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Senator Rachel Siewert
Chair
Commonwealth Senate Community Affairs Committee
PO Box 6100, Parliament House
CANBERRA ACT 2600

Dear Senator Siewert

Subject: Questions taken on Notice - Senate Inquiry into Forced Adoption Practice

Thank you for the opportunity for members of the Adoptions and Permanency Services Team to appear at the Senate Inquiry Hearing into forced adoption practice held on 16 December 2011. During the hearing a number of questions were taken on notice, I provide response to these questions below:

1 What was required under law prior to 1968 in relation to taking consents to adoption from birth fathers?

The *Adoption Act 1920* was in force at this time and provided very little in the way of detailed prescriptions regarding the taking of consents. Section 5V stated that before making an order of adoption the Police Magistrate:

"Shall… require the consent in writing 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"

Section 5V1 goes on to say that consent is not required:

"…in the case of a deserted child…"

Given the very limited provisions in relation to consents it is likely, especially in relation to unmarried birth fathers, that consent was simply not required. It is probable that the 'desertion' provision was often utilised.

Tasmanian Adoption Law has increasingly strengthened in this area. The current legislation (*Adoption Act 1988*) sets out in detail the circumstances where the father's consent to an adoption is required. Essentially, where paternity is established, either directly or indirectly the father of an ex-nuptial child has the right to refuse his consent to the adoption.

2 **Please provide a copy of the report; Background Paper for the Minister of Community and Health Services. On Issues Relating to Historical Adoption Practice in Tasmania prepared by Ann Cunningham, 4 December 1996.**

A copy of this report is enclosed.

3 **Provide a list of the facilities and institutions historically involved in adoption in Tasmania.**

The two agencies with responsibility for overseeing the process of adoption since 1968 have been the Department of Health and Human Services and The Catholic Private Adoption Agency (Centacare).

There have been a range of other institutions in Tasmania whose activities have intersected with the process of adoption over the years. Most significantly 'rescue homes' for women were established and often accommodated young, pregnant women during their 'confinement'. These included[1]:

- Lying-in home for married mothers. The home operated from 1888 to 1895 at Cascades, Hobart and from 1895 to 1925 as the New Town Charitable Institution.
- Home of Mercy, a Church of England home for unmarried mothers and prostitutes was founded in Hobart in 1890. It was later absorbed into Clarendon children's Homes.
- Magdalen Home, was a Roman Catholic home for girls and young women of twelve years of age upwards was founded in 1893. It was situated in Hobart and later became Mount St Canice.
- Elim Maternity Hospital, a Salvation Army home for unmarried mothers was founded in 1897 and the last recorded birth there was in 1973
- Rocklyn Maternity Hospital, established by the Salvation Army in Launceston in 1896 and was destroyed in a boiler explosion in the 1960's.
- The Karadi Home in Launceston, originally established by the private Queen Victoria hospital as a home for expectant mothers from King and Flinders islands, was subsequently used as a hostel for single mothers.

Other care institutions, particularly those that provided services to children who were subject to guardianship of the State also involved in the adoption process at times. Lists of these institutions can be found on the 'Find and Connect' website through the following web address:

http://www.findandconnect.gov.au/tas/

Details of care institutions can also be found in the report prepared by the Tasmanian Ombudsman in relation to the review of claims of abuse from adults in State care as children in 2004. This report can be found through the following web address:

http://www.ombudsman.tas.gov.au/publications_and_media/case_studies

[1] Parliament of Tasmania Joint Select Committee Report, Adoption and Related Services 1950-1988, 1999, p.18

4 Provide numbers of adoptions in Tasmania under the various Adoption Acts

Legislation	*Years*	*Numbers of Adoptions*
Adoption of Children Act 1920	*1920-1968*	*7 849*
Adoption Act 1968	*1969-1988*	*3 342**
Adoption Act 1988	*1989-present*	*626**

**includes Intercountry adoptions*

5 Provide advice on what interaction occurred between states and the commonwealth regarding the development of model law in relation to Adoption in the mid 1960's.

Departmental files suggest in the early 1960's Tasmania along with other states was considering changes to adoption legislation. In early 1961 the Commonwealth and States' Attorneys General met and agreed that an attempt should be made to achieve some degree of uniformity at least to the extent that there could be interstate and international recognition of adoption orders. Two conferences were arranged by the Commonwealth and State Attorneys-General to consider the welfare aspects of adoption. The conference was attended by the by states' Directors of Social Services along with representatives of the Commonwealth Government. The conference agreed that a 'model bill' would be developed by the Commonwealth Attorney General's Department upon which states could base new adoption legislation. The model Bill was completed in 1965 and states and territories developed their own legislation in consequence. Tasmania enacted legislation in 1968.

Thank you once again for the opportunity to give evidence at the hearing. I trust that this additional information will prove useful also.

Yours sincerely

Greg Johannes
Acting Secretary

10 January 2012

Enc: Background Paper for the Minister of Community and Health Services, on issues Relating to Historical Adoption Practice

BACKGROUND PAPER FOR THE MINISTER OF COMMUNITY AND HEALTH SERVICES

ON ISSUES RELATING TO HISTORICAL ADOPTION PRACTICES IN TASMANIA

PREPARED BY
ANN CUNNINGHAM
LLB. (Hons)

4 DECEMBER 1996

CONTENTS

1. TERMS OF REFERENCE

To prepare a background paper for the Minister on issues relating to historical adoption practices in Tasmania. The paper should include:

- An historical and social overview of adoption practices since the 1920's including a review of Adoption Legislation.

- An initial assessment of the potential reasons for, nature and extent of adoption practices involving official deception of coercion.

- The extent to which it would be possible or desirable to investigate alleged cases given the following:

  - information that is available
  - access to records
  - issues of confidentiality
  - wishes of various stakeholders

- A recommendation on a method of research should an alleged case be investigated with particular reference to the independence of the research.

- Advice on what support arrangements might be put in place for an individual, family or group who experience distress because:

  - an alleged case of official deception is substantiated, or
  - they believe they have been deceived but in fact the child was stillborn or died soon after birth. (They actually need support to come to terms with this fact).

2. PREFACE AND INTRODUCTION

This report was commissioned by the Minister following allegations of malpractice in adoption procedure reported by the media around the State.

It was alleged that up to 50 birth mothers had been told that their babies had died at birth when in fact they may have been adopted. Other allegations were made in relation to illegal and inappropriate practice in the area of adoption.

I was engaged to prepare a background paper to investigate past adoption practices and to provide an assessment of the extent of such allegations of official coercion in relation to adoption procedures.

An outline of the terms of reference for the paper is attached.

Following my appointment there was extensive advertising of my services around the State which invited people affected by past adoption practices to contact me. I have also been engaged to assist people with enquiries in relation to adoption, to help them access records and refer for legal advice or other support services where appropriate.

I was invited to attend meetings of two adoption support groups, Adoption Jigsaw and Origins. I was independently contacted by other members of the support groups who informed me of their concerns in relation to past practices. Many of these concerns were allayed following access to appropriate records. Most of the concerns related to the period from the late 1960's to the early 1970's when there was a steady increase in the number of adoption orders made.

In addition to those people who initiated contact with me who were mainly birth mothers and adoptees, I arranged appointments with child welfare officers who had worked in the field of adoption in the 1960's and 1970's, medical practitioners, hospital staff, magistrates and solicitors. I also spoke with adoption officers at Centacare and visited Elim Hostel in West Hobart. I have consulted with officers at the Adoption Information Service, the Registrar of Births, Deaths and Marriages and staff appointed at the medical records departments of various public hospitals all of whom have most willingly assisted and provided me with information within the confines of confidentiality provisions.

Being based in Hobart I arranged appointments in Launceston and Burnie where I visited the general hospitals and spoke with social workers who had worked as past adoption officers. Advertisements were placed in the local newspapers inviting any person affected by past adoption practices to meet with me however I had very little response to this invitation.

I have also read widely from various papers and reports and national and state adoption conference presentations.

The basis upon which information was gathered for the report was that it would be non-identifying and all persons contacted were willing to contribute on this basis.

I very much appreciate the contributions made by those people who gave of their time, experiences and information in the knowledge that it would hopefully assist appropriate responses to an area of practice that has recently aroused so much emotion and concern for many people.

Whilst I have endeavoured to make contact with as many people within the limitations of my consultancy agreement, I am aware that there are other people who may have been able to contribute but with whom I have not made contact due to the constraints of time and resources.

3. EXECUTIVE SUMMARY

The essence of my brief for this report was to examine the extent and nature of allegations of adoption practices involving official deception, coercion and illegalities and to advise on methods of research and investigation of such allegations.

I was not vested with authority nor had I the power under the current legislation to access information in relation to adoption practices without the express consent of those persons involved. My investigations were consequently restricted to cases presented by individuals. With their permission I was able to access their medical records and those held by the Registry of Births, Deaths and Marriages. Approaches for information from the Adoption Information Service were generally made by the individual concerned.

Included in the Report is a fairly detailed analysis of historical adoption practices and consequential changes to practices as each new Act was introduced -

The Adoption of Children Act 1920
The Adoption of Children Act 1968
The Adoption Act 1988

Changes in societal attitudes and practices precipitated many of these legislative changes.

My investigations and research have revealed that there were certainly previous adoption practices that were inappropriate, could be considered unethical and exercised without regard to the rights of those involved. There are also allegations of practices that were possibly illegal, that is contrary to applicable law at the relevant time. For instance allegations of coercion and duress in relation to the signing of consents, the withholding of vital information as to rights of revocation of consent and explanation of the legal ramifications of signing a consent to adopt.

The practice of refusing the mother contact with her child even prior to her signing the consent was common however not "illegal" until provisions were enacted under the Adoption Act 1988.

Although in the Department Manual directives were given that welfare officers assist the mother in making an informed decision about adoption after consideration of other alternatives, I am informed by many birth mothers that there was little or no discussion of other alternatives in particular availability of the State Welfare Benefit from 1969. I undertook a search of the Annual Reports of the Department of Social Welfare for the years 1969 to 1974 which contained details of the number of persons receiving the benefit.

I am not aware of a substantiated allegation of a mother being told her that baby had died when in fact the baby had been subsequently adopted. For those mothers who claim they were told that their babies had died at birth and later discovered that they had been adopted, a signed consent form was discovered on the file and whilst none have disputed the signature, many had no recollection of signing the form. Most of the mothers who recall being told that their babies had died are unclear as to who informed them of the death, it may have been family members. I have not personally received a request to investigate such an allegation from a birth mother and rely on information from previous enquiries. I did speak with one adoptee whose mother had claimed that she was told her baby had died in 1952. A search of her adoption file revealed a consent form, although only signed one day after the birth of the baby.

