Chapter 7

Model adoption legislation: social welfare considerations

Introduction

7.1 The previous chapter addressed the impetus for the development of model adoption legislation, and the role of the Commonwealth in its execution. It showed that the lack of recognition of interstate adoption legislation has caused legal problems from the early 1940s. The Commonwealth and the States, at the recommendation of the Commonwealth Attorney-General, and through the mechanism of the Standing Committee of Attorneys-General, decided to solve this problem in the early 1960s by developing a model adoption bill.

7.2 Once the jurisdictions decided to develop a model bill, the next question was what the bill should look like: what it could change about adoption arrangements and what provisions from existing state legislation it should include, expand upon or omit. This chapter addresses the issues that arose in determining the substance of the model adoption bill. To understand how it was developed, the committee undertook detailed archival research, using the sources outlined in Chapter 1. It built on information provided by the Commonwealth Attorney-General's Department (AGD) in its evidence to the committee and answers to questions on notice, examining in detail the files of that agency for the period of the early 1960s.

7.3 One point that both government and non-government parties engaged with adoption policy issues at that time seemed to agree upon was that there were limitations in the way adoptions were arranged. For example, many people held concerns about the operation of private adoption agencies as well as the placement of children with unapproved adoptive parents. However, there was a range of views amongst society and government representatives about how best to address these types of issues.

Preparation for the initial meeting of child welfare officers

7.4 The attorneys-general were legal experts, not adoption experts. As mentioned in the previous chapter, the attorneys-general decided at SCAG on 29 March 1961 that state child welfare officers should meet to discuss the substance of the bill, and that Child Welfare Ministers would be invited to SCAG in June 1961.

7.5 The terms, 'Child Welfare Minister', 'Child Welfare Department' and 'child welfare officer' are used for ease of reference throughout this chapter, however the names of the equivalent departments varied across the states. Similar responsibilities fell to the Children's Welfare and Public Relief Department in South Australia, the State Social Services Department in Tasmania, and the State Children Department in Queensland.

7.6 As discussed in the previous chapter, the Commonwealth Attorney-General and his Department had relatively little practical knowledge of adoption arrangements. However, officers from state child welfare departments who were involved in adoption arrangements had a much greater understanding of how adoptions worked. Officers from different states agreed upon some issues but in other areas held very different views about what constituted best practice.

Hicks' background paper

7.7 It appears that some discussion took place between the Commonwealth Secretary of the Attorney-General's Department and the Under Secretary of Child Welfare in NSW in relation to obtaining background material on the social welfare aspects of adoption. On 20April 1961, Under Secretary Mr Richard Hicks wrote:

> As promised I am forwarding you by to-day's post twenty five copies of notes on the 'Principles and Practice of Adoption' in New South Wales.
>
> I trust that these will be of some use to you as a starting point.[1]

7.8 This paper is important because it is the most detailed account of the problems in adoption practice—from a social welfare point of view—written by a senior state government bureaucrat in the early 1960s. It summarises many of the aspects of adoption arrangements that the child welfare officers discussed with respect to model adoption legislation. From the records available, the paper also appears to have been the first time that the Commonwealth AGD became formally aware that senior state public servants held serious social welfare concerns about adoption arrangements. While the concerns of Hicks are not necessarily considered to be representative of those of all states, it is likely from subsequent agreement of child welfare officers that several of his concerns were echoed in other jurisdictions.

7.9 Mr Hicks' paper addressed the needs of the mother, adopting parents and adopted child in turn, noted 'deficiencies' in the way adoptions were arranged and made suggestions to improve practice.

Needs of the mother

7.10 The key points made in the paper with respect to mothers relate to consent to adoption. Hicks considered that the mother should first be provided with all relevant information about services—and welfare payments—available that might support her to keep her child. If, after considering this information, she subsequently favoured adoption, she should be made fully aware of the legal consequences of signing consent:

> This is not always done in the smaller agencies and mothers have been known to complain...when it is too late, that they were given to understand

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1 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from NSW Under Secretary Hicks to AGD Secretary Yuill, 20 April 1961, folio p. 23, digital p. 228.

