for adoption. To my distress, one therapist admonished me to 'blow it off' when I cried over my stolen child.<sup>10</sup>

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People say, 'Why don't you just go to a counsellor?' You just cannot go to any counsellor. It has to be a specialist counsellor. I have tried other counselling before this—even before my son contacted me—and I always left feeling worse. Why wasn't I getting over it? I have been told that many times—you need to get over it; you need to move forward; he is back in your life; what is your problem; you should be happy; it's a fairytale. It is none of those things. It is hard. It is very difficult.<sup>11</sup>

10.9 As well as mothers, adopted people who submitted to the inquiry also expressed the ongoing trauma that was caused by their adoption. In some cases, even when adopted people had a positive relationship with their adoptive parents, they

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7 Mrs Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, pp 30–31.

8 Ms Irene Kalves, *Submission 271*, pp 1–2, 5.

9 Name withheld, *Submission 38*, p. 1.

10 Ms Rosemary Harbison, *Submission 92*, p. 3.

11 Mrs Lisa McDonald, *Committee Hansard*, 1 April 2011, p. 31.

wrote of their difficulty constructing their own identity and addressing feelings of loss, abandonment and grief. In other submissions, adopted people expressed their continued suffering due to the compounded effects of struggling with identity and loss as well as a childhood marred by abuse and hardship:

I have never been able to maintain an intimate relationship which I believe is linked to being separated from my birth mother and left in hospital for six weeks...

I am a recovering alcoholic / addict and suffer from a mental illness which requires a combination of psychiatric medication. In my assessment my adoption issues contributed greatly to the onset of my illness.<sup>12</sup>

10.10 Mrs Elizabeth Hughes described the complexities of adopted persons' grief in her submission:

Many adoptees have difficulty in describing their experiences of adoption, because the trauma of loss of attachment and adoption happened before they had words to voice their feelings. It takes decades sometimes for adoptees brought up to be 'good, happy, grateful adoptees' to recognise that their adoption was abusive, the act of forced removal and forced adoption [was] abusive and to begin to speak about it. It takes time to recognise the feelings and find the words to describe them. This happens with victims of sexual, emotional and physical abuse. For victims of adoption who may have experienced all of those abuses and the abuse of adoption itself, it is sometimes doubly difficult and impossible to make a recovery. Many adoptees recognise and use the expression 'the adoption fog' to describe some of the effects of adoption they experience quite regularly and commonly. They use it to describe being stuck in a painful place they don't understand; somewhere frightening and inexplicable, which sometimes never makes sense, or sometimes makes sense after decades [of] therapy and support.<sup>13</sup>

10.11 Mr Eric Spinney identified a need for specific counselling for adopted people:

I need the support to be able to get an education or the pieces of paper stating that I know what I know. I need the support of a counselling service that actually knows what an adoptee goes through. I have spoken to counsellors before. I mean no disrespect to some of the organisations that have them, but they are a joke because they do not understand; they do not get what it does.<sup>14</sup>

10.12 White Australian Stolen Heritage (WASH), a support and lobby group formed by adopted people described the ongoing issues they face as '[m]ental health issues, physical disabilities, substance abuse, family and relationship breakdown, parenting,

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12 Name withheld, *Submission 67*, p. 2.

13 Mrs Elizabeth Hughes, *Submission 59*, p. 2.

14 Mr Eric Spinney, *Committee Hansard*, 29 April 2011, p. 4.



criminal, and problems of reunion etc.<sup>15</sup> Ms Kerri Saint, Chair, explained to the committee that the unmet need for counselling for adopted people was the catalyst for WASH's formation:

As I struggled to come to terms with the enormity of my own horrific past, I found myself connecting with other adoptees whose lives had been destroyed through adoption and who had similar stories to tell. All of us concluded that we really had nowhere to go. Counselling is expensive—some pay up to \$300 per hour for it. Many counsellors [who tried] to help had little or no knowledge of the deep trauma adoptees were suffering. The most they could do was to offer medication and years of counselling that many can ill afford. In fact, many adoptees report feeling worse and being re-traumatised when attending counselling...

Many adoptees have left groups because mothers have become frustrated and angry with them, which I believe is the result of the mother's inability to cope with their own unresolved issues of guilt and shame plus fears of possible abuses to their own child. It may be the result of the remembrance of the abuse the mother herself experienced while she was pregnant. But whatever the reason is, it is not safe for adoptees to seek help and assistance from some groups set up for adoption support. As a result of this, adoptees expressed a need for a group just for adoptees, especially for abused adoptees; hence WASH was formed.<sup>16</sup>

#### 10.13 VANISH Inc's submission also notes the trauma felt by adopted people:

Adopted people, like natural mothers, lack a concrete focus for their grief, as they usually have no conscious memory of their natural mothers. There is also no finality to their grief, as they know that they have other families somewhere and that they will always, in some way, be a part of these families. Adopted people lack any rituals to facilitate their grieving, as they were not intellectually aware at the time that the adoption took place ... Like their natural mothers, they have often not expressed their true feelings of loss and so too often the assumption has been made that those feelings did not exist. As their natural mothers appeared to 'get on with their lives' and often showed no outward signs of their inner turmoil, so adopted people often appear to be content with their lot and show no obvious signs of grieving.<sup>17</sup>

10.14 A counsellor or a support group can be vitally important for grieving mothers, fathers and adopted people to help them to take steps to recover emotionally and in some cases to lead fulfilling lives. VANISH considered that a skilled counsellor has the ability to 'identify and address the grief experienced by adopted persons, which often centres on issues surrounding identity and perceived rejection.'<sup>18</sup>

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15 WASH, *Submission 172*, p. 2.

16 Ms Kerri Saint, WASH, *Committee Hansard*, 27 April 2011, p. 35.

17 VANISH Inc., *Submission 160*, p. 3.

18 VANISH Inc., *Submission 160*, p. 3.

## Support services

10.15 It is clear that there is a real need to make counselling and support services available to all the parties affected by adoption. These services can provide opportunities for people to talk about their experiences to explore inner pain and find a capacity for inner healing, which may help improve their quality of life.

10.16 The Benevolent Society provided statistics to the committee about the uptake of counselling services by people affected by adoption. While the statistics are outdated, the society has indicated that its work continues in this field:

In total, we have had 31 073 counselling calls (to end April 1998) in the past 7 years, with an average of 54 per cent of these being from new clients. We have conducted 3720 direct counselling sessions, 324 focussed group sessions to 2420 people. Our 55 Information and Reunion Meetings have been attended by 1370 people.<sup>19</sup>

10.17 Counselling and support services can take a range of forms. Submitters to the inquiry mentioned two broad forms of available support:

- psychological and psychiatric services from trained professionals; and
- participation in peer support groups.

10.18 This section discusses these services, and suggestions made to improve their effectiveness. During the inquiry, two suggestions to improve services delivered by trained professionals were most prevalent. It was argued that these services could be delivered at lower cost, reflecting the high needs and often economically disadvantaged status of those affected by forced adoption. It was also suggested that there is a need for specialised post-adoption counselling. One way to fulfil this need would be for training in post-adoption support to be included in counselling, psychology and social work courses, ensuring that there is effective training for those who will provide specialised services to this group.

10.19 The committee also received many submissions addressing the role of peer support groups in post adoption support. Some submitters had positive experiences in peer support groups, and suggested that such groups should receive government funding. Other submitters had less positive experiences with peer support groups. These submitters considered that counselling should only be provided by trained professionals, as in some cases, participation in peer support groups had caused further distress rather than healing.

## *Professional services*

10.20 Psychological services can play a vital role in the healing process for mothers and children separated by adoption. Counselling with highly skilled mental health care workers, 'who understand and validate the complexity of trauma symptoms and

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19 Benevolent Society, *Submission 191*, p. 11.

reactions' can be of great service.<sup>20</sup> This sentiment was echoed by Mr Thomas Graham:

So in moving forward I think we need to find avenues for people—and there are avenues—where they can heal and move on and lead full and vital lives. That is not to say that, moving on, that pain or that loss or that abandonment disappears completely; but in managing it on a day-today basis you can embrace life, and I think that is where I would like to see people move towards. Let us deal with this trauma and let us deal with this pain, and, in dealing with and accepting it, in some ways we can live full and meaningful lives. It takes time and effort, but people affected by adoption are not the only segment of the population that suffers trauma in some or other way. I think that trauma would be quite similar for people who have lost people through war or motor car accidents or things like that. Yes, it is slightly different, but it is still that trauma that needs to be dealt with.<sup>21</sup>

10.21 VANISH Inc. also highlighted important role counselling can play in facilitating the healing process:

Of the benefits of seeking qualified professional help to address the loss and grief, Robinson says: 'Considering that many mothers come to [counselling] feeling guilty and ashamed about having become pregnant, about having allowed their babies to be adopted and also about the fact that they are still suffering from their loss, this [understanding and acceptance of their feelings] is often felt to be a major achievement.'<sup>22</sup>

10.22 Counselling and other professional support is particularly important during the process of re-connecting with family members. There is access in most states and territories to support services for people seeking information about parents or children,<sup>23</sup> though the services are not necessarily free.<sup>24</sup> The committee heard that this is can be a very difficult time for all parties, requiring sensitivity as well as knowledge of adoption records and the re-connecting experience.<sup>25</sup> These services can be thinly stretched, but are widely regarded as vital.

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20 V. Lindsay, 'Adoption Trauma Syndrome: Honouring the Survivors', *Proceedings from the Sixth Australian Conference on Adoption: Separation, Reunion, Reconciliation*, Brisbane, 1997, p. 242.

21 *Committee Hansard*, 28 September 2011, p. 19.

22 VANISH Inc. *Submission 160*, p. 2.

23 For example, South Australia Department for Communities and Social Inclusion, *Past adoption*, <http://www.dfc.sa.gov.au/pub/default.aspx?tabid=234> (accessed 16 February 2012).

24 The Benevolent Society, Post Adoption Resource Centre, *Counselling*, <http://bensoc.org.au/postadoption/director/counselling.cfm> (accessed 16 February 2012).

25 Ms Isobel Andrews, Coordinator, Adoption Jigsaw, *Committee Hansard*, 1 April 2011, pp. 19–20, 22.

10.23 As discussed above, many submitters need effective psychological treatment, and qualified counsellors, psychologists and psychiatrists are trained to deliver these services. Some submitters to the inquiry noted considerable improvements in their mental health as a result of accessing such services. However, other mothers, fathers and adopted people suggested that access to these services could be improved.

*Lower cost services*

10.24 Some submissions noted that progress had been achieved with trained professionals, but that this had come at considerable financial expense:

Some months after this I had a nervous breakdown; my GP referred me to a psychologist who was able to support me through a difficult 24 months. As a relinquished child and my trauma being caused by that relinquishment I could not claim any Medicare rebate. I was in the lucky position to be able to pay for this counselling. Many in my position cannot afford decent targeted help. Over the period of 24 months, I had expended approximately \$4500 for psychological counselling.<sup>26</sup>

10.25 It appears that the above submitter was not accessing government funded mental health programs, or required a level of service beyond what such programs support. There are organisations that provide inexpensive psychological support, although these may be more difficult for some people to access, for example, those who live outside metropolitan areas. Ms Susan Lunt explained that Relationships Australia offers low-cost counselling:

For the record, I am a psychologist and I work for Relationships Australia. We are a non-profit organisation and we are nationwide. We have a base in Launceston and we have a base in Hobart. We provide low-cost to no-cost counselling to anybody who seeks that out with our organisation. I understand that there has been enough trauma and grief without having to then go on to pay for counselling around those issues, and that is where our service comes in. So I would like the witnesses to know that Relationships Australia are here for you any time you want to call our office. I am happy to give our phone number and contact details to anybody who wants them.

My role there is to see people through our counselling program, which is a low-cost counselling program, as I said, and also through the Medicare system. Through us currently you can still get up to 18 sessions, despite the changes to Medicare, and there are then options to roll into other programs for long-term counselling. I am a trauma specialist; that is what I have been doing for the last 12 years. We also have other counsellors on hand who have different specialities. I understand that the cost of accessing a private psychologist is unaffordable for some people. I am here today because I acknowledge that and I want to honour the stories that I have heard today, deeply. I have been very moved and very humbled.<sup>27</sup>

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26 Mr Neil Richards, *Submission 59*, p. 1.

27 Ms Susan Lunt, *Committee Hansard*, 16 December 2011, p. 47.

10.26 However, access to low-cost services, and a lack of support through Medicare, was raised several times during the inquiry.<sup>28</sup> For example, Ms Sue McDonald suggested that counselling services should be free for 'those involved in past adoption practices'.<sup>29</sup> Some submitters considered that given their trauma had been caused by external parties—such as hospital staff, social workers, or nuns—it was up to external parties, not the person who had experienced the trauma, to pay for treatment.

10.27 The committee also heard that some of those subject to forced adoption are affected by particularly acute mental health issues. The committee has heard numerous distressing accounts of suicide, attempted suicide, poor-self esteem and other mental health issues. Some witnesses considered that given this poor health, funding should be made available to allow affected parties free medical and counselling care:

[T]heir experiences and their feelings are an appropriate response to what has happened in their lives. For me, the basic understanding is that these people have experienced a loss, that grieving is an appropriate and productive response to a loss and that they are not suffering from mental health issues in many cases.<sup>30</sup>

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[Recommendation] No. 3 is that all the natural mothers I know who had their babies taken from them have health issues. Suicides run rampant amongst us, and that includes adoptees too. I myself attempted suicide and, quite frankly, it is a miracle that I even survived. Therefore my third recommendation is that a mothers trust be set up for mothers who had children taken for adoption and that they be given a golden card which would entitle them to free medical and counselling services.<sup>31</sup>

10.28 Other witnesses suggested that there is a role for the Commonwealth to ensure that funding is available for counselling and support services:

Because the experiences of family members who were separated by adoption were so similar in every state and territory there was an appearance of a set of attitudes and behaviours which were recognisable throughout the whole of Australia. Also, mothers were often sent to other states to have their babies in order to protect them and their families from public shame, so many adoption experiences span more than one state. For these reasons, I believe that it is appropriate for the federal government to ensure that the provision of services is equitable around the country by

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28 See for example, Mrs Robyn Cohen, *Committee Hansard*, 16 December 2011, p. 25.

29 Ms Sue MacDonald, *Submission 129*, p. 31.

30 Ms Evelyn Robinson, *Committee Hansard*, 26 October 2011, p. 14.

31 Ms Judith Hendriksen, *Committee Hansard*, 1 April 2011, p. 2.

taking responsibility for ensuring that adequate and appropriate funding and training are provided in every state and territory.<sup>32</sup>

10.29 Avenues to access psychological services under the Medicare Benefits Scheme do exist.<sup>33</sup> It is possible that some submitters are not aware, or their GPs are not aware, of these programs. However, even when people do access free or subsidised services, some find that the support available is not sufficiently targeted towards the specific needs of mothers, fathers and other people affected by adoption. This causes them either to discontinue the treatment or seek psychological services privately, which can be very expensive.

#### *Training for service providers*

10.30 Many submitters suggested that counsellors should be provided with specialist training to address the needs of people affected by adoption. Dr Susan Gair recommended that a training package be introduced for current and future counsellors and mental health care workers:

Recommend and sponsor the development of a Framework and Training Packages—in consultation with representatives of all Stakeholders – that would inform present day professionals, including training packages for social workers, psychologists, psychiatrists, nurses, medical doctors, counsellors, mental health workers and volunteers (almost all of whom have national associations) who work with recipients of past adoption services who suffer the associated mental health, social, emotional, spiritual and psychological legacies.<sup>34</sup>

10.31 The Adoption Loss Adult Support (ALAS), a self-funded voluntary support group for mothers and adoptees, also noted the ongoing mental anguish that many of their members experience, and emphasised the need for adequate and free counselling:

We ask for specialist counsellors trained in Post Adoption Traumatic Stress Disorder to be available free to mothers and their stolen children, Australia wide.<sup>35</sup>

10.32 It was suggested that counselling to people affected by former forced adoption practices is a niche skill that cannot be developed without adequate exposure or training:

Those counsellors who come forward to do that very specialised and sensitive work also need to be made aware, with some kind of a training

32 Ms Evelyn Robinson, *Committee Hansard*, 26 October 2011, p. 13. See also, Ms Kerri Saint, *Submission 207*, p. 5.

33 For example, see information about *Better Access* at Department of Health and Ageing, *Better Access*, <http://www.health.gov.au/internet/main/publishing.nsf/content/mental-pubs-b-better> (accessed 20 February 2012).

34 Dr Susan Gair, *Submission 139*, pp 1–2.

35 ALAS, *Submission 226*, p. 7.

package, of what the issues are that need to be addressed—and no counsellor or psychologist, unless they have been through this process, actually knows what they are.<sup>36</sup>

10.33 Post-Adoption Resource Centre (PARC) counsellor Ms Orlaith Shield agreed that specialised training would assist mental health professionals to deliver a better service:

We at PARC agree that there needs to be more specialised counselling and that psychologists and social workers do need to be trained in universities about this specific area of work to recognise the presentation of issues. We do provide in-depth therapy and also counselling around reunion and the long-term issues of reunion.<sup>37</sup>

10.34 It was suggested that social workers and other medical professionals should receive training about post-adoption support. Papers prepared for the Sixth Australian Conference on Adoption suggested that social workers were poorly trained about the issues faced by natural mothers.

[W]ith readings in the field of adoption not being central to the professional education of social work students, there are still many practising social workers who lack a sufficient level of knowledge and skills to offer natural mothers an appropriate service.<sup>38</sup>

10.35 MacKillop Family Services considered that courses should be redesigned so as to increase the knowledge and understanding of issues experienced by mothers and their children affected by adoption:

Medical and Social Work curriculums should provide training to develop specialists in an understanding of the implications of past adoption practices, and in particular for the support of mothers who continue to suffer grief and loss as a result of separation from their babies.<sup>39</sup>

10.36 The suggestion that social workers can provide effective post-adoption support services would not be supported by all submitters. Some submitters argue that certain service providers are limited due to their own, or of similar groups' historical role in adoption. For example, many mothers who lost their children to adoption

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36 Ms Cherry Blaskett, *Committee Hansard*, 16 December 2011, p. 19.

37 Ms Orlaith Shield, *Committee Hansard*, 15 December 2011, p. 12.

38 R. Rawady, 'Partnership or Seeking Common Ground? Social Work and Self-help for Natural Mothers: Towards a process of reconciliation,' *Proceedings from the Sixth Australian Conference on Adoption: Separation, Reunion, Reconciliation*, Brisbane, 1997, p. 391.

39 MacKillop Family Services, *Submission 86*, p. 4.

mistrust social workers, or certain religious organisations because of these groups' former involvement in the very cause of their trauma.<sup>40</sup> As Ms June Smith explained:

I would like the committee to know that I would not personally endorse nor enter into any counselling with any group or organisation that is or has been associated with adoption in any way. I strongly support other mothers' belief that only trained trauma counsellors should be made available to us.<sup>41</sup>

10.37 As a consequence, the counselling and support services provided for mothers, fathers and adopted people can be more effective when they are, and appear to be, completely separate from groups that contributed to past injury. This means that it is imperative that a variety of service providers address the counselling and support needs of adopted people and their parents so that each person can choose a service and service provider they feel comfortable with.

10.38 For some people who have been subject to former adoption practices, it is only possible to trust other people who have experienced similar trauma. This has led to the establishment of several peer support groups.

### ***Peer support groups***

10.39 Peer support groups are often formed amongst people with a shared experience of having endured particular suffering. These groups are attended and often facilitated by individuals who have experienced the same or similar trauma to those seeking help. Members have a special connection through their shared testimonies and can relate to each others' life-story in a unique way that they feel counsellors and other trained professionals are not able to. Support groups also facilitate the giving of useful and practical advice borne out of real-life experiences and the wisdom of others who are on a similar path to healing.

10.40 Some studies indicate that peer support offers unique opportunities for healing:

[Peer support] has been defined by the fact that people who have like experiences can better relate and can consequently offer more authentic empathy and validation. It is also not uncommon for people with similar lived experiences to offer each other practical advice and suggestions for strategies that professionals may not offer or even know about. Maintaining its non-professional vantage point is crucial in helping people rebuild their sense of community when they've had a disconnecting kind of experience.<sup>42</sup>

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40 For more on this, cf. R. Rawady, 'Partnership or Seeking Common Ground? Social Work and Self-help for Natural Mothers: Towards a process of reconciliation,' *Proceedings from the Sixth Australian Conference on Adoption: Separation, Reunion, Reconciliation*, Brisbane, 1997, p. 389.

