

# **Lily Arthur**

Submission

## **Review of Government Compensation Payments**

I am writing this submission as a former Ward of the State of Queensland and as the plaintiff in a landmark court case taken against the State of Queensland in 2004 [ **Arthur v. State of Queensland [2004] QSC 456 (22 December 2004)**]

### **I would also ask that this submission be made public**

**My name is Lily Arthur formally known as Lily Josephine McDonald**

**I reside at**

**I am the currently the Co-ordinator of Origins Inc Supporting People Separated by Adoption**

## **Comparison of my personal experience as opposed the experience of Cornelia RAU**

Cornelia Rau as an adult was “locked up” in a detention centre for 10 months she was suffering a mental disability. Subsequently she was found to have been falsely detained and there was a public outcry at her treatment

Her treatment was the subject of the Palmer Report commissioned by the Federal Government to investigate the legal issues surrounding her incarceration. She was later awarded \$2.6 million for damages as a result of her treatment.

The author of this submission has also exercised her rights in a landmark court case to seek similar justice for her unlawful arrest, imprisonment, and the subsequent theft of her first newborn by the state of Queensland

## **Foreword**

16<sup>th</sup> February 1967. At the age of 16 years and eleven months I was taken from my bed, arrested and imprisoned overnight at the South Brisbane Watch house. I appeared before the Children’s Court the next day and was incarcerated for an indefinite period at Holy Cross Woolloowin Brisbane.

I was placed into an infamous Magdalene Asylum known as the Holy Cross Industrial School for Girls

My "crime"? I was pregnant and was considered to be "exposed to moral danger" even though I had a home of my own and the father of my child was prepared to marry me with our parents with our parents mutual consent

At the age of 16 years and 11 months I was 11 months over the age of consent and living in a de-facto relationship with the father on my child with whom I had intentions to marry.

I was allowed under Commonwealth Marriage Act 1963 to legally marry at the age of 16 with parental permission, which I had.

I was placed into this institution by the Children's Court and where the State of Queensland knew I was going to be put into situation of slavery by being forced to work without payment, a breach of the **Queensland Children's Services Act 1965 sec 110. 111**

In 2004 I applied for the wages due to me and received the attached letter stating there was no provision for wages from girls under "care and control"

The average age of girls in this institution ranged from 14-16. I was the oldest girl there at this time

I was 2 months pregnant at the time of my arrest. The State placed me into this institution where I was forced to perform hard dangerous work, not only in the commercial laundry but also in the home buildings, for a period of seven months, without rest and up to the very day I went into hospital to give birth.

The State knowingly placed me into an Institution where for 7 months before the birth of my baby I was abused, neglected, punished.

I was placed into an institution which the State knew I could not easily escape from, and if I did escape or caused problems, I would be punished and sent to Karalla House ( a maximum security detention centre).

I was placed into Holy Cross, an institution where my name was changed and my identity was taken from me, and where the agents of the State had control of my every movement, discipline and contact with those who could help me.

I was locked up behind 3 high fences and locked in a dormitory at night with bars on the windows, and dragged out of bed at all times of the day and season to attend mass either at night or early morning.

The State incarcerated me in a place that controlled the times, days, and the nature of the visitors who were allowed to see me and where I could not freely receive advice from counselors, social security and welfare agencies.

I was not allowed contact with the father of my child who was prepared to marry and support myself and our baby.

On the 1<sup>st</sup> September 1967 I went into labor and was transported to Royal Women's Hospital Herston Brisbane

As a vulnerable 17 year old that was experiencing the birth of her first child the treatment I received before, during and after the birth and was nothing short of torture and neglect.

I went into to the labor ward un-prepared and with no idea of what the labor process was to involve.

\* I was given drugs during the labor.

\* I was tied down to the bed.

\* I was held down by the nurse.

\* My screams to be allowed to move were ignored.

\* I was torn to pieces

\* I was taken to a ward with only unmarried mothers residing.