The majority of concerns raised in relation to past adoption practices are now covered by legislation under the Adoption Act 1988.

Most of the contacts I have received are from persons enquiring as to how they can access adoption, medical and birth/death records relating to the birth of their babies. Few discrepancies have arisen following such searches and where there has been any area of concern I have referred those persons to Roland Brown at the Legal Aid Commission whose appointment I arranged specifically to deal with issues relating to historical adoption practices. I understand that few people have sought legal advice, most being satisfied with the information that I have been able to access on their behalf.

I believe that the services already in place can continue to offer appropriate investigative functions to any persons who may subsequently seek an investigation of the circumstances of their case.

It is apparent that many of these people simply need assistance to heal their wounds and some are now suffering significant trauma as a result of inappropriate and unethical past adoption practices and societal attitudes displayed towards them. Part of the healing process in coming to terms with their grief and sense of loss is a public acknowledgement of the circumstances in which they relinquished their babies for adoption and recognition of the unjust and immoral treatment at the hands of those in authority and power. Few are seeking revenge but rather a public understanding of the circumstances in which they reluctantly gave their babies for adoption in a society that offered them no financial support, a society that shunned the unwed mother and called her child "an illegitimate bastard". Without family and community support, the mother was easily convinced that adoption was the best option and would provide her child with the family and financial security that she could not.

Many of these mothers need to revisit the circumstances of the adoption of their children and access to their records has greatly assisted this process. Some will need professional grief and trauma counselling.

With community acceptance of openness in relation to adoption there is little need for the secrecy which surrounded past adoption practices. Many of the present provisions in relation to access to information under the Adoption Act 1988 create significant difficulties for the Adoption Information Service in providing appropriate information.

Recommendations are also suggested in the report in relation to legislative reform in this area and in particular the lifting of restrictions present in sections 82, 84 and 86 requiring the relevant authority to first obtain the agreement in writing of affected persons before the information sought can be released.

It is suggested however that wider community attitudes be assessed in relation to this very sensitive issue, particularly as I have had very little contact to date with adoptive parents. It is recommended that submissions be sought from those who may be affected by such changes to the legislation.

4. HISTORICAL AND SOCIAL OVERVIEW OF ADOPTION PRACTICES

The Terms of Reference required me to research adoption practices since the early 1920's and provide an historical and social overview of such practices.

Adoption Practices 1920's - 1960's

I was able to obtain little direct information concerning adoption practices in the very early years. Most of the following accounts of these years are anecdotal and from research material including reports prepared for National Australian Adoption Conferences. I did discover some interesting historical information from a perusal of early Departmental files dating from 1961.

The first homes opened for the care of unmarried expectant mothers were for the most part run by charitable organisations and churches. A "Government Lying-in Home" was opened in Cascades, Hobart in 1888 and a Ladies Visiting Committee was appointed to look after the girls. At this time most mothers kept their babies and were assisted in finding accommodation or employment. There were no social welfare benefits or housing support schemes available. As a result there were numerous deserted children and children forcibly removed from families and placed in institutionalised care which was regarded as being little better than prisons. Following recommendations of a Royal Commission Report in 1871 a boarding out scheme was established in Tasmania, the principles of which later served as a guide for adoption and foster care practice. The Adoption of Children Act in 1920 created the legal status for such arrangements where children, usually

neglected or abandoned, were placed in the care of a family rather than in an institution. There was no provision for concealment of the identities of those involved in the adoption process. Indeed it was expected that the natural parents would participate in the selection of the adopting parents and have the right to object to a particular applicant.

Following the Second World War adoption agencies throughout the country experienced a dramatic increase in the number of babies being made available for adoption.

There was considerable stigma attached to the concept of single parenting during the 1950's and 1960's. Unmarried expectant mothers were often sent inter state on a "working holiday" where they either boarded with a private family or stayed in a girl's home pending the birth of their babies. The Catholic Church would be contacted by a church in another state requesting boarding arrangements with a family for a single expectant mother where she may assist in the care of the family's children during her "confinement". The Church would also often arrange placement for babies being adopted with families within the Catholic community. Within the public hospital system, "lady arminahs" arranged placements and it is understood that various sums of money also changed hands in consideration.

The Elim Maternity Hostel in Hobart run by the Salvation Army, was originally established in 1897 as a rescue home. The first woman was admitted to the

home on the 19th April 1897, her condition being described simply as "fallen". Records now held with the Department of Community Welfare indicate that the date of the first baby born at the Elim Hostel and subsequently adopted was the 15th October 1927. The last recorded birth at the hostel was on the 27th November 1973. The Salvation Army had also established a hostel in Launceston known as Rocklyn which was destroyed during a boiler explosion in the late 1960's. It is believed that all records relating to admissions at Rocklyn including adoption records were lost in the explosion.

The Karadi Home in Launceston was established by the Queen Victoria Hospital (a private maternity hospital) as a home for expectant mothers pending the birth of their babies. It was originally set up as a home for expectant mothers from King and Flinders Island but was subsequently used as a hostel for single mothers. Often young girls from the south of the state would be sent by their families to the north and vice versa to conceal the impending birth of their "illegitimate child". Such was the stigma attached to the condition of these women, I am informed that they were only permitted to go out "after dark".

It is interesting to note the issues raised in the Report of the joint UN-WHO Meeting of Experts in September 1953 where it was stated that

> "adoption is regarded as the most complete means whereby family relationships and family lives are restored to a child in need of a family. When constituted of mother, father, and children, the family shows

> itself to be the normal and enduring setting for the upbringing of a child.... The goal of adoption is the incorporation of the child within the new family and providing him with all that a family means to its children."

In the Report consideration was given to the needs of the child and his future as well as those of the natural mother and the adopting parents. It was pointed out that where it is appropriate for the unmarried mother to keep her baby, practical and financial provision must be made to enable her to do so adequately. The provision of financial assistance it was stated, should not discriminate against illegitimate children. Comment was also made of the social climate in which an unmarried mother chose to keep her child and the attitudes that may be displayed towards her and her child in determining what is in the best interest of the child. Other considerations the Report noted, were whether the mother had a good relationship with her own family, was of a stable personality and capable of "such a decree of motherly feeling as to make them able to bring up their children in spite of the difficulties involved".

There are several references in the Report to the "morality" of the mother's behaviour and that the retention by an unmarried mother of her baby in some communities would constitute for the child "a severe social handicap".

Much of what is contained in this Report reflects the social climate of the 1950's which attitudes were still prevalent in the 1960's and early 1970's.

The unmarried mother faced considerable hurdles if she decided to bring up her baby on her own and without the support of her family. This was often the case given the stigma then attached to the status of an illegitimate child. I have been informed by many of the relinquishing mothers of statements made to them by their own mothers to the effect that they could not expect to return to the family with their illegitimate child. Often the decision to adopt was made by the parent of the pregnant daughter. Without that support, the benefit of social welfare payments, housing allowance or child care to enable the mother to return to work, an unmarried mother had little option but to relinquish her child for adoption, although reluctantly. There is little doubt that the anguish and grief suffered by a mother who was forced to relinquish her child merely because of the lack of support services was widely recognised. Not by all however and the birth mothers often felt that their treatment was harsh and judgmental particularly by hospital staff and those holding positions of authority.

Many mothers have relayed accounts to me of their "confinement" in hospitals and at various homes. Although the Elim Hostel provided a temporary home for young, unmarried expectant mothers, the attitudes and practices of those in charge were designed I am informed to ensure that those mothers never returned for a second time. Unmarried expectant mothers entered Elim on the understanding that their child would be adopted. This was conditional of course on the child being passed as medically fit for adoption. Those that were not passed, were reassessed at either six or twelve months of age. The

Annual Report of the Department of Social Welfare in 1967 stated that during the past 5 years 63 babies had been medically assessed as not being fit for adoption and were either admitted as wards of the state or placed in foster care, 31 children being subsequently adopted by their foster parents.

The practice at Elim was that the mothers would continue to care for their babies after the birth and breast feed for at least two weeks until they were collected by their prospective adopting parents. This practice was regarded as cruel and punitive by some mothers and others working in the field of adoptions. It was not practised in any other hospital at the time. I have spoken to other mothers who gave birth to their babies at Elim and who expressed no dissatisfaction with the care that the hostel afforded them. Four women who I met still reside at the home, which now provides accommodation for women with intellectual disabilities. They informed me that there was no pressure placed upon them to adopt their babies and in fact two of these women continued to care for their children until it was assessed that they could no longer provide appropriate care when the children were two or three years of age. The children were then provided with foster care.

There was no provision under the 1920 Adoption of Children Act relating to the time within which a consent to adopt could be signed. I was interested to discover what the practice had been and I obtained permission from the Registrar of Birth, Deaths and Marriages to select files at random from which I gathered the following non-identifying information. Twenty nine files were

selected from a box containing adoption records for the period July to October 1960. they revealed the following:

Number of consents taken within 2 days of birth	4
" " " " " 3 " " "	3
" " " " " 4 " " "	3
" " " " " 5 " " "	5
" " " " " 6 " " "	4
" " " " " 7 " " "	2
" " " " " 8 days and over	8

It was also interesting to note the ages of the mother signing such consents as follows:

2 mothers 15 years of age
2 mothers 16 years of age
4 mothers 17 years of age
4 mothers 18 years of age
3 mothers 19 years of age
2 mothers 20 years of age
12 mothers 21 years of age and over

From various sources I have learnt of the practice of "rapid" adoption where a married woman whose baby had died at birth, was given a substitute baby from a young unmarried mother, and went home with the baby from hospital. This practice was referred to by Sister Phillipa Chapman of the Centacare Agency in her address to the Tasmanian Conference on Adoption in November 1985. She was referring to practices prior to the 1968 Act when often there were little or no assessment procedures or supervision of placements. This was at a time when arrangements for adoption were made by doctors, medical staff, the clergy and solicitors.

I also understand that it was not an uncommon practice for doctors to arrange adoptions within their own practices. A couple who could not conceive their own child would be "given" the baby of young unmarried mother who had consulted the same doctor. Many a woman must have wondered at subsequent visits to the surgery whether her child was also present in the waiting room.

Then there were the "baby farmers" who frequented the Queen Victoria Hospital in Launceston and persuaded girls to place their babies with them on the understanding that they could see their babies as often as they wished. The "baby farmer" would be eligible to collect the foster care allowance.

With the transfer of responsibility to the Department Community Welfare under the 1968 Act and the procedures that were introduced under the Act, many of the practices referred to above were no longer legal.