> that signing consent meant handing the child over to the Child Welfare Department in a revocable contract liable to be terminated...according to their convenience and desires.[2]

7.11 Hicks was convinced that consent should not be taken less than five days after the birth, should be witnessed by a 'disinterested party', and should take the form of a legal document:

> Consent to adoption should not be taken too soon after the birth...the experience of motherhood itself may lead the mother to change her mind, parents and relatives are apt to modify their attitudes once the baby has arrived...the unusual psycho-physical state of the mother within a short time after the profound experience of giving birth, to a large extent invalidate a desire expressed beforehand in a vastly different set of circumstances...
>
> The preliminary form of surrender at present used by the Child Welfare Department...is not a consent, not a legal document, never goes before a Court and does not in any way bind the mother legally. In private adoptions...this form is unknown.[3]

Suitability of the adopting parents

7.12 With respect to adopting parents, Hicks recommended that 'thorough investigation' be undertaken into the suitability of applicants. He noted desirable characteristics relating to health, religious observance, character, financial means, age and motive for adopting a child. Hicks suggested that a person trained in psychology and social work should make the assessments in order to avoid the approval of unsuitable candidates:

> It is obviously unsatisfactory if the application is motivated by a desire to hold together a tottering marriage, to give the wife a means of occupying her time at home, or to satisfy morbid, selfish or neurotic urges in one or both of the applicants.[4]

Welfare of the child

7.13 Hicks considered that 'matching' a child with adoptive parents was extremely important and would give the child the best chance of 'a mutually satisfying and

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2 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from NSW Under Secretary Hicks to AGD Secretary Yuill, 20 April 1961, folio p. 23, digital p. 228.

3 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 22, digital p. 229.

4 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 14, digital p. 232.

lasting parent-child relationship'.[5] He suggested that 'matching' a child as closely as possible with adoptive parents holding characteristics in common—such as education, occupation and to some extent appearance—with his/her natural parents, would promote the interests of the child:

> The welfare of the child must be regarded as, beyond question, the paramount consideration.[6]

Concern about agencies: conflict of interest and waiting time

7.14 Hicks expressed concern about the lack of public scrutiny of private adoption agencies against the backdrop of increasingly long waiting lists. Hicks noted that the percentage of total adoptions arranged by agencies in NSW grew from 13 per cent in 1947 to 44 per cent in 1960. He considered that, while there may have been merit in private adoptions in some cases, there was also greater potential for 'trafficking and other malpractice':[7]

> It is no rare thing for adopting parents previously rejected by the Department on the ground of, for example, age, to apply to the Court privately at a later stage and succeed in adopting a child...[8]
>
> Reputable professional persons in New South Wales have stated categorically that there is a definite activity in regard to disposing of babies for considerations...
>
> Other off-the-record statements have been made to the same effect by doctors and lawyers.[9]

7.15 Hicks also suggested that parties in some cases had made indirect payments or donations—such as to boards or charities, for medical expenses of the mother—that subsequently influenced the allocation of babies.[10] He also noted the potential

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5 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 22, digital p. 229.

6 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 22, digital p. 229.

7 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 17, digital p. 234.

8 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 17, digital p. 234.

9 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 16, digital p. 235.

10 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 16, digital p. 235.

connection that this may have with undue influence on mothers to relinquish their babies to avoid 'legal, social and perhaps religious sanctions which do not in fact operate'.[11]

7.16 To address the issues he had raised, Hicks suggested that a 'single, disinterested adoption tribunal' should be established with a common waiting list. Hicks suggested that if adoptions were centrally arranged through an impartial tribunal, mothers would not be pressed for consent, applicants would all fulfil agreed standards, and the best interests of the child would be served.[12]

7.17 AGD circulated Hicks' paper to the states, and invited them to respond or provide similar papers outlining what they perceived as key adoption issues. In addition, as discussed in the previous chapter, AGD also requested the states to answer questionnaires about adoption and provide adoption statistics.[13]

