The role of the Commonwealth Government in relation to Adoption in Australia

Submission to Senate Community Affairs Reference Committee Inquiry into the Commonwealth contribution to former forced adoption policies and practices

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This submission briefly addresses the terms of reference of this inquiry.

(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.

As the expertise of the authors lies in the history of adoption in Australia, our attention in this submission is directed primarily to the first of these terms of reference.

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

As the Australian Constitution gives authority for matters pertaining to children to the governments of the states and territories, consideration of the role of the Commonwealth in relation to past adoption practices and their impact on the parties to adoption requires a perspective which brings into view the indirect role of the Commonwealth in relation to the adoption of children under state and territory law; that is, a view which considers not only the Commonwealth's commissions in this area, but also its omissions.

The Social Security Context

Thus, where the Commonwealth (at least prior to the Family Law Act of 1975) assumed for itself little or no direct legislative authority in matters pertaining to children, it had responsibility for social security. Arguably, the greatest contributing factor to the separation of mothers from their children

(especially new born children) through adoption is the absence of any clear and direct means for these women to support their children financially. History, both here and in other jurisdictions, tells us that the provision of support for single mothers has direct bearing on the numbers of children, especially neonates, placed for adoption. Given the choice (and in the absence of access to adequate financial support it is questionable what choice many women in Australia who relinquished children for adoption effectively had prior to 1973), many or perhaps the majority of single mothers will choose to keep their children and raise them. As US legal scholar David Smolin writes in 2007:

> Today, however, less than two percent of single pregnant woman choose to give birth and relinquish their children for adoption. The original purpose of adoption as a response to the situation of the single mother is, for the most part, an unpopular or ineffectual remedy. Put another way, it appears that the relative empowerment of single pregnant women has resulted in a situation where only a small proportion voluntarily relinquish their parental rights.

Thus, the 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. Child endowment, when first introduced in 1941, was paid only for the second and subsequent children, The Commonwealth Widows' Pension, introduced in the following year (1942) made no direct provision for single mothers who had not lived with the father of their child. 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.

While materially the circumstances of an unwed mother and her child are no different from those of widowed or deserted married mothers, the distinctions between these different groups of mothers with respect to their eligibility for Commonwealth benefits and the level of benefit until 1973 when the Commonwealth introduced a supporting mothers' benefit meant that widowed or deserted wives were entitled to support, while unmarried mothers were in the words of American historian Linda Gordon (1994) 'pitied, but not entitled.' As reported by relinquishing mothers in Australia and other comparable Western jurisdictions (see Cole, 2008 ; Fessler, 2006) and as documented in reports of relinquishing mothers in non-Western countries (such as Korea) whose children are currently being removed from them for intercountry adoption (see Dorow, 1999) their incapacity to access financial support for themselves and their children is a key determinant in the often agonised decision to hand over their child. For the children of mothers without support, prospects were severely limited: a life of poverty and social marginalisation with their mothers, or a 'normal' life in an adoptive family and at least until recent legislative change at state and territory level, the loss of contact with those mothers. In the absence of social security for unwed mothers and their children, those mothers faced the invidious decision to relinquish their children in order to provide them with secure futures – in many cases, at emotional cost to both mother and child.

By consistently failing to include unwed mothers within social security provisions until 1973, the Commonwealth government created a social security context which delimited the choices available

to women who found themselves pregnant out of wedlock. While the conduct of adoptions, and the treatment of women and their infants during confinement, delivery, consent and relinquishment are matters directly under the authority of state and territory health and welfare departments, the social security context has significant bearing on the history of adoption, especially as related to ex-nuptial births, in Australia. There are strong grounds to argue that irrespective of the actual circumstances of individual adoptions and the degree of coercion and force which may have been applied to mothers to relinquish children, the social security context in Australia – for which the Commonwealth is directly responsible – created a set of circumstances for unmarried women in which even ostensibly freely given consent to adoption should not be viewed uncritically.

(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.

During the period 1950 to 1975, when domestic adoption was at its peak, it was a common practice for single mothers to move, or be moved, interstate (or indeed overseas, particularly to New Zealand) in order to conceal their pregnancy. Hence, although adoption is a state jurisdiction, its aftermath crosses state boundaries with adoptees and their birth parents forced to deal with multiple bureaucracies and different regulations and entitlements in seeking to re-establish their relationships. Through its Find and Connect initiative the Commonwealth has accepted a responsibility for funding and co-ordinating services for Forgotten Australians who similarly were a state responsibility. Although the issues facing those whose lives have been impacted by forced adoption policies in the past differ in significant ways from those of the Forgotten Australians, the Commonwealth is well positioned to play a similar co-ordinating role.

For Australia's 10,000 or more intercountry adoptees (Rosenwald, 2009), many of whom are now either adults of approaching their majority, the challenges facing them in reconnecting with their birth families are as great – and in many cases greater – than those facing individuals separated by domestic adoption as intercountry adoption necessarily involves the crossing of national boundaries. As with many past domestic adoptions, it is regrettably impossible to assert with certainty that the surrendering of children for intercountry adoptions is not in many cases forced by circumstances of direst poverty and disadvantage. Due to its role, through both the Departments of Foreign Affairs and Immigration in intercountry adoption, the Commonwealth is more directly involved in intercountry adoptions, in their immigration dimensions, than domestic adoptions. Based on what we know about other groups whose lives have been fractured by removal from families and their needs for ongoing support and assistance in reconnecting with family, there is a significant present and future need for intercountry adoptees in relation to reconnecting with birth families. The Commonwealth is well positioned to play a role in the funding and co-ordination of services, including liaison with authorities in key sending countries, with respect to intercountry adoptees.

References

Cole, Christine ed. (2008). *Releasing the Past: Mothers' stories of their stolen babies.* Sydney: NSW Committee on Adoption and Permanent Care.

Dorow, Sarah. Ed. (1999). *I wish for you a beautiful life: Letters from Korean Birth Mothers of Ae Ran Won to their children. Seoul: Yeong &Yeong Book Company.*

Fessler, Ann (2006). *The girls who went away: The hidden history of women who surrendered children for adoption in the decades before Roe v. Wade. New York: Penguin.*

Gordon, Linda (1994). *Pitied but not entitled: single mothers and the history of welfare, 1890-1935.* New York: Free Press ; Toronto : Maxwell Macmillan Canada ; New York : Maxwell Macmillan International.

Rosenwald, Trudy (2009). Ten thousand journeys: A brief demographic survey of intercountry adoption in Australia. In Ceridwen Spark and Denise Cuthbert, eds. *Other People's Children: Adoption in Australia*. North Melbourne: Australian Scholarly Publishing, pp. 197-206.

Smolin, David (2007). Intercountry adoption and poverty: a human rights analysis. *Capital University Law Review.* 36: 313-53