Adoption practices since 1968

Privately arranged adoptions were outlawed under the 1968 Act. Under this Act responsibility for adoptions was transferred to the Department of Social Welfare from which time records relating to adoption were held by the Department.

The Catholic Family Welfare Bureau operating in Hobart (now known as Centacare) was authorised under the 1968 Adoption Act to make

arrangements for adoption. Requests had been received during the early part of the 1960's from Catholic women both in Tasmania and from interstate that the Catholic agency make arrangements for the adoption of their child. The Agency's practice has been not to place a baby with the adopting family until after the revocation period has elapsed. The baby was placed with a foster family in the interim period. Consents to adopt were generally signed at the office rather than the hospital. It was acknowledged by the Agency that the young mothers reluctantly relinquished their babies for adoption, that they had few options at the time and very few mothers received any support from their families to keep the baby. It was also not uncommon, I was informed, for a married couple to relinquish a child for adoption where there were already many children within the family and severe financial hardship. In these circumstances the other siblings were invariably told that the baby had died at birth.

The Agency recognised that it was important for the birth mother to see her child after birth and refused to take a consent to adopt unless the mother had at least been informed of the sex of baby. The Agency categorically disputed that any details in the consent forms would have been altered after the mother signed her consent, for instance to include reference that the child be brought up in the Catholic religion. They maintained that their practice was at all times ethical and within the law and any form not properly completed would be resworn or amendments initialed by all parties. I asked these questions of the Agency as I was shown a consent form from one mother who

maintained that she would not have agreed to her child being brought up in the Catholic religion although her form stated that this had been her preference. She did concede that the father of the child was a Catholic but he had not signed the consent to adoption. The mother further said that she had no recollection of signing the form. She disputed the date when consent was taken and disputed that she had signed her consent in the offices of a Launceston solicitor as indicated on the form.

Representatives of Centacare say that it is now acknowledged that many of the birth mothers relinquishing their children suffered from a trauma syndrome which was not recognised at the time. No one was then experienced with trauma counselling however they believe that the adoption workers dealt with the issues as best their could within the confines of their resources, knowledge and experience at the time.

I have referred to the practice of the Catholic agency, Centacare in not placing the baby with the adoptive parents until the lapse of the period within which the natural mother could revoke her consent to the adoption. This avoided the possibility of the child being removed from the care of the adoptive parents and returned to the natural mother. This practice has been under review within the Department in early 1961 and it was determined then that the Infant Life Protection provisions of the Infants Welfare Act authorised placement of children to be adopted with the proposed adopters prior to an application for an adoption order being lodged with the Court.

The Department continued the practice of placing babies for adoption with their intended adoptive families once the consent by the natural mother had been signed. One mother with whom I spoke was particularly concerned to learn that the day on which she had signed the consent to the adoption of her twins in 1973, they were in fact removed from Tasmania and placed in the care of the prospective Victorian adoptive parents. The adoption had been organised between the State Welfare Department and the Mormon Church in Victoria. She wonders with whom the responsibility lay to return the twins to her care had she exercised her right to revoke her consent to their adoption.

There are mothers who have reported that they were heavily sedated following the birth of their babies and in some instances inspection of their medical records has confirmed this. I am aware of allegations having been made in other states of Australia that some mothers signed their consent forms while under the influence of sedatives. No one has reported such an allegation to me at this stage.

Provisions were introduced under the 1968 Adoption of Children Act which prevented a Court from making an adoption order where the instrument of consent had been made on or within seven days after the date of birth of the child. If the consent had been signed within that period a certificate of a legally qualified medical practitioner was required stating that at the time the mother was in a fit condition to give the consent. (S26 (3) & (4)

The practice in most public hospitals was to actively discourage and prevent mothers from having any contact with their babies after birth if they were to be adopted. It was widely felt by professionals that contact between the mother and baby would only make the eventual separation more stressful. I sighted a letter on the Departmental files written by the Medical Commissioner at the time, T.H.G. Dick, addressed to the Minister for Health which letter was dated the 18th September 1969 and I quote

> "re: Adoption of Babies. There will be some cases where the parents of the unwed mother agree to take her daughter and her off-spring home. Only in this case do I feel it wise that the unwed mother should see her baby after birth. In all other cases where the child is going out to adoption it is my unqualified opinion that it is most unwise for the mother to see or have any relationship with he child after birth. I have discussed this question with the Professor of Psychiatry who is in entire agreement with me on this matter."

Other doctors with whom I have consulted in relation to this paper confirmed that it was their professional opinion at the time that it was preferable if mothers proposing to have their babies adopted did not see or have contact with their babies following birth.

I was informed by several welfare workers working as adoption officers during the late 1960's and early 1970's that they disagreed with the hospital practice of not allowing single mothers to see their babies after birth. Some mothers were not even informed of the sex of their baby. These welfare workers claim

that they were instrumental in changing hospital policy to allow contact between the mother and baby if requested.

The hospital staff had no right to refuse such requests for contact however there was no legislation in force until the enactment of Section 45 (1) under the Adoption act 1988 which made provision for a mother's right to visit her child during the revocation period after consent to adoption had been signed. During this period the Director for Community Welfare assumes guardianship of the child.

I understand that it was particularly difficult to persuade hospital staff at the Queen Victoria Hospital in Launceston that a mother had a right to see her baby if requested. The mothers that were able to see their babies after birth reported that it assisted them in coming to terms with the relinquishment of their baby.

There was little counselling as we now know the process for mothers who intended or were deciding whether to relinquish their babies for adoption. The adoption workers with whom I spoke and who had worked for the Department in the late 1960's and early 1970's all acknowledged that the decision of adoption involved pain and suffering for the natural mother and that little was done to assist her in the process of grieving for the child that she had relinquished for adoption. Many put this down to lack of time and resources for workers at the time and the extensive case load that each

worker had to carry when included child welfare work and consequential court appearances. There was no ongoing support services for the relinquishing mother and little if any antenatal care. It is therefore not difficult to understand how many mothers have never been able to come to terms with the loss of their child, when one recognises the harsh and punitive attitudes displayed towards them, the lack of counselling and support services, and that these mothers were left to cope with their loss on their own. Many were simply told by hospital staff, the medical profession, family and others, to put it all behind you and now get on with your life.

However, the practice of adoption, I have been informed, was regarded as a specialised task within the Department of Social Welfare, and always received priority. Although many of the welfare officers were introduced to adoption work only 6 months after joining the Social Welfare Department, many of them subsequently undertook a course in social welfare and received ongoing skills training. Ms Joan C Brown a trained social worker with an honours degree in history from the University of London joined the Department from England in 1962 and introduced many of the practices later enacted in the 1968 Adoption Act. She worked with the Department for eight years becoming a State Welfare Child Supervisor. Welfare officers who worked with Ms Brown informed me how she initiated and maintained a most professional standard of practice within the Department. I understand that Ms Brown was responsible for updating the Departmental Manual section relating to adoption. It is stated at page 160 of the Manual

> "The policy of the Department is that while in many cases adoption of the child may be the best course, the mother of the child should have a choice, should be informed about any alternatives and assisted to work out her own decision. The C.W.O. should help the mother to see the problem in realistic terms, but should not persuade her in either direction. Effective work by a child welfare officer, at this stage, can often avoid distressing situations resulting from a girl revoking her consent to the adoption of her child, at a later stage. It is also an advantage for a child welfare officer to be known personally to the girl, at the time stage where she is completing the necessary documents, after the birth of child."

It was stated in the Manual that counselling was regarded as an essential part of the process. Detailed information was contained in the Manual in relation to the process of taking consents, the need for accuracy, and further that the person witnessing the consent be required to certify that she; (i) had explained to the person giving the consent the effect of such a consent; (ii) gave ample opportunity for the mother to read or have read to her the instrument of consent; (iii) had informed the mother of the revocation provisions; and (iv) that she was satisfied that the mother understood the effect of signing consent. It is to be noted that all the Department adoption workers were female at this time and could be delegated authority by the Director to witness consents to adoption.

The adoption welfare officers with whom I spoke in Hobart, Launceston and on the North West Coast, and who had been employed by the Department in the late 1960's to mid 1970's described their practices of counselling the expectant mothers before the birth of their baby. They saw their role as facilitating the adoption if this was the mother's wish. They dispute that any pressure was placed on the mothers to give consent and said that if they believed that the mother was uncertain or reluctant they would continue to counsel the mother and return at a later stage to take her consent if appropriate.

On page 161 of the Department Manual it was stated, "where an unmarried mother is aged 16 or younger, and the whereabouts of her parents are known, it is normal practice to obtain from her father or mother a brief statement indicating agreement with their daughter's consent to adoption".

There is no provision in the legislation for the age at which a mother can give her consent to adoption. The question of capacity to consent would be determined by common law principles.

There are directives in the Manual relating to the assessment of applicants for adoption, the requirements for medical examinations and the matching of babies with suitable applicants. Regardless of these directives, several birth mothers reported to me that they felt pressured and harassed into relinquishing their babies for adoption when they would rather have had the

option to keep them. They are angry and maintain that other alternatives to adoption where not offered to them. The adoption workers argue in defence that there generally were no other options and all disputed that any coercion or pressure was exerted on the mothers to agree to adoption. They maintain that there were no viable alternatives for most young single mothers and that adoption at the time was seen as being in the best interests of a child. It was an acceptable practice and provided the child with a family.

There are letters and memoranda on Departmental files from 1969 referring to the cost of keeping mothers in hospitals until they had signed their consent to adopt. The 1968 Act required that the consent not be taken until seven days after the birth of the child. In one memorandum, the Director, G.C. Smith referred to a changed practice of allowing girls to leave the hospital after the birth of their child and before consent to adoption was signed. The Director commented in his memorandum as follows,

> "..... an experiment was started three years ago at the Royal Hobart Hospital and later extended to the Queen Alexandra Hospital and Calvary Hospital to allow the mother to leave the hospital 3 - 5 days after the child's birth and arrange for her to come to the office in Hobart to give her consent seven to nine days after the child's birth. In most cases (almost 95%) the girl had been referred to the child welfare officer during pregnancy and had seen her on a number of occasions so that a friendly relationship had been built up and the girl understood what the procedure was to be and was dealing with a person she knew

and trusted at the time of signing her consent. The results of this experiment (over three years) have been very satisfactory. Not a single girl has failed to give her consent and therefore no baby has been abandoned in hospital as a result. The girl herself has been allowed to return to her home or to the family with whom she was living and has had time away from the hospital to think over her decision. At the time of giving her consent she has been far less upset and emotional than was often so in hospital and was returning immediately to her family or friends who could assist her recovery. Revocations of consent have been very rare so that the baby and the adoptive parents have not been subjected to a distressing parting. Last year this practice was extended to the North West Coast where so far it has also been satisfactory."