Child Welfare Ministers' goals for model adoption legislation

7.18 Child Welfare Ministers had a completely different view of what model legislation might achieve from their legal ministerial counterparts. The attorneys-general were in broad agreement about the need for interstate recognition provisions, and enacted such provisions uniformly across jurisdictions.[14] However, state Child Welfare Ministers held different opinions both from the attorneys-general, and from each other, about what the legislation should achieve and how it should be achieved. Some of these divisions were resolved in meetings between state representatives, others were not. As such, the so-called 'uniform adoption legislation' was not enacted uniformly across the states with respect to all social welfare provisions.

Limitations identified by states with respect to previous adoption legislation

7.19 Adoption and out-of-family care practices in the mid-twentieth century were very different to today. Many more children than today were placed for adoption, and they were amongst large numbers of children separated from their parents for a wide variety of reasons. Some of these became wards of the state or were in state institutions. Most children who were to be adopted out were placed with prospective

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11 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 15, digital p. 236.

12 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, *Uniform Adoption Legislation—Material prepared by States*, Some notes on the Principles and Practices of Adoption—New South Wales, folio pp 11–12, digital pp 239–240.

13 NAA, A432, 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, letter from AGD Secretary to Vic Children's Welfare Department Secretary, folio p. 26, digital page 225; State responses, for example, letter from SA Children's Welfare and Public Relief Department to AGD Secretary Yuill, folio p. 93, digital p. 141.

14 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 282.

adopting families, often with little or no screening processes. It was generally not until many months after this placement that adoption formally took place.

7.20 State Child Welfare Ministers, through their departments, provided briefs indicating their views about adoption legislation that AGD circulated prior to the first meeting of child welfare officers. The view that adoption legislation needed considerable amendment was most strongly expressed by the NSW Department, both in Hicks' brief and also in subsequent communication:

> [Hicks] very rightly perceived that the real purpose to be served by new and uniform legislation is the eradication of malpractice rather than mere uniformity of legislation...
>
> Mr. Hicks, on the basis of 17 years' experience and accurate knowledge of conditions in New South Wales, found the opportunities for malpractice to lie in:
>
> (a) The difference in the waiting time involved in applications made to the public authority compared with applications made to non-official agencies or resulting from third party or direct placing.
>
> (b) What he considers to be the inevitable results when adoption is (I) used to serve the interests of the agencies themselves and not in principle those of the child (covert child buying, duress, confusion or intimidation of the mother), or (II) subject to the influence of private persons exempt from legal or any other kind of responsibility (doctors or matrons in public and private hospitals, agency representatives, do-gooders and busybodies, etc.)[15]

7.21 The brief from the West Australian Department noted specific issues that had arisen with its adoption legislation:

> A decision as to their [the adopting parents'] 'child worthiness' should be made before an infant is placed with them. To place an infant with people who later are found to be unsuitable is harmful to the infant and unfair to them...
>
> At present in W.A. a child may remain as a guardianless foster child or be returned to the reluctant natural mother. This is an important defect in W.A. adoption procedure...
>
> In too many cases a child is placed with prospective adopting parents with the promise that the mother's consent will be given. Its long delay (and often ultimate denial) is inimical to the welfare of the child and unfair to the new parents.
>
> This is the second serious defect in W.A. Adoption law.[16]

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15 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States,* letter from Children's Welfare Department to AGD Secretary Yuill, 24 May 1961, folio p. 107.

16 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States,* Adoption—from the Welfare Viewpoint, WA briefing paper, folio pp 8–10, digital pp 243–245.

