

Senate Inquiry into Commonwealth Contribution to Forced Adoption Policies and Practices

Tuesday, 25 October 2011



Adoption Origins Victoria Inc.

Compiled by Michael O'Meara aka Stuart Ritchie

A. Marriage to legitimize a child born out of wedlock.

Marriage Bill 1960 & Marriage Act 1961

"I wish to mention now the legitimation of children who are born out of wedlock. The bill provides that a child shall be considered legitimate whether or not there was a legal impediment to the marriage of his parents at the time of his birth. We are far in advance of the views of the House of Lords on this matter". "This bill will provide that in Australia a child may become legitimate by act of Parliament irrespective of whether the child was born in or out of wedlock. However, there is a query in my mind on this matter. Young parents will have to wait until they are of marriageable age. The child will be legitimate during that period on the confirmation of its status by a marriage at a later date"

"Pregnancy is not to be regarded by the judge as a legitimate reason for agreeing to an early marriage. I do not know what other reason the Attorney-General could advance. He has said that he will explain this point in committee and this matter is so important that I am anxious to hear what he has to say. I believe difficulties are created when pregnancy in itself is not to be regarded as a reason for permitting a marriage between young

persons. The idea behind the provision is to stop forced marriages”ⁱ - WHITLAM, Gough
17 August 1960

The child is made to suffer for the mistake of its parents. This bill will provide that in Australia a child may become legitimate by act of Parliament irrespective of whether the child was born in or out of wedlock. However, there is a query in my mind on this matter. Young parents will have to wait until they are of marriageable age. The child will be legitimate during that period on the confirmation of its status by a marriage at a later dateⁱⁱ. - Mr DUTHIE , 17 August 1960

Many couples married or were in de facto relationships prior to the “*adoption order*” being made by either the Supreme Court or the County Court in the State Of Victoria, along with other States and Territories. This highlights the legal obligations marriage placed upon the legal status of an adoption order for an *illegitimate child*.

“Adoption Orders” were being recorded by the Government Statistⁱⁱⁱ in the register by either courts under the Adoption of Children Act 1958^{iv} & the County Court 1958 Act, conflictive of the Ordinance Act 1929.

Conclusion – The parents of the illegitimate child could legitimate the child through an act of marriage, or by de facto relationship, or through a declaration of legitimation for an ex nuptial child

B. De Facto Adoptions

- 1) A person so authorized to adopt the infant and an infant authorized to be adopted are in this Act referred to as an "adopter" and an "adopted child" respectively, and "infant" means a person under the age of twenty-one years, and includes any person over the age of twenty-one years who has been brought up maintained and educated by any person or two spouses jointly as his her or their child under any de facto adoption.^v Ex-nuptial child “means a child not born in lawful wedlock. When any man who claims to be the father of any ex-nuptial child, whose mother he has married since the birth of such child, produces to a Registrar

a statutory declaration in accordance with the form in the Fourth Schedule, the Registrar shall register such child, whether alive or dead, as the lawful issue of such man and his wife, and the Registrar shall make a note in the entry underneath his signature to the effect that such registration has been made under the authority of this Ordinance^{vi}

C. Marriageable Age

- 1) A person is of marriageable age if the person has attained the age of 18 years. However, A person who has attained the age of 16 years but has not attained the age of 18 years may apply to a Judge or magistrate in a State or Territory for an order authorising him or her to marry a particular person of marriageable age despite the fact that the applicant has not attained the age of 18 years.^{vii} Or if satisfied that the applicant has attained the age of 16 years.

D. Child of the Marriage

- 1) A *child* (whether born before or after the commencement of this Act) whose parents were not married to each other at the time of his or her birth but have subsequently married each other (whether born before or after the commencement of this Act) is by virtue of the marriage for all purposes the legitimate child of his or her parents as from his or her birth or the commencement of this act whichever was the later.^{viii} Interim Order^{ix} (i.O.) could have been imposed under *The Act* in accordance for Parent's to comply to *The Acts*^x, which the latter was not considered. "The adopted child shall have as his surname the surname of the adoptive parent or parents."^{xi} I.O was not considered in adoption applications as "parents" or de facto relationships were not consulted. A person who is, or is deemed to be, as from a particular time, the legitimate child of that person's parents by virtue of section 89, 90 or 91 is, or shall be deemed to be, for all purposes the legitimate child of that person's parents as from that time in the external Territories^{xii}