\* My baby was taken from me straight after the birth.

\* My baby was placed in a locked nursery

\* At no time did I give permission for this treatment or approach the Department of Children's Services to arrange for the adoption of my child.

\* Nor did the Department contact me in regard to the future welfare of my baby even though it had me incarcerated for seven months previous to the birth of my child.

\* Eight days after the theft of my newborn I was forced to sign an unlawful adoption consent under threat of further imprisonment, for my baby whom who I had not seen since birth.

\* I signed as a minor an unlawful adoption consent for a baby who may or may not have been alive or dead.

On the very afternoon and immediately after being forced to sign the consent to the permanent loss of my baby, the State incarcerated me back into Holy Cross where again I was abused by being put back to work in the laundry on the very day I lost my child.

Under common law I was the sole legal guardian of my child and had every legal right to keep my child.

As my guardian, it was the duty of the State not only to look after me properly and keep me from slavery, danger, physical and emotional violence, it was also its duty and responsibility to ensure that I had full information on what was going to happen to me.

On the 26<sup>th</sup> of October 1967 six weeks after the theft of my baby I was suddenly released from Holy Cross. I was dispatched from the Home and sent back to my mother in NSW. My plane fare paid for with the baby bonus and sickness benefit I was paid during the last 6 weeks of my confinement.

The State so traumatized me with my imprisonment slavery and the theft of my child that I was unable to speak of it to anyone for decades. I lived with the shame of not only being arrested and incarcerated but for the loss of my first child and only son. This has not only impacted on my personal life, but also the mental health damage I suffered has seen me frequently attending a psychiatrist for the past 9 years.

I was unable to gain a further education and did menial cleaning work for over 20 years never realizing that I had the ability to achieve a position where I could have earned a decent wage.

## **My Quest for Access to Justice**

In 1997 I remarried and was encouraged by my husband to re-enter education and I enrolled at TAFE to study Community Welfare and as a student I decided to investigate my adoption and incarceration experience.

I made my first phone call to an independent organisation known as Origins Inc Supporting People Separated by Adoption and from the first phone call I was sent into a state of high anxiety from the realization that my experiences had been unlawful. It was then that I decided to take an action against the State for the crimes committed against me as a ward of the state and the theft of my only son.

My first priority was however to find him and tell him the truth of what had happened to us.

This was to be very difficult because all I had was his first name and the threat from the Queensland Government of a 2 year jail sentence and a \$7000 fine for breaching sec39 of the Adoption of Children Act

Given that, the realization of the crimes committed against me by the state, I was not to be deterred by the threat of more abuse. And after several months of searching it was through a sequence of coincidences (and if one believed in a higher power) that I eventually found my son in April 1998

It was also to be long and frustrating exercise trying to find a solicitor to take on the matter, as the majority of them were not only inexperienced in adoption issues as legal/negligence issue but many thought that I would be defeated by the Statue of Limitations.

After at least 2 years of searching I eventually found a solicitor in Queensland who agreed to take on my case.

I would insert here that all of my evidence, and any other information even relating to the adoption of my son that was needed to mount my case was withheld from me under 1965 Adoption Legislation sec39, and also from my son placing a contact/information objection ('veto') on all of his information.

I did not have one piece of paper to even validate my claims, or substantiate that I was even a state ward due to the fact of the State hiding the evidence under its legislation. This situation changed when my son lifted his 'veto' in 1998 that I was able to obtain limited information but enough to take an action.