7.22 Similar problems were identified in the Tasmanian Department's brief:

> It is considered that there are real defects, from the aspect of social welfare, in all of the present adoption legislation in Australia in that most, if not all of the Acts are concerned only with the legal order of adoption, and do not touch on the important aspect of the placement of the child with a view to adoption, and the events preceding an application for an order.
>
> There should be a responsible control of the process by which proposed adopters are investigated and approved, and children for adoption are placed with proposed adopters.[17]

7.23 The brief from the Victorian Department also asserted that adoptive parents should be approved as such before a child was placed with them. However, Victorian officers were more content with their legislation than their West Australian or Tasmanian counterparts, especially in relation to provisions such as the 30 day revocation period for consent to adoption:

> The Victorian Adoption Act (consolidated in 1958) is considered to be sound in its principles, and while still capable of further improvement in ways outlined later, contains a number of provisions to be retained in any construction of uniform law.[18]

7.24 Briefs from the South Australian[19] and Queensland[20] departments did not make suggestions for legislative reform, but were limited to a description of adoption law and practice in their states. In addition, no brief was requested from, or provided by, an administrator of adoption in any of the Commonwealth territories. However, all the states that expressed concern about adoption arrangements, expressed particular concern about one issue: the procedure whereby children were placed in the custody of adoptive parents prior to an adoption order being made. This seemed to be causing two major difficulties:

- First, that the mother might revoke her consent to the adoption after the child had lived for several months with the adoptive parents. Returning the child to the mother was considered to be hard on the prospective adoptive parents and to deprive the infant of stability.
- Second, that prospective adopting parents might be found unsuitable after having custody of the child for some time. This was considered especially bad for the child, because both possible remedies—allowing unsuitable people to

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17 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio p. 45, digital p. 197.

18 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, Vic briefing paper, folio p. 116, digital p. 113.

19 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States* Adoption Section, Children's Welfare and Public Relief Department, Adelaide, SA briefing paper, folio p. 91, digital p. 143.

20 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States* Adoption—Queensland, Qld briefing paper, folio p. 120, digital p. 107.

> adopt a child, or making the child a ward of the state—were considered detrimental to the child's interests.[21]

7.25 These concerns were addressed by Child Welfare Ministers in the context of promoting the 'welfare and interests of the child'. The priority in their view was that these difficulties should be solved in such a way as to reduce the potential for an adopted child to be deprived of stability, to live with unsuitable people, or to become a ward of the state.

Public debate about adoption law reform

7.26 As well as government ministers and officers, several commentators, including lawyer and Australian National University academic David Hambly, noted the shift towards considering the rights of the child to be the paramount consideration for adoption legislation. Professor Hambly's journal article published in the West Australian Law Review in 1967–68 emphasised the overarching nature of this shift:

> A study of the innovations in the uniform Acts is predominantly a study of the changes brought about by the introduction of this cardinal principle [the paramountcy of the rights of the child]. It leads to new restraints upon people who wish to adopt a child and to a curtailment of the rights which were formerly attributed to natural parents.[22]

7.27 While Hambly agreed that adoption legislation should promote the welfare and interests of the child, he considered that the laws enacted after the development of model legislation 'weakened the interests of the other parties, especially the parents, to an excessive degree'.[23] In particular, Hambly referred to the potential for courts to be forced to conclude that a child's interests would be better served living with adoptive parents, because their suitability as parents had already been proved to the court (Couples had to demonstrate their suitability as parents before they could be approved as adopting parents, whereas natural parents were subject to no such test).[24]

7.28 Hambly's contribution to the debate, like other media reports and public discussion outlined below, all provide evidence of an ongoing issue for adoption reformers: properly balancing the rights and needs of the different parties to an adoption.

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21 Returning the child to the mother was not considered as an option on the assumption that she had lawfully consented to the adoption.

22 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 283.

23 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 318.

24 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 316.

The clean break theory

7.29 During the development of the model adoption legislation, legislators thought they were protecting the interests of the child of an unmarried mother via the 'clean break theory'. For example, by ensuring that children had access to inheritance from adoptive families:

> In the case of intestacy why should an archaic law deprive an illegitimate child of what every reasonable person now concedes is his right. The time will surely come when the term 'illegitimate' will have no content in law or society, and the sooner the better.[25]

7.30 The clean break theory was a prominent child welfare theory at the time. It held that it was better both for the mother and soon-to-be adopted child if they were separated as early and as completely as possible. That is, both mother and child would fare better economically and socially if the child was adopted at birth, and no further contact occurred.[26] This is sometimes referred to as 'closed adoption'.