- 2) Nothing in this section renders ineffective any legitimation that took place before the commencement of this Act by or under a law of a State or Territory or shall be taken to exclude the continued operation of such a law in relation to such a legitimation^{xiii}

E. Legitimation of the Child

- 1) A child of either the husband or wife (including an illegitimate child of either of them and a child adopted by either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife, shall be deemed to be a child of the marriage.^{xiv} Any child born before the marriage of his or her parents, and whether before or after the commencement of this Ordinance, whose parents have intermarried, shall be deemed on the registration of such child as hereafter provided to have been legitimated by such marriage from birth and shall be entitled to all the rights of a child born in wedlock.^{xv}

F. Subsequent Marriage

- 1) Nothing in this Ordinance shall have the effect of legitimating Limit to any child if at the time of the birth of such child there existed any legal impediment to the intermarriage of the parents of such child.

G. Status of Children

- 1) Every person, whether born before or after the commencement of this Act, whether born in Victoria or not, and whether or not his father or mother has ever been domiciled in Victoria.^{xvi}

Adoption en mass had come to an end in Victoria in 1974 with the gazette of the Status of Children Act.

References

ⁱ MARRIAGE BILL 1960 Wednesday, 17 August 1960
Second Reading

ⁱⁱ MARRIAGE BILL 1960
Second Reading Wednesday, 17 August 1960

ⁱⁱⁱ in the State of Victoria, be authorized to adopt the said infant AND IT IS DIRECTED that the Government Statist shall make an entry recording this adoption in the Adopted Children Register in the form set out in the Schedule to the Adoption of Children Act 1958 AND it having been proved to the satisfaction of the Judge that the said infant was born on the.....

^{iv} An Act to consolidate the Law relating to the Adoption of Infants.

^v Adoption of Children Act 1958

^{vi} AN ORDINANCE 1929 Relating to Marriage. PART IV Part 28 (1).—LEGITIMATION

^{vii} MARRIAGE ACT 1961 - SECT 12
Authorisation of marriage of person under age of 18 years in exceptional circumstances

^{viii} MARRIAGE ACT 1961 - SECT 89 Legitimation by virtue of marriage of parents Subsection (1)

^{ix} (d) That it is not desirable for the welfare of the infant that the Court should be asked to make an Interim Order or that in making an Adoption Order the Court should impose any particular provision for the infant;

^x AN ORDINANCE 1929 Relating to Marriage. MARRIAGE ACT 1961. Adoption of Children Act 1958.

^{xi} Evidence of transcript COMMUNITY AFFAIRS REFERENCES COMMITTEE
Commonwealth contribution to former forced adoption policies and practices
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^{xii} MARRIAGE ACT 1961 - SECT 111

^{xiii} MARRIAGE ACT 1961 - SECT 89 Legitimation by virtue of marriage of parents Subsection (4)

^{xiv} QUESTION
MATRIMONIAL CAUSES BILL 1959 Tuesday, 17 November 1959

^{xv} AN ORDINANCE 1929
Relating to Marriage .PART IV.—LEGITIMATION

^{xvi} Status of Children Act 1974 - SECT 3
All children to be of equal status

Attachments

THE FOURTH SCHEDULE.

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

Marriage Ordinance 1929.

STATUTORY DECLARATION IN CONNEXION WITH APPLICATION FOR LEGITIMATION OF CHILD.

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STATUTORY DECLARATION IN CONNEXION WITH APPLICATION FOR
LEGITIMATION OF CHILD.

I, _____ of _____ in the Territory for the
Seat of Government do solemnly and sincerely declare as follows :—

1. That I am the father of a certain child, named, _____ born on
the _____ day of _____ at _____
2. That I was married to _____ the mother of the said child, on the
day of _____, at _____, and I am desirous
of having the birth of the said child registered as that of the lawful issue of myself
and the said _____
3. That the document hereunto annexed is a true and correct copy of the certificate
of my marriage with the said _____
4. That no legal impediment to the marriage of myself and the said
_____ existed at the time of the birth of the said child.

And I make this solemn Declaration by virtue of the *Statutory Declarations
Act 1911* conscientiously believing the statements contained herein to be true in
every particular.

Declared at _____ the _____ day of _____
19 _____
Before me

(Here insert title of person before whom declaration is made.)

To the—
Registrar of Births, Deaths and Marriages
at _____

Dated this seventeenth day of December, One thousand nine
hundred and twenty-nine.

STONEHAVEN
Governor-General.

By His Excellency's Command,
FRANK BRENNAN
for Minister of State for Home Affairs.