



ORIGINS INC SUPPORTING PEOPLE SEPARATED BY ADOPTION

A Submission of Origin SPSA Inc in Response to Part (b) of the Terms of Reference of the Senate Inquiry into Commonwealth Contribution to Former Forced Adoption Policies and Practices

A Proposal for a National Program of Reparation and Reconciliation to Address the Consequences of Forced Adoption

Introduction

This proposal outlines a program of reparation and reconciliation to address the consequences on families -- mothers, sons and daughters, fathers, siblings, grandparents and grandchildren – who were separated from one another by past forced adoption policies. It follows and elaborates on previous submissions by Origins to the Senate Inquiry into Commonwealth Contribution to Former Forced Adoption Policies and Practices.

Background

Forced adoption practices which separated single mothers in Australia from their children have parallels to similar events in other nations and other cultures. Similarly, one can also look at global principles of redress and reparation for guidance on how to proceed with a program that will meet not only the needs of the mothers and their lost sons and daughters, but also the needs of their immediate and extended families, and of society as well.

“16(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” – Universal Declaration of Human Rights (1948)

On December 16, 2005, the General Assembly of the United Nations adopted and proclaimed *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.*” This document gives direction to nations on how to address gross violations of human rights, including violations of the Universal Declaration of Human Rights (1948). It asserts that victims of such abuses have a right to prompt, adequate and effective reparation. This is held to include, in some combination and as appropriate, restitution, compensation for harm, and rehabilitation in mind, body and status.

“Reparation without steps to ascertain the truth about past violations, for example, may be perceived as an effort to buy victims’ silence – and thus may not only offend victims but also allow denial to flourish. Similarly, reparations without reform or other measures to prevent future abuses can make a mockery of the initiative, rendering empty the promise reparations hold of non-repetition. Likewise, a reparations program that is not accompanied by measures to ensure that perpetrators be held accountable effectively asks victims to trade away their right to justice in order to receive the support that is also their due.” (Magarrell, 2007, page 2)

It is recognized that any program of restitution would necessitate changes in Federal and State law; however, legal changes would appropriately reflect the severity of the injustices and legal transgressions that were allowed to occur, and to ensure that they will not occur again.

Existing Precedents

Precedents have already been set around the world for programs of reparation in other nations where forced adoption and kidnapping for adoption purposes have occurred. Argentina, Canada, and Ireland all saw systemic forced adoption practices, and various reparation and reconciliation actions were taken:

- *Australia* – A national apology was given to members of the Stolen Generation. Link-Up was established to provide family tracing and reunion services. “Bringing them Home” counsellors are available to help with reunion and post-reunion restoration of family relationships.
- *Argentina* – The Banco Nacional de Datos Genéticos (National Genetic Data Bank) was established in 1989 to help the human rights organization Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo) find children who had been abducted for adoption purposes by the previous military dictatorship. Eighty-seven of the approximately 500 missing children have been located thus far. In 2011, Abuelas de Plaza de Mayo was awarded the UNESCO peace prize for their work.
- *Canada* – In response to recognition of the government’s role in the forced removal of Aboriginal children by the residential schools system, the Federal government established a Truth and Reconciliation Commission (Motto: "For the child taken, for the parent left behind"). The Southern Manitoba First Nations Repatriation Program was established to actively find and help reunite First Nations children and parents who were separated by these policies, providing counselling to help with reunion and post-reunion restoration of family relationships.

Elements of the Program

The proposed national program of reparation and reconciliation would be composed of four components:

1. Restitution of Legal Status and Correcting Legal Error
2. Reunion and Restoration of Separated Families
3. Truth and Reconciliation
4. Compensation

Component 1: Restitution of Legal Status and Correction of Legal Error

There are two legal principles involved under this section. The first legal principle is *filiation*, the legally-recognized family relationship between parent and child. In addition to changes in parental rights and inheritance, the effect of an adoption under Australian law is to sever the child’s *filiation* with his or her mother and transfer it to the adoptive parents. In the situation of a forced adoption, filiation with her child was taken from a mother against her will

The second legal principle is the validity of a consent taken under duress. For a consent to adoption to be valid, a mother must sign by her own free will without force, manipulation, fraud, or coercion from others. The application of any of these should have immediately invalidated the acceptance of the consent by the Court.