41 June Smith, *Committee Hansard*, pp 33, 42.

42 S. Mead and C MacNeil, *Peer Support: What Makes it Unique?* (2004), <http://www.mentalhealthpeers.com/pdfs/PeerSupportUnique.pdf> (accessed 10 February 2012).



10.41 Post adoption peer support groups are accessed by people for a number of reasons. Many people who join peer support groups do so because they have had negative experiences when seeking support from trained professionals, and feel that peer support groups provide a more understanding environment. Other members join these groups to help others, or to seek companionship from others with similar experiences:

I believe there is a great value in being in company with people who have shared the same experience as you. I think that is extremely valuable and I certainly think there is a place for that. I also think there is a place for learning from people whose experience of adoption has been different.<sup>43</sup>

10.42 Several witnesses recounted negative experiences they had had when seeking to access professional services. The committee heard that this lack of understanding extends in some cases to GPs:

I have never been offered any kind of counselling. When I talked to my doctor recently about [name removed], he said, 'I find that hard to believe'.<sup>44</sup>

10.43 Literature indicates that this kind of response can emerge as a self-protection mechanism when counsellors witness psychological trauma.<sup>45</sup> While this reaction may or may not be intentional, it could further traumatise victims of forced adoptions, denying them the validation that they require.<sup>46</sup>

10.44 Additionally, many counsellors and social workers who help mothers reunite with their sons and daughters are employed by the same institutions as those that were involved in their children's adoption. This may discourage people from using services, further traumatise the mother, or unintentionally repeat the pattern of service providers having a controlling role in reunion, just as they had in separation for adoption.<sup>47</sup>

10.45 Many submitters identified this conflict and recommended other options that they believe would help natural mothers and adoptees.

The establishment of independent organisations, with no history of involvement in adoptions, in addition to those existing organisations should

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43 Ms Evelyn Robinson, *Committee Hansard*, 26 October 2011, p. 14.

44 Ms Alexandra Bird, *Committee Hansard*, 20 April 2011, p. 109.

45 V. Lindsay, 'Adoption Trauma Syndrome: Honouring the Survivors', *Proceedings from the Sixth Australian Conference on Adoption: Separation, Reunion, Reconciliation*, Brisbane, 1997, p. 241.

46 V. Lindsay, 'Adoption Trauma Syndrome: Honouring the Survivors', *Proceedings from the Sixth Australian Conference on Adoption: Separation, Reunion, Reconciliation*, Brisbane, 1997, p. 241.

47 V. Lindsay, 'Adoption Trauma Syndrome: Honouring the Survivors', *Proceedings from the Sixth Australian Conference on Adoption: Separation, Reunion, Reconciliation*, Brisbane, 1997, p. 242.

be considered. While some of the non government organisations that were intimately involved in carrying out the forced adoptions seek to continue to work in the area and may be providing useful support to some of those affected by their past activity not all adoptees or parents are able to trust their viewpoint and accept any help offered because of the organisation's past involvement...

Most of those affected by adoption have found the support of others involved most helpful and for many may obviate the need for long term formal counselling. Unfortunately many of the people seriously affected by adoption issues have indicated that much of the counselling provided to them in the past has not been helpful indicating a need to train professionals with relevant understanding of the issues involved.

Funding for the self help organisations and support groups should be considered as well as contribution to the funding of new independent counselling and support organisations in cooperation with the States.<sup>48</sup>

10.46 The suggestion that peer support groups be funded was reiterated by some of those groups themselves. The Australian Relinquishing Mothers' Association requested that the Commonwealth provide funding for support groups, but did not specify any particular group.<sup>49</sup> ALAS suggested that groups who have provided counselling services should be compensated:

We now need financial support to help us resolve our grief, trauma and psychological damage. We also need compensation for groups like ALAS, which has never received a cent from the government. We listened to the heartbreaking accounts—I say 'accounts', not 'stories', because these are not stories, they are accounts and help these people survive.<sup>50</sup>

10.47 Origins SPSA Inc. also requested funding support, to provide services such as counselling, welfare assistance, research, information and advice, and commemorative events:

We therefore request that:

- the Federal Government fund Origins SPSA Inc as an organisation suitable to continue to provide ongoing and collaborative services to Australians separated by 'forced adoption'...
- Nation-wide financial and material assistance be granted to organisations such as Origins SPSA Inc, to support and to enable the development of other self help organizations in city, regional and outer lying areas of the states.<sup>51</sup>

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48 Mr David Anderson, *Submission 61*, pp 5–6.

49 Australian Relinquishing Mothers' Association, *Submission 196*, p. 4.

50 Ms Patricia Large, *Committee Hansard*, 27 April 2011, p. 28.

51 Origins SPSA Inc., *Submission 170, Supplementary Submission (1)*, pp 2–3.

10.48 Peer support groups play a role in assisting with post adoption support. Some members find validation and acceptance in the company of others with a similar experience, and benefit from 'healing' relationships forged within these groups. The act of 'relating', in and of itself, may be cathartic: helping mothers and adoptees to reconcile their emotions, and to understand that their reactions to trauma are normal and that the feelings they have battled with throughout their lives are similarly felt by others. VANISH emphasised the importance of peer support groups in its submission:

Many people with adoption experiences have found, in the few places where such support groups are held, that the sharing of common experiences has helped them validate their personal narrative. Effective support groups demonstrate a balance between a) the sharing and recognition of allied experiences, and b) acknowledging diversity and presenting the opportunity for the individual to explore his or her own adoption experience, i.e. they enact self-help. Support groups are most effective when in the hands of a skilled facilitator, a person capable of helping people help themselves (Coles, 2010). A counselling background may assist here.<sup>52</sup>

10.49 It is very difficult to cater for the range of support needs of a diverse group of individuals who have experienced significant trauma as a result of forced adoption. There is potential for further harm if during their search for psychological support, people revisit past trauma but are not adequately supported throughout the re-emergence of painful memories and emotions. Some people who experienced forced adoption have been retraumatised by ineffective counselling:

People say, 'Why don't you just go to a counsellor?' You just cannot go to any counsellor. It has to be a specialist counsellor. I have tried other counselling before this—even before my son contacted me—and I always left feeling worse.<sup>53</sup>

[I]f you just have counselling, for instance, it can traumatise a person who is in trauma. You will find this when you talk to women, they will relive their trauma and it will retraumatise them.<sup>54</sup>

10.50 While some people have had negative experiences with counsellors, others have had negative experiences with support groups. Some submitters consider that peer support groups are not representative of all who have been affected by forced adoption.<sup>55</sup> As psychologist Dr Denise Nisbet Wallis explained:

I am a little bit hesitant about peer support groups. They can be very good and they can be very bad...

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52 VANISH Inc., *Submission 160*, p. 4.

53 Mrs Lisa McDonald, *Committee Hansard*, 1 April 2011, p. 30.

54 Ms Christine Cole, *Committee Hansard*, 1 April 2011, p. 44.

55 Ms Brenda Coughlan, *Supplementary Submission 19*, p. 54.

I believe that it is in the best interests of people not to counsel each other when they are both traumatised.<sup>56</sup>

10.51 The committee is not aware of any research comparing the effectiveness of trauma counselling by trained professionals and the support provided by members of peer support groups.<sup>57</sup> It appears that peer support groups are not effective for everyone. For example, when asked whether she was aware of support groups, Ms Anita Welsh responded:

Like I said, I do not feel I belong anywhere, you know. I have a bit of a hard time with that.<sup>58</sup>

10.52 Recognising that peer support groups have limitations, it is important that a range of effective services are available to mothers, fathers and adopted people, on the understanding that people affected by adoption are individuals with different needs.

### *Committee view*

10.53 The committee considers that the availability of a range of psychological and psychiatric services is vital to addressing the needs of those affected by former forced adoption practices. A range of support services is imperative to addressing the diverse needs of mothers, fathers and adopted people.

10.54 The committee supports the incorporation of specialist training into the counselling, social services and psychology university curriculums to enable mental health professionals to better address the distinctive needs of victims of forced adoptions.

10.55 While acknowledging the mental health funding provided under Medicare, the committee recognises the need for additional funding to support people affected by former forced adoption practices. The committee suggests that some funding could be made available by institutions and organisations that were involved in the practices of removing children from their mothers and fathers.

10.56 While the committee is cognisant that many of these organisations would not be the best groups to provide counselling to people affected by adoption, they could demonstrate their commitment to rectifying past errors by contributing funds to which independent groups could tender to provide counselling services via a transparent process. The committee considers that a clear separation between organisational

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56 *Committee Hansard*, 15 December 2011, p. 5.

57 Shalev, Bonne and Eth note that despite the theoretical basis and widespread use of peer support groups to treat PTSD 'data concerning the efficacy of group therapy are mostly descriptive'. A Shalev, O Bonne and S Eth, 'Treatment of Posttraumatic Stress Disorder: A Review', *Psychosomatic medicine*, vol. 58, no. 2 (1996), p. 176, <http://www.psychosomaticmedicine.org/content/58/2/165.full.pdf+html> (accessed 30 January 2012).

58 Ms Anita Welsh, *Committee Hansard*, 1 April 2011, p. 14.

funding and the provision of independent counselling would be imperative to the effectiveness of any such initiative.

10.57 The committee recognises that some individuals are greatly assisted by peer support groups, and others are not. The committee believes that, for counselling purposes, government funding should be made available only to qualified counsellors. It believes that it may be appropriate to fund peer support groups for other activities, such as information-sharing, documenting of experiences, or assistance with information searches and memorial events.

### **Recommendation 8**

**10.58 The committee recommends that the Commonwealth, states and territories urgently determine a process to establish affordable and regionally available specialised professional support and counselling services to address the specific needs of those affected by former forced adoption policies and practices.**

### **Recommendation 9**

**10.59 The committee recommends that the Commonwealth fund peer-support groups that assist people affected by former forced adoption policies and practices to deliver services in the areas of:**

- promoting public awareness of the issues;
- documenting evidence;
- assisting with information searches; and
- organising memorial events;

**And that this funding be provided according to transparent application criteria.**

### **Recommendation 10**

**10.60 The committee recommends that financial contributions be sought from state and territory governments, institutions, and organisations that were involved in the practice of placing children of single mothers for adoption to support the funding of services described in the previous two recommendations.**



# Chapter 11

## Redress for former forced adoption policies and practices

11.1 Evidence submitted to the committee by those affected by former forced adoption policies and practices suggests that redress is required as an important step towards official recognition of the injustices suffered, and towards individual and community healing.

11.2 The committee considers that governments and institutions should take concrete steps toward mitigating the harm done by former forced adoption practices. These include an apology, formal grievance procedures, reforms to ensure removal of unnecessary barriers to litigation, and the provision of specialised trauma counselling for the different parties to past adoptions. Chapters 9 and 10 considered the prospect of an apology and the provision of counselling services respectively. This chapter considers the issue of compensation, the options for legal redress and the establishment of a grievance process.

11.3 Previous Senate Community Affairs Committees carried out inquiries into child migration and those who experienced institutional care, collectively known as Forgotten Australians. There were similarities in the issues that arose from these inquiries, particularly around reparation and redress schemes, and the difficulties in pursuing legal action as a form of redress. The committee considered the reports of these previous inquiries, and government responses to them, in order to inform its approach to the current issue.<sup>1</sup>

### Compensation

11.4 During its inquiries into Forgotten Australians and child migrants the committee considered the difficult issues involved in providing redress for past wrongs. The issue of monetary compensation was as contentious in those inquiries as it has been in this one. In this inquiry the issue of compensation was often linked to an apology, with the apology being seen as the acknowledgement of wrongs committed, and compensation as the tangible acceptance of responsibility by authorities. As discussed in Chapter 9, the committee has recommended that the Commonwealth Government issue a formal statement of apology that acknowledges, on behalf of the nation, the hurt and distress suffered by many mothers whose children were forcibly removed and by the children who were separated from their natural parents.

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1 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004; Senate Community Affairs References Committee, *Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports*, 25 June 2009; Senate Community Affairs References Committee, *Lost Innocents and Forgotten Australians Revisited*, 25 June 2009.

11.5 Most submissions did not raise compensation as an issue, and some thought that it would not be an effective form of assistance. During the hearing in Adelaide, Mrs Roslyn Phillips was asked about compensation, and expressed doubt about whether it would be an effective response:

Senator ADAMS: Some witnesses have been asking for compensation from the government. What do you feel about that?

Mrs Phillips: I am not sure about that. I think the same was said about Aboriginal children who had been separated from their parents. Again, some of them mentioned it in your inquiry because they were forced to put their babies up for adoption. It is very hard. Once you talk about compensation, there is a matter of proving things and when it is a long time ago, there can be court cases. I am not sure that is the best way to go. I think it would be better to provide the best kind of counselling and other assistance to help them get on with their lives.<sup>2</sup>

11.6 Many submitters told the committee of how awful the experience of forced adoption was. This led some to argue that compensation could not be effective, because it not compare with the severity of the harm experienced:

I would like to see that this sort of thing never happens to anybody else anywhere—all over the world, not just Australia. This is so wrong; this is so, so wrong. There is no way there can be in any recourse or compensation or anything else for the things that were done to us, the way we were treated. It is just so bad. We were made to feel shame. I was never allowed to talk about it. Even now with my family I am in trouble all over the place. There are adopted children in my family and, because of what I have done now in putting this submission forward, it is like I should not be around. They are treating me like something you would scrape off the bottom of your shoe and I cannot do anything about it. I do not know what to do about it, so who is going to help?<sup>3</sup>

11.7 Asked about compensation, one witness saw actions, not money, as the important form of compensation:

Also, my idea of compensation is to get it out there in the media and to let our kids know—we do not have to know because we know what went on—that we were not the bitch, the slut or the whore that met a sailor when the ship came in. In fact, I only ever met one person that that happened to. We have to let them know that they were loved and there was no choice. We do not know what the adoptive parents have told these kids or what has been rammed down their throats for how many years. They need the second story out there in the media. I do not mean talking about it on the computer or on Facebook because these people are my age. I could not even send in a

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2 Mrs Roslyn Phillips, *Committee Hansard*, 26 October 2011, p. 3.

3 Ms Carol Helmrich, *Committee Hansard*, 29 April 2011, p. 65.



submission over the internet. So that will not work. It has to be when they switch on the television and bang it is there.<sup>4</sup>

11.8 One of the commonest responses of submitters to the question of compensation was to link it to an apology, and to other concrete measures.

*The link between an apology and compensation*

11.9 Ms Marigold Hayler's submission was typical of those that expressed the connection between an apology and compensation.

In my view there should be some compensation also, as well as an apology. Apologies are excellent (think of the Truth and Reconciliation Commission in South Africa). But, also, compensation is a tangible thing.<sup>5</sup>

11.10 The significance of compensation in validating the trauma and grief associated with forced adoptions was also highlighted in another submission:

Apology—brings validation and healing

Redress—financial compensation and acknowledgement for the separation...<sup>6</sup>

11.11 In another submission, a mother argued that financial compensation and acknowledgement of her forceful separation from her child was imperative for the healing process.<sup>7</sup> Thus for some submitters, acknowledgement and financial compensation appear to be two sides of the same coin: both allow mothers to feel that they have been heard and have had their feelings of grief and anger validated.

11.12 Compensation can also reflect both the economic and intangible costs of their past experience:

I also ask for legislation for compensation for the life-long effects and costs of post-traumatic stress and unresolved grief.<sup>8</sup>

11.13 Another submitter identified compensation as key to her recovery and to the recovery of her children. Again, the act of acknowledgement and compensation appear to be intertwined:

1. Payment for grief and loss counselling.
2. Compensation for personal injury.
3. Acknowledgement of my loss.

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4 Ms Christine Burke, *Committee Hansard*, 16 December 2011, p. 44.

5 Ms Marigold Hayler, *Submission 32*, p. 2.

6 Name Withheld, *Submission 120*, p. 6. See also Name Withheld, *Submission 284*, p. 1 and Name Withheld, *Submission 341*, p. 4.

7 Ms Susan Bryce, *Submission 134*, p. 2.

8 Ms Joy Goode, *Submission 241*, p. 4.

4. As my children are not old enough to fully understand what has happened I would like them to be told about the adoption practices, and for them to gain an understanding of what has happened to me so that when I meet them they will benefit from information on adoption.
5. Compensation for my children who have had to live without each other.
6. Recognition of past adoption practises.
7. Those people responsible for unethical and illegal activities dealt with through the legal system.<sup>9</sup>

11.14 Acknowledgement, vindication and compensation for suffering was also highlighted in another submission, in which the following requests were made:

The results I would like to see come out of this Inquiry are

- That adoptees are made aware of the truth
- That mothers involved in forced adoptions be vindicated publicly
- That appropriate Psychological Treatment be made available to mothers and adoptees, ASAP
- That financial redress be made to these mothers and their children, who should be considered comparable to victims of crime...<sup>10</sup>

11.15 Of the need for natural justice, and the role compensation would play in achieving this, one submitter wrote:

These women are owed compensation as any other person who has faced injustice under criminal acts. These women are owed compensation for the illegal abduction/kidnapping of their babies and the abuse and trauma they suffered at the hands of those who were supposed to care for them.

A precedent needs to be set so that this heinous episode bordering on genocide (the taking of one group of people and giving them to another group), will never again happen in this country's history.<sup>11</sup>

11.16 Echoing the need for natural justice, another submitter argued that:

I am not a materialistic woman but I state powerfully and strongly, us mums who were treated in such a barbaric and draconian manner...ask for substantial compensation to be given for the pain and suffering and rejection by family and society at the stigma that has followed us for a lifetime since.<sup>12</sup>

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9 Ms Sharon Thornton, *Submission 76*, p. 10.

10 Name Withheld, *Submission 258*, p. 10.

11 June Smith, *Submission 83*, p. 9. Judy M, *Submission 205*, p. 4 also appealed to natural justice and asked for the involvement of the Human Rights Commission to prosecute individuals/institutions involved in forced adoptions.

12 Ms Beverley Redlich, *Submission 112*, p. 5.

11.17 One mother reasoned that compensation is essential for repairing the damage caused and the grief she has suffered:

The others who got it wrong still owe all mothers and their stolen babies an apology. What amount can repair a lifetime of grief? What amount can cushion the theft of a child by a government eugenically oriented?

I believe there are a couple of things left to do.

1. Apologise.
2. Repair and compensate for the damage...<sup>13</sup>

11.18 Other submitters sought redress, without necessarily framing it as financial compensation. The element of mental anguish was highlighted by an adopted person who felt that their separation from their natural mother dictated an isolated and lonely life, consistently feeling that they do not 'belong' with their adopted family:

I also think that government needs to look at redress as so many [lives] have been destroyed due to Forced Adoption leaving those with little ability to earn an income or have what would be considered a normal life. We all have been severely disadvantaged with Past Governmental Policies.<sup>14</sup>

11.19 Another adopted person highlighted the consistent daily pain that he battles with and the debilitating effects adoption has had on his life. When asked how the Commonwealth could best assist in trying to repair the damage inflicted he said:

I think that they should continue along the line that they are with supporting CLAN with funding and supporting Open Place. Open Place has things like they will pay for your medical provisions, and I do need medication that I have had for quite some time...

The main thing now is that anyone who has been in an orphanage warrants financial compensation. It is like they destroyed us...So I think some sort of compensation is necessary because we lost our income, our ability to earn an income. Most of us are on medications, and have been from a very early age. It is just not fair that we never had the right to earn a proper living.<sup>15</sup>

11.20 Compensation for this witness was linked to having been in institutional care. He thought other forms of assistance than compensation should be available, such as support for medical care.

11.21 Witnesses often linked the need for financial assistance to costs incurred later in life (rather than as compensation for the action of forced adoption itself). For example, one submitter informed the committee that:

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13 Ms Jan Kashin, *Submission 93*, p. 17.