It was during this time that I gave evidence at the Forde Inquiry into the Abuse of Children in Queensland Institutions on imparting my evidence to Ms Leneen Forde she advised me to make a complaint of my allegation to the Queensland police which I did and for 18months my allegations in relation to the "theft" of my child were investigated by the crime squad, as the police could not find the doctor named in the matter they also suggested that I take my case though a civil action ( I can provide supporting documentation to my submission)

I entered Macquarie University in 2000 and was accepted into studying law I used this knowledge to put together a better presentation for my claim, and on the 27<sup>th</sup> April 2001, a Statement of Claim was entered into the Supreme Court of Queensland against the State and the Sisters of Mercy on the basis Breach of Fiduciary Duty of Care

Shortly after the lodgment of the Statement of Claim I was encouraged to go to Queensland to “reconcile” with the Sisters of Mercy after much discussion I was offered \$20,000 as an act of contrition by the nuns with their lawyer, advising me that “they the Church” would take the matter to court and tell the Judge that they were told by the State to treat me in the manner that had occurred, and that they would be exonerated and that I would receive nothing.

I was then advised by my Barrister at that time to take whatever you can get and “sick it in your war chest” I settled with the Sisters of Mercy that day, much to the detriment of my later action where the Judge, pondered that they should have also been part of the action

After the settlement of the Sister of Mercy which included a confidentially agreement signed by myself and my whole family including my son and his father, my action laid dormant by solicitors for over 3 years.

With many attempts to get my solicitor to finally get the matter into court I ended up having to look elsewhere for a new solicitor and found one by accident.

He suggested that we move the matter immediately, as my former solicitor had by one week just about run me out of time to get the matter heard, after much work in writing up affidavits etc, we went to court in November 2004. I submitted over 200 documents of evidence to substantiate my claim

As one would expect I was “grilled” by the Defendant in the witness box, and at times, he tried to denigrate not only my evidence, but other instances of my life unrelated to the claims in my case.

The evidence given by me about the theft of my child in the hospital went unchallenged by the State as I had already substantiated it by a letter from the Qld Minister of Health, in other words I had proved that they had stolen my child at birth, the very crux of my claim

In his judgment the Judge concentrated on the consent taking process, what he did not acknowledge was the evidence given that I was not to be approached by a consent taker under guidelines set down by the State, let alone have to justify the unlawful consent taking process

What no-one contested was the fact that I had been unlawfully arrested in the first instance and whatever happened after that event was at the control of the State of Queensland and the Sisters of Mercy to whom I was “entrusted”

On the afternoon of the second day I was offered a “settlement” option of either walking away and absorbing my own costs which up to that point was around \$100 000 (paid for by myself) or having the judgment (if it went against me) being responsible for the State’s cost as I was personally financially destitute at that time, and because I had waited 7 years plus waiting to get into court for justice I was not going to walk away.

The matter continued on for the next 2 days and I was warned by my solicitor that from the deliberations of the Judge that I was going to lose the case.

On the 22<sup>nd</sup> of December 2004 the sitting Judge handed down his judgment. I was in the court

to hear him in a brief manner (of probably less than 10 minutes) say: "In the Matter of Arthur v Queensland this claim is dismissed" The State solicitor then announced that the State would not seek costs and that was the end of my "matter"

After the dismissal I was taken to a room where my solicitor read out the Judges scathing decision, obviously intended it to deter any other ex-ward or victim of abuse by the State to seek justice.

In his judgment I was labeled as "a bitter angry woman" a shameful description of a woman who was abused so badly by her Guardian and sought justice and accountability

In effect what happened in this decision was to give license to any State across this country to abuse the children in its care, and then by the time they realize what had happened to them, their abusers would be able to hide behind the protection of the Courts

I expected that I would lose the action, what I was not prepared for was the scathing judgment for the entire world to read as a Landmark decision.

Not only had the Court rewritten my life, and my experience they had also taken away my liberty, my opportunity to marry the man I loved, my child, my health, my ability to succeed but also nearly cost me my life.

After coming home to Sydney that very evening I was prepared to suicide, it was only for the grace that my husband of 8 years watched over me and brought a friend to stay with me that I am alive to tell my story today.

## **In Conclusion**

I as an individual and as Coordinator of Origins SPSA Incorporated have been actively involved in parliamentary inquiries for a number of years and have called for a national Senate Inquiry into adoption practices numerous times, more recently at Senate hearing for Forgotten Australians.