7.31 The closed nature of adoption extended to all aspects of it, as illustrated by the following brief from Tasmania:

> There should be adequate provision to preserve secrecy, if the adopters so desire. This protection should cover all stages of the process, including the taking of consents; the placement of the child; the application for an order of adoption, and investigations made by any person in respect of the application; the hearing of the application; and the recording of the order by the Registrar-General, including the availability of his records to the public.[27]

7.32 The clean break theory relies upon the presumption that the interests of the child of an unmarried mother was well-served by adoption by a married couple. However, this opinion was not held by all commentators. In contrast, Hambly quoted the report of the UK Departmental Committee which reviewed the adoption law of England and Scotland (the Hurst Committee):

> Lastly, we must mention the view, strongly held in some quarters, that it is generally best for a child to be brought up by his natural parents or parent. Quite apart from the possible value of blood tie, we think that the importance of preserving parental responsibility is such that the parents'

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25 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation,* letter from J.D. Dwyer, Parliamentary draftsman, Tas Attorney-General's Department to AGD Secretary Yuill, 26 November 1963, folio pp 14–15, digital pp 304–305.

26 See M. Iwanek, 1997. 'Healing History: The story of adoption in New Zealand', *Social Work Now*, vol. 8, pp 13–17.

27 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio p. 40, digital p. 199.

> claims should not be reduced for the sake of giving greater claims to prospective adopters.[28]

7.33 While the Hurst Committee was British, it appears that similar views were held by some people in Australia. As discussed in the previous chapter, the *Mace v Murray* case spearheaded debate about adoption and the rights of unmarried mothers. One letter to the editor published in the *Sydney Morning Herald* compared Miss Murray's situation to that for single mothers in the UK:

> Sir,—If, as the Judge said, in the Murray-Mace baby case, the mother is wayward (or some such thing), would it not be better to let her have the child and the protection of a public institution where some mild corrective treatment may be afforded?
>
> There are homes in England for unmarried mothers where they are taught to be proud of their little ones. To separate mother from child, against the maternal wish, is a new form of Australian justice which one did not think possible in this land of fairness and freedom.[29]

7.34 While the attitude that an unmarried woman might need 'corrective treatment' would be abhorrent to current sensibilities, the letter indicates that even those people who disapproved of unmarried motherhood did not necessarily support adoption as a response. Other letters indicated that members of the public were not only concerned about the rights of the child, but also of the mother:

> Sir,—Whilst Mr. Justice McLelland is a just and learned man, he could not possibly know what it means to a mother to have her baby taken from her.
>
> Nor could Mrs. Mace. It's hard enough to bear when it is done by God's will. It is against all natural laws for anyone else to do it.[30]

7.35 In quite a different vein, a writer to *The Advertiser* expressed particular concern about the interests of the adoptive parents:

> Sir,—The adoption system is the only way some people who love children and cannot have their own, can hope for the happiness that home and children bring.
>
> From the Joan Murray-Mace case, it appears that a person who has signed the adoption papers can attempt to reverse the issue, with unhappy chaos.
>
> One fact in this case should be outstanding, and that is the shattering blows being dealt to the confidence of people who always took it for granted that, provided their adoption status was reputable, and they met the necessary

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28 Report of the Departmental Committee on the Adoption of Children, Cmd 9248, para. 119, quoted in Professor David Hambly, *Adoption of Children: An Appraisal of the Uniform Acts*, Australian Law Review 1967–68 Volume 281, p. 318.

29 'Perth, Fair play', Letters to the Editor, *Sydney Morning Herald,* Saturday 26 September 1953, p. 2.

30 'Dover Heights, A mother', Letters to the Editor, *Sydney Morning Herald* Saturday 26 September 1953, p. 2.