14 Name Withheld, *Submission 201*, p. 2.

15 Mr Michael Bamfield, Member, Care Leavers Australia Network, *Committee Hansard*, 20 April 2011, p. 55.

Recompense would need to be addressed on a case-by-case basis. Many mothers were rendered incapable of working or holding down a job of any kind and as a consequence have not had the financial means of proper health care or professional psychiatric help to try to unpack the experience they had resulting in the damage sustained when their babies were forcibly taken from them. Financial assistance would contribute to her attaining and maintaining the semblance of a 'normal' life. Financial assistance is in some cases needed to reunite mothers with their lost children and grandchildren.<sup>16</sup>

11.22 As the examples outlined above have shown, the type of compensation sought, and the reasons for it, varied. The most common request was not for direct compensation, but for concrete actions that reflected their experience, and support in addressing the ongoing costs that they experienced as a result of past harm. This range of submitter requests, underpinned by a common call to have their voices heard, was also a feature of the inquiries into child migrants and children in institutional care.

***Redress and reparations for child migrants and children who experienced institutional care***

11.23 The policies that led to the child migrants and children in institutional care inquiries collectively involved placing upwards of 500 000 children into care for a substantial period, sometimes all of their early lives. The damage done to these children, now adults, is documented extensively in those reports. The inquiries into those episodes of Australian history showed that the placement of these children in institutions was the result of a coherent and conscientious policy at state and federal level, and a collective responsibility for the neglect and abuse that occurred in the environments into which the children were placed. In the case of *Child Migrants* the findings of the inquiry included:

State Governments were unable or unwilling to ensure the protection of the children and the Committee received evidence of shocking physical and sexual abuse and assault perpetrated by those charged with their day-to-day care.

[and]

Australian authorities ignored changes in childcare arrangements developing in the United Kingdom and many child migrants were placed in barrack-style institutions, isolated from the general community. Connection with family was severed or actively discouraged by carers. Without those connections, children lost their personal identity, culture and country.<sup>17</sup>

11.24 The committee at that time recommended the establishment of the Child Migrants Trust fund in conjunction with the United Kingdom. The purpose of the Trust was to allow affected people re-engage with their country of origin and attempt to rebuild familial links through the funding of travel between Australia and the UK.

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16 Ms Linda Graham, *Submission 258*, p. 27.

17 Senate Community Affairs Committee, *Lost Innocents: Righting the Record*, Prologue, p. xiii.

Other functions of the Trust included funding specific counselling services for child migrants and to:

develop strategies to improve former child migrants' access to mainstream services as well as to improve the capacity of mainstream service providers to respond appropriately to the needs of former child migrants.<sup>18</sup>

11.25 In the case of the *Forgotten Australians* the committee also recommended a number of diverse redress options. These included issuing an apology, the establishment of a national reparation fund, addressing the barriers to legal actions, ensuring a standardisation of church and institutional grievance procedures, and the establishment of an external complaints review mechanism.

11.26 On the issue of the establishment of a national reparation fund for *Forgotten Australians* there were issues with its implementation, particularly in relation to the role of the states and the churches who had the primary responsibility for the institutions where much of the abuse took place.

11.27 As highlighted in previous committee reports,<sup>19</sup> state redress schemes, where implemented, have fallen short of meeting the requirements and/or expectations of abuse victims and there are issues surrounding inequitable outcomes. This is attributed to the complicated bureaucratic steps involved in processing claims, which are further complicated by the fact that many victims of abuse reside in different states to where the abuses occurred.

11.28 Moreover, the state schemes have very different criteria and payout figures.<sup>20</sup> This creates inequity in the reparation schemes and often leaves victims feeling resentful and at times re-traumatised by the bureaucratic process. Moreover, some states assess payout figures in relation to the perceived seriousness of abuse suffered. This multi-tiered system is highly subjective and can further exacerbate the emotional stress applicants are already under.<sup>21</sup> Additionally, state-run redress schemes are undermined by the reluctance of victims to come forward and lodge a claim because they experienced abuse in state institutions in the first place. Consequently, many abuse victims have a mistrust of bureaucracy.

11.29 Church administered redress schemes for *Forgotten Australians* have also been problematic. During the inquiry the committee received many complaints as to

18 Senate Community Affairs Committee, *Lost Innocents: Righting the Record*, pp 203–204.

19 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004; Senate Community Affairs References Committee, *Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports*, 25 June 2009.

20 Senate Community Affairs References Committee, *Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports*, 25 June 2009, pp 212–213.

21 Senate Community Affairs References Committee, *Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports*, 25 June 2009, pp 212–213.

the deficiencies of such schemes.<sup>22</sup> For example, submissions to that inquiry expressed concern that after victims took the painful steps to submit details of abuse or neglect to the church authorities, the assessors found that the alleged abusing priest or nun was too old, senile or dead, and therefore could not respond to the allegations.<sup>23</sup> Moreover, submitters alleged that the assessors often claimed a lack of evidence for a particular form of abuse or neglect or that there was no corroborating evidence for the allegations.<sup>24</sup> It was then further alleged by submitters that the plaintiffs received pro forma letters from the relevant church authorities claiming that the matters raised had not been substantiated and no further actions would be taken.<sup>25</sup>

11.30 Additionally, many people will not use church redress schemes because of their past experiences in these institutions. Effectively, victims are required to go back to their abusers, undergo a potentially traumatic inquiry process and then ask for money. As highlighted by the *Forgotten Australians* report, this prospect is too humiliating and traumatizing for many victims.<sup>26</sup>

11.31 The Commonwealth has not funded compensation schemes in either case. In the case of children in institutional care, it argued that most recommendations were matters for the states. The Community Affairs committee then suggested that redress schemes should be set up by, and be consistent across, all states. In the case of child migrants, the Commonwealth provided funding for redress through measures focussing on support for travel, personal support schemes, and for memorial activities.<sup>27</sup>

### ***Committee view***

11.32 As outlined in Chapters 5 to 7, this inquiry concluded that the Commonwealth's role in adoption policy was (and remains) indirect, as adoption

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22 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, pp 228–229.

23 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, p. 230.

24 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, p. 230.

25 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, p. 231.

26 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, pp 228–239.

27 Dr Coral Dow and Janet Phillips, 'Forgotten Australians' and 'Lost Innocents': child migrants and children in institutional care in Australia', *Background Note*, Parliamentary Library, Canberra, 11 November 2009, pp 5–7.

legislation was a state and territory matter and the institutions where adoptions were organised were not Commonwealth controlled or operated.

11.33 The committee is also acutely aware that the Commonwealth government rejected the recommendation in the *Forgotten Australians* report for the establishment of a national reparation scheme on the grounds that it did not have direct involvement:

[The government] is of the view that all reparations for victims rests with those who managed or funded the institutions, namely state and territory governments, charitable organisations and churches. It is for them to consider whether compensation is appropriate and how it should be administered...<sup>28</sup>

11.34 In the absence of direct Commonwealth responsibility for past adoption policies and practices the committee does not agree on any recommendation to establish a monetary compensation scheme funded by the Commonwealth. That said, the committee recommends that the Commonwealth government should provide leadership in the development of a national framework to address forced adoption practices, just as it provided leadership in the 1960s in the development of model adoption laws. The national framework is referred to further in the final chapter.

11.35 The committee agreed that the primary responsibility for financial reparation should be at state and territory level and that the Commonwealth should have a coordinating role to ensure national consistency in the establishment of reparation schemes.

## **Recommendation 11**

**11.36 The committee recommends that the Commonwealth should lead discussions with states and territories to consider the issues surrounding the establishment and funding of financial reparation schemes.**

## **Formal grievance and complaint mechanisms**

11.37 While the committee has not recommended the establishment of a national compensation scheme, there are cases where individuals have been harmed by former forced adoption practices, and where those practices may have involved illegal or unprofessional conduct by state or privately-run institutions in which adoptions were arranged.

11.38 People affected by these practices should not have to rely solely on costly, difficult and sometimes inaccessible legal proceedings to seek redress. People need a mechanism to address this concern. An institution or government that had responsibility for adoption arrangements in the period from the 1950s to the 1970s should have grievance mechanisms in place. These would create a process for

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28 Senate Community Affairs References Committee, *Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports*, 25 June 2009, p. 34.

individual cases to be aired and, where appropriate, for responsibility to be established that may result in redress for affected parties. The committee heard a limited amount of evidence on this issue. Catholic Health Australia gave evidence at one of the committee's hearings in Canberra:

[S]ome mothers today continue to have grievances about the specifics of their birth experience and particularly the consent procedure that did or did not occur at the time of their child being adopted. Adoption was and is a legal responsibility of the states. The processes that exist to hear grievances about medical care and consent differ across states and they are complex and challenging to access. Again, the Community and Disability Services Ministers' Conference should develop a strategy for those who seek to have their grievances dealt with and better system navigation could be offered to help support those with grievances in dealing with this very fragmented complaints process. We in Catholic hospitals have in place a protocol to respond to those seeking these types of supports where a birth occurred within one of our hospitals. Our protocols are by no means perfect and, indeed, they work slowly, but we are least able to do our best to respond to those who come forward to us.<sup>29</sup>

11.39 The committee appreciates that many of the institutions and organisations involved in past adoptions have protocols that allow parties to access records and information about their adoption experience. This is without doubt extremely helpful to those searching. The committee would like to see every organisation establish similar protocols to deal with grievances and complaints. These protocols should involve a set of measures for redress where wrongdoing has been established.

11.40 While the committee is not endorsing any particular model for a grievance process, it notes the principles set out by the Catholic Church in Australia in its program 'Towards Healing'. The Church states that it will 'make a firm commitment to strive for seven things' when dealing with complaints:

- Truth
- Humility
- Healing for the victims
- Assistance to other persons affected
- An effective response to those who are accused
- An effective response to those who are guilty of abuse
- Prevention of the abuse<sup>30</sup>

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29 Mr Martin Laverty, Chief Executive Officer, Catholic Health Australia, *Committee Hansard*, Wednesday 28 September 2011, p. 45.

30 Catholic Archdiocese of Adelaide, Professional Standards Office, *Principles of Towards Healing*, available at: <http://www.adelaide.catholic.org.au/sites/ProfessionalStandards/dealing-with-complaints-of-abuse/towards-healing/principles-of-towards-healing> (accessed on 27 February 2012).



11.41 The Benevolent Society, describing the lessons it is seeking to learn from the past, described some similar values. It wrote about the importance of determining truth, of 'ensuring that we learn and change', and of 'not repeating the mistakes of the past'. It also emphasised the need for good policies and procedures.<sup>31</sup> The committee suggests that these would extend to effective procedures for redress.

11.42 The committee does not envisage a grievance procedure to be a replacement for legal proceedings. The committee does envisage a system whereby a complainant receives access to all of the information pertinent to their experience, and is made aware of how the relevant institution undertakes to respond in cases where the process has found evidence that wrongdoing occurred.

## Recommendation 12

**11.43 The committee recommends that institutions and governments that had responsibility for adoption activities in the period from the 1950s to the 1970s establish grievance mechanisms that will allow the hearing of complaints and, where evidence is established of wrongdoing, ensure redress is available. Accessing grievance mechanisms should not be conditional on waiving any right to legal action.**

## Legal avenues for redress

11.44 The committee has previously expressed its view about the difficulties people face in attaining redress for their pain and suffering. In the 2004 *Forgotten Australians* report, the committee expressed concern over the 'difficulties applicants have in taking civil action against the unincorporated religious or charitable organisations, and that this may be a device for deliberately avoiding legal liability and accountability.'<sup>32</sup>

11.45 The committee also argued that seeking compensation through civil action is further complicated by the various statutes of limitation legislation.<sup>33</sup> The *Forgotten Australians* report had noted that this was a continuing theme prevalent in many previous inquiries of that nature:

Just as *Bringing them home* noted legal impediments for indigenous people seeking compensation for past actions, the child migrants' inquiry found that while some former child migrants had suffered criminal assaults, various legal impediments imposed by the statute of limitations prevented them from taking legal action. Regarding physical assaults, the Forde Inquiry said that the abuses went far beyond the prevailing acceptable

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31 The Benevolent Society, *Submission 191*, p. 10.

32 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, p. 213.

33 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, pp 207–208.

limits, while the child migrant inquiry found that some children had clearly suffered physical and sexual abuse, similarly beyond anything that could conceivably be argued as normal for the time.<sup>34</sup>

11.46 Moreover, to apply for an extension of time to the statutes of limitation, proceedings may cost between \$10 000 to \$15 000 for each side, and there is no guarantee that leave to issue proceedings will be granted.<sup>35</sup> Should the applicant lose, they will be liable for not only for their own legal costs, but also the legal costs of the other side.<sup>36</sup>

11.47 However, it may be useful to note that the statutes may only operate from when an applicant first made the connection between their injuries and past abuses.<sup>37</sup> This means that people suffering from post-traumatic stress disorder may still have an opportunity to pursue legal action. However each appeal is subject to the discretion of the Courts and leave is, more often than not, refused.<sup>38</sup>

11.48 The adversarial nature of civil litigation was also cited as a barrier:

Victims often find the process of testifying and facing cross-examination painful, as it brings back memories and opens old wounds. Victims often complain that they feel as if they are the ones on trial because they are forced to 'prove' what happened to them.<sup>39</sup>

11.49 Civil action appears a less than desirable outcome for those affected by forced adoptions. Litigation is a very costly process and the chances of a successful prosecution are slim. Moreover, the adversarial nature of litigation may be very distressing for the plaintiff.

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34 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, p. 15.

35 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, p. 205.

36 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, p. 205.

37 *Stingel v Clark*, <http://www.austlii.edu.au/au/journals/MULR/2008/18.html> (accessed 2 December 2011).

38 'Mixed Messages on Sexual Assault and the Statute of Limitations: *Stingel v Clark*, The IPP "Reforms" and an argument for change,' in *The Melbourne University Law Review* 18 (2008), pp 15–16, <http://www.austlii.edu.au/au/journals/MULR/2008/18.html> (accessed 2 December 2011).

39 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, 30 August 2004, p. 208.

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*Committee view*

11.50 In cases where illegality is alleged in the adoption process the prosecution of those responsible should not be hindered by statutes of limitation. The committee urges all states and territories to examine the limitations for infringements of adoption legislation to ensure that they do not act as a barrier to litigation by individuals who were not made aware of their legal rights at the time that offences may have been committed. The committee does not want people who have been damaged by their experience of forced adoption to be damaged further by having to endure a long and bruising legal journey that may ultimately be unsuccessful due to a legal technicality.



## Chapter 12

### A national framework: access to information

12.1 Adoption may change a person's legal identity, but there are things it can never change. Mothers forever remember the baby to which they gave birth, and often adopted people grow up wondering about their family of origin, especially their natural mother whom they may never have met. Parents wonder what happened to their children and how they have grown up; children wonder whether they have siblings, or what their cultural background is, or their family's health history. And some adopted people don't wonder—because they are never told the truth about their identity—until they find out by accident the circumstances of their birth, sometimes very late in life.

12.2 When someone—whether a mother, an adopted person, or another family member—decides to find out about their relatives, it is often the beginning of a long, slow and expensive journey of discovery, and one that too often ends in disappointment. Records can be hard to locate, differ from state to state, and seldom include the names of fathers, even when they were known to the women who registering the birth. Some information is subject to vetoes from other parties, while in other cases there can be rules preventing contact, even if information is available.

12.3 Record-keeping, access to information and contact provisions are areas which are all provided for in legislation across Australia, however the extent and exact nature of the provisions vary from state to state. Many submitters suggested that this is an area in which the Commonwealth should pursue a national framework to ensure consistency, and provide better access to information about identity and adoption history.

12.4 This chapter outlines the current situation across the states with regard to birth certification, access to adoption records, and the procedures in place to govern any contact between the relevant parties after adoption has taken place.

### Registering births

12.5 The Australian Institute of Health and Welfare's annual publication *Adoptions Australia* summarises how adoption operates in Australia:

When an adoption order is granted, the legal relationship between the child and the biological parents is severed. The legal rights of the adopted child are the same as they would be if the child had been born to the adoptive parents. The legal rights that exist from birth with regard to the birth parents (inheritance and name, for instance) are removed. A new birth certificate is

issued to the child bearing the name(s) of the adoptive parent(s) as the legal parent(s), and the new name of the child, if a change has occurred.<sup>1</sup>

12.6 As a result, there generally exist for any adopted person two birth certificates. The first, often secret, and seldom held by either parent or child, is the original birth certificate. The second, and legally current, one is the certificate on which are named only the adopting parents.

12.7 Problems regarding the production and subsequent access conditions for birth certificates were raised repeatedly by submitters to the inquiry. The committee heard evidence from both adopted people and mothers saying that the truthful recording of a birth was fundamental to a person's identity:

The naming of a child is so fundamental a concern that it has been recognised by the United Nations in the Declaration of the Rights of the Child, which states in principle 3:

The child shall be entitled from his birth to a name and a nationality.

The International Covenant on Civil and Political Rights, ratified by Australia in 1996, states in similar terms, in article 24.2:

Every child shall be registered immediately after birth and shall have a name.

As an adoptee, it is hard to feel you belong when you do not look like anybody you live with, and your genetic self does not fit. Then on top of that to have certificates full of lies, mistakes and half-truths adds to the confusion of your identity. Even a prisoner of war has a serial number and a rank that define his identity, and that is respected. My son's right to have his original name on his original birth certificate was finally fulfilled last year. He knows the meaning of his original name and how that ties to his family of origin, me.<sup>2</sup>

12.8 The committee also heard evidence that the birth certificate provided validation of the woman as the child's natural mother:

I never got a birth certificate. To me, that is acknowledgement that I have given birth, that this child is mine.<sup>3</sup>

This mother thought she was going mad, and we had to have the counselling team heavily involved. She knew she had a baby but the records said she did not have a baby.<sup>4</sup>

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1 For example, Australian Institute of Health and Welfare, *Adoptions Australia 2010–11*, AIHW, Canberra, 2011, p. 1.

2 Ms Therese Hawken, Adoption Loss Adult Support, *Committee Hansard*, 27 April 2011, p. 29.

3 Ms Mary Wood, *Committee Hansard*, 20 April 2011, p. 41.

4 Dr Melisah Feeney, Link-Up Queensland, *Committee Hansard*, 27 April 2011, p. 12.

12.9 The practice of producing two birth certificates was undertaken throughout Australia. The committee heard from a number of organisations who thought that this not only caused confusion and difficulty in accessing the records, but also exacerbated the anxiety of the mothers, and children involved. Vanish Inc. suggested that the Commonwealth had a role in this practice:

The Commonwealth has condoned the Australia-wide practice of issuing two birth certificates to adopted persons. Not only does this perpetuate the lie that adopted persons are as if born to their adopted parents but also the two names create identity confusion for adopted persons.<sup>5</sup>

12.10 Adoption Jigsaw concurred with the view:

I think it is also that the Commonwealth showed no leadership in terms of any issue to do with adoption at any time. The example I gave in my submission is the issuing of birth certificates. One assumes that a birth certificate is an honest document. In the case of adoption a new certificate was issued which nominated the adoptive parents as the parents. We at Jigsaw have over the years had many people who did not discover they were adopted until they were 40 or 50 years of age, because they had a certificate that enabled them to believe that and because their parents did not tell them. It seems to me that—whether the state or the Commonwealth—there was no overseeing of birth certificates. They should not be a fiction but in fact should be an honest description of someone's birth. I guess it is very concerning that, to my knowledge, that state still exists in many states, not in Western Australia but in other states around Australia.<sup>6</sup>

12.11 According to evidence it was only the second birth certificate, produced with the names of adoptive parents on it, that was considered legally valid for the purposes of identification. This led to some submitters accusing the system of perpetuating a 'lie' that the birth certificate accurately reflected the details of the birth:

[W]ith the lie that this birth certificate implies that his adopters gave birth to him, with his birth certificate a blatant lie.<sup>7</sup>

If we are going to change things then we are going to say I am her mother in the continuum. Whether somebody else became her mother later is irrelevant. I am that child's mother. I birthed her, I registered her and I should be able to get that birth certificate. In many ways I think it is a sleight of hand almost that the birth certificate gets put away somewhere and the 'real' certificate is that of the adoptive parents—and that continues.<sup>8</sup>

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5 Mr Ian (Gary) Coles, Vanish Inc., *Committee Hansard*, 20 April 2011, p. 2.