The Director further noted that in the case of a girl returning to a remote country area in the State "..... the Child Welfare Officer can be asked to interview the girl in hospital prior to discharge, and fill in the forms ready for signing giving her an addressed envelope for return posting and writing down the date on which they should be signed and posted to the Department. She can then obtain a local Justice of Peace as witness. This has been the practice in our Burnie District for Smithton, Queenstown and Rosebery Hospitals where no Departmental office is available within a reasonable distance. Again no girl has failed to return her papers over the last 2 - 3 years."

The Director went on to comment that it was hoped that "in the interests of these young mothers, this procedure could be brought into effect at the Queen Victoria Hospital. There is an added danger that if an early consent is given, even though a medical certificate is provided, the girl could later claim that she was forced to sign in order to be allowed to leave hospital and that as she could not afford to remain, she was under severe economic pressure. Conversely the actual signing of consent is not a safe guard in itself since the mother could withdraw this immediately on leaving the hospital (or within 30 days after) and provided this revocation was in writing the Department would have no choice but to act upon it.

At present the mother may revoke her consent at any time up to the making of the adoption order but in practice it is comparatively rare for this to happen after the placement of the baby. The mother is seen as regularly as possible during pregnancy, to provide opportunities to discuss the pros and cons of adoption from every point of view and help her with plans to keep her baby if this is what she wishes. Usually the decision reached by the end of pregnancy is a firm one."

Adoption workers on the North West Coast of Tasmania told me that their practice was to meet with the pregnant mother early at her home or in the office prior to the birth to discuss the prospect of adoption. Consents were not signed in the hospitals but sometime following the birth either at the

mother's home or at the Departmental office. They recall very few revocations of consent. They also spoke of the practice of "shared care" which was trialed in the early 1970's for a period. The child was placed with foster parents and maintained contact with the natural parent(s) thereby having two sets of visible parents. Experience subsequently showed this practice to have a detrimental affect on the child and was discontinued.

It is apparent that there were directives issued to welfare officers working in the adoption field at least from the time of the enactment of the 1968 Act which emphasised the fact that the decision to adopt was that of the mother, that she should be assisted to make an informed decision and not be placed under any duress.

Acknowledgement was made of the fact that many single mothers did keep their babies and managed quite successfully especially where they received support from their own parents. It was noted in one Departmental memorandum in 1969 that there had been several actions in the Supreme Courts of other states where mothers had challenged adoption orders on the grounds that undue persuasion was placed upon them to consent to the adoption and that judges had been critical of such persuasion.

Kellmer Pringle in his article "The Needs of Children," made a statement about adoption which largely confirmed societal attitudes at the time (1974):

> "Available research evidence shows that adoption is one of the soundest, most lasting - and incidentally cheapest - ways of meeting the needs of certain children who are socially deprived and in need of a normal home life! In fact, it is the most satisfactory form of permanent care yet devised by western society for children whose own parents cannot undertake it."

It is interesting to note that at the first Australian Conference on adoption held in February 1976, there were no references to the rights and issues for birth mothers in adoption. Topics centered on the rights of adoptive children and their parents, medical and genetic considerations, adoption of children with special needs, intercourtry adoption, adoption in a changing society, assessment and placement and general legal issues. The issue of the rights of natural parents was discussed at the second conference held in May 1978. Acknowledgement was expressed of the trauma and guilt felt by natural parents in giving up a child for adoption and recognition that some natural parents may still not have resolved their feelings. At that time no study had been conducted in Australia to elicit the views of natural parents regarding access to adoption records. Studies in other countries had revealed that most natural parents would agree to a reunion if this was sought by the adoptee. There was discussion at this conference about the establishment of an adoption record.

The Third National Conference held in Adelaide in May 1982 included papers which specifically addressed the problems of relinquishment of a child by a

natural mother, the effect on the mother and the grief suffered by her. As Kate England said in her paper entitled "The Relinquishment Process and Grieving ":

> "The most long lasting aspects of grief I have encountered in my work with relinquishing parents appear to be the powerlessness and rejection leading to the decision to adopt and for those at some distance from those events, the continuing social and legal denial of the interest and concern for the children they relinquished. The legal "death" is unmatched by a death feeling; indeed the social context in which women find their reality demands that contradiction be maintained."

It must be obvious that from the dramatic reduction in the number of children being offered for adoption from the mid 1970's, that given a choice of other alternatives mothers will decide to keep their children rather than relinquish them for adoption. A number of factors influenced this change - the introduction of the Supporting Parents Benefit in 1974, changes in societal attitudes towards unwed mothers and their children, and the removal of the concept of "illegitimacy" under the Status of Children Act 1974. There were other factors such as the availability of contraception and abortion that resulted in fewer unplanned births.

It was well recognised that adoption as well as providing a home for the child also served the dual purpose of providing an infertile couple with a much desired child of their own. With recent advances in medical technology in this

area, there would be less demand for children to be made available for adoption.

5. REVIEW OF ADOPTION LEGISLATION

1920 - Present

Tasmania was the second state in Australia to enact adoption legislation with the passage of the Adoption of Children Act 1920. Prior to 1920 adoptions were generally arranged by solicitors who prepared the necessary documentation. It is not known how or whether such arrangements were recorded.

Under the 1920 Adoption of Children Act power was conferred on the Police Magistrate to make an order for adoption. The provisions of section 5(1) required that he be satisfied that:

(i) the person to be adopted is a child as defined by section two;

(ii) the person proposing to adopt the child is of good repute, and a fit and proper person to have the care and custody thereof, and of sufficient ability to bring up, maintain, and educate the child;

(iii) the welfare and interests of the child will be promoted by the adoption; and

(iv) the consent required by this Act have been duly signed and filed.

An important consequence of the adoption order was that the adopting parent would be "deemed in law to be the parent of such adopted child, and be subject to all liabilities affecting such child as if such child had been born to such adopting parent in lawful wedlock", (Section 8 (2)). These provisions

ensured that the adopted child became the natural child of the adopting parents, thus removing the stigma of illegitimacy.

Certain provisions were also contained in the Act which provided that the adopted child would not automatically inherit the property of his/her adopting parent unless expressly provided. Section 8 (2) of the Act extinguished the relationship between the child and its natural parents "except the right of the child to take property as heir or next of kin of his natural parents directly or by right of representation".

Further provision was made in the Act for a reversal or discharge of an order for adoption whereby the legal status existing prior to the adoption order would be restored, (S9).

This Act formalised adoption procedures and adoptions were registered with the Registry of Births, Deaths and Marriages. The original birth registration was annotated and a new registration made containing details of the adoptive parents. Adopting parents were required to apply to the court for an order for adoption. The court viewed the relevant documents of consent to adoption, could hear oral evidence on any relevant matter or receive evidence by affidavit concerning the suitability or otherwise of the proposed adoption.

Regulations were gazetted in 1921 prescribing the forms to be used in relation to an application for adoption. The form of consent to an order for

adoption was initially simplistic in its terms simply requiring the natural parent to sign before a Justice of the Peace saying that he/she or both "hereby consent to an order for adoption being made in the terms of the Adoption of Children Act 1920 in favour of .....".

This form was subsequently modified over ensuing years and in 1960 the form of consent was similar to that enacted under the Adoption of Children Regulations 1969 whereby the natural parent(s) gave his/her consent to the adoption of her child and attested to the fact that he/she understood that the effect of an adoption order would be to permanently and totally deprive he/she of any parental rights in relation to the child. The form was signed in the presence of a Justice of the Peace who may also have signed an affidavit to the effect that he was present and did see the mother sign the consent form which was read over and explained and in his belief understood by the natural parent.

An offence was created under the Act for anyone who received a premium or other consideration in respect of the adoption of a child without the consent of a Police Magistrate the penalty being one hundred pounds.

In 1943 an amendment was passed conferring the powers previously exercised under this Act by the Police Magistrate on the Registrar General in the city of Hobart and on the Registrar of Births and Deaths for the district of Launceston. The reason for this transfer of power according to current

Registrar General, Mr John Jameson, was that the Minister then responsible for the Registry of Births, Deaths and Marriages (the Treasurer) advised that he was dissatisfied with the current arrangements for the following reasons:

- private arrangements were being made with hospitals and doctors;
- hospitals and doctors took the pick of the children with the remainder being handed over to the Social Services Department for placement as thought fit;
- some applicants were waiting years whilst others were granted adoptions virtually immediately;
- applicants were required to wait in court precincts awaiting hearings by a magistrate.

The reviewed system provided for a list of all applicants to be maintained by the Registrar General and allocations occurred in order of application. The natural parents were still at liberty to seek suitable adoptive families themselves. The Registrar General would personally interview and witness consents by the natural parents and then process the adoption order. This system continued until section 2A was repealed by Act of Parliament in 1960. From that date power to make adoption orders was restored to the Police Magistrate.

These amendments also made provision for an applicant who desired to keep his identity confidential to apply for a serial number to be allocated. Until this amendment information was freely available, and could be accessed from records held at the local council chambers. The amendment resulted from

pressure by certain members of the community for confidentiality of adoption records. I am not sure however that any regulations were ever made under this amended section of the Act.

There was no provision in the Act for revocation of a natural parents consent it being generally understood that a mother could revoke her consent at any time prior to the adoption order being made.

From 1920 until the introduction of the 1968 Adoption of Children Act some 7,849 adoption orders were made in the State. A couple wishing to adopt would simply register with the Registrar of Birth, Deaths and Marriages. There would be no assessment of their suitability, virtually no waiting time and no supervision or follow up of placements. Upon the making of an adoption order, the adoptive parents received a copy of the order of adoption containing the original surname and if given, christian names of the adoptive child.

For many years prior to the introduction of the 1920 Act, unmarried mothers although living in conditions of poverty kept their babies and were helped to find accommodation and employment. This legislation as well as rescuing children from the prospect of institutionalised care, provided an option for unmarried mothers. However it also had the effect of reinforcing community attitudes that adoption offered a better future for the child and a single mother was branded as selfish if she contemplated bringing the child up by herself.

By the 1960's very few single mothers decided to keep their children to rear on their own. Where previously the decision to place a child with alternative carers or a family who might subsequently apply to adopt the child was that of the natural parent(s), the new legislation had the effect that this responsibility was transferred to the adoption agency. The parents consent was for the adoption of the child by any person, the authority of placement of the child now laying with the agency. The welfare officer rather than the biological parent was vested with the responsibility/power to determine what was in the best interests of the child.