Part 1: Restoration of filiation between parent and child

The first, and primary key in a reparation program would be the restoration of the original filiation of the mother with her child. Filiation with all other natural family members will also thus similarly be restored (e.g., natural siblings become legal siblings again). If paternal parentage can be confirmed, filiation similarly can be re-established with fathers as well.

Note: It is recognized that a family relationship now exists between the person who was adopted as an infant and the people who adopted. It is thus proposed in the spirit of reconciliation that the re-establishment of filiation with the natural parents *not* annul current filiation with the adoptive parents, but instead be in addition to it. It is suggested that there is no valid reason to limit a person, especially an adult adoptee, to having only two legal parents. Precedents exist in other nations where a adopted person obtains joint filiation with both natural and adoptive parents. An example of this is the legal institution of *l'adoption simple* in France. Multiple-parent filiations are also common when blended families are created due to remarriage and step-parent adoption.

Part 2: Annulment of the coerced consent form

As the taking of consent by means of force, fraud, and coercion was illegal under the law, this consent document which the mother was forced to sign or which was associated with her would be retroactively, legally annulled as a sign that the law of the land will be upheld by the government and courts of the land.

Note: As per the previous note, in the spirit of reconciliation it is proposed that this annulment will have no legal effect on the subsequent adoption which took place. However, this significant step will formally acknowledge that these consents were taken in a manner which was unjust and illegal.

An exception to the latter is the case of parents who were married prior to the adoption order being signed by a Judge, because according to the 1958 Adoption of Children Act (which was replaced with the 1964 Adoption of Children Act) both parents of origin were required to consent to their child's adoption, as sole legal custodians of their child until the adoption was formalized.

In the latter case perhaps consideration could be given to the adopted person to have legal recognition of a reinstated family relationship, so that both nature and nurture are legally validated particularly concerning adoptions prior to the proclamation of the 1964

Adoption of Children Act, whereby an illegal birth entry usurped the original birth entry of the child already legitimized by the marriage of its parents.

Furthermore, this legally recognized continuity of all family rights should include inheritance from the family that raised the child.

Component 2: Reunion and Restoration of Separated Families

Reparations made to families who have been separated by forced adoption must include a program of active reunion and restoration, to disclose full information to these families and allow them the choice, information, support, and the necessary tools to renew social/emotional family relationships. In order to be effective, this program must have several components (Parts 3 through 11)

Part 3: Finding and contacting adults who were taken as children and mothers who were told their babies had died

The right of the parent to know her child is recognized under the law. Equally, every child has a right to know his/her parents and identity. If the adoption had not taken place, these rights would have remained intact. It is thus proposed that as the adoptions that took place did so under illegal circumstances, that an active search and contact service be established to reunite these families.

Adult adoptees would be contacted and informed of the forced adoption and the consent document has been annulled. Mothers would be contacted and informed that what was done to them was illegal, and that documents that they were forced to sign under pressure or coercion have been annulled. Special care would be taken in case the mother had been told that her baby had died, or the adoptee was told that his or her mother had died.

Great sensitivity must be used in contacting people who were separated by forced adoption. Contact should be made by a trained mediator (not a social worker) who is knowledgeable about forced adoption practices, adoption-related trauma, and helping families. Some mothers are unable to even speak with social workers, as their sole experience with a social worker was the forced loss of their baby and it is a reminder of the trauma. Similarly, the mediation service should *not* be supplied by agencies which were, or currently are, involved in procuring children for adoption.