> requirements, they could blissfully proceed with their family life. This is apparently not so.
>
> Is it not high time the Government decided that this case goes beyond the individual, and took action to ensure that people who adopt children, and bring happiness to them as well as themselves, were protected?[31]

Pressure for changes to adoption laws

7.36 The above letters show that members of the public were not only concerned about the interests of the child, but also those of the natural and adoptive parents. Several letters suggested the *Child Welfare Act 1939 (NSW)* should be amended,[32] and a delegation of women visited the NSW Minister for Education in 1953 to lobby for amendments to the adoption provisions of the act.[33] This lobbying took place in the wake of the initial *Mace v. Murray* decision in the NSW Supreme Court, which had led to community concern about uncertainties in the adoption process. The group, comprising representatives from a number of women's organisations, was led by Mrs. Preston Vaughan, founder and President of the Feminist Club, Sydney.[34] Mrs Vaughan wanted to ensure adoption, where it was the decided course of action, took place as expediently as possible. However, she also appeared supportive of single women who wished to keep their children. She was both critical of the stigma experienced by these women, but also realistic about the prospect of reducing it. Her suggestions for managing this stigma, patronising by today's standards, are notable for omitting the surrendering of a child for adoption:

> [The] unmarried mothers' fear that they and their children will have to live under a social stigma could be relived or avoided by:
>
> * The mother making every effort to protect the child, even to the extent of moving to a new district.
> * Community realisation that illegitimacy is no fault of the child.
> * Compassion of other women in more comfortable circumstances towards the mother and her problem.[35]

7.37 Reporting on the delegation, the *Sydney Morning Herald* outlined aspects of the regime for obtaining a mother's consent. The text reflected concern that mothers not be forced into surrendering their children; it also set out the emerging view, that was made more clear in the adoption law reforms, that the welfare of the child is the paramount consideration:

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31 Mr Keith Chilman, 'Baby Adoption Laws'. Letters to the Editor, *Adelaide Advertiser*, Wednesday 25 August 1954, p. 4.

32 'Sydney, H. Griffin', Letters to the Editor, *Sydney Morning Herald*, Saturday 26 September 1953, p.2.

33 *The Australian Women's Weekly*, Wednesday 7 October 1953, p. 18.

34 *The Australian Women's Weekly*, Wednesday 7 October 1953, p. 18.

35 *The Australian Women's Weekly*, Wednesday 7 October 1953, p. 18.

> Consent is not taken if there is any suggestion of indecision or any doubt as to whether the mother has fully considered the matter. In any case, before a consent is taken, the department offers to help the mother to keep her child if she wishes to do so...
>
> *Three Dangers*
>
> It is the duty of the Child Welfare Department and the Court to protect the child. But the other two parties should, so far as is compatible with the welfare of the child, be protected also. There are, then, three dangers to be avoided:-
>
> (1) The danger that the child will be deprived, if only temporarily, of a continuing relationship with a mother.
>
> (2) The danger that the natural mother, through a hasty decision subsequently regretted, will be deprived of her own child.
>
> (3) The danger that foster parents, through legal delay and the natural mother's change of heart, will be deprived of a child for whom they have developed love.[36]

7.38 Both media reports about the delegation noted the support for a 30 day revocation period for consent to adoption. This approach, already applied in Victoria, was included in the provisions of the model bill. This is discussed further in the next section, which examines the substance of the model adoption bill in more detail. The committee acknowledges that officers and ministers of the time were genuinely concerned about the welfare of children and sought to promote it by amending adoption legislation through the model bill. As earlier chapters showed however, the end result, for some parents and their children, was considerable pain and loss.