The Adoption of Children Act 1968 was introduced in Tasmania and modelled on the Adoption of Children Ordinance 1965 of the Australian Capital Territory. The 1965 Ordinance resulted from discussions between State and Federal Attorneys General and formed the basis of State Adoption Acts. Between 1964 and 1968 legislation was introduced in all states in a desire for uniformity of adoption law. The effect of such uniform legislation ensured that an adoption order made in one state would be recognised as having the same legal effect in any other state and further that a consent taken in one state was also valid for the making of an adoption order in another.

One of the major consequences of the introduction of the 1968 Adoption of Children Act was the transfer of responsibility for adoptions to the Department of Community Welfare. The Registrar General no longer had any jurisdiction over the adoption process and was merely responsible for registering

adoptions and annotating births. There was considerable opposition to this major shift in responsibility especially from the medical profession who had traditionally exercised considerable autonomy in the placement of children for adoption. The Act essentially outlawed privately arranged adoptions except within the extended family. In giving consent to adoption, the birth parents could not consent to the adoption by a particular person. In practice this meant that the allocation of a child for adoption was arranged by the Department of Social Welfare or a private adoption agency approved under the Act.

In Part III of the Act, provision was made for approval of a charitable organisation as a private adoption agency. Approval under this section was given by the Minister to the Catholic Family Welfare Bureau (now Centacare) which remains the only private adoption agency operating in Tasmania.

Other significant legal changes introduced by the 1968 Act were:

- enactment of the principle that the welfare and interests of the child concerned shall be regarded as the paramount consideration (S11);
- the introduction of strict confidentiality provisions to ensure that members of the birth family and the adoptive family would not discover each others identity and that the records of the adoption would be kept confidential;
- the new birth certificate issued for the adopted child was intended to disguise the fact that the child had been adopted;

- provision was made for the discharge of adoption orders by the court where either the adoption order or any consent for the purposes of the order was obtained by fraud, duress or other improper means; or for some other exceptional reason (section 19 (1));
- a revocation period of 30 days was introduced in relation to the consent to the adoption of a child (section 23);
- the court was prevented from making an adoption order if the instrument of consent was signed within 7 days of the birth of the child unless a medical practitioner had certified that the mother was in a fit condition to give such consent (section 26 (3) & (4));
- the Director of Social Welfare assumed guardianship of the child once consent to adoption was either given or dispensed with (section 29);
- advertising without the approval of the Director in relation to adoption was outlawed whereas this had been a common practice prior to this Act.

Regulations were made under the Act which regulated interalia the conditions and requirements for the operation of private adoption agencies, the keeping of lists of persons approved to adopt children, the form of instrument of consent to adoption, the manner of execution and attestation of such instruments, the duties of persons executing and witnessing those consents and other forms to be used in the exercise of jurisdiction conferred by the Act. The instrument of consent (form 4) included provision whereby the natural parent(s) acknowledged that they understand that the effect of the order would be to permanently and totally deprive them of parental rights in relation

to the child. The form also offered the natural parent the option to express a desire in the relation to the religious upbringing of the child and stated that the person giving the consent understood that the consent could be revoked within a period of 30 days. The form was required to be witnessed. Regulation 16 set out before whom the instrument of consent could be signed, such persons being the Director of Social Welfare, an officer of the Department authorised to witness instruments of consent, a justice of the peace, a commissioner for affidavits, a barrister or solicitor, a legally qualified medical practitioner, a minister of religion, a clerk of petty sessions, a principle officer of an agency or a member of the Australian Association of Social Workers. In each case the witness was required to certify that they had explained to the person giving the consent the effect of the consent, provided ample opportunity to read or have read to them the instrument of consent before signing, that they had informed the person giving the consent of the revocation provisions and were satisfied that the person giving the consent understood the effect of signing the form.

The natural parent was also required to sign a Request to Make Arrangements For the Adoption of a Child (form 8) which interalia contained provisions in relation to the guardianship of the child pending the making of an adoption order.

There was little consistency of approach in relation to the selection of suitable adoptive parents, there being no criteria prescribed in the Act. In most states

as in Tasmania, the legislation provided that the applicant parents be of "good repute and is a fit and proper person to fulfill the responsibilities of a parent of a child" (s15 (1) (C)). Section 15 (1) further provided that the court not make an order for adoption unless a written report had been submitted either by the Director of Social Welfare or an officer of a private adoption agency. The reports were regarded by magistrates as being generally informative and well prepared by the adoption officers. The adopting parents were also required to undergo a medical examination and a report was prepared for the benefit of the court.

In July 1985 an Interdepartmental Committee on Adoption Legislation Review was established to undertake a review of Tasmania's adoption legislation. The major thrust of the Committee's suggestions for reform of adoption legislation lay with access to information. A change of community attitudes towards adoption and social change generally meant that the secrecy provisions contained in the 1968 Act were no longer appropriate. There was increasing community pressure throughout Australia for parties to adoption to have access to information. There was recognition that it was important for people to have access to information regarding their origins for their self development and a sense of self identity.

One of the most difficult issues addressed by the Committee was whether access to information should be allowed retrospectively. The Committee concluded after extensive research, taking submissions and hearing from

individuals affected by adoption, that adult adoptees ought to have retrospective access to information and be entitled to copies of their original birth certificates.

The 1968 Adoption of Children Act was repealed by the 1988 Adoption Act. On the recommendations of the Committee, significant reforms were enacted under the new legislation.

A major area of reform was in relation to the rights of partners of ex-nuptial children. Under the 1968 Act, the consent of the father of the child was only required where the child to be adopted was a child of the party's marriage. Although it had been the practice of the Department to informally consult with the father in situations where it was acknowledged that he was the father of the child, he was not able to legally object to an adoption application. The new Act now provided that the consent of the father of a nuptial child is required where there is evidence that he is the father of the child as provided in s29 (3) of the 1988 Act.

The provisions of section 31 of the 1988 Act provide that before a consent to adoption can be taken the person giving the consent must have received counselling from a person approved by the Director or the principal officer of an approved agency and must be provided with written information about the effect of an adoption order, the alternatives to adoption and the revocation process. Notice in writing must be given advising that the person may at any

time before an adoption order is made, apply for a certified copy or extract from an entry in the register of births. A signed copy of the consent must be given to the person who signed it. The Court could not make an adoption order where it appeared that the consent was allegedly obtained by fraud, duress or other improper means, the instrument of consent had been altered in a material way, the consent was signed before the birth of the child, the person giving the consent was not in a fit condition at consent or did not understand the nature of the consent (section 36 (1)).

The Director or principal officer of an approved agency is required under section 38 of the Act to give notice in writing to the person who has given consent of:

(a) the placement of the child with the prospective adoptive parents;

(b) the termination of such a placement;

(c) the renunciation by the Director of guardianship of the child;

(d) the making of an adoption order; and

(e) where child has died before an adoption order is made.

The Director or principal officer is further required to advise if the placement of the child is no longer possible, such advices are not required however where the person who has given the consent has expressed a wish not to be so notified. Sub-section 4 provides that where the Director or principal officer is notified of the death of an adopted person he shall take such steps as are reasonably practicable to transmit that notification to each parent who has given consent to the adoption.

Section 45 makes specific provision, for contact during the revocation period by a parent who has given consent to the adoption of the child.

The effects of adoption orders on the disposition of property are covered by the provisions of section 51 of the Act.

Perhaps the most significant changes under the new legislation relate to access to information which are contained in Part VI of the Act.

A summary of those provisions is as follows:

- An adopted person who has attained the age of 18 years may apply to a relevant authority for information about himself which may identify his natural parents. The relevant authority will not disclose information which may identify the whereabouts of a natural parent or relative unless the relevant authority has the agreement in writing of that parent or relative unless they are deceased. (S82)
- Where an adopted person has not obtained the age of 18 years he/she must have the agreement in writing or evidence of death of each adoptive parent before any identifying information would be provided by the relevant authority (S81).
- A natural parent of an adopted person who has not attained the age of 18 years can only receive information which could identify the adoptive parents or the whereabouts of the adoptive person where the relevant

authority has (i) considered any wishes expressed by the adopted person and (ii) obtained the agreement in writing or evidence of the death of each adoptive parent. The discretion really lies with the relevant authority as to whether or not such information will be disclosed to a natural parent taking account of (i) and (ii) above (S83).

- Once an adopted person attains 18 years of age, a natural parent can apply for information about the adopted person but may not be entitled to such information if it could identify the adoptive parents or the whereabouts of the adopted person unless they have given their consent in writing. (S84)
- A natural relative's right to information about the adopted person is subject to the discretion of the relevant authority in similar circumstances to the right of a natural parent to apply for information.(S85)
- An adoptive parent can apply for information about their adopted child. However where the information may reveal the identify of the natural parent or relative, the relative authority will only release the information if it has obtained the agreement in writing or evidence of death of the natural parent or relative and the adopted person (over 18 years) has been notified of the intention to give the information. (S86).

The provisions of Section 87 of the Act set out in what circumstances a person can apply to a judge in chambers for information under Division 2 of the Act.

A person who is not entitled to information under Division 2 may nevertheless apply for an order for information about an adopted person pursuant to Section 88 of the Act.

The Adoption Information Service was established under this Act as a service within the Department for Community Welfare to (a) advise persons with respect to the provisions of the Act; (b) make arrangements for counselling under the Act; (c) receive applications for information; and (d) facilitate the provision of information to a person whose name is entered under the register. (Section 89)

The Director and principal officer of an approved agency are directed under Section 90 of the Act to each establish and maintain an Adoption Information Register. The principal officer is to forward a copy of the parties entered to the Director who shall then enter those particulars in the Adoption Information Register, maintained by him so in effect all particulars registered by Centacare should be also kept by the Adoption Information Register with the Department.

Regulations were made under the Act to provide for the approval of adoption agencies, the assessment of applicants for adoption, and provision in relation to the taking of consents to adoption, the significant aspects of which are: (i) those persons who may witness a consent; (ii) that there must be two witnesses to a consent; (iii) written information must be given to the parent(s)

giving consent as to nature and effect of adoption and the effect of signing a consent to adoption; (iv) the alternatives to adoption and the availability of appropriate services and supports; (v) the right of the consenting person to express certain wishes and to be notified of certain matters in relation to adoption arrangements for the child; (vi) the right of the consenting person to have reasonable access to the child throughout the revocation period; (vii) the right of the consenting person to obtain a copy of the child's birth certificate before the making of an adoption order; (viii) the provisions of the Act relating to revocation of consent; (ix) the provisions of the Act relating to the Adoption Information Register. (Regulation 25)

The regulations make provision in relation to the placement of children, financial assistance for certain classes of children, the actual adoption order, prescribed fees payable and the application forms.