Part 4 Disclosure of renewed filiation

It is necessary to inform separated parties that their original filiation has been restored. It is important to note that some people are unaware that "*filiation*" exists as a legal concept, and may assume that filiation between mother and child has continued regardless of the adoption having taken place

Part 5 Family reunification and counselling

Family reunification services and counselling must be available and offered to the separated parties and their families to help them process the news of their lost family members, the ramifications of this news, the options and choices they have, and the consequences of these choices. Also offered would be ongoing specialized services for the separated parties and their families who are interested in actively rebuilding social/emotional family relationships, to provide support and counselling to help in the development and restoration of family relationships, and the process of incorporating new family members into their lives and their existing family's lives.

Part 6 Counselling and trauma therapy for survivors

Counselling and trauma therapy would be provided to mothers and their adult sons and daughters by professional psychotherapists and psychologists for those who were separated by forced adoption practices. This would include trauma therapy for mothers, including screening and diagnosis of PTSD and other mental health consequences, and professional services commensurate with the severity of the impact on mothers' lives.

Counselling would not be provided by agencies which have directly engaged in forced adoption practices or which are affiliated with agencies, churches, or other organizations which have the current or past mandate of providing a child for adoption purposes. Agencies such as these are in direct conflict-of-interest.

Nor should counselling be provided by agencies or individual who question or cast doubt on the existence of coerced and forced adoption by stating it is a "subjective point of view," "open to conjecture," or that belief in it is a "psychological coping mechanism" on the part of a mother who "truly made a choice. Victims of forced adoption have reported that counselling as practiced by these agencies can consist of telling the mother to "take responsibility for her decision" and "her role in permitting the adoption to take place." This is neither an ethical or appropriate approach for the treatment of trauma victims.

Part 7 Counselling and education (towards reconciliation) for those who obtained a child taken by forced adoption

Counselling and education would be available for families who obtained and then adopted the child that a mother was forced to surrender, especially those who were not aware of the circumstances under which the child was procured for them to adopt. These services are to help them adjust to the fact that they are not the adopted person's "sole" parents and to educate them about illegal/unethical/criminal adoption practices and how they were themselves misled. It will also inform them about welcome the child's natural mother, father, siblings, etc. into their lives in an expanded and extended family network.

Part 8 Release of all records to affected parties

As a recognition of its importance in the healing process, natural mothers would be immediately given their medical, psychiatric, and social worker records and case notes. If records have been destroyed, then the mothers will be notified of the destruction date, the person who authorized the destruction, the reason for the destruction, and under which legislative authority the records were destroyed.

Part 9 Equal access to birth records

As part of state reparation programs, state legislation would be introduced that would enable natural parents to have full and immediate access to both the original birth record and amended birth record of their lost child. Adopted persons would also have full and immediate access to their original birth record and amended birth record. Veto legislation would be repealed, to be replaced with the counselling, support, and mediation programs described in Parts 5 through 7 above.

Part 10 Procedure for termination of adoptions by adopted persons

Adult adoptees should have the right to make the individual informed decision as to whether they wish to remain legally adopted by the people who have adopted them as infants. A legal mechanism would be established whereby any adult adoptee may petition the Court to unilaterally terminate their current adoption.

Part 11 Establish a voluntary national DNA registry for persons affected by forced adoptions

Besides coercion applied to mothers, forced adoption also involved acts of systemic fraud, including:

- Mothers forced to use assumed names for hospital and consent documents,
- Birth records falsified by staff to indicate fictitious names or dates of birth,
- Fathers' names omitted from birth records, despite the mother knowing and stating who the father was,
- Mothers fraudulently told that their babies had died at birth,
- Adoptees fraudulently told that their mothers had died in childbirth or in "accidents,"
- Custodians of adoption records falsifying documents to prevent reunions.

Mothers are still coming forward today, having had an adult son or daughter contact them whom they had been told was stillborn. It is evident that huge barriers exist that prevent families from finding their lost members.