6 Ms Isabel Andrews, Adoption Jigsaw, *Committee Hansard*, 1 April 2011, pp 19–20.

7 Ms Lynnette Kinghorn, Origins Victoria, *Committee Hansard*, 20 April 2011, p. 17.

8 Ms Kathryn Rendell, *Committee Hansard*, 27 April 2011, p. 4.

12.12 Origins Victoria proposed that the two documents be different and for both to be identifying documents:

[W]e also talked about birth certificates before. Origins lobbies for the original birth certificate and an adoption certificate and for the child or the person who was adopted to use either as legal tender.<sup>9</sup>

12.13 In her thesis *Adopted Persons' Access to and Use of their Original Birth Certificates: An Analysis of Australian Policy and Legislation*, Miriam Mandryk considered Article 8: part 2 of the United Nations Convention on the Rights of the Child was relevant to the issue. The section in question states:

Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.<sup>10</sup>

12.14 Mandryk reasoned that, as some of the actions involved in forced adoption were illegal, governments have a responsibility to help rectify issues with these children's (now adults') identity documentation – in this case, birth certification.<sup>11</sup>

12.15 The legality of actions around past adoptions is a complex issue, and the committee has not considered this at the level of individual cases. While there were many forced adoptions, some at least of which probably involved breaches of the law, not all were forced. Whatever approach is taken to rectify the situation, one of the challenges is that it must be able to be applied to the records of *all* adoptions.

### ***The inclusion of fathers on birth certification***

12.16 The issues of consent and the recording of the father's name on the birth certificate appear to be inextricably linked. The committee received evidence that if the father's name was going to be on the birth certificate then he would have had to consented to the adoption along with the mother. It was suggested that this would have caused delay and potentially substantially more work for the authorities. Origins Victoria submitted that '[s]everal of our members have mentioned that Social Workers failed to acknowledge the fathers or actively removed their names from legal and informational documentation'.<sup>12</sup>

12.17 One of the submitters who maintained that she insisted that the father's name be put on the birth certificate said:

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9 Ms Elizabeth Edwards, Origins Victoria, *Committee Hansard*, 20 April 2011, p. 26.

10 Office of the United Nations High Commissioner for Human Rights, *United Nations Convention on the Rights of the Child*, Article 8, part 2, <http://www2.ohchr.org/english/law/crc.htm#art8> (accessed 19 February 2012).

11 Miriam Mandryk, *Adopted Persons' Access to and Use of their Original Birth Certificates: An Analysis of Australian Policy and Legislation*, RMIT University, 2011, p. 12.

12 Origins Victoria, *Submission 166*, p. 59.



[T]he birth certificate was bodgied up by the mother and baby home who never put the father's name on a birth certificate—I did not know this but that was normal practice because it was easier for them to then get a signature from one woman and they could just leave the father out of it altogether. I know they deliberately did that because I was adamant his name go on the birth certificate. He visited me. He came there. Still it did not go on.<sup>13</sup>

12.18 It was commonplace for fathers' names to be omitted from birth certificates. This sometimes caused a great deal of pain and anxiety for everyone involved. The evidence the committee received is very similar to that submitted to the NSW Legislative Council's Standing Committee on Social Issues as part of their inquiry into past adoption practices. They cited testimony from the AASW setting out the procedures required for a father to be on the birth certificate:

If she wanted the father's name it would be necessary for the father to sign, I think, a statutory declaration in front of a JP to give his permission for his name to be given.<sup>14</sup>

12.19 This process of requiring a separate declaration by the father apparently resulted in a very small number of fathers being recorded on the birth certificate. The NSW Registry of Births, Deaths and Marriages gave evidence that:

[L]ess than two per cent of original birth certificates from the period up until the 1980s included the name of the birth father...[T]his may have been due to the reluctance of fathers to contact a justice of the peace, or their lack of knowledge of this requirement.<sup>15</sup>

12.20 Another mother described the indifference of adoption agencies to ensuring that this information was recorded, and highlighted the impact that the omission of the father's name ultimately had on the child:

They had to prove that the father was really the father. If the father was not willing to give information about his name and details, or whatever, to go on the birth certificate they had to then chase them to put it on, but they did not want to. It was too much trouble because they had that many babies pouring through anyhow that it was just extra work for them. But that is a common thing and a lot of adoptees will say that. Their father's name is not on it. A lot of mothers will say, 'But I told them.' That hurt my son a lot, I know.<sup>16</sup>

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13 Ms Lynne Devine, ARMS WA, *Committee Hansard*, 1 April 2011, p. 46.

14 AASW, cited in NSW Legislative Council's Standing Committee on Social Issues, *Releasing the Past: adoption practices, 1950–1998*, Sydney, 2000, p. 113, para 7.101.

15 NSW Legislative Council's Standing Committee on Social Issues, *Releasing the Past: adoption practices, 1950–1998*, Sydney, 2000, p. 113, para 7.102.

16 Ms Barbara Maison, Apology Alliance, *Committee Hansard*, 20 April 2011, p. 37.

12.21 Consistent with evidence that fathers had to take active steps to be legally recognised, Origins Victoria cited Ingles (1984) who said in his book *Living Mistakes: Mothers who consented to adoption*:

In this atmosphere of punitive moralism, fathers by nature were not fathers in law unless they placed themselves in that situation.<sup>17</sup>

12.22 Furthermore, the committee heard from the Tasmanian Government Department of Health and Human Services who said that prior to 1988 there was no process for an unmarried father to have his name put on the birth certificate which would have triggered a requirement for authorities to obtain his consent.

My understanding is that [a father's consent] was only required since the 1988 legislation. It was set out that if a man had done certain things such as put his name on the birth certificate then he had acknowledged paternity and his consent was required.<sup>18</sup>

12.23 The general adoption legislative situation in Tasmania has developed over the years, but the issue of consent before 1988 was governed by the *Adoption Act 1920*. This provided very little in way of guidance on the requirements for parental consent, other than to say:

[The Police Magistrate] shall...require the consent of the parents, whether living in or out of the state, or such One of them as is living at the date of the application, or if both the parents are dead, then the legal guardian of the child, or if one of the parents has deserted the child, then the consent of the other parent.<sup>19</sup>

12.24 It appears that fathers were often not named on birth certificates, despite their names being provided either by the fathers themselves, or by the mothers. The committee understands that this situation has sometimes caused, and continues to cause, anger and distress for all the parties concerned. The following section explores the evidence the committee received on changing birth certificates to include fathers' names where appropriate.

### ***Changing birth documentation***

12.25 A recurring request from submitters to the inquiry was that amending birth certificates and other documentation should be made much easier than it is at present. One of the submitters in Perth recommended that:

[A]dopted adults be allowed to reclaim their true identities, which show that they were born to the natural parent, and be given back their own true

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17 K. Ingles, 'Living Mistakes: Mothers who consented to adoption', Allen & Unwin, North Sydney, 1984.

18 Jane Monaghan, Tasmanian Department of Health and Human Services, *Committee Hansard*, 26 October 2011, p. 34.

19 Department of Health and Human Services, Tasmanian Government, answer to question on notice, 10 January 2012 (received 12 January 2012), p. 1.

original birth certificate stating this truth. Substitute parents should have no say in this matter. Other adults in society are allowed to make their own choices and adoptees should not be discriminated against and treated as if they were forever children. Natural fathers who do not have their names mentioned on the original birth certificate should have the right to have their names added now if they so wish.<sup>20</sup>

12.26 Another submitter described the importance of being able to change the birth certificate to accurately reflect the natural parents:

I applied for her original birth certificate to see what she would see once she applied for it, and I was furious that there was a blank at her father's name...I insisted that they change the birth certificate, which they did. The issues of records are extremely important, and I find it astounding that donor and surrogate children may be in the situation of not being able to find their parents in the future.<sup>21</sup>

12.27 MacKillop Family Services wrote that the ability to correct or amend birth documentation was one of the many unresolved issues for these mothers:

Errors in the recording of information, in particular relating to the circumstances of conception and birth of the child. Mothers have a right to correct these details, and this is an important step in their reclamation of power over the recording and circumstances of their motherhood.<sup>22</sup>

12.28 In WA the Association Representing Mothers Separated from their Children by Adoption (ARMS WA) gave evidence that Western Australian legislation has historically prohibited the surname of the mothers being kept, and had also prevented the adopted person from obtaining their original birth certificate with their original details on it:

In 1926 a further amendment was made to the act to prevent adult adoptees from discovering their original identity when they applied for a birth certificate. A provision was made so that the original register of births could not be opened for inspection except with the approval of the Registrar-General.<sup>23</sup>

12.29 The Monash University History of Adoption project confirmed this situation, outlining the legislative amendments to the WA Adoption of Children Act in the 1920s:

1921—Major amendment to introduce secrecy. Adopting parents objected to child retaining original surname. Amendment meant that adopted child assumed the adoptive parents surname but kept his/her original first

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20 Ms Judith Hendriksen, *Committee Hansard*, 1 April 2011, p. 2.

21 Ms Jennie Burrows, *Committee Hansard*, 29 April 2011, p. 61.

22 MacKillop Family Services, *Submission 86*, p. 3.

23 Ms Shirley (Esme) Moulds, ARMS WA, *Committee Hansard*, 1 April 2011, p. 51.

(Christian) names. Adoption records only open to inspection with permission of the Master of the Supreme Court

1926—Legislation to amend Adoption Act to prevent adopted child from obtaining original birth certificate. Up until then a new registration was not made on adoption—apparently a notation of the adoption was just made on the original birth entry. Hence on applying for a birth certificate adopted children might suddenly realise that they were not the children of those who adopted them, and whom they had always regarded as their parents.<sup>24</sup>

### *Committee view*

12.30 Allowing subsequent modification of a document as basic as a birth certificate should never be lightly undertaken. However the committee believes there is a strong case in this situation. The committee understands the reasoning behind the production of two birth certificates. Equally, it understands the suggestion put by Origins Victoria, which discussed the possibility of both the original birth certificate and the certificate that represents the transfer of legal responsibility to adoptive parents both be recognised as legal documents of identification by all relevant authorities.

12.31 This is a matter of some legal and technical complexity. For example, risks of security, fraud and identity theft may mean that governments would be very cautious around allowing any individual to have dual, legally valid identity documents that included different names. While the committee sympathises with the objective of ensuring that each person's complete identity is respected, it does not want to support reforms that increased the scope for fraud or identity theft.

12.32 The committee understands that, under its current adoption laws, Western Australia now uses an integrated birth certificate that records all details in one record: original parents, adoptive parents, and the adoption.<sup>25</sup> Mandryk suggests that a certificate of this nature be made available to all adopted people who apply for it.<sup>26</sup> The committee notes that this would avoid fraud and identity theft issues, and agrees that such a certificate could be made available in all jurisdictions.

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24 Monash University, *History of Adoption Project*, <http://arts.monash.edu.au/historyofadoption/records/western-australia.php>, (accessed 15 February 2012).

25 Government of Western Australia, Department for Child Protection, *Information about Adoption: Obtaining adoption information*, <http://www.dcp.wa.gov.au/FOSTERINGANDADOPTION/Pages/PastAdoptionInfo.aspx> (accessed 21 February 2012).

26 Miriam Mandryk, *Adopted Persons' Access to and Use of their Original Birth Certificates: An Analysis of Australian Policy and Legislation*, RMIT University, 2011, p. 53.

## **Recommendation 13**

### **12.33 The committee recommends that**

- **all jurisdictions adopt integrated birth certificates, that these be issued to eligible people upon request, and that they be legal proof of identity of equal status to other birth certificates, and**
- **jurisdictions investigate harmonisation of births, deaths and marriages register access and the facilitation of a single national access point to those registers.**

12.34 Adding new information to old birth certificates should also be approached with caution, but the committee believes there are cases where it is warranted. Subject to appropriate controls being in place to verify paternity, the committee supports the names of fathers being added to pre-adoption birth certificates. The process of adding a father's name should be rigorous, but not unduly costly or time consuming.

12.35 It may be appropriate that a policy governing the addition of a father's name to a certificate should be applied to certificates registering a birth to any single woman (not only those whose child was then adopted). The committee's recommendation is narrower in scope, simply because it did not receive evidence more broadly.

## **Recommendation 14**

### **12.36 The committee recommends that:**

- **All jurisdictions adopt a process for allowing the names of fathers to be added to original birth certificates of children who were subsequently adopted and for whom fathers' identities were not originally recorded; and**
- **Provided that any prescribed conditions are met, the process be administrative and not require an order of a court.**

## **Access to documentation and information management systems**

12.37 Access to adoption information, documentation and other records that accompany adoption was of great importance to submitters. Most states have relatively recently established systems around access to information that gives control to the parties involved in the adoption. However these systems are not uniform. Each state has markedly different processes and regulations. The committee examined the provisions in each jurisdiction, in some cases writing to state or territory governments seeking a clearer picture of why they chose to operate systems in a particular way. The information below draws on the work of the Australian Institute of Health and Welfare (AIHW) which collates annual data for adoptions across Australia, as well as from the states' own post adoption services.

12.38 The systems for managing the access to information and potential contact between parties vary across the states and territories. Contact vetoes for example are used in some states. As the term suggests a contact veto allows one party to an

adoption to block contact from another party to the same adoption. Contact vetoes are usually managed within a system that either periodically checks with the interested parties to ensure that a veto is still wanted, and/or involves a mediation service acting as an intermediary to liaise between parties to see if contact would be possible.

12.39 In some states such as South Australia a party to an adoption can veto identifying information being released to another party, and that state does not have any systems to manage contact. In the Northern Territory a party to an adoption can veto the release of information and contact separately.

12.40 A common feature across the country is that different parties to an adoption can have access to differing kinds of information about an adoption. Their identity (and sometimes other facts such as the age of the adopted person) will dictate whether the party receives identifying information such as name and current whereabouts; or whether they receive non-identifying information that gives details of things like occupation, or the religion that a child was raised.

12.41 A number of jurisdictions also use some form of register or message bank that allows parties to an adoption to register their wishes regarding access to information or contact. This is usually managed by a post-adoption service that also may provide mediation and counselling services in conjunction with the management of the information.

### ***New South Wales***

12.42 Access to information in NSW depends on whether an adopted person is under or over 18 years old and whether an adoption order was made before or after 1 January 2010. For adoptions that took place before 1 January 2010, an adopted person aged 18 or over is entitled to have access to his or her original birth certificate and to information about his or her origins. Natural parents also have the legal right to identifying information. If the adopted person is under 18 permission of the adoptive parents or guardian is required, and the willingness of the adopted person or natural parents to be contacted is also a factor.<sup>27</sup>

12.43 The identifying information about a person involved in an adoption and/or an adopted person's siblings can include:

- Name;
- Date of birth; and
- Address.

12.44 Documents that contain identifying information are an adopted person's:

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27 New South Wales Department of Family and Community Services, Adoption and Permanent Care Services, *Past Adoption Information*, [http://www.community.nsw.gov.au/parents\\_carers\\_and\\_families/fostering\\_and\\_adoption/adoption/past\\_adoptions/pre\\_2010.html](http://www.community.nsw.gov.au/parents_carers_and_families/fostering_and_adoption/adoption/past_adoptions/pre_2010.html) (accessed 16 February 2012).

- Original birth certificate—which has the names and addresses of birth parents and the adoptee's name at the time of their birth
- Amended birth certificate—which has the names and addresses of adoptive parents and the adoptee's name after the adoption
- Birth record and adoption order—which have the adoptee's pre and post adoptive names and the names of all of the people involved in the adoption.<sup>28</sup>

### *Contact vetoes*

12.45 Where an order of adoption was made before 26 October 1990, natural parents and adult adopted persons are able to lodge a contact veto. On the lodgement of a contact veto, it becomes an offence for the recipient of identifying information to try to make contact with the person who imposed the contact veto. Information about that person can be released if the applicant for the information gives a written undertaking not to use the information to seek contact.<sup>29</sup> Contact veto provisions do not apply to adoptions made after 26 October 1990.

### *Registers*

12.46 The Adoption Information Unit of the NSW Department of Health and Community Services manages a number of registers that people can use to convey their wishes and manage their information. These are:

#### Reunion and information register

Birth parents, adoptive parents, adoptees, their birth siblings, grandparents and relatives can use this register to contact a person from whom they were separated by adoption.

#### Contact veto register

If the adoption was made before 26 October 1990, and you are an adopted person or birth parent, you can prevent contact from the other party by registering a contact veto. The veto only prevents contact. It does not prevent the release of identifying information about the people involved in the adoption.

#### Advance notice register

Birth parents, adoptees over the age of 17 years and 6 months and adoptive parents may register if they wish to delay the release of identifying

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28 New South Wales Department of Family and Community Services, Adoption and Permanent Care Services, *Past Adoption Information*, [http://www.community.nsw.gov.au/parents\\_carers\\_and\\_families/fostering\\_and\\_adoption/adopti on/past\\_adoptions/pre\\_2010.html](http://www.community.nsw.gov.au/parents_carers_and_families/fostering_and_adoption/adopti on/past_adoptions/pre_2010.html) (accessed 16 February 2012).

29 Australian Institute of Health and Welfare 2011. *Adoptions Australia 2010–11*. Child welfare series no. 52. cat. no. CWS 40. AIHW, Canberra, Appendix B.3, pp 72–73.

information for two months, giving them time to prepare for possible contact.<sup>30</sup>

## Victoria

12.47 Victoria's *Adoption Act 1984* governs access to adoption information.<sup>31</sup> The locating and provision of family records and information on adoption is facilitated by the Victorian government's Family Information Networks and Discovery (FIND) service.

### *Access to identifying and non-identifying information*

12.48 All parties to an adoption in Victoria can apply for information from the FIND service. An adopted person is entitled to all information contained in their adoption records, including identifying information about the natural parent(s). However if the adopted person wishes to obtain information that is not part of the adoption records concerning the current whereabouts of the natural parent then permission from the natural parent is required.<sup>32</sup>

12.49 According to the information on the FIND website any party to the adoption can apply to receive a copy of the adopted person's original birth certificate and adoption records.<sup>33</sup> However, identifying information about an adopted person can only be released with the written consent of the adopted person if he or she is aged 18 or older, or of the adoptive parents if the adopted person is under 18.<sup>34</sup> Natural parents are entitled to non-identifying information about their child's placement and relevant adoptive family history, which is obtained from the adoption records.<sup>35</sup>

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30 New South Wales Department of Family and Community Services, Adoption and Permanent Care Services, *Past Adoption Information*, [http://www.community.nsw.gov.au/parents\\_carers\\_and\\_families/fostering\\_and\\_adoption/adoption/past\\_adoptions/pre\\_2010.html](http://www.community.nsw.gov.au/parents_carers_and_families/fostering_and_adoption/adoption/past_adoptions/pre_2010.html) (accessed 16 February 2012).

31 Victorian Department of Human Services, *Adoption Records – Family Information Networks and Discovery*, <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/adoption-and-family-records/adoption-and-family-information-networks-and-discovery> (accessed 16 February 2012).

32 Section 93 of the *Adoption Act 1984* (Victoria).

33 Victorian Department of Human Services, *Information for birth parents*, <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/adoption-and-family-records/adoption-and-family-information-networks-and-discovery> (accessed 16 February 2012).

34 Australian Institute of Health and Welfare 2011. *Adoptions Australia 2010–11*. Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 73.

35 Victorian Department of Human Services, *Information for birth parents*, <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/adoption-and-family-records/adoption-and-family-information-networks-and-discovery/information-for-birth-parents> (accessed 16 February 2012).



### *Contact and information register*

12.50 There is no contact veto system in Victoria. However, there are restrictions allowed on the release of identifying information, noted above, which can be placed by adopted persons. This system, operated by FIND, involves maintaining an adoption information register in accordance with the Adoption Act. The register records relevant people's wishes in relation to giving or receiving information and making contact. On registering the contact details, desires about providing information, obtaining information, or meeting other people involved in an adoption are entered onto the Adoption Information Register. All information is kept strictly confidential. Registered applicants can update or cancel the details on the Register at any time.

12.51 Adult adopted people are entitled to receive information about their origins, including the names of their natural parents if available. Other parties may only receive non-identifying information initially. The search and intermediary support that FIND provides may facilitate identifying information being exchanged between parties.<sup>36</sup>

12.52 The committee sought further information on Victoria's regulatory framework, and the state government responded explaining the reasoning behind the their current access to information provisions in the Act:

The Act places restrictions on the provision of identifying information in line with privacy considerations, and established safeguards such as seeking agreement between parties and the provision of counselling by an adoption information service.<sup>37</sup>

### *Queensland*

#### *Access to identifying and non-identifying information*

12.53 The *Queensland Adoption Act 2009* makes different provisions for the release of information depending on whether an adopted person is under or over 18 years old and whether an adoption order was made before or after 1 June 1991. The Queensland Government funds a post adoption support service (PASQ) that assists those people engaging in a search, providing information, counselling and mediation between relatives if required.