A form for general consent for the adoption of a child (form 4) was amended by Statutory Rule 162 in 1995 to include the following paragraph (3) "I have been given counselling and provided with written information regarding the nature and effect of adoption, the effect of signing this document, alternatives to adoption, availability of services and supports, my rights to access to my child during the next 30 days and my rights to obtain a copy of my child's birth certificate". This form of consent is significantly different to the consent form under the 1968 Act. It makes provision for inclusion of;

- the reasons for the parent(s) consenting to the adoption,

- the authorisation of medical treatment and examination,
- expression of wishes regarding the upbringing of the child including religious convictions and ethnic background of the adoptive parents,
- expression of desire as to whether the parent(s) identity be made known,
- expression of wishes in relation to access to or information about the child following the making of the adoption order,
- expression of wish to be notified of the following matters -
  - the placement of the child with prospective adoptive parents,
  - the termination of such placement,
  - the inability of the Director of Community Welfare or the Principal Officer to place the child with prospective adoptive parents,
  - where an application is made to a court for an adoption order in respect of the child within 30 days of the date on which the parents signed the instrument of consent,
  - the making of an adoption order relating to the child
  - the death of the child (whether before or after adoption has been finalised) if the Director for Community Welfare or Principal Officer is notified of the death
- the address for notification of the above
- revocation of consent within 30 days
- acknowledgement of the fact that the Director of Community Welfare will assume guardianship of the child until an adoption order is made
- acknowledgement that the consent is given voluntarily and of the persons own free will and the legal effect of the making of an adoption order

- two witnesses to the signature of consent, one being approved as a counsellor under Section 4 of the Act, and advice that the parent was given counselling and the written information on a certain date as required under regulation 25 and a form for revocation of consent.

This new Act was described by the then Minister for Community Welfare, Roger Groom in his second reading speech to the Legislative Council as being one of the most significant pieces of social legislation that had been introduced into Tasmanian Parliament for some time. It reflected the enormous changes that had occurred in adoption practices and attitudes since the introduction of the Adoption of Children Act (1968) as well as responding to the needs of parties to adoption.

6. SUGGESTED AREAS OF REFORM OF THE LEGISLATION

It is now eight years since the enactment of this Act and once again pressure is surfacing from individuals and groups representing persons affected by adoption to review certain aspects of the current legislation particularly in relation to access to information. Adoption Jigsaw Tasmania Incorp, an organisation of support for those people affected by adoption has already submitted their proposals for reform based on representations by members of their organisation.

I have received support for reform of Section 84 of the current Act. This section prescribes the natural parents right to information about their adopted child. Under the current provisions a natural parent is not entitled to such information where the child's adoptive parents may be identified or the child's whereabouts ascertained unless the relevant authority has obtained the agreement in writing or evidence of death of the adopted person.

The natural parents who consulted me, argue that their rights to obtain information about their adopted child should be the same as and no less than the adopted persons right to obtain information about himself or his natural parents. Under the provisions of Section 82 of the current Act an adopted person can obtain information about himself whether or not one of this natural parents or relatives can be identified from that information. The Section further provides that if that information could reveal the whereabouts of the

natural parent or natural relative, the relevant authority must obtain the agreement in writing of those persons.

The current provisions in relation to access to information place the onus on the adoption agency to make contact with the relevant persons and obtain their consent to the release of information. Often the process of location is a difficult, expensive and time consuming operation. Many of those to be contacted have relocated inter state, changed names and occupations. Where no contact and therefore no consent to the release of the information can be obtained, it remains sealed from the applicant forever.

We now live in a society that appreciates and understands how vitally important it is for people to be able to come to terms with their own identity. Applications for adoption would undoubtedly be refused now if the applicant parents indicated that they would keep the fact of adoption from their child. Research has shown that severe distress can be suffered by adoptees who discover late in life the status of their adoption. Studies and contact with birth mothers have also established that it is very rare for birth mothers to be unaffected by the experience of relinquishing a child for adoption. The relinquishment was a source of grief and stress of varying intensities that largely continued for the rest of their lives and these mothers rarely forget the child they relinquished for adoption. Most have welcomed the opportunity that the law now provides to learn of and make contact with their birth children whether through their own initiative or that of the adoptee.

In the years between the 1970's and the 1990's there was continuing debate on the issues raised resulting from pressure for more openness in adoption. This created for some much apprehension especially adoptive parents who had adopted children in the climate of secrecy, many of whom did not discover their status and identify until adulthood. The adoptive parents were concerned that they might lose the affection from those children or have their lives complicated by the intrusion of members of the birth family.

The difficulties associated with the concept of retrospective legislation were addressed in detail by the Inter Department Committee reviewing the 1968 adoption legislation. Concerns were expressed that this notion threatened the assurances of confidentiality given to those who adopted children or surrendered a child for adoption. It was concluded by the Committee however that there was sufficient support from those who had been affected by adoption to make the changes that they recommended. As they commented at page 5 of the Report: "Adoption needs to be a dynamic, ongoing service in order to meet the changing needs in the community and to develop understanding as to how these should be met. Legislation and practice must constantly be kept under review in order to keep pace with these changing needs and knowledge".

The past secrecy surrounding adoption was largely related to the social conditions and beliefs at the time. Most children surrendered for adoption

were born outside marriage, the births often resulting from an unintended pregnancy. The stigma once associated with those involved with adoption, the unmarried mother, the illegitimate child and infertile married couples has now largely disappeared. It could therefore be argued that the fears previously surrounding the concept of open access to adoption information are no longer valid. I believe that it is now an opportune time to again address the issue of access to information and to call for submissions in relation to but not necessarily limited to the following:

- The lifting of the restrictions present in Sections 82, 84 and 86 that the relevant authority must first obtain the agreement in writing of those persons referred to in the particular sections before the information sought can be released.
- Amendments to permit the release of information to a natural parent as to the identify and burial location of an adopted child who has died before attaining the above of 18 years.

Respect and understanding must still be afforded to those persons who do not wish to have personal contact which is the position under the current legislation. It is suggested that the requirements of Section 80 in relation to counselling and the issue of a certificate to an adopted person seeking identifying information could also be a prerequisite to natural parents and adoptive parents, seeking identifying information which could reveal the whereabouts of their adopted children.

I understand that the support group "Origins" have lodged with the Minister a number of recommendations for reform of the current legislation which includes:

(i) That birth mothers be informed of the death of their child and the place of burial. (This issue is addressed in my report. The proposal assumes that the relevant authority is informed of the death).

(ii) That birth mothers be informed in the event of the adopted child being orphaned or made a ward of the state. (I would support this proposal however it assumes that the relevant authority is so notified. S38 provides for notification in the event of termination of placement. Wardship is governed by the provisions in the Child Welfare Act 1960.)

(iii) Rights of access to the original birth certificate. (All birth mothers have the right to access their child's birth certificate. The adopted child can receive his/her birth certificate following the issue of a S80 certificate.)

(iv) Rights of access for birth parents to all records (see below).

(v) Rights to access visits between birth mothers, natural relatives and the adopted child (see below).

These proposals are essentially made on behalf of birth mothers and adopted persons. It is suggested that the rights of adoptive parents be also taken into account when consideration is being given to these suggested amendments to the current legislation. Upon the making of an adoption order the adopted

child legally becomes the child of the adoptive parents who assume all the rights and responsibilities as if the child was a natural child of the adoptive parents. The provisions of S50 (b) provide that the adopted child is treated at law as if he/she was not a child of any person who was a parent (whether natural or adoptive) prior to the making of the adoption order.

Further the rights of third parties also require consideration when considering a person's access to records.

7. ASSESSMENT OF ADOPTION PRACTICES ALLEGING OFFICIAL DECEPTION, COERCION AND ILLEGALITIES

The impetus for this Report arose following complaints of past adoption practices and in particular allegations that 50 Tasmania birth mothers had been tricked into thinking their babies had died at birth and were later contacted by these children who had been adopted as infants.

As well as being engaged to prepare this Report for the Minister, I have been appointed to provide specialist individual assistance to assist people to access records, search for information and investigate allegations of past adoption practices. Despite fairly extensive advertising of my services around the State, I have not been contacted by one birth mother who has alleged that she was told her baby had died at birth and subsequently discovered that her baby had been adopted. Nor have I been approached by any adoptees who believed that they may have been "switched" at birth or asked to investigate if they were one of the so called "stolen babies". I have not been asked to investigate any issues on behalf of adoptive parents.

I had no power under the current Adoption Act 1988 nor was I vested with any authority to inspect adoption records without the consent of the individuals involved. From the limited number of records I was authorised and permitted to examine on behalf of individuals, I found no evidence of official deception as has been suggested in media reports. By this I infer that a government agency or instrumentality, was not involved in a practice or

procedure that was illegal or not authorised by law and calculated to deceive those to whom it owed a duty of care. There is little doubt that there were certainly practices many of which have been referred to in this Report, that were unacceptable and quite immoral by todays standards.

The majority of concerns relayed to me related to the period from the late 1960's to the early 1970's. The most often repeated complaint by birth mothers is that they did not give their consent to adoption willingly or of their own free will rather that they were coerced and pressured into placing their babies for adoption. Adoption workers that I have contacted have refuted this claim and said in response that they believed their role was to assist the mother in considering her options and making an informed decision. The paramount consideration being as to what was in the best interests of the child. However it would appear that the decision as to what was best for the child at the time lay with the welfare officer rather than the natural mother. She felt powerless in the circumstances in which she found herself and often had little alternative but to place her baby for adoption. She was also faced with the possibility that if she was not able to rear her child successfully, her child could be forcibly removed from her and made a ward of the state. Many birth mothers believe that had they been counselled as to alternative arrangements for instance, short term foster care, or the availability of state welfare benefits, they may have made a decision other than adoption. I am informed by the adoption workers that short term foster care was not an

option as any foster care that was available was utilised for those babies who had not been assessed as being medically fit for adoption.

One mother recounted to me how following the birth of her twins she was threatened by a social worker that if she did not relinquish her babies for adoption, steps would be taken by the Department to place them as well as her first daughter into the care of the Department. It was suggested that she was not able to properly care for all three children. This mother acknowledged that her own mother would not allow her to bring her babies home with her. She maintains that she signed the consent forms for the adoption of her twins under duress and was extremely distraught with the pressure that was exerted on her to relinquish her babies. She maintains that the current Government should take responsibility for her grief and suffering in the years that followed.