1960s adoption legislation

7.39 The legislation enacted in all states and territories (except WA) following the model bill stated that the 'welfare and interests of the child concerned shall be regarded as the paramount consideration'. It was through this lens that social welfare aspects of adoption were legislated. This section seeks to examine, as far as is possible from the available records, the views of the jurisdictions about social welfare aspects of adoption expressed during the drafting of the model legislation. Letters and briefs from states to the Commonwealth Attorney-General and minutes from social welfare officers' meetings in 1961–62 are considered as indicative of the states' initial positions in relation to the issues. The provisions enacted in each states' adoption legislation between 1964–68 are taken to signify the final resolution of each states' view:

- *Adoption of Children Ordinance 1965* (*Cth*) (applied to the ACT)
- *Adoption of Children Act 1965* (*NSW*)

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36 A Staff Correspondent, 'Should the Adoption Law be Changed?' *Sydney Morning Herald*, 1 October 1953, p. 2.

- *Adoption of Children Ordinance1964* (*Cth*) (applied to NT)
- *Adoption of Children Acts 1964* (*Qld*)
- *Adoption of Children Act 1966* (*SA*)
- *Adoption of Children Act 1968* (*Tas*)
- *Adoption of Children Act 1964* (*Vic*)
- *Adoption of Children Act 1896–62* (*WA*)[37]

7.40 As discussed above, the overriding themes of the model legislation arose in response to perceived inadequacies in adoption legislation at the time. Three major kinds of problem were discussed in detail:

1. Problems that arose due to the child being placed with prospective adopting parents prior to their approval and when consent to adoption could still be revoked;

2. The risk of adoption 'malpractice' in private adoption agencies; and

3. Legal problems or embarrassment that adopted people might encounter as a result of being required to produce identification documents relating to their birth parents, and/or their adoption being made widely known.

7.41 The first set of issues, which appear to have been considered most problematic, was dealt with through provisions relating to consent, and the required characteristics and approval of adopting parents. The second issue was addressed in specific provisions about private adoption agencies. The third set of issues was thought to be solved through the application of the clean break theory to record keeping. These provisions are discussed in turn below.

Consent provisions

Consent provisions prior to model legislation

7.42 Consent provisions prior to model legislation were minimal. Each act or ordinance specified whose consent was required before an adoption order could be made, and other provisions specified the circumstances in which such consent could be dispensed with. In most jurisdictions, consent was required to be given by whoever was looking after the child at the time of the application, the child's parent(s), guardian(s), or the Director of the Child Welfare Department (in some states). There would generally be some detail in relation to who must give consent, and in which cases consent could be dispensed with.

37 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 283.

7.43 Prior to the development of model adoption legislation, consent was required to be given to the child's adoption by specific adopting parents, for example, Miss Smith consented to her child being adopted by Mr and Mrs Brown. This was required in all states except in Victoria which already had *general* consent provisions (discussed below).[38]

Revocation of consent

7.44 In all states except Victoria, consent could be revoked at any time before the adoption order was made.[39] As adoption orders were not usually made by courts at the moment an adoptive parent took unofficial custody of the child, this meant that consent could be withdrawn after the child had lived for several months with prospective adoptive parents. The high profile case of *Mace v. Murray* came about because Miss Murray revoked her consent to adoption, and Mrs Mace did not accept her revocation. However, as the experiences recounted in Chapter 3 demonstrated, many women, especially young unmarried women, had insufficient awareness of their ability to revoke consent and lacked access to the necessary legal support to do so.

7.45 Victoria was the only jurisdiction to specify a consent revocation period in its Adoption of Children Act:

> (5)(b) Any person who has given any such consent may—
>
> (i) within thirty days after the giving of such consent sign a revocation thereof in the prescribed form or to a like effect;
>
> (ii) within seven days of the signing of such revocation deliver it or by registered letter post it to the registrar of the county court in Melbourne—
>
> and upon receipt thereof by the said registrar the consent shall be revoked.[40]

Dispensing with consent

7.46 In all legislation, parental consent could be dispensed with for a number of reasons. These reasons included—and many of these appeared across most jurisdictions—if the parent resided interstate, was an unmarried father, was considered unfit for custody, or for another reason the court considered just and reasonable.[41]

7.47 Prior to the uniform adoption