12.54 Adopted persons and natural parents are entitled to receive identifying information once the adopted person has reached 18. Queensland has specific criteria in place regarding information to and from natural fathers:

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36 Victorian Department of Human Services, *Information for birth parents*, <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/adoption-and-family-records/adoption-and-family-information-networks-and-discovery> (accessed 16 February 2012).

37 Victorian Government Department of Human Services, response to committee correspondence, received 3 January 2012, p. 2.

Identifying information can be provided to an adopted person about his or her birth father and to the birth father about the adopted person if

- he consented to the adoption, or the need for his consent was dispensed with;
- he is recorded on the birth certificate as the person's father;
- Adoption Services Queensland's records demonstrate he accepted paternity of the adopted person before or at the time of the adoption; [or]
- there is otherwise sufficient evidence to satisfy Adoption Services Queensland that the man is the adopted person's biological father.<sup>38</sup>

12.55 Eligible relatives of an adopted person or birth parent who signed an adoption consent can also obtain identifying information. This includes siblings of the adopted person who were not themselves adopted.<sup>39</sup>

#### *Contact vetoes and statements*

12.56 Queensland still effectively has a contact veto mechanism in place for adoptions that took place prior to 1991, although the commencement of the Adoption Act brought significant changes to the provision of identifying information. Even if a request for no contact is in place, identifying information can be provided, as long as the person seeking information has signed an acknowledgment indicating that they are aware that a contact statement requesting no contact is in place and that it would be an offence to contact the other person.<sup>40</sup>

12.57 The reason that there is still a veto mechanism in place is that the repealed *Adoption of Children Act 1964* made provision for 'objections to contact', with objections to contact and the disclosure of identifying information to be lodged by adopted people or natural parents affected by an adoption order made before 1 June 1991. Under new legislation that commenced in February 2010, objections to contact have been replaced with 'contact statements'. However, all objections which were in force under the repealed *Adoption of Children Act 1964* continue to operate under the new legislation. They have the effect of a contact statement specifying a request for no contact (thus operating as a contact veto).

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38 Queensland Government, Child Safety Services, Adoption Services, *Access to identifying information before an adopted person is 18 years of age*, <http://www.communities.qld.gov.au/childsafety/adoption/past-adoptions/access-to-information/access-to-identifying-information-before-an-adopted-person-is-18-years-of-age> (accessed 16 February 2012).

39 Australian Institute of Health and Welfare 2011. *Adoptions Australia 2010–11*. Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, pp 73–74.

40 Queensland Government, Child Safety Services, Adoption Services, *Access to identifying information before an adopted person is 18 years of age*, <http://www.communities.qld.gov.au/childsafety/adoption/past-adoptions/access-to-information/access-to-identifying-information-before-an-adopted-person-is-18-years-of-age> (accessed 16 February 2012).

12.58 A contact statement does not need to be renewed: it remains in place unless revoked by the person who lodged the statement or the person dies. Offence provisions with a maximum penalty or imprisonment for two years apply if an adopted person or natural parent affected by an adoption order made before 1 June 1991 contacts another party who has requested no contact.

12.59 The release of identifying information can be restricted only if the Children's Court has made an order preventing the release of identifying information where the release would pose an unacceptable risk of harm.<sup>41</sup>

## ***Western Australia***

### *Access to identifying and non-identifying information*

12.60 Natural parents, adoptive parents and adopted persons may apply for access to identifying and non-identifying information about the adoption from departmental records. Permission for access is at the discretionary authority of the departmental Chief Executive Officer. The committee did not receive evidence about how this discretion is exercised in practice.<sup>42</sup>

12.61 Identifying information may contain the names, addresses, ages or dates of birth and occupations of the people involved in the adoption when it took place. Non-identifying information is from adoption records and files, and provides details about a person who is part of an adoption but does not identify that person. This information may include a physical description, hobbies or interests, education or medical details.

12.62 Since 1995, future contact and exchange of information between parties is facilitated by an adoption plan. This must be negotiated between natural parents and prospective adoptive parents before a child is placed. The plan becomes part of the Adoption Order and operates until the adopted person becomes an adult.<sup>43</sup>

### *Outreach and messagebox system*

12.63 In Western Australia, a 'message box system' operates, which allows anonymous contact between the parties.<sup>44</sup> Information and contact vetoes in Western

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41 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 74.

42 Western Australian Department for Children Protection, *Post Adoption Information and Services*,  
<http://www.dcp.wa.gov.au/FOSTERINGANDADOPTION/Pages/PastAdoptionInfo.aspx>  
 (accessed at 16 February 2012).

43 Western Australian Department for Children Protection, *Post Adoption Information and Services*,  
<http://www.dcp.wa.gov.au/FOSTERINGANDADOPTION/Pages/PastAdoptionInfo.aspx#8>  
 (accessed at 16 February 2012).

44 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 75.

Australia were prohibited under changes to the *Adoption Act 1994* by the *Adoption Amendment Act 2003*. The amendment prohibited the placement of any new information vetoes or contact vetoes on adoptions since that date and existing information vetoes ceased to be effective from 1 June 2005.

12.64 The Western Australian Government's Past Adoption Services provides a limited outreach service or alternatively, a licensed mediator may be able to assist parties to make contact.

### ***South Australia***

#### *Access to identifying and non-identifying information*

12.65 In South Australia, adopted people aged 18 or over can have access to information in their original birth certificate, as well as the following details:

- The names and dates of birth of birth parents, if known.
- The names of any siblings who were also adopted and who have also reached 18 years of age.
- Any information held on record that relates to the birth parents and the circumstances of your adoption.
- Any message, information or item that has been left by another party.
- The authority to obtain their original birth certificate.<sup>45</sup>

12.66 Once the adopted person reaches 18, the natural parents can have access to the following information:

- The name given to the adopted person by their adoptive parents.
- The names of the adoptive parents.
- Other relevant information relating to the adoptive parents or the adopted person.
- Any message, information or item that another party has left.<sup>46</sup>

12.67 Adoptive parents also have the right to access information relating to the natural parents only if they have the consent from the adopted person. They can also access any message left for them.

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45 Government of South Australia, Adoption and Family Information Service (AIFS), *Post Adoption*, Restricting access to adoption information, <http://www.dfc.sa.gov.au/pub/tabId/234/itemId/891/moduleId/871/Getting-adoption-information.aspx> (accessed 20 February 2012).

46 Government of South Australia, Adoption and Family Information Service (AIFS), *Post Adoption*, Restricting access to adoption information, <http://www.dfc.sa.gov.au/pub/tabId/234/itemId/891/moduleId/871/Getting-adoption-information.aspx> (accessed 20 February 2012).

12.68 If a person applies for adoption information and a veto has been placed (see below), the Department can still release non-identifying information. In these circumstances, an adopted person can find out information about their adoption that does not allow the person placing the veto to be traced. Such information could be details about their natural parents interests and backgrounds found on the adoption file or messages left by their natural parents.<sup>47</sup>

### *Information veto and messaging system*

12.69 Vetoes for adoptions completed after 1989 were prohibited by the *Adoption Act 1988*. However if the adoption took place before 17 August 1989 then the parties to the adoption can place a veto on identifying information being given to other parties. A veto lasts for a 5 year period with a reminder being sent to the placer of the veto prior to its expiry. It can be revoked at any time by the party who placed it. The system also allows for a message to be left explaining the reasons for the veto.

12.70 The committee wrote to the South Australian Government seeking information on the background behind the decision to allow an effective veto to be placed on pre-1989 adoptions. The Government of South Australia responded that:

[B]ecause most previous adoptions had been conducted in secret and parties were told that their identities, including the child's, would never be revealed to one another, the South Australia Parliament introduced the concept of the veto system.<sup>48</sup>

12.71 However they also said that the veto was not necessarily insurmountable:

In practice, careful social work intervention can involve the exchange of non-identifying information (such as letters) between parties to an adoption through the Department acting as an intermediary while a veto remains in place. This sometimes leads to parties feeling comfortable enough about the other party to remove the veto and allow direct communication between them.<sup>49</sup>

12.72 Following the enactment of the *Adoption Act 1988 (SA)*, adopted people, natural parents, adoptive parents and certain relatives are legally entitled to get adoption information once the adopted person turns 18 years of age.<sup>50</sup> Adoptive

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47 Government of South Australia, Adoption and Family Information Service (AIFS), *Post Adoption, Restricting access to adoption information*, <http://www.dcsi.sa.gov.au/pub/tabid/234/itemid/869/default.aspx> (accessed 20 February 2012).

48 Government of South Australia, Department for Education and Child Development, response to committee correspondence, received 4 January 2012, p. 1.

49 Government of South Australia, Department for Education and Child Development, response to committee correspondence, received 4 January 2012, p. 2.

50 Government of South Australia, Adoption and Family Information Service (AIFS), *Searching for birth relatives*, <http://www.dcsi.sa.gov.au/pub/default.aspx?tabid=241> (accessed 16 February 2012).

parents are able to lodge a veto to restrict identifying information about themselves being released to the natural parents, with a provision that this does not prevent the adopted person and the natural parent from making contact with each other.<sup>51</sup>

## ***Tasmania***

### *Access to identifying and non-identifying information*

12.73 In Tasmania, an adopted person aged 18 or over may apply for access to his or her pre-adoption birth record and information from the adoption record. The committee assumes that this would include identifying information of a natural parent.

12.74 Natural parents, natural relatives and lineal descendants of an adopted person may apply for non-identifying information at any time or for identifying information when the adopted person is aged 18 or over. Adoptive parents may apply for non-identifying information at any time, but may receive information that includes the name of a natural parent only with the written permission of the natural parent concerned.

### *Contact veto*

12.75 The Adoption and Permanency Service provides a number of services for those looking for assistance in searching for information about an adoption, albeit at a significant cost. One of their roles is to manage the veto system.<sup>52</sup>

12.76 The right to information is unqualified, but a contact veto may be registered. Any adopted person, natural parent, natural relative, lineal descendant of an adopted person or adoptive parent may register a contact veto. Where a veto has been registered, identifying information is released only after an undertaking not to attempt any form of contact has been signed. An attempt to make contact where a veto is in force is an offence. A contact veto may be lifted at any time by the person who lodged it.<sup>53</sup>

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51 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 75.

52 Tasmanian Government, Department of Health and Human Services, *Adoption and Permanency Services*, [http://www.dhhs.tas.gov.au/service\\_information/services\\_files/adoption\\_and\\_information\\_service](http://www.dhhs.tas.gov.au/service_information/services_files/adoption_and_information_service) (accessed on 16 February 2012).

53 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 76.



## ***Australian Capital Territory***

### *Access to identifying and non-identifying information*

12.77 The ACT's *Adoption Act 1993*, provides for access to identifying information for adopted people, adoptive parents, natural parents and natural relatives where the adopted person is over 18 years. Before the *Adoption Act 1993*, no provision for accessing adoption information existed. However, the Act is retrospective, so information is now available for adoptions that occurred under the previous Act. The system allows for identifying information to be released but to say no to future contact or communication.

### *Contact veto*

12.78 The Act provides for an unqualified right to information, but also gives the adopted person aged over 17 years 6 months, an adoptive parent, natural parent, adult natural relatives, adoptive relatives and adult children or other descendants of the adopted person the right to lodge a contact veto. The veto has to refer to a specified person or a specified class of persons. On the lodgement of such a veto, it becomes an offence for the information recipient to try to make contact with the person who imposed the contact veto. Under the *Adoption Amendment Act 2009* vetoes can no longer be lodged in respect of adoption orders made after 22 April 2010.<sup>54</sup>

### *Reunion information register*

12.79 The ACT government also provides a Reunion Information Register for those who wish to register their wishes to meet other parties to their adoptions.<sup>55</sup>

## ***Northern Territory***

### *Access to identifying and non-identifying information*

12.80 Up until 1994 there was no provision in the Northern Territory for the release of information about an adoption to anyone, even those most intimately involved. In 1994 the *Adoption of Children Act 1994* was passed which provided for a more open process, with identifying information being available unless a veto has been lodged. All parties to the adoption are able to apply for:

- Non-identifying information which was recorded at the time of adoption;
- Information which identifies the person/s and their address at the time of adoption;

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54 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 76.

55 ACT Government, Department for Health and Community Services, Adoptions and Permanent Care Unit, *Information on post order support services*, [http://www.dhcs.act.gov.au/\\_data/assets/pdf\\_file/0013/11704/DHC1628\\_adoptinfopostsupport.pdf](http://www.dhcs.act.gov.au/_data/assets/pdf_file/0013/11704/DHC1628_adoptinfopostsupport.pdf) (accessed at 16 February 2012).

- Documentation which will allow an adopted person to obtain their original birth certificate.<sup>56</sup>

12.81 Aboriginal and Torres Strait Islander childcare agencies are authorised to counsel for the purpose of supplying identifying information.

12.82 The NT Government Department of Children and Families Adoption Unit provides information and counselling to adopted people, natural parents, adoptive parents, and former State Wards.<sup>57</sup>

#### *Contact and information veto system*

12.83 A three-year renewable veto may be lodged by the adopted person or natural parents with respect to adoptions finalised before 1994. There is no veto provision with respect to adoptions finalised under the new Act.<sup>58</sup> The veto can apply to:

- identifying information to another party to the adoption;
- contact with that party; or
- both contact and identifying information.

#### *Committee view*

12.84 From its review of adoption information laws, the committee has observed areas of cross-national consistency. Most jurisdictions operate systems that, for adoptions that occurred since the law reforms (typically in the 1990s), allow full exchange of information once an adopted person is over 18, and allow managed exchange of information before they reach that age.

12.85 For adoptions that took place under the older laws, most jurisdictions, while improving information accessibility for older adoptions, have found ways to maintain restrictions that reflect the past secrecy provisions associated with 'closed adoption'. Every jurisdiction has a mechanism to prevent contact between parties if one of more party wants to prevent it.

12.86 In one important area, however, there are significant differences. Three jurisdictions—Victoria, South Australia and the Northern Territory—have systems that allow some parties to prevent others from obtaining identifying information, not just preventing contact. In each of these jurisdictions, the arrangements are slightly different. Victoria's system was the one about which the committee received most evidence, perhaps reflecting the large number of adoptions that took place in that state, and therefore the large numbers of mothers affected.

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56 NT Government, Department of Children and Families, *Adoption Services*, <http://www.childrenandfamilies.nt.gov.au/Adoption/> (accessed 16 February 2012).

57 NT Government, Department of Children and Families, *Application for Identifying Information*, <http://www.childrenandfamilies.nt.gov.au/Adoption/> (accessed 21 February 2012).

58 Australian Institute of Health and Welfare 2011, *Adoptions Australia 2010–11*, Child welfare series no. 52. cat. no. CWS 40, AIHW, Canberra, Appendix B.3, p. 77.



12.87 As noted earlier, under Victoria's rules, an adopted person can put in place a restriction on the adoption information register that prevents natural parents from obtaining identifying information about their child. Origins Victoria were critical of this provision, asking:

why a mother was discriminated against, when for decades adoptive families knew her identity, and the current legislation disenfranchises her right of identifying information of the child she carried and birthed... Origins argue that to deprive a mother of 50-80 years of age of identifying information relating to the person she carried and birthed is not only a veto it is cruel.<sup>59</sup>

12.88 Veto provisions that have similar effects exist in South Australia and the Northern Territory, however in those jurisdictions vetoes must be renewed regularly to maintain their validity. In Victoria this is not required.

12.89 In Victoria, the proportion of cases in which natural parents fail to obtain identifying information about their child is relatively high, despite the efforts of Family Information Networks and Discovery (FIND) in search and mediation services. This is in part because a natural parent cannot get identifying information if FIND fails to locate the adopted person.<sup>60</sup> Analysis of 2009-10 figures supplied by FIND shows that, of the 70 cases where a natural parent registered and sought information about their child,<sup>61</sup> the majority of these cases did not result in the exchange of identifying information, with over a third of them because the adopted person refused to release it, or because they could not be found.<sup>62</sup>

12.90 In contrast, the proportion of cases affected by South Australia's veto system appears smaller (though the figures are not directly comparable). South Australia stated that

For approximately the last 5 years, only about 1 to 2 per cent of the applications for adoption information each year have encountered a veto by the other party. At 30 June 2011, 439 adoption information vetoes were in place in South Australia.<sup>63</sup>

12.91 The total number of South Australian vetoes represents only a few percent of adoptions that took place in that state prior to the introduction of the new legislation in

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59 Origins Victoria, *Submission 166*, pp 42–43.

60 Although there is an option to see a court order to release the information.

61 The Victorian data reported on 94 cases in all. The committee's analysis excluded six that had not been concluded, two who had returned to the service for counselling, six who registered with the service but did not then proceed, and ten who left contact details but appeared not to actively request information. This left 70 cases.

62 Correspondence from Victorian Department of Human Services, 23 December 2011, received 3 January 2012.

63 Correspondence from South Australian Department for Education and Child Development, 28 December 2011, received 4 January 2012.

1989. Although there are differences between South Australia and Victoria, in both cases the number of parents affected by the vetoes is relatively small. Evidence received by the committee shows that the impacts on those parents is however very great.

12.92 Victoria argued that its system was the result of a careful balancing of rights, including to privacy:

The Act placed restrictions on the provision of identifying information in line with privacy considerations, and established safeguards such as seeking agreement between parties and the provision of counselling by an adoption information service. With regard to adopted persons, however, the best interests of the child were seen to override such considerations, and identifying information was to be provided to adult adopted persons as a right.<sup>64</sup>

12.93 The committee notes that Victoria maintains a relatively high level of support for parties to adoptions seeking to reconnect with their families. It recognises that Victoria was the first jurisdiction to reform adoption laws, and is to be commended for its early work in this area. However now, a quarter of a century on, it may be time for them to be further reformed.

12.94 Decisions about the information disclosure provisions in Victoria's new legislation were based on the paramountcy of the rights or interests of the child. However, an adopted person over the age of 18 is no longer a child. At that point, the basic legal principle should be that they take on the rights and responsibilities of an adult. These rights and responsibilities extend to the right to manage contact with other people, but also the responsibility of accepting that individuals cannot control all information held about themselves by others, particularly other relatives.

12.95 The committee notes that NSW, Queensland, Western Australia, Tasmania and the ACT between them include the majority of Australia's post-war adoptions. None of these jurisdictions allows an adult party to an adoption to be prevented from having identifying information about other adults. The committee did not receive evidence to suggest that the policies in these jurisdictions caused significant problems for affected individuals. Those problems that it heard about appeared associated with a lack of counselling or preparation, rather than with the receiving of the information itself.

12.96 In any case, the committee questions whether the principle of paramountcy of the interests of the child provides relevant guidance in forced adoption cases, for two reasons. First, in many cases of forced adoption the mother was herself a child at the time. Both were children, and both may seek to claim protection of their rights as children. Second, where adoption was forced, it is not clear why that unethical use of

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64 Correspondence from Victorian Department of Human Services, 23 December 2011, received 3 January 2012.

force should be allowed to attenuate the interests of one party (the natural mother) as against the interests of others. In short, the committee does not believe that paramountcy of the rights or interests of the child can provide meaningful policy guidance on how to frame information and contact provisions of adoption laws as they pertain to people who are now adults.

12.97 The active assistance of a service such as FIND in Victoria can sometimes overcome initial resistance that a party to an adoption may have to the release of identifying information. South Australia, when discussing its information vetoes, observed that:

On the whole the current veto provisions, along with careful Social Work assistance for those parties affected by them, have provided good outcomes for parties to adoptions in this State. In most cases the best possible balance is achieved of allowing access to information to those who seek it and respecting the right to privacy for parties who wish to maintain it.<sup>65</sup>

12.98 Effective support by post-adoption services is valuable, but the problematic cases remain those where 'allowing access to information to those who seek it' *conflicts* with 'the right to privacy for parties who wish to maintain it'. The South Australian correspondence provided no information that would show why this conflict should be resolved through an information veto rather than, as in most states, through a contact veto.

12.99 Finally, the committee is aware of concerns around some current 'contact statements' in Queensland, particularly the grandfathered 'objections to contact' that were lodged in conjunction with the first tranche of law reform in Queensland, in 1990-91. The concerns have arisen because of controversy around the passage of the legislation, and the discovery of some fraudulent forms objecting to contact. These forms had been improperly placed on the files of adopted children, preventing contact by natural parents, without the adopted children knowing that the form had been placed there.<sup>66</sup>

12.100 There were also specific concerns around the placement of contact vetoes affecting Indigenous adopted persons:

Another thing that Link-Up finds sometimes is that the no-contact statements that were put in place at the time of the adoption are actually not the wishes of the birth parent. They were the wishes of the authorities that were taking the child away. There was an idea that if they severed the relationship completely, the child would never know their Indigenous parentage.<sup>67</sup>

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65 Correspondence from South Australian Department for Education and Child Development, 28 December 2011, received 4 January 2012.