Most of the mothers who contacted me contend that they were never informed of a state welfare benefit that was available from 1969. My research revealed that this benefit was available for a period of between 1 and 2 years to single mothers wishing to retain their babies on condition that:-

(1) they sought maintenance from the father of the child; and

(2) they were listed as a "case study" and therefore subject to regular supervision by the Department.

A search of the Annual Reports of the Department of Social Welfare between 1967 and 1976 revealed that in;

1969 51 unmarried mothers received the welfare benefit
(348 adoption orders made)

1970 92 unmarried mothers received the welfare benefit
(243 adoption orders made)

1971 99 unmarried mothers received the welfare benefit
(289 adoption orders made)

1972 279 unmarried mothers received the welfare benefit
(303 adoption orders made)

1973 408 unmarried mothers received the welfare benefit
(268 adoption orders made)

1974 462 unmarried mothers received the welfare benefit
(268 adoption orders made)

1975 494 unmarried mothers received the welfare benefit
(243 adoption orders made)

1976 460 unmarried mothers received the welfare benefit
(211 adoption orders made)

The Annual Report for the year 1970 noted that babies are relinquished for adoption from all sections of the community - professional families, labourers, business executives, factory workers, skilled tradesmen, white collar workers and farmers; and that "adoption is increasingly regarded by the general community as an acceptable and desirable method of bringing up a family and the status of an adopted child has benefited accordingly".

It was further reported that child welfare officers were seeing many girls who wanted to keep their babies and that these girls were given support and guidance to help them make a realistic decision on the future of their baby. Where the mothers decided to keep the baby and were placed on the single mother's allowance, regular contact was maintained to assist the mother with her "personal problems and to ensure good care of the baby". In that year it was reported that, 280 unmarried mothers were seen on at least 2 or 3 occasions and usually on a regular basis.

In 1971 it was reported that there was a greater number of applicants to adopt than babies available for adoption although during the year there were periods when there were "barely sufficient applicants wishing to proceed at that time", especially applicants wanting baby boys.

The Annual Report for 1973 reported a considerable increase in the number of unmarried mothers assisted under the Welfare Benefit Assistance Scheme (408) and that the number of babies being offered for adoption was starting to decline especially in other states. Applicants were then waiting between nine and twelve months to adopt a baby.

Of interest is a draft memorandum from the Chief Secretary to the Minister for Health discovered on a 1969 Departmental file which reads as follows;

> "After discussing this matter with the Director of Social Welfare, I would find some difficulty in concurring with the suggestion unmarried

mothers should be strongly discouraged from keeping their infants, but rather should be encouraged to adopt out the babe.

I understand that about 50% of illegitimate babies are kept by their mothers. Most mothers manage quite successfully, especially where their own parents are willing to give them some support. Many subsequently marry the father of the child and apply for legitimation and over 100 children are legitimated each year according the Registrar General's figures. Others marry someone other than the child's father and in an increasing number of cases the mother and her husband apply to adopt the child jointly. On the other hand, there are some young irresponsible girls who want to keep their babies, although unable to make satisfactory provision for them. Each case must be considered on its merits. It is considered that the function of child welfare officers, when discussing the future of a child with an unmarried mother, should be to help the mother to see the problem in realistic terms, but not persuade her in either direction."

Reference was also made in the memorandum to the recently introduced financial assistance available from the State. The Chief Secretary went on to state;

"As you may know this State, in common with other States, has recently introduced financial assistance, subsidised by the Commonwealth for unmarried mothers keeping their babies. With such

assistance there is supervision of the welfare of mother and child, by a child welfare officer. This is in line with the policy in most Departments concerned with adoption, that an unmarried mother should have an opportunity to keep her child, if she wishes."

It is alleged by some mothers that they were intimidated by the authoritarian attitude with which many welfare workers approached them. They felt powerless against the welfare worker, who claimed that the mothers were not fit to care for their children and who they allege threatened to remove their children forcibly from them if they were not prepared to sign a consent to their adoption. These mothers now resent that attitude and many feel that they signed their consents to adoption under duress and coercion which is contrary to provisions contained in the Act. If such a suggestion had been made to the court at the time of the hearing of the application to adopt, the court could have refused to make the adoption order. The court also has the power to discharge an adoption order on the ground that the consent was obtained by fraud, duress or other improper means.

I have spoken with birth mothers who have no recollection of signing an adoption consent form. Upon a search of their adoption records, they have been provided with a copy of a consent form signed by them. It is not difficult to understand how a mother may have blocked all memory of the experience from her conscious mind. One might conclude that well meaning relatives and others may have told the young mother to put it all behind you and act as

if the baby had died, forget the episode and try to get on with your life now. With the passage of time and repression of memory, the mother may have come to believe and accept that the baby had died.

I am informed that in many instances there was no explanation of the consent form signed by the mother at the time, its legal implications and no information was provided about the revocation period. The mother was simply asked to sign and it has been stated to me that not infrequently the top part of the consent form containing details of the child, its sex, information of the revocation period and provision for wishes regarding religion was covered by another piece of paper.

It is difficult to comprehend in today's climate how a person would sign a legal document with half of the contents concealed from them. We must try to understand the circumstances in which a young, distressed and emotional mother with no understanding or information about her rights could have been pressured into signing such a document which had the capacity to sever forever any legal relationship between herself and her child. She believed that she had no alternative. She was not offered any financial or family support to enable her to even contemplate keeping her child and she was faced with the societal stigma of being a single unmarried mother with an illegitimate child. She was told that she was being selfish if she considered keeping the child, that her child had the right to be brought up by a loving,

caring family who could financially afford to meet its needs and further that if she truly loved her child she would agree to its adoption.

Many mothers have been overwhelmingly distressed to subsequently discover that the adoptive family they thought had been selected to love and care for their child had in fact not provided such care. Prior to enactment of the 1968 Adoption of Children Act there was not a consistent approach to the processing of applications for adoption and consequent placement of the child with its adoptive parents. In some instances the Department of Social Welfare was requested to prepare a report for the Court hearing. The court could make the order sought on the basis of community based references, and references from the local doctor, parish priest and town policeman. Reports prepared by the Department generally covered issues such as economic factors pertaining to the applicants, their religion, interests, physical characteristics, hobbies and geographic location. The early reports were short and confined to factual issues. Reports prepared pursuant to the 1968 Act were more detailed and as one magistrate commented were of much assistance at the hearing of the application for adoption. He could not recall having ever refused to grant such an application.

I have received enquiries from birth mothers who feared following the reading of media reports, that the baby they were informed had died at birth, may have been placed for adoption with another family.

Many of these fears and suspicions have been allayed following an examination of the birth mothers medical records which have generally revealed fairly extensive information about the birth of the baby. The majority of concerns have related to births at the Royal Hobart Hospital, Queen Alexandra Hospital and Gore Street Hospital, the records of which are now held at the Medical Records Department of the Royal Hobart Hospital. I received only one contact relating to an adoptee's birth at Calvary Hospital where the only records available for that period (1953) were contained in an annotated birth register which only recorded details of the name, date of birth and type of delivery.

I have not encountered any difficulty in accessing records on behalf of mothers through the Medical Records Department of the Royal Hobart Hospital. Although their usual practice is to forward copies of records to the patient's general practitioner, following arrangements made directly with the Medical Records Department of the Hospital and the appointment of a single officer to access records relating to adoption, I have been favoured with a fairly speedy response to all enquiries.

Some mothers simply wanted medical confirmation of the still birth or death of their baby and this information has been available within a relatively short period of time.

One mother who gave birth in 1971, recollected seeing movement in her baby at the time of its birth and was subsequently informed that the baby had died. She was concerned when she was unable to discover any records at the Registry of Births, Deaths and Marriages relating either to the baby's birth or death. She contacted the funeral parlour which she understood had buried the baby and was told that they would have received a death certificate before they could arrange a burial. Inspection of this woman's medical records included information that the baby was stillborn, details of the baby's weight and gestation period.

I was informed by the Registrar of Births, Deaths and Marriages that it was not the practice from the mid 1960's to register the stillbirth of a baby and this would explain why the mother failed to discover any records relating to her baby at the Registry. The Registrar further informed me that the funeral parlour would have received a notification of the death of the baby from the hospital and not a death certificate.

The mother's recollection however of the gestation period and the circumstances of the delivery vary in some respects with the medical records that she inspected and she has not been able to resolve this discrepancy.

Some mothers spoke of the frustration of discovering that the names they had chosen for their babies at birth were not included in the consent forms nor on the babies' original birth certificates. They would like the ability to have the

birth certificates amended to include the names that they had chosen for their babies.

Another issue raised has been the right of contact of natural relatives to their adoptive children and in particular to natural grandchildren where the adopted child is preventing contact. The natural relative could make an application under the Family Law Act 1975 for contact with the child which may be granted if it could be established that such contact would be in the child's best interests.

I was informed by a member of Adoption Jigsaw that there have been instances in past years where birth mothers believed that their babies had died at birth and were subsequently contacted by a person claiming to be their adopted child. In these cases a search of adoption records revealed that there were signed consent forms on the file and when shown the form the mother had not disputed the signature. There are obviously no satisfactory explanations for these mothers but I understand that no one has sought redress or legal action. They may believe that their recollection of the traumatic circumstances in which they relinquished their babies is far from clear for them.

It has been suggested to me that there were instances at the Elim Hostel where mothers were told that their babies had died when this was not in fact

the case. No one has yet sought my assistance however in relation to such allegations.

Other birth mothers have spoken of the frustration of not knowing anything about the children they had relinquished for adoption, not knowing even whether the child was still alive.

Under the 1988 Adoption Act a natural parent is not entitled to information about their adopted child if the relevant authority is of the opinion that such information may be contrary to the wishes of the adoptive person or conditions imposed by an adoptive parent. However the Department is under an obligation to take steps to inform the natural mother of the death of a child and obviously this can only happen if the Department has the means of ascertaining the whereabouts of the natural mother whose responsibility it should be to maintain contact with the Department. I therefore cannot see any reason why under the current legislation the natural mother could not enquire as to whether or not her adopted child is still alive. It would appear however, that if the deceased adopted child was under 18 years of age, the current legislation could prohibit identifying information being released without the adoptive parent's consent.

Some adoptees to whom I spoke recounted how they often felt like "second class citizens" and were not entitled to the same rights and information as children brought up by their natural parents. They spoke of the frustration in

not having access to complete medical histories to which they felt entitled. With current medical knowledge about genetics I believe that this issue is particularly legitimate and all individuals must have unfetted rights to information about their origins and medical histories.