In my own experience, and given that Cornelia Rau, (one woman's) experience of being forcibly detained, warranted a parliamentary inquiry and quantum damages, the least that could be expected from a democratic parliament and judicial system is the opportunity to access the same rights to justice.

Many tens of thousands of young women forcibly incarcerated like myself, with the added trauma of having their newborns stolen from them at birth are owed that right, we should not have to go to the expense of taking legal action that is doomed to fail in order to receive justice, or redress, and this situation should apply to all those who have been harmed by governmental negligence

I would add here that in 2009 I received Redress payments from the Queensland Government of \$21,000 for "serious harm suffered in a Queensland institution" whilst grateful to receive anything at all, it is a far cry from the judgment in the Cornelia Rau matter

The comparison being that a child who is owed a fiduciary duty of care, who is forcibly incarcerated and harmed by its guardians namely the State and its agents, has less recourse to justice than an adult who is capable of exercising their rights to resist detention

I went into that institution a normal teenage young woman with prospects to live a

constructive and fruitful life and was “dispatched” as a person who has suffered major psychological damage

The State governments and those involved in the unlawful incarceration of young women and the unlawful adoption industry refuse to accept accountability for it’s past practices.

Once again I ask this Senate Committee on behalf of all those mothers for the same opportunity as others who have been acknowledged to have their say and their experience recorded for the historical record though a Senate Inquiry

## Reasons for a Senate Inquiry into Adoption, Practices, Past , Present and Future

Adoption separation alone directly affects at the very least 5-6 million persons in Australia.

Since Federation there has been an estimated 300,000 women who have lost children to adoption.

An estimated 150,000 children were removed from their mothers over the period from 1950 to 2000 when adoption practices<sup>1</sup> at this time had been deemed unlawful by a New South Wales inquiry into past adoption practices. The report “Releasing the Past” was handed down in December 2000<sup>2</sup>. After two and a half years of investigation

It has also suggested by the Senate Inquiry Committee in the Forgotten Australians Report page 109<sup>3</sup> that there needs to be inquiries at State level to uncover the truth surrounding past adoption practices. This needs to be done at a Federal level due to the vast issues of Common and International breaches of law

In recent days there have been revelations that there are now instances of children from India and other destinations such as Ethiopia being trafficked into Australia, it has been known for decades by State governments that children have also been trafficked into Australia from South East Asia, and possibly other countries.

If International adoption is to continue there needs to be a thorough investigation into the adoption practices of the State Government Departments and their adherence to the Commonwealth’s sovereignty over law and international matters

As signatories to international covenants and the overseeing body of Common Law in Australia the Federal Government has a duty to its citizens to investigate the breaches of law by State governments, and to protect the most vulnerable people in society namely women and children, both in Australia and countries where poverty reigns and where the vulnerable are preyed on for their children

### **Terms of Reference Senate Inquiry into Adoption Practices, Past, Present and Future**

That the Senate Inquire into and report on:

1 Releasing the Past’ New South Wales Parliament, Standing Committee on Social Issues Inquiry into Past Adoption Practices, Final Report 2000 p 99

2 Releasing the Past’ New South Wales Parliament, Standing Committee on Social Issues Inquiry into Past Adoption Practices, Final Report 2000 p 104

3 Forgotten Australians Report 2004 Senate Community Affairs Committee, p109

1. Whether State Governments throughout Australia have breached Common Law principles and International Covenants in relation to:
2. The professional practices in the administration and delivery of adoption and related services, particularly those services relating to the taking of consents offered to parents and children in all States of Australia from 1950- 2009
3. Whether adoption practices referred to in clause one, involved unlawful and unethical practices or practices that denied birth parents access to non adoption alternatives for their child.
4. Whether State government adoption agencies have breached International covenants of human rights and have been involved in neglectful practices that have encouraged child trafficking into Australia
5. The Senate to look at uniform legislation of State Adoption Acts
6. And what measures would assist persons experiencing distress due to the effects of unlawful and unethical adoption practices