66 Ms Linda Bryant, Origins Queensland, *Committee Hansard*, 27 April 2011, pp 47-49; Dr Trevor Jordan, Jigsaw Queensland Inc., *Committee Hansard*, 27 April 2011, p. 55.

67 Mrs Rosemary Rennie, *Committee Hansard*, 27 April 2011, p. 14.

12.101 Several witnesses called for Queensland's system regulating contact to be reviewed or abolished.

Mrs Rennie: ...Another recommendation that Link-Up would like to make is for a review of no contact statements. I think there is importance in protecting the privacy of birth parents but there is a responsibility to a child as well so that they can have the full understanding of who they are.

Dr Feeney: We definitely, like you, were pointing out about reviewing them. We have talked to Jigsaw about this, but there are a lot of examples where they were not made with the fullest possible understanding.

CHAIR: They were also made a long time ago.

Mrs Rennie: And they just carried on every time the legislation changed.<sup>68</sup>

12.102 ALAS stated:

In 1991 another injustice was done by the Queensland government in setting up the veto system. This system needs to be abolished and there need to be a full investigation into those vetoes that are still current. Some innocent adoptees are waiting for their natural mothers to contact them, when the adoption department has told the mothers that the adoptees do not want contact with them—a waste of valuable time for the sick and aged innocent parties.<sup>69</sup>

12.103 The committee supports harmonisation of adoption legislation across Australia, to provide consistency in the accessibility of information for all parties involved in adoption. It believes changes need to be pursued in some jurisdictions that will allow access to all information, identifying or otherwise, for all parties once they have reached adulthood. The committee is concerned that indefinite contact vetoes (or their effective equivalents, however described) may be inappropriate, and that making them open-ended increases the risks of them being improperly placed, or simply incorrect, such as is the case on some Queensland files.

## Recommendation 15

**12.104 The committee recommends that the Community and Disability Services Ministers Conference agree on, and implement in their jurisdictions, new principles to govern post-adoption information and contact for pre-reform era adoptions, and that these principles include that:**

- **All adult parties to an adoption be permitted identifying information;**
- **All parties have an ability to regulate contact, but that there be an upper limit on how long restrictions on contact can be in place without renewal; and**

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68 Mrs Rosemary Rennie, *Committee Hansard*, 27 April 2011, p. 14.

69 Ms Patricia Large, Adoption Loss Adult Support, *Committee Hansard*, 27 April 2011, p. 27.

- **All jurisdictions provide an information and mediation service to assist parties to adoption who are seeking information and contact.**

### *Non-government organisations*

12.105 Not all adoption information is contained in the official adoption records held by state authorities. The hospitals, homes or institutions that the women gave birth in, or spent time in as part of their birthing experience, also hold important information such as medication received, or the circumstances that caused the mother to consent to the adoption.

12.106 Information from non-government agencies (NGOs), homes and institutions can often be much more difficult to obtain than officially state held records. Many of the institutions are not operating anymore and the information recorded at the time has been lost. Even if records have been located, their quality can be variable, providing little useful information.

12.107 The NGOs responsible for the operation of institutions that provided care to mothers and babies seem to be in agreement that the exercise of trying to obtain records has been a trying process for all those involved in past adoptions. They agreed that steps should be taken to ease the burden for those attempting to access their records. During the committee's hearing in Hobart the Salvation Army gave evidence that illustrated the problems faced in trying to obtain information:

In today's terms I would call them rather scant records. We have a record of every person who was admitted, when they came in, when they left and when the child was born. There are lot of incomplete records as to the outcome of the birth—whether the child was adopted or taken home with them. We have some idea of the length of time that they remained in the hospital, but that is the limit of the records.<sup>70</sup>

12.108 In response to questions on what kind of medical information would have been recorded in the records that the Salvation Army did have, Major McClimont responded:

[B]ased on information that I have from what are really large ledgers that go back to 1923. The information indicates—certainly, from that changeover brief—that they kept cards on every resident. Now, those cards are lost. I only have a number of cards that indicate what might have been the medical practices at the time. So we have a number of examples of that, but we do not have a complete set of records at all.<sup>71</sup>

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70 Major Graeme McLimont, The Salvation Army Tasmanian Division, *Committee Hansard*, 16 December 2011, p. 10.

71 Major Graeme McLimont, The Salvation Army Tasmanian Division, *Committee Hansard*, 16 December 2011, p. 10.

12.109 In their written submission Catholic Health Australia accepted that the process of trying to obtain records for homes that they were responsible for has not always been as easy as it should have been:

Our anecdotal experience is that those who do come forward find accessing their records, making contact with their family members, seeking counselling for their grief, and seeking to remedy any wrongs overly complex.<sup>72</sup>

12.110 The Benevolent Society saw the need for uniform access to information and adoption records. In their submission they recommended that the:

Commonwealth Government drives the national standardisation of legislation and regulation about access to adoption information.<sup>73</sup>

12.111 They also sought to make the access and search process as easy as possible by removing the costs of information and records access by ensuring that all records and information are made available and that:

That the Commonwealth encourage all state government Registries to consider removing the additional costs associated with applications for birth certificates for those affected by past adoption practices.<sup>74</sup>

12.112 South Australia has a helpful link on its adoption services websites that provides substantial historical information on the homes and institutions that cared for mothers and babies.<sup>75</sup> However this type of portal does not appear to be available in other states.

### ***Committee view***

12.113 The Committee is strongly supportive of proposals to make access to information as easy as possible to those affected by adoption. Following the committee's inquiries into Forgotten Australians and Former Child Migrants, the Commonwealth provided funding to improve access to family tracing and support services for these groups. This service includes a Find and Connect website, which provides information and raises awareness about past policies.<sup>76</sup> The site is also linked into state and territory services of a similar nature. A service like Find and Connect, applied at both the national and state and territory levels, could assist in record

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72 Catholic Health Australia, *Submission 279*, p. 3.

73 The Benevolent Society, *Submission 191*, p. 3.

74 The Benevolent Society, *Submission 191*, pp 9–10.

75 Government of South Australia, Department for Communities and Social Inclusion, *Historical information about homes or institutions (South Australia)* <http://www.dcsi.sa.gov.au/pub/tabid/234/itemid/884/default.aspx> (accessed 2 February 2012).

76 See website homepage, Find and Connect Australia, <http://www.findandconnect.gov.au/> (accessed 2 February 2012).

location, particularly for adoption information other than birth and adoption certificates.

### **Recommendation 16**

**12.114 The committee recommends that the Commonwealth provide funding to extend the existing program for family tracing and support services to include adoption records and policies, with organisations such as Link-Up Queensland and Jigsaw used as a blueprint.**

### **Recommendation 17**

**12.115 The committee recommends that the states and territories extend their Find and Connect information service to include adoption service providers.**

### **Recommendation 18**

**12.116 The committee recommends that non-government organisations with responsibility for former adoption service providers (such as private hospitals or maternity homes) establish projects to identify all records still in their possession, make information about those institutions and records available to state and territory Find and Connect services, and provide free access to individuals seeking their own records.**

### ***Barriers involved in searching for information***

12.117 The committee took evidence from a number of post adoption organisations who assist in locating information about births and subsequent events. This includes information relating to the identification of the parties involved such as the mother, father, the adopted person or the adoptive parents, as well as immediate and extended families. Complicating factors surrounding access to information can include uncertainty about when and where the adoption took place, and the situation where an adopted person has two birth certificates that are sometimes not accessible to those conducting the search.

12.118 MacKillop Family Services also emphasised the barriers in place for those trying to obtain information about an adoption:

Difficulties in accessing records and negotiating with the range of organisations that hold the records. There are separate procedures for accessing the actual adoption record and for accessing the record relating to accommodation prior to and post adoption.<sup>77</sup>

12.119 Link-up Queensland described the trauma that engulfed a mother during her search for the records of the birth of her child:

This mother thought she was going mad, and we had to have the counselling team heavily involved. She knew she had a baby but the

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<sup>77</sup> MacKillop Family Services, *Submission 86*, p. 3.

records said she did not have a baby. It was only last week that we finally told her that we found the name that her child was named. She said it was such a relief because she said, 'I have gone through life thinking I was dreaming the fact that I went through labour.' That's a pretty big thing to go through that and then think it never happened. We were going to the authorities and there was no trace of the woman having a baby, even at the hospital.<sup>78</sup>

12.120 They also discussed the impact on the organisation conducting the searches of:

[T]he fact that the name was changed on the birth certificate. In terms of man-hour power—we are a very small unit as an organisation—you can spend weeks, months and up to years trying to track and trace. It gets to the point where you almost need to say, 'Find every single baby that was born in that hospital and trace them to where they ended up and whether there is some connection.'

The things that you are looking at are quite critical to this organisation. They take enormous resources and we only have one research officer to handle all this sort of stuff and who works four days a week. It is pretty huge resource wise.<sup>79</sup>

12.121 Adoption Jigsaw (WA)'s written submission discussed how the laws have developed in various states, but indicated that support services and the administration of records need to adequately support the objectives of the legislation for providing information:

An often essential part of healing is to obtain information and for many reconnection with birth parent(s) or child. This has been legally recognized since 1987, when Victoria became the first state to allow adopted people to obtain their original birth certificate and consequently the ability to start a search. Each state has followed suit and enshrined the principle of a right to information about one's own family, however these laws have not been supported by appropriate access to records.<sup>80</sup>

12.122 The committee heard many comments from submitters about the costs and time involved in trying to obtain information about their own births and the adoption of their own children.

## **Recommendation 19**

**12.123 The committee recommends that the Community and Disability Services Ministers Conference, in consultation with non-government organisations that had responsibility for adoption services and hospitals, agree on and commit to a statement of principles for access to personal information, that would include a**

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78 Dr Melisah Feeney, Link-Up Queensland, *Committee Hansard*, 27 April 2011, p. 12.

79 Dr Melisah Feeney, Link-Up Queensland, *Committee Hansard*, 27 April 2011, p. 12.

80 Adoption Jigsaw, *Submission 146*, p. 2.



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**commitment to cheaper and easier searches of, and access to, organisational records.**



# **Chapter 13**

## **Where to from here?**

13.1 The committee has read the accounts of submitters, heard from witnesses, and conducted its own research in order to ascertain the role of the Commonwealth in former forced adoption policies and practices. In Chapter 1, the committee examined adoption in Australia, and summarised how adoptions generally took place in the 1950s and 1960s. In Chapter 2, the committee traced the history of attitudes towards adoption in Australia in the early part of the twentieth century, which led to adoption becoming widespread by the 1960s. Chapters 3 and 4 have given voice to the often heartbreaking accounts of people personally affected by former forced adoption policies and practices.

13.2 Chapters 5, 6 and 7 have addressed the role of the Commonwealth with respect to social security and adoption legislation. The committee has found that the Commonwealth did have a coordinating role in the development of uniform adoption legislation, but not a direct role in implementing such legislation. Further, the committee has found that the Commonwealth had little role in social security payments to unmarried mothers prior to 1973.

13.3 The committee identified a role for the Commonwealth in addressing the consequences of former forced adoption policies and practices in Chapter 8. While recognising that nothing can negate the pain and suffering of many of the submitters and witnesses, the committee has recommended that a national framework be developed by the Commonwealth, states and territories through the Community and Disability Services Ministers Conference (CDSMC).

13.4 Chapters 9 to 12 have recommended that a national framework should be established that includes the following elements to address the needs of those directly affected:

- That there should be public acknowledgement that past adoption practices forced some parents to give up their children for adoption against their will, including formal statements of apology from the Commonwealth, state governments and non-government institutions that administered adoptions.
- That all extant organisations involved in past adoptions establish grievance procedures and appropriate redress where wrongdoing has been established.
- That specialist support services should be available to people affected by past adoption practices, and that professionals delivering these services should be appropriately trained.
- That natural parents and their children should, as adults, have free access to all their personal records, regardless of the state or territory in which the adopted person was born, the adoption took place, or the parties subsequently resided, and that no-one's consent be required for such access to be granted.

13.5 The committee considers that a national framework that adequately addresses the above issues will in part address the consequences of former forced adoption policies and practices.

13.6 The committee also suggests that the findings of this report be utilised for the additional purposes explained below.

### **Public acknowledgement and awareness**

13.7 The committee has recommended that public apologies be made by governments, religious organisations, hospitals and others involved in former forced adoption policies and practices. Such apologies will need to be well-publicised in order to have benefit.

13.8 During the course of this inquiry the committee visited the National Museum of Australia exhibition commemorating the experiences of the Forgotten Australians. The Museum's project was not just the exhibition—it includes a blog which acts as a repository for accounts, experiences and artefacts from people's lives in institutions. The committee recommends that a similar project be developed to catalogue people's experiences of forced adoption.

### **Recommendation 20**

**13.9 The committee recommends that the Commonwealth commission an exhibition documenting the experiences of those affected by former forced adoption policies and practices.**

13.10 The committee notes that there are a significant number of untold accounts of people's experiences of forced adoption and considers that the Commonwealth government should explore ways that these accounts could be heard. In this respect the committee welcomes the funding for the Australian Institute of Family Studies (AIFS) *National Research Study on the Service Response to Past Adoption Experiences*. The committee is keen to see an ongoing commitment by the Commonwealth government to ensuring that information and data collection continues in this area.

13.11 The committee has recommended that funding for counselling be restricted to those with relevant professional qualifications. However, in recognition of the role of peer-support groups in supporting people affected by former forced adoption policies and practices, the government should consider engaging such groups to assist with public awareness strategies. Peer-support groups could play a role in information-sharing, the documenting of experiences or providing assistance to organise memorial events.

## Intercountry adoption in Australia

13.12 Although it was beyond the terms of reference for this inquiry, the committee received some evidence on intercountry adoptions, and the scope for the issues raised during this inquiry to recur. VANISH stressed their concerns:

We see the same mistakes being made with intercountry adoptions that were made back in the sixties and seventies with local adoptions. That is an issue for us, and the Commonwealth has a real role to play there because it obviously has the primary responsibility for conventions and dealing with other countries in relation to adoptions, even if the adoptions are under a state's legislation. There are things like Australian aid and the way that is used to help countries deal with issues around separation from family and reconnection with family—or indeed helping intercountry adoptees reconnect with their families in the future, which is a role that the Commonwealth can look at.<sup>1</sup>

13.13 Professor Cuthbert from Monash University commented 'that we are just setting up precisely the same circumstances for the future.'<sup>2</sup> Professor Cuthbert also discussed the central role for the Commonwealth government:

The Commonwealth is not in the situation that it is with respect to domestic adoption and being able to stand back and say, 'Well, this is a state and territory matter', because from day one the Commonwealth was involved in brokering arrangements because intercountry adoption is a mode of family formation but it is also a mode of migration.<sup>3</sup>

13.14 In 2009–2010, there were 222 intercountry adoptions in Australia, representing 54 per cent of all Australian adoptions. In Australia, intercountry adoption is conducted in accordance with the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (the Convention).<sup>4</sup> Australia ratified the Convention on 25 August 1998 and it came into force on 1 December 1998. The Convention is implemented by the *Family Law Act 1975* and the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1988*.<sup>5</sup>

13.15 As explained in Chapter 8, the Attorney-General's Department chairs two working groups of the Community and Disability Services Advisory Council with

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1 Mr Leigh Hubbard, Chair, VANISH, *Committee Hansard*, Wednesday 20 April 2011, p. 4.

2 Professor Denise Cuthbert, Professor of Sociology, Monash University, *Committee Hansard*, Wednesday 20 April 2011, p. 74.

3 Professor Denise Cuthbert, Professor of Sociology, Monash University, *Committee Hansard*, Wednesday 20 April 2011, p. 59.

4 Hague Conference on Private International Law, *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, 1 May 1995, <http://www.hcch.net/upload/conventions/txt33en.pdf> (accessed 24 March 2011).

5 The Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998 is also relevant.

respect to intercountry adoption in Australia, the *Harmonisation Working Group* and the *Alternative Models Working Group*. While it is outside of the scope of this inquiry, the committee recommends that the relevant Ministers bring the findings of this report to the attention of the Advisory Council, and ensure that such findings are taken into consideration during deliberations of the working groups.

13.16 In addition, the committee considers that the findings of this report should also contribute to discussions about local adoptions.

### **National Principles of Adoption**

13.17 The committee sought information about current reforms being undertaken around adoption. FAHCSIA explained that the Community and Disability Services Ministers Conference (CDSMC) agreed to establish the Enhancing Adoption as a Service for Children Working Group with the following terms of reference:

- to examine research and best practice evidence to explore the future role of adoptions in meeting the needs of children and families;
- to review the National Principles in Adoption with a view to reaching agreement on a set of principles to guide adoption practice which achieves the best possible outcomes for children and families;
- within the context of a reviewed set of National Principles in Adoption and to achieve better outcomes for children, to achieve a more consistent approach to adoption matters across jurisdictions; and
- to report back to the Community and Disability Services Ministers Conference about the outcomes of the group.<sup>6</sup>

13.18 FaHCSIA also stated that the Working Group were planning to review the 'National Principles of Adoption' that have been in place since 1997. New Principles are expected to be considered by Ministers in the first half of 2012. According to FaHCSIA, the Principles are being reviewed because:

Significant changes have occurred in adoption regulation and practice in Australia since 1997 and a number of national forums have identified the need to review and redraft the Principles.<sup>7</sup>

13.19 All aspects of adoption policy are being discussed by appropriate ministers at both Commonwealth and state level. As has been done in the past, the committee maintains an ongoing interest in the subjects of its inquiries. The committee would expect to be updated on the development of the Principles.

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<sup>6</sup> FaHSCSIA, Reply to correspondence, *Information about the Enhancing Adoption as a Service for Children Working Group and the National Principles in Adoption*, January 2012, p. 1.

<sup>7</sup> FaHSCSIA, Reply to correspondence, *Information about the Enhancing Adoption as a Service for Children Working Group and the National Principles in Adoption*, January 2012, p. 1.

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## Learning from the past

13.20 More than 400 submitters and witnesses wrote to or appeared before the committee, expressing a range of hopes about what the inquiry could achieve. Many implored the committee to ensure that the painful experiences they had endured would not happen again, and that circumstances leading to a need for a similar inquiry in the future would not eventuate.

13.21 The committee recommends a number of possible measures to ensure that the experiences of forced adoptions are not repeated. Firstly, a public awareness campaign would help to increase knowledge of this past injustice. Secondly, the committee suggests that relevant Ministers provide this inquiry's results to the Community and Disability Services Ministers' Advisory Council intercountry adoption *Harmonisation Working Group* and the *Alternative Models Working Group* for their consideration. As intercountry adoption is now the most common form of adoption in Australia, it would be appropriate that these working groups, as part of their current deliberations, take the results of this inquiry into account in their deliberations. Thirdly, the committee considers that its recommendations should be taken into consideration in the development of the new Principles of Adoption being undertaken under the auspices of the CDSMC.

### *Committee view*

13.22 The committee has found that the Commonwealth had a limited role in the former forced adoption policies and practices. However, the committee considers that the Commonwealth should take a lead role in addressing their consequences. As part of its lead role, the Commonwealth should take the earliest opportunity to apologise publicly to those affected by former forced adoption policies and practices.

13.23 Finally, the committee urges all those involved in current adoption practices to take the findings of this report into account to ensure that the mistakes of the past are never repeated.