An interesting development in adoption practices and one widely practised for some time in New Zealand is that of "open adoption". Under this arrangement the natural parent(s) continues to be involved and have ongoing contact with the adopted child. At the time of the adoption information is exchanged and an understanding entered into between the adopting parents and the natural parents in relation to future contact and exchange of information. These arrangements are not legally binding however and I am familiar with the distress of one mother whose contact with her seven year old son has recently been severely curtailed.

There are indeed many people who have been affected by past adoption practices who are severely distressed, hurt, angry and suffering. Some of them are insisting that the government acknowledge their hurt and take responsibility for the actions and past practices of their adoption workers. Others simply want some public acknowledgement of the powerless position in which they found themselves at the time. Although there are references in Departmental letters and documents to the mothers right of choice to keep her baby, for most this was not a realistic option. For without family support both financial and emotional, it was virtually impossible given the society in

which they then lived. The limited State Government welfare available was conditional and limited in time. Many mothers did not wish to pursue the father for maintenance. In some cases the mothers were under 16 years of age and the fathers could have been charged with the offence of carnal knowledge.

It is my hope that this paper has exposed some of those past adoption practices which we today would find totally unacceptable and indeed quite reprehensible. It is vitally important particularly for those natural mothers and their adopted children that society appreciates and understands the circumstances in which they relinquished their babies for adoption. Circumstances over which they had no power or control within a society that shunned and humiliated the unwed mother and labelled her child as an "illegitimate bastard". Although in reality these mothers had no choice, they were presented with the alternative of adoption as being the best arrangement for the child, it would legitimise his/her birth and provide him/her with a loving home. Many adopted children were brought up by their adoptive parents believing that their natural parents did not want them and had simply abandoned them to be cared for by someone else. No one had told them differently and many attempted reunions between natural mother and child have not been successful because of such beliefs. These people need to understand the circumstances in which the arrangements for their adoptions were made.

8. SUPPORT ARRANGEMENTS

I have previously referred to the lack of professional and appropriate counselling that was offered to birth mothers at the time they were contemplating adoption and following their decision to adopt. Instead many of these women were told to go away and forget that they had ever had a baby. As was stated in a paper presented by Sue Wells "Post Dramatic Stress Disorder in Birth Mothers" to a world conference of the International Society for Traumatic Stress Studies in Amsterdam in around 1993, "The medical profession and social workers acting within contemporary psychological theories probably believed that we could. This was before PTSD as a psychiatric condition and before our experience was regarded as traumatic, instead of a very transient disorder that we ought to have been able to forget about."

Sue Wells went on to say in her article that surveys that she had conducted suggested that the reactions suffered by birth mothers to the loss of their children constitute a trauma which may have life long effects. In some cases their physical and mental health as well as their interpersonal relationships with family, partners and their parenting of subsequent children had been affected. It is believed that these issues are connected with the mother's loss and grief having not been acknowledged at the time. Reactions having been compounded where the birth mothers had not actively participated in the adoption decision but rather were pressurised by parents and social workers to make the decision to adopt. She believed that unlike a normal loss or

bereavement, because the relinquished child's life had never been acknowledged, the grief felt by the mothers increased rather than decreased with time.

Sue Wells also describes in her paper the kinds of trauma that birth mothers experience and the avoidance mechanisms that they had developed in an effort to cope with the trauma. Symptoms can include psychogenic amnesia, examples of which are those mothers who cannot recall signing the adoption papers. Another reactive condition is psychic numbing, the birth mother feels detached or estranged from others who have not been through the same experience which can lead to a lack of trust in personal relationships and difficulties in relating to others. Other mothers experience difficulties in forgiving their parents who many saw as instrumental in the loss of their babies and this had affected their subsequent family relationships.

It is acknowledged that the symptoms of PTSD can be intensified when the person is exposed to a similar situation resembling the original trauma, for instance the birth of subsequent children which can act as a trigger of the condition.

It would appear that one of the key symptoms of PTSD is the avoidance of any reminders of the trauma so sufferers are often reluctant to seek treatment. Effective treatment however as Sue Wells points out, is often effected by reintroducing the memories of the traumatic experience in order to

help deal with avoidance issues. To this end she noted ".....so the social workers task is to promote awareness of the event, its significance, responsibility for their role at the time and later on (powerless versus searching etc) and ultimately to help them actively participate in the process of getting information, searching or joining a support group." She said it was important that the birth mother be given assistance to concentrate on the motivation for relinquishment rather than on what was done, to help her forgive herself and concentrate on the present. The birth mother needed assistance to help her acknowledge the loss.

From contacts that I have had with those persons who have either approached me in my capacity to provide specialist individual assistance and those that I have met and spoken with at various group meetings of the Jigsaw and Origins Associations, it would appear that:

- a small number are seeking or contemplating legal redress and compensation from the government for injustices and "illegal practices" to which they contend they were subjected. .(They are currently seeking legal advice)
- many others are seeking some form of acknowledgement from the Government for what they claim were illegal adoption practices (contemptuous of individual rights) and now unacceptable. Whilst these people are seeking recognition for the circumstances in which they surrendered their babies for adoption they also acknowledge that they need assistance in coming to terms with their loss but believe that

this is not possible until past adoption myths and practices are exposed.

The Adoption Information Service currently offers counselling within its own service and by independent counselling consultants. It is been said to me that there are many mothers who because of their past associations with the government adoption service had chosen not to access their counselling facilities. They contend that any counselling offered must be independent and not associated with the adoption agency.

With recent recognition that many of these mothers may be suffering from post traumatic stress disorders, trauma counselling should be offered and I understand that there are suitably experienced counsellors within the Mental Health Department that could provide this service. There are other counsellors who are experienced in grief work attached to the Royal Hobart Hospital.

It may be appropriate to call for expressions of interest from those persons experienced in grief and trauma counselling so that a register could be kept from which referrals may be made.

9. METHODS OF RESEARCH AND INVESTIGATION OF ALLEGED MALPRACTICE

Representatives of the support group "Origins" have said that the healing cannot begin for them until past adoption practices have been exposed. Birth mothers with whom I have spoken who have been particularly distressed, have said that they see little point in counselling until they can come to terms with what actually happened and the circumstances surrounding the relinquishment of their children. To this end I have been helping these mothers access their medical records, search for records of births or deaths at the Registry of Birth, Deaths and Marriages, and referred them to the Adoption Information Service where appropriate. On some occasions I have referred people to the Legal Aid Commission of Tasmania where a solicitor has been appointed to help people with legal enquiries relating to adoption.

Some people are most apprehensive about searching historical records whereas for others they need to have access to these records to allay their fears, clarify some issues of concern or inform them of circumstances of which they have little or no memory.

Records of adoption relating to the period 1920 to 1969 are held with the Registry of Births, Deaths and Marriages. Where the Department of Social Welfare or Catholic Welfare Family Bureau were involved, their records of assessment and reports are still within their custody and control. All records relating to adoptions from 1969 are in the custody of the Director for

Community Welfare. Access to these records is governed by legislation as previously outlined.

The Elim Home still has possession of its antenatal records between the years 1962 and 1973 however all of their adoption records have been transferred into the custody of the Director for Community Welfare. I am informed that all records previously kept at the Salvation Army Home, Rocklyn in Launceston were destroyed at the time of the boiler explosion in the early 1960's.

Medical records can be inspected by patients at the various hospitals by arrangement. The preferred practice of the hospitals however is for the records to be forwarded to the patient's general practitioners and I understand that in these circumstances no fee is charged for this service.

The usual disposal procedure for the public hospitals is to destroy records of adult patients after 15 years and 25 years in the case of a minor (7 years after the child has turned 18 years).

Application can also be made to view records under the Freedom of Information Act however adoption records are specifically excluded under the terms of this Act. Where the information sought contains information in relation to third parties such details are deleted.

Other records can be viewed at the Archives Office of Tasmania which also holds sample records of destroyed documents. The Tasmanian Archives Act 1983 governs the disposal procedure of records and provides that no government agency can dispose of records without the written authority of the State Archivist.

The private hospitals hold limited records of older medical records, for example at Calvary the annotated birth registry contains details of dates of admission, time and day of delivery, nurse or doctor in attendance, sex of child delivered and date of discharge.

With the consent of those involved I have had no difficulty in accessing medical and records relating to births and deaths on behalf of individuals as requested. For an inquiry in relation to an adoption I have referred individuals to the Adoption Information Service who make an initial check of the Adoption Information Register. In the case where there is a record of a child being adopted in order for further information to be accessed, the applicant must first register with the Adoption Information Service. Before any information is revealed all persons who are resident of Tasmania are required to have counselling. The purpose of the counselling is to inform people of their rights, to make sure that they fully understand the rights of others and to help them consider some of the matters that may arise in search and reunion. There is no charge for the counselling service, fees are charged in relation to registration and the provision of information, search and outreach services.

In the case where there is no record of an adoption, I have helped and assisted people to search the records of births and deaths and made enquiries of various medical records on their behalf or referred individuals to the hospitals to carry out their own searches. If individuals are not satisfied with these enquiries and want advice in relation to the information obtained, they should be referred for specialist independent legal advice.

10. CONCLUSION

The terms of reference asked that I investigate the extent of adoption practices that may have involved official deception of coercion. As I was not delegated or vested with any authority to inspect or access records without the express authority of the individuals concerned, I was not able to undertake this task.

The limitations in relation to accessing records resulted in my only being able to investigate those claims directly referred to me and where I was provided with the necessary authority to inspect those records relevant to the particular case. As I have indicated in the substance of this report, I was not able to conclude an instance of official deception in relation to adoption practices from the cases that I was asked to investigate on behalf of particular individuals.

I believe that this report has exposed many questionable past practices and more specifically allegations of coercion and duress in relation to the taking of consents to adoption.

In the event that this report is made available to the general public, I anticipate that it is likely that many other persons affected by past adoption practices will come forward and seek assistance, although this may be over a period of time. Some of those persons will seek an investigation of their concerns and allegations and they should be assisted to do so. Others may

need support and assistance to come to terms with what for them was a very traumatic experience.

I believe that the services currently provided by the Adoption Information Service, Adoption Support Groups and the individual specialist service established to assist people to access records and be referred where appropriate, will continue to meet the needs of most people. For others, specialist grief or trauma counselling should be offered.

I expect that many people reading this report and learning that their experience was not an isolated case and that there are many others affected by past adoption practices who are also angry, hurting and possibly traumatised by the experience will be assisted by this knowledge. Recognition and acknowledgement of those past practices by those in authority will undoubtedly help to heal those wounds.

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