Given these barriers and the necessity of justice for the separated mother and child and the magnitude of the injustices which occurred, a national DNA registry is necessary to find and reunite the members of families that were separated by forced adoption. The efforts of the Grandmothers of the Plaza de Mayo can be used as a model for this initiative.

This registry would be publicized, and healthcare workers (nurses, doctors etc.) would be contacted and requested to provide information to all their patients about voluntary registration and how to provide DNA samples. Health care professionals would also be given the necessary medical tools to collect and submit samples and information.

Registrants should include, but not be limited to:

- Women who gave birth in Australian hospitals and were told their child was stillborn or had died soon after birth.
- Anyone who either has been told they were adopted but has not reunited or who suspects they might be adopted
- Anyone who has lost a sibling, niece, nephew, grandparent, or grandchild to forced adoption.

The National Criminal Investigation DNA Database (NCIDD) already serves the purpose of allowing identification of victims of national disasters and missing persons. As victims of forced adoptions can be considered to be “missing persons” and victims of crimes, it would be appropriate to explore its use. To protect all participants, issues identified in ALRC Report 96, *Essentially Yours: The Protection of Human Genetic Information in Australia* and appropriate privacy and usage protections be implemented.

Component 3: Truth and Reconciliation

In the spirit of truth and reconciliation, reparations made to families who have been separated by forced adoption must include public acknowledgement, accountability, and responsibility. (Parts 12 through 16)

Part 12 Public acknowledgement of crimes committed

There must be public acknowledgment of the illegality of what was done to mothers in order to separate them from their babies.

Part 13 Public record of crimes committed

Public record should be created of the acts that were committed, the perpetrators, and the accomplices. This includes citation of laws and human rights declarations that were broken.

Part 14 Perpetrators and accomplices to take responsibility

In the interest of truth and reconciliation, we ask that that the organizations and individuals who were responsible for or complicit in these crimes take public responsibility for them. Such personnel might include religious workers, medical personnel, legal practitioners, and social workers; however, it will be clearly stated if circumstances show that individuals were acting under the orders or policies of their superiors (the legal doctrine of *respondeat superior*) or employers.

Part 15 Public formal apologies

As part of this reparation and reconciliation package, we ask that the individuals, institutions, agencies, organizations, and government departments who are identified as having perpetrated, participated in, or acted as accomplices to forced adoption, publicly apologize for the action or lack of action that resulted in the forced adoptions taking place.

Part 16 Individual personal apologies

Individual personal apologies should be given whenever possible to the parents and the children who were separated by a forced adoption.

Apologies however must continue to be given as victims continue to be identified. There are mothers alive today who are still unaware that their children are alive or that crimes were committed against. As these mothers come forward, they must also be able to be recipients of apologies and any reparations provided to survivors.

Component 4: Compensation

It is known that victims of trauma can be affected by life-long consequences. The aftermath of trauma can mean severe financial and educational set-backs, damage to mental and physical health, and difficulty in finding qualified and informed professional aid to help with the healing process.

Part 17 Compensation

Details on a proposal for compensation have been presented on page 3 of the Origins submission *Recommendations on 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.*

Money does in no way compensate for the loss of a child, but it recognizes the injury inflicted, and that this injury resulted in ongoing losses and challenges in the mother's life. Trauma may have impacted victims continually since the loss of their children, leading to severe depression, PTSD, and unresolved grief and loss. These disabilities can result in loss of potential earned income, loss of the educational attainment the mother would have otherwise achieved, and even impacts to physical health. Due to the impact of the trauma and secondary infertility, mothers may never have had other children, and this is a loss to be recognized as well.

Summary

A program of reparation and reconciliation will go far towards addressing the grave injustices, crimes, and human rights abuses which acted to involuntarily separate families for the purpose of forced adoption.

Australia can look at examples from other nations around the world which are currently acting to redress similar injustices. It can also look at legal options such as restoration of filiation, and programs which aim to reunite and restore families, and recognize and heal the trauma caused by forced separation.

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