# **APPENDIX 1**

## **Submissions received by the committee**

- 1** Ms Margaret Nonas
- 2** Mrs Hannah Spanswick
- 3** Confidential
- 4** Ms Tracey Lee
- 5** Ms Carol Helmrich
- 6** Confidential
- 7** Confidential
- 8** Ms Lynette Kinghorn
- 9** Confidential
- 10** Ms Colleen Grubb
- 11** Ms Teresa
- 12** Ms Juliette Clough
- 13** Ms Judith Hendriksen
- 14** Mrs Barbara Maison
- 15** Ms Valerie Linow
- 16** Ms Margaret Whalan
- 17** Ms Linda Ngata
- 18** Ms Rosalie Wilson
- 19** Ms Brenda Coughlan

- 20** Ms Maree Laird
- 21** DES Action Australia-NSW
- 22** Name Withheld
- 23** Ms Evelyn Robinson
- 24** Name Withheld
- 25** Ms Therese Parish
- 26** Ms Lily Arthur
- 27** Mr Geoffrey Gong
- 28** Name Withheld
- 29** Mrs Janette Lord
- 30** FamilyVoice Australia
- 31** Ms Julie Morgan-Thomas
- 32** Ms Marigold Hayler
- 33** Mrs Rosa Feakes
- 34** Ms Alison Mylne
- 35** Confidential
- 36** Ms Annie Florence
- 37** Monash University
- 38** Name Withheld
- 39** Ms Suzanne Hammond
- 40** Mrs Colleen Ewen
- 41** Mr Joseph Soll

- 42 Name Withheld
- 43 Ms Maureen Melville
- 44 Mrs Loma Pincham
- 45 Name Withheld
- 46 Confidential
- 47 Ms. Fiona Sutherland
- 48 Ms Anita Welsh
- 49 Name Withheld
- 50 Angela
- 51 Ms Janet Kaye
- 52 Confidential
- 53 Ms Frances Howard
- 54 Ms Terri Wallace
- 55 Ms Kathleen Maczkowiack
- 56 Mrs Lyn Anderson
- 57 Name Withheld
- 58 Name Withheld
- 59 Mrs Elizabeth Hughes
- 60 Ms Janette Mills
- 61 Mr David Andersen
- 62 Ms Patricia Williams
- 63 Ms Allison Bosley

- 64** Confidential
- 65** Confidential
- 66** Confidential
- 67** Name Withheld
- 68** Mr Neil Richards
- 69** Origins Canada
- 70** Family Inclusion Network of New South Wales
- 71** Baby Scoop Era Research Institute
- 72** Ms Cassandra Cooke
- 73** Ms Lorraine Hassett
- 74** Ms Jacalin Sherman
- 75** Margaret
- 76** Ms Sharon Thornton
- 77** Ms Laraine Murray
- 78** Ms Emily Wolfinger
- 79** Ms Margaret Hamilton
- 80** Ms Josephine LittleHawk
- 81** Mr Murray Legro
- 82** Ms Kim Menta
- 83** Ms June Smith
- 84** Mr Graeme Reynolds
- 85** Australian Institute of Family Studies

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<b>86</b>	MacKillop Family Services
<b>87</b>	Confidential
<b>88</b>	Truth and Reconciliation for the Adoption Community of Korea (TRACK)
<b>89</b>	Name Withheld
<b>90</b>	Ms Janice Konstantinidis
<b>91</b>	Ms Robyn Cohen
<b>92</b>	Mrs Rosemary Harbison
<b>93</b>	Ms Jan Kashin
<b>94</b>	Ms Jennie Burrows
<b>95</b>	Name Withheld
<b>96</b>	Ms Annette Winnett
<b>97</b>	Ms Patricia Large
<b>98</b>	Ms Margaret Watson
<b>99</b>	Confidential
<b>100</b>	Confidential
<b>101</b>	Mrs Louise Greenup
<b>102</b>	Confidential
<b>103</b>	Confidential
<b>104</b>	Mr John Hughes
<b>105</b>	Confidential
<b>106</b>	Ms Robin Turner
<b>107</b>	Auntie Wendy Kelly

- 108** Ms Lorraine Griffith
- 109** Ms Annette Wilson
- 110** Name Withheld
- 111** Confidential
- 112** Mrs Beverley Redlich
- 113** Leonie Horin
- 114** Name Withheld
- 115** Australian Journal of Adoption
- 116** Ms Judith Burkin
- 117** Ms Veronica Rushbrooke
- 118** Ms Spring Blossom
- 119** Name Withheld
- 120** Name Withheld
- 121** Ms Linda Bryant
- 122** Name Withheld
- 123** Name Withheld
- 124** Mrs Elizabeth Edwards
- 125** Mr Brian FitzGerald
- 126** Ms Marie Coleman
- 127** Confidential
- 128** Ms Karen Saville
- 129** Ms Sue MacDonald

- 130** Ms Amelia Smith
- 131** Name Withheld
- 132** Mrs Kirstin Ross
- 133** Mr Erik Spinney
- 134** Ms Susan Bryce
- 135** Name Withheld
- 136** Mr John Rutherford
- 137** Mr Michael O'Meara
- 138** Anne Burrows
- 139** Dr Susan Gair
- 140** Ms Therese Pearson
- 141** Name Withheld
- 142** Name Withheld
- 143** Mr Gary Coles
- 144** Confidential
- 145** Ms Marlene Grant
- 146** Adoption Jigsaw
- 147** Ms Barbara Hardy
- 148** Mr Thomas Graham
- 149** Ms Susanne Finch
- 150** Ms Marilyn Murphy
- 151** Mrs Rosemary Neil

- 152** Mrs Sue Atkinson
- 153** Ms Margaret Hatton
- 154** Confidential
- 155** Mrs Debbie Leaf
- 156** Ms Maria Neasham
- 157** Ms Ann Allpike
- 158** Name Withheld
- 159** Ms Lina Eve
- 160** VANISH Inc
- 161** Mr Jonathan Gourlay
- 162** Confidential
- 163** Mr Dallas McDermott
- 164** Ms Kelly Wright
- 165** Mrs Carmel Ipock
- 166** Adoption Origins Victoria Inc.
- 167** Kaye
- 168** Ms Josephine Yeats
- 169** Atheist Exit Counselling Support Australia
- 170** Origins Supporting People Separated by Adoption Incorporated
- 171** Mrs Elizabeth Brew
- 172** White Australian Stolen Heritage
- 173** Ms Cherylyn Harris



<b>174</b>	Ms Joyce Osborne
<b>175</b>	Mrs Bernadette Wallman
<b>176</b>	Mrs Patricia Gall
<b>177</b>	Ms Victoria Fitzpatrick
<b>178</b>	Mrs Lynette Hughes
<b>179</b>	Confidential
<b>180</b>	Confidential
<b>181</b>	International Social Service Australia
<b>182</b>	Name Withheld
<b>183</b>	Ms Marlie McMarshall
<b>184</b>	Ms Kathryn Rendell
<b>185</b>	Miss Gabrielle Mittermayer
<b>186</b>	Confidential
<b>187</b>	Name Withheld
<b>188</b>	Jigsaw Queensland Inc.
<b>189</b>	Confidential
<b>190</b>	Mrs Margaret McGrath
<b>191</b>	The Benevolent Society
<b>192</b>	Ms Darelle Duncan
<b>193</b>	Link-Up Queensland
<b>194</b>	Name Withheld
<b>195</b>	Name Withheld

- 196** Australian Relinquishing Mothers' Association (ARMS)
- 197** Name Withheld
- 198** Mrs Gabrielle McGuire
- 199** Ms Lee-Anne Doyle
- 200** Mrs Lorraine Vince
- 201** Name Withheld
- 202** Name Withheld
- 203** Adoption Research and Counselling Service (ARCS)
- 204** Confidential
- 205** Judy M
- 206** Name Withheld
- 207** Ms Kerri Saint
- 208** Name Withheld
- 209** Ms Leanne Brennan
- 210** Ms Lynne Devine
- 211** Confidential
- 212** New South Wales Government
- 213** E. Shirley Moulds
- 214** Mr Anthony Nix
- 215** Ms Rita Carroll
- 216** Confidential
- 217** Mr Wesley Rush

- 218** Miss Susan Treweek
- 219** Name Withheld
- 220** Confidential
- 221** Ms E. Mittermayer
- 222** Origins Queensland SPSA
- 223** Ms Christine Cole
- 224** Women's Electoral Lobby Australia
- 225** Name Withheld
- 226** Adoption Loss Adult Support (ALAS) (QLD)
- 227** National Stolen Generations Alliance
- 228** Name Withheld
- 229** Mrs Mary Dunn
- 230** Confidential
- 231** Name Withheld
- 232** Name Withheld
- 233** Dr Clare Graydon
- 234** Mrs Catherine Edwards
- 235** Ms Kate Howarth
- 236** Mr Mark Hartley
- 237** Name Withheld
- 238** Ms Carolyn Brown
- 239** Confidential

- 240** Ms Jane Carroll
- 241** Ms Joy Goode
- 242** Confidential
- 243** Ms Robyn Webb
- 244** Canadian Council of Natural Mothers
- 245** Ms Margaret Larsen
- 246** Ms Helen Walker-Mcready
- 247** Confidential
- 248** Name Withheld
- 249** Mrs Glenys Campbell
- 250** Name Withheld
- 251** Ms Rosemary Bateman
- 252** Women and Children's Branch, FaHCSIA
- 253** Alliance for Forgotten Australians
- 254** Public Interest Advocacy Centre Ltd
- 255** Name Withheld
- 256** Name Withheld
- 257** Australian Adoptee Survivors
- 258** Ms Linda Graham
- 259** Ms Juanita Ellis
- 260** Ms Juanna Fatouros
- 261** Ms Samilya Muller

- 262** Mr Maurice Wills
- 263** Ms Teri Hay
- 264** Name Withheld
- 265** Ms Janet McHugh
- 266** Mr Charles Leon
- 267** Ms Gemma Dore
- 268** Ms Kim Lawrence
- 269** Ms Margaret Collins
- 270** Mrs Susan Evans
- 271** Ms Irene Kalves
- 272** Ms Carole Griffiths
- 273** Name Withheld
- 274** Ms Allison Nye
- 275** Ms Suzanne Kier Himmelreich
- 276** Mr Craig Miller
- 277** Mr Phil Evans
- 278** Ms Raelene Trusler-Steer
- 279** Catholic Health Australia
- 280** Ms Debra Wellfare
- 281** Origins Scotland
- 282** Ms Isabell Collins
- 283** Name Withheld

<b>284</b>	Name Withheld
<b>285</b>	Name Withheld
<b>286</b>	Name Withheld
<b>287</b>	Name Withheld
<b>288</b>	Dr Denise Wallis
<b>289</b>	Confidential
<b>290</b>	Ms Lynette Hinings-Marshall
<b>291</b>	Ms Pamela Carmichael
<b>292</b>	Ms Deborah Snelson
<b>293</b>	Confidential
<b>294</b>	Name Withheld
<b>295</b>	Mr Dan Lancaster
<b>296</b>	Mr Paul Carberry
<b>297</b>	Confidential
<b>298</b>	Adoptees of Color Roundtable Adopted and Fostered Adults of the African Diaspora
<b>299</b>	Helping Adoptees Lead Together
<b>300</b>	KUMFA and Dandelions
<b>301</b>	Nodutdol for Korean Community Development
<b>302</b>	United Adoptees International
<b>303</b>	Council of Single Mothers and their Children (Victoria)
<b>304</b>	Confidential

<b>305</b>	Confidential
<b>306</b>	Confidential
<b>307</b>	Name Withheld
<b>308</b>	Ms Jane Snelson
<b>309</b>	Confidential
<b>310</b>	Name Withheld
<b>312</b>	Confidential
<b>313</b>	Name Withheld
<b>314</b>	Name Withheld
<b>315</b>	Confidential
<b>316</b>	Ms Jan Stewart
<b>317</b>	Mrs Virginia Perry
<b>318</b>	Confidential
<b>319</b>	Name Withheld
<b>320</b>	Ms Pamela Kenyon
<b>321</b>	Ms Dorothy Macpherson
<b>322</b>	Ms Sandra Parker
<b>323</b>	Name Withheld
<b>324</b>	Ms Marion Simms
<b>325</b>	Confidential
<b>326</b>	Ms Mary King
<b>327</b>	Name Withheld

- 328**     Name Withheld
- 329**     Mrs Gabrielle Phillips
- 330**     Name Withheld
- 331**     Ms Judith Vickers
- 332**     Ms Judith Newcombe
- 333**     The National Council of Single Mothers and their Children
- 334**     Ms Debra Thurley
- 335**     Department of Education Employment and Workplace Relations
- 336**     Name Withheld
- 337**     Dr Don Tustin
- 338**     Name Withheld
- 339**     Confidential
- 340**     Name Withheld
- 341**     Name Withheld
- 342**     Mrs Madeleine Schwer
- 343**     The Benevolent Society
- 344**     Name Withheld
- 345**     Ms Charmaine Williamson
- 346**     Name Withheld
- 347**     Mr David Jefferys
- 348**     Intentionally Left Blank
- 349**     Richard Hughes and Associates



- 350** Ms Helen Lindstrom
- 351** Confidential
- 352** Name Withheld
- 353** Ms Cherry Blaskett
- 354** Ms Janys Allan
- 355** Ms Margaret Singline
- 356** Ms Laurie Watkins
- 357** Name Withheld
- 358** Ms Margaret Bishop
- 359** Name Withheld
- 360** Mr Brian Jenkins
- 361** Confidential
- 362** Mrs Julie Noble
- 363** The Australian Association of Social Workers (AASW)
- 364** Ms Vera Pickford
- 365** Name Withheld
- 366** Ms Betty Mills
- 367** Miss C Garvie
- 368** Ms Muriel Dekker
- 369** Ms Robyn Hossack
- 370** Ms Tammy Hamers
- 371** Ms Pamela

- 372** Confidential
- 373** Ms JB (nee Williams)
- 374** Ms Judy Osbourne
- 375** Confidential
- 376** Uniting Care Wesley Adelaide Inc and Uniting Church of South Australia
- 377** Confidential
- 378** Confidential
- 379** Mrs Jenny Marshall
- 380** Confidential
- 381** Ms Barbara Pendrey
- 382** Ms Fay Roberts
- 383** Mr Brian Cherrie
- 384** Mr Steve Deliloucas
- 385** Ms Evelyn Mundy
- 386** Confidential
- 387** Ms Kim Taylor
- 388** Name Withheld
- 389** Ms Tamara Furey
- 390** Ms Gemma Black
- 391** Mrs Kerri Small
- 392** Ms Christine Burke
- 393** Mrs Thelma Adams

- 394** Mrs Ruth Orr
- 395** Ms Isabel Field
- 396** The Salvation Army Tasmania
- 397** Name Withheld
- 398** Confidential
- 399** Royal Women's Hospital, Victoria
- 400** Dr Raie Goodwach
- 401** Name Withheld
- 402** Ms Angela Brown
- 403** Name Withheld
- 404** Name Withheld
- 405** Ms Miriam Stevenson
- 406** Name withheld
- 407** Ms Gai Mailer
- 408** Mr Wayne Lewis
- 409** Ms Deanne Barone
- 410** Confidential
- 411** National Adoption Awareness Week
- 412** Ms A Allitt
- 413** Name Withheld
- 414** Karin Mcrae
- 415** Mrs Monica Craig

- 416** Ms Lois Hamilton
- 417** Ms Merrial B Ehm
- 418** Mr Stephen Albany

## **APPENDIX 2**

### **Public hearings**

*Friday, 1 April 2011 - Perth*

#### **Witnesses:**

**Ms Judith Hendriksen - Private capacity**

**Ms Anita Welsh - Private capacity**

#### **Adoption Jigsaw**

Ms Ann Allpike, Administrator and Researcher

Ms Isabel Andrews, Coordinator/Counsellor

#### **Adoption Research and Counselling Service**

Mrs Jennifer Newbould, Counsellor/Manager

Mrs Lisa McDonald, Committee Member

#### **Apology Alliance**

Ms Christine Cole, Convenor

**Ms Suzanne MacDonald - Private capacity**

#### **Association Representing Mothers Separated from their Children by Adoption WA**

Ms Shirley Moulds, Founding Coordinator

Ms Carmel Ipock, Coordinator

Ms Lynne Devine, Secretary

*Wednesday, 20 April 2011 – Melbourne*

**Witnesses:**

**VANISH Inc**

Mr Leigh Hubbard, Chair

Mr Ian Coles, Manager

**Origins Victoria**

Mrs Jean Argus, Secretary

Mrs Elizabeth Edwards, Convenor

Mrs Patricia Gall, Committee Member

Ms Lynette Kinghorn, Treasurer

**Apology Alliance**

Mrs Barbara Maison, Member

**June Smith – Private capacity**

**Mrs Mary Wood – Private capacity**

**Mr Michael O'Meara – Private capacity**

**Care Leavers Australia Network**

Mr Michael Bamfield, Member

**Monash University**

Professor Denise Cuthbert, Professor of Sociology

**Professor Marian Quartly – Private capacity**

**History of Adoption Project**

Professor Shurlee Swain, Chief Investigator

**MacKillop Family Services**

Ms Jenny Glare, Manager, Heritage and Information Service

**Ms Brenda Coughlan – Private capacity**

**Women's Electoral Lobby Australia**

Dr Kathleen MacDermott, Member, Victoria Executive

**Forum**

Ms Lily Arthur, Coordinator, Origins Inc.

Ms Alexandra Bird, Private capacity

Ms Spring Blossom, Private capacity

Ms Susan Bryce, Private capacity

Ms Isabell Collins, Private capacity

Ms Leonie Horin, Private capacity

Mrs Dorothy Kowalski, Treasurer, ARMS (VIC) Inc

Mr Roy Legro, Private capacity

Ms Kim Menta, Private capacity

Mrs Pru Murphy, Private capacity

Mrs Marilyn Murphy/Webse, Private capacity

Ms Lynnette Newington, Private capacity

Mrs Catherine O'Dwyer, Convenor, ARMS (VIC) Inc.

Ms Charlotte Smith, Private capacity

*Wednesday, 27 April 2012 – Brisbane*

**Witnesses:**

**Ms Kathryn Rendell – Private capacity**

**Mrs Bernadette Wallman – Private capacity**

**Link-Up, Queensland**

Dr Melisah Feeney, Chief Executive Officer

Miss Ruth Link, Social and Emotional Wellbeing Counsellor

Mrs Rosemary Rennie, Family Research Officer

**Stolen Generations Alliance Inc**

Ms Gillian Brannigan, National Coordinator

Mrs Rosemary Baird, Executive Secretary

Ms Leonie Pope, Convenor, SGA Adoption Subcommittee

Ms Heather Shearer, South Australian Aboriginal Delegate

**Adoption Loss Adult Support (ALAS)**

Miss Patricia Large, Co-Founder and Coordinator

Mrs Margaret Hamilton, Member

Mrs Therese Hawken, Member

**White Australian Stolen Heritage**

Ms Kerri Saint, Chair

**Origins Queensland Inc**

Ms Linda Bryant, Coordinator

**Mr Matthew Cotterell – Private capacity**

**Ms Susan Treweek – Private capacity**

**Jigsaw Queensland Inc**

Dr Trevor Jordan, President

**Forum**

Ms Angela Barra, Private capacity

Mrs Rhonda Grant, Private capacity

Ms Susan Kelly, Manager, Post Adoption Support, Queensland

Miss Patricia Large, Co-Founder and Coordinator, Adoption Loss Adult Support

Ms Julie Morgan-Thomas, Member, Origins

Mr William North, Private capacity

Ms Susan Treweek, Private capacity

Ms Aleisa Woodward, Private capacity

*Friday, 29 April 2011 – Sydney*

**Witnesses:**

**Mr Erik Spinney – Private capacity**

**Mrs Gabrielle McGuire – Private capacity**

**International Social Service Australia**

Mr Damon Martin, Manager, New South Wales Office



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**The Benevolent Society**

Ms Maree Walk, General Manager, Operations

Ms Sarah Fogg, Senior Policy Manager

Ms Janet Henegan, Team Leader, Post Adoption Resource Centre

**Origins Inc**

Mrs Lily Arthur, Coordinator

Mrs Lizzy Brew, Member

Ms Valerie Linow, Committee Member

**DES Action Australia, New South Wales**

Mrs Carol Devine, Coordinator

**Apology Alliance**

Ms Christine Cole, Convenor

Ms Cassandra Cooke, Secretary, Stolen White Generation

Ms Robin Turner, Member

**Family Inclusion Network, New South Wales (FIN NSW)**

Dr Frank Ainsworth, President

Dr Patricia Hanse, Secretary

Ms Meryanne Bonnici, Parent Member

**Forum**

Ms Kellie Beuganey, Private capacity

Mrs Allison Bosley, Private capacity

Ms Jennie Burrows, Private capacity

Mrs Louise Greenup, Private capacity

Mrs Christine Hamilton, Private capacity

Mrs Carol Helmrich, Member, Origins

Ms Hanet Henegan, Team leader, Post Adoption Resource Centre, The Benevolent Society

Ms Kate Howarth, Private capacity

Mrs Irene Knight, Private capacity

Ms Vikki Lewis, Private capacity

Ms Maureen Melville, Private capacity

Miss Gabrielle Mittermayer, Private capacity

Ms Heather Painter-Williams, Private capacity

Ms Therese Pearson, Member, Origins Newcastle

Mr Erik Spinney, Private capacity

Ms Kim Taylor, Private capacity

Ms Pamela Vernon, State Ward Representative, Origins, New South Wales State Representative, Alliance for Forgotten Australians

***Thursday, 22 September 2011 – Canberra***

**Witnesses:**

**Department of Families, Community Services and Indigenous Affairs**

Ms Cate McKenzie, Group Manager

Ms Helen Bedford, Branch Manager, Children's Policy

Ms Karen Wilson, Former Branch Manager, Children's Policy

***Tuesday, 27 September 2011 – Canberra***

**Witnesses:**

**Ms Marie Coleman PSM – Private capacity**

***Wednesday, 28 September 2011 – Canberra***

**Witnesses:**

**Attorney-General's Department**

Dr Albin Smrdel, First Assistant Secretary, Access to Justice Division

Ms Kerri-Ann Smith, Acting Assistant Secretary, Marriage and Intercountry Adoption Branch

**Australian Institute of Family Studies**

Dr Daryl Higgins, Deputy Director, Research

**Dr Thomas Graham – Private capacity**

**Department of Social Work, James Cook University**

Dr Susan Gair

**Department of Health and Ageing**

Mr Shane Porter, Assistant Secretary, Medicare Financing and Analysis Branch

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Mr Alan Singh, Assistant Secretary Mental Health System Development Branch

**National Archives of Australia**

Dr Stephen Ellis, Acting Director-General

**Department of the Prime Minister and Cabinet**

Ms Joan Sheedy, Assistant Secretary, Privacy and FOI Policy Branch

**Mrs Janice Kashin – Private capacity**

**Catholic Health Australia**

Mr Martin Laverty, Chief Executive Officer

**Forum**

Mrs Lily Arthur, Coordinator, Origins Inc

Ms Gillian Brannigan, National Coordinator, Stolen Generation Alliance

Mrs Lizzy Brew, Secretary, Origins Inc

Ms Jennie Burrows, Private capacity

Ms Christine Cole, Private capacity

Ms Judith McPherson, Private capacity

Ms Robin Turner, Private capacity

*Wednesday, 26 October 2011 – Adelaide*

**Witnesses:**

**Family Voice Australia**

Mr David D'Lima, State Officer

Mrs Roslyn Phillips, National Research Officer

**Department of Education, Employment and Workplace Relations**

Ms Marsha Milliken, Group Manager, Income Support Group

**Ms Christen Coralive – Private capacity**

**Ms Evelyn Robinson – Private capacity**

**National Council for Single Mothers and Their Children**

Ms Terese Edwards, Chief Executive Officer

Dr Elspeth McInnes, Policy Advisor

Ms Kathryn Rendell, Member, Advisory Committee

**Mrs Lorraine Hassett – Private capacity**

**Stolen Generations Alliance**

Ms Heather Shearer, South Australian Aboriginal Delegate

*Thursday, 15 December 2011 – Sydney*

**Witnesses:**

**Dr Denise Nisbet Wallis – Private capacity**

**Forum**

Ms Lily Arthur, Private capacity

Mrs Lizzy Brew, Private capacity

Ms Jennie Burrows, Private capacity

Ms Christine Cole, Private capacity

Ms Pauline Egan, Private capacity

Ms Jennifer Harman, Private capacity

Mr Mark Hartley, Private capacity

Ms Monica Jones, Private capacity

Mrs Gabrielle McGuire, Private capacity

Mr Michael O'Meara, Private capacity

Ms Loma Pincham, Private capacity

Ms Orla Shield, Private capacity

Mr Erik Spinney, Private capacity

Ms Robin Turner, Private capacity

*Friday, 16 December 2011 – Hobart*

**Witnesses:**

**Australian Association of Social Workers**

Ms Carol Dorgelo, President

**Salvation Army**

Major Graeme McClimont, Divisional Commander, Tasmanian Division

**Centacare Tasmania**

Mrs Georgina McLagan, Principal Officer, Catholic Private Adoption Agency

**Forum**

Ms Cherry Blaskett, Private capacity

Mrs Robyn Cohen, Private capacity

Mrs Barbara Pendrey, Private capacity

Mrs Virginia Perry, Private capacity

Ms Margaret Singline, Private capacity

**The Hon. Frances Bladel – Private capacity****Tasmanian Department of Health and Human Services**

Mr Timothy Vaatstra, Manager, Adoption and Permanency Services

Ms Jane Monaghan, Coordinator, Adoption Information Service

**Forum**

Mrs Christine Burke, Private capacity

Mr Murray Legro, Private capacity

Ms Jane Lunt, Psychologist, Relationships Australia

Miss Carolyn McGrath, Private capacity

Mrs Patricia MacPherson, Private capacity

Ms Isabel Morris, Private capacity

Ms Evelyn Mundy, Private capacity



## **APPENDIX 3**

### **Additional information, correspondence and answers to questions taken on notice received and published by the committee**

#### **Additional information**

- 1** Article from Jigsaw Newsletter 2006 "What do I want?" Provided by Isabel Andrews of Adoption Jigsaw, received 5 April 2011.
- 2** A history of St Anthony's Home Croydon, July 1989, written by Sr Kath Burford RSJ. Provided by Origins NSW.
- 3** Geoffrey A Rickarby: "Psychosocial Development of Adopted Children" and "Post-Traumatic Phenomena Following Separation from a Baby". Provided by Origins NSW.
- 4** Statement made by Murray Ryburn, National Adoption Conference, 1994. Provided by Jennie Burrows.
- 5** Australian Capital Territory Adoption of Children Ordinance 1965 Explanatory Memorandum.
- 6** Australian Capital Territory Adoption of Children Ordinance 1965.
- 7** Draft model adoption of children bill, from archived files of the Commonwealth Attorney-General's Department, dated 31 January 1964. It is not known whether this was the final version circulated amongst jurisdictions.
- 8** Guidelines on Religious Discrimination under Victorian Equal Opportunity Act 1984.

- 9 Violations of women's human rights: birth mothers and adoption. Tabled at Canberra public hearing 28 September 2011 by Jennie Burrows.
- 10 Rights of Relinquishing Mothers to Access to Information Concerning their Adopted Children. Tabled at Canberra public hearing 28 September 2011 by Jennie Burrows.
- 11 Opening Statement-Martin Lavery, CEO Catholic Health Australia at Canberra public hearing 28 September 2011.
- 12 Notes for Hearing 26 October 2011. Name withheld. Tabled at Adelaide public hearing 26 October 2011.
- 13 Family Inclusion Network, Additional Information received. Tabled at Sydney Public Hearing 29 April.
- 14 Origins Medical Survey on Stilboestrol. Tabled at Sydney Public Hearing 29 April 2011 by Origins Supporting People Separated by Adoption Incorporated.
- 15 Slavery and Child Exploitation. Tabled at Sydney Public Hearing 29 April 2011 by Origins Supporting People Separated by Adoption Incorporated.
- 16 Submission to the New South Wales Parliament Standing Committee on Social Issues' Inquiry into Past Adoption Practices by Dr G. A. Rickarby. Tabled at Sydney Public Hearing 29 April 2011 by Origins Supporting People Separated by Adoption Incorporated.
- 17 Relinquishment as a stressful life-event. Tabled at Sydney Public Hearing 29 April 2011 by Origins Supporting People Separated by Adoption Incorporated.



- 18 Babies for the Deserving: Developments in Foster Care and Adoption in one Australian State - Others to Follow? by Dr Frank Ainsworth and Ms Patricia Hansen. Tabled at Sydney Public Hearing 29 April 2011 by Family Inclusion Network of NSW.
- 19 Additional Information provided by Ms Christine Cole. Tabled at Sydney Public Hearing 29 April 2011 by Apology Alliance.
- 20 Ms Cassandra Cooke's Hearing Notes. Tabled at Sydney Public Hearing 29 April 2011 by Apology Alliance.
- 21 You Only Have One Mother by Gabrielle McGuire (Published 1998 by Conference Publications). Tabled at Sydney Hearing 29 April 2011 by Mrs Gabrielle McGuire.
- 22 Correspondence and Documents relating to the identification of Mr M Cotterell's birth mother. Tabled at Brisbane Public Hearing 27 April 2011 by Origins Queensland SPSA.
- 23 Why Won't My Mother Meet Me? by Carole Anderson. Tabled at Brisbane Public Hearing 27 April 2011 by Origins Queensland SPSA.
- 24 Correspondence to the Department of Children Services (QLD) dated 4 February 1961. Tabled at Brisbane Public Hearing 27 April 2011 by Origins Queensland SPSA.
- 25 Additional Information provided by Ms Kerri Saint. Tabled at Brisbane Public Hearing 27 April 2011 by White Australian Stolen Generation.
- 26 The Importance of the Western Australian Apology to Mothers and Fathers brutally seperated from their infants by Sue Macdonald. Tabled at Perth Hearing 1 April 2011 by Apology Alliance WA.
- 27 Overview of Service Model. Tabled at Perth Hearing 1 April 2011 by Adoption Research and Counselling Services Inc.
- 28 ARCS - Issues for our service. Tabled at Perth Hearing 1 April 2011 by Adoption Research and Counselling Service Inc.

- 29** Agency Report: Consumer Perception Survey, November 2010. Tabled at Perth Hearing 1 April 2011 by Adoption Research and Counselling Service Inc.
- 30** Correspondence to Ms Brenda Coughlan. Tabled at Melbourne Hearing 20 April 2011 by Ms Brenda Coughlan.
- 31** Rights of Relinquishing Mothers to Access to Information Concerning their Adopted Children, Human Rights Commission Discussion Paper, 1984, by Dr Kathy MacDermott. Tabled at Melbourne Hearing 20 April 2011 by Women's Electoral Lobby Australia.
- 32** 'Adopted Persons' Access to and use of their Original Birth Certificates: An Analysis of Australian Policy and Legislation.' Masters thesis by Miriam Kathleen Mandryk, 2011.
- 33** Information about the Enhancing Adoption as a Service for Children Working Group and the National Principles in Adoption, provided by FaHCSIA, received 3/02/2012.
- 34** National Principles in Adoption, provided by FaHCSIA, received 3/02/2012.
- 35** Book: The 'WOTS' Family by 'Miss' Campbell, provided by Ms Cheryl Campbell.

## **Correspondence**

- 1** Response from the Deputy Premier of Western Australia, Minister for Health; Tourism - to potential adverse comment.
- 2** Response from the Department of Health, Northern Territory - to potential adverse comment.
- 3** Response from the Department of Children and Families, Northern Territory Government - to potential adverse comment.
- 4** Response from the Minister for Children and Families, The Hon Kon Vatskalis MLA - to potential adverse comment.

- 5 Response from Jewish Care (Victoria) - to potential adverse comment.
- 6 Letter from Sisters of St Joseph regarding location of records.
- 7 Response from Department of Human Services Victoria regarding current access to information provisions.
- 8 Response from Department of Education and Child Development South Australia regarding current access to information provisions.

### **Answers to Questions on Notice**

- 1 Answers to Questions on Notice provided by Isabel Andrews of Adoption Jigsaw, following public hearing 1 April 2011. Received 5 April 2011.
- 2 Answers to Questions on Notice provided by Origins SPSA Inc, following public hearing 29 April 2011. Received 28 June 2011.
- 3 Answer to Question on Notice provided by VANISH Inc., following public hearing 20 April 2011. Received 9 June 2011.
- 4 Answers to Question on Notice provided by Attorney-General's Department, following public hearing 28 September 2011. Received 21 October 2011.
- 5 Answers to Questions on Notice from Martin Laverty, CEO Catholic Health Australia, following public hearing 28 September 2011. Received 21 October 2011.
- 6 Answers to Questions on Notice provided by Department of Families, Housing, Community Services and Indigenous Affairs, following public hearing 22 September 2011. Received 16 November 2011.
- 7 Answers to Questions on Notice by Janice Kashin. Received 25 October 2011.
- 8 Answers to Questions on Notice by Janice Kashin. Received 24 October 2011.

- 9      Answers to Questions on Notice by Janice Kashin. Received 26 October 2011.
- 10     Answer to Questions on Notice provided by the Department of Education, Employment and Workplace Relations. Received 9 December 2011.
- 11     Answer to Questions on Notice provided by DEEWR. Attachment A.
- 12     Answer to Questions on Notice provided by DEEWR. Attachment B.
- 13     Answer to Questions on Notice provided by DEEWR. Attachment C.
- 14     Answer to Questions on Notice provided by DEEWR. Attachment D.
- 15     Answer to Questions on Notice provided by DEEWR. Attachment E.
- 16     Answer to Questions on Notice provided by DEEWR. Attachment F.
- 17     Answers to Questions on Notice provided by the Australian Association of Social Workers Tasmania following Public Hearing 16 December 2012. Received 21 December 2011.
- 18     Attachment 1 to Answers to Questions on Notice provided by the Australian Association of Social Workers Tasmania following Public Hearing 16 December 2012. Received 21 December 2011.
- 19     Attachment 2 to Answers to Questions on Notice provided by the Australian Association of Social Workers Tasmania following Public Hearing 16 December 2012. Received 21 December 2011.
- 20     Answer to Questions on Notice provided by Catholic Private Adoption Agency. Received 12 January 2012.
- 21     Answer to Questions on Notice provided by Margaret Singline. Received 18 January 2012.
- 22     Answers to Questions on Notice provided by the Salvation Army Tasmania. Received 6 January 2012.

- 23**      Answers to Questions on Notice provided by the Tasmanian Department of Health and Human Services. Received 12 January 2012.
- 24**      Clarification of answers to Question on Notice provided by Attorney-General's Department, following public hearing 28 September 2011. Received 24 January 2012.
- 25**      Answers to Questions on Notice #1, #2 and #5 provided by Department of Health and Ageing. Received 25 January 2012.
- 26**      Answers to Questions on Notice #3 and #4 provided by Department of Health and Ageing. Received 1 February 2012.
- 27**      Answers to Questions on Notice provided by NT Department of Children and Families. Received 03 February 2012.



## APPENDIX 4

### Australian adoption statistics 1950–2010

#### Sources:

*Australian Institute of Health and Welfare, Adoptions Australia 2004–2005, Child Welfare Series No. 37, 2005, Table 1, p. 5*

*Australian Institute of Health and Welfare, Adoptions Australia 2009–2010, Child Welfare Series No. 50, December 2010, Table A.1, p. 43.*

NAA, A432 1966/2404 Part 2, *Uniform Adoption Legislation*, draft letter to the Attorney-General, 11 July 1963, folio p. 49, digital p. 326.

NAA, A432 1961/2241 Part 2, *Uniform Adoption Legislation—Material prepared by the States*, Number of Adoptions in Each State During Period 1951–60, folio p. 134, digital p. 91.

NAA, A432 1961/2241 Part 2, *Uniform Adoption Legislation—Material prepared by the States*, State of Victoria: Summary of Adoption Orders made from 1939–1960, digital p. 59.

NSW Legislative Council, Standing Committee on Social Affairs, *Releasing the Past—Adoption Practices 1950–1998—Final report*, Parliamentary Paper Number 600, December 2000, pp 219–220.

#### Notes:

Some sources report data by calendar year, others report data by financial year, while others do not specify. This table is labelled by calendar year as that is the format used by the AIHW, from which the majority of figures are drawn.

## Australian Adoption Statistics 1950–2010

Year	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Australia
1939-40	982	400	n/a	133	n/a	n/a	n/a	n/a	n/a
1940-41	1,164	509	n/a	166	n/a	n/a	n/a	n/a	n/a
1941-42	1,403	773	n/a	215	n/a	n/a	n/a	n/a	n/a
1942-43	1,440	786	n/a	140	n/a	n/a	n/a	n/a	n/a
1943-44	1,496	844	n/a	188	n/a	n/a	n/a	n/a	n/a
1944-45	1,594	1,171	n/a	231	n/a	n/a	n/a	n/a	n/a
1945-46	1,324	1,029	n/a	243	n/a	n/a	n/a	n/a	n/a
1946-47	1,597	1,121	n/a	244	n/a	n/a	n/a	n/a	n/a
1947-48	1,378	1,095	n/a	244	n/a	n/a	n/a	n/a	n/a
1948-49	1,716	1,124	n/a	253	n/a	n/a	n/a	n/a	n/a
1949-50	1,549	992	n/a	274	n/a	n/a	n/a	n/a	n/a
1950-51	1,533	1,145	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1951	1,343	1,174	851	275	n/a	259	n/a	n/a	3,902
1952	1,522	1,208	860	258	n/a	254	n/a	n/a	4,102
1953	1,758	1,297	819	273	359	241	n/a	n/a	4,747
1954	1,853	1,158	756	237	383	239	n/a	n/a	4,626
1955	1,591	958	662	288	374	249	n/a	n/a	4,122
1956	1,420	1,243	783	262	402	264	n/a	n/a	4,374
1957	1,516	1,224	765	277	470	251	n/a	n/a	4,503
1958	1,939	1,298	771	290	472	258	21	24	5,073
1959	2,121	1,232	852	316	575	285	26	17	5,424
1960	1,843	1,306	865	332	571	256	27	20	5,220
1961	2,217	n/a	n/a	n/a	n/a	n/a	39	14	n/a
1962	2,303	n/a	n/a	n/a	n/a	n/a	41	20	n/a
1963	2,175	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1964	2,517	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1965	2,294	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1966	2,914	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1967	1,940	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1968	1,986	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1969-70	2,346	2,031	1,500	703	834	243	102	61	7,820
1970-71	3,275	2,057	1,562	301	879	289	122	68	8,553
1971-72	4,539	1,768	1,774	457	776	303	127	54	9,798
1972-73	3,315	1,765	1,678	717	649	268	121	29	8,542
1973-74	1,936	1,557	1,458	783	558	268	120	25	6,705
1974-75	1,799	1,168	1,394	528	551	243	123	33	5,839
1975-76	1,449	1,032	1,112	531	549	211	87	19	4,990



Year	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Australia
1976-77	1,770	908	1,014	497	658	185	82	74	5,188
1977-78	1,068	951	660	417	506	164	55	46	3,867
1978-79	1,020	956	563	380	415	173	56	40	3,603
1979-80	853	914	450	387	475	148	85	25	3,337
1980-81	794	711	454	305	505	140	74	35	3,018
1981-82	855	753	467	261	396	119	81	39	2,971
1982-83	926	692	555	270	424	117	59	29	3,072
1983-84	698	686	517	250	438	87	51	43	2,770
1984-85	623	631	331	293	222	97	74	23	2,294
1985-86	n/a	n/a	359	n/a	n/a	n/a	n/a	n/a	n/a
1986-87	n/a	n/a	334	n/a	n/a	n/a	n/a	n/a	n/a
1987-88	280	114	309	191	416	120	36	28	1,494
1988-89	335	288	353	147	221	85	47	25	1,501
1989-90	360	212	278	128	174	71	50	21	1,294
1990-91	329	258	210	136	103	61	25	20	1,142
1991-92	310	185	232	120	112	58	23	12	1,052
1992-93	209	101	222	87	111	23	20	10	783
1993-94	188	112	206	85	106	37	21	9	764
1994-95	260	145	179	127	108	12	18	6	855
1995-96	204	131	170	75	48	17	19	4	668
1996-97	263	123	129	56	79	30	26	3	709
1997-98	200	114	111	69	48	19	15	1	577
1998-99	185	102	94	64	53	25	16	6	545
1999-00	154	122	105	79	59	19	24	4	566
2000-01	166	98	62	74	53	24	27	10	514
2001-02	207	110	49	79	62	20	23	11	561
2002-03	122	82	67	76	72	21	25	7	472
2003-04	115	120	65	59	79	26	33	5	502
2004-05	154	161	84	49	77	23	20	17	585
2005-06	149	131	82	62	72	35	30	15	576
2006-07	164	127	91	65	62	26	22	11	568
2007-08	125	98	86	41	36	31	14	9	440
2008-09	155	71	92	43	35	23	13	9	441
2009-10	157	81	68	50	26	9	16	5	412
Total	75082	44,753	27,510	14181	14,653	6,426	2136	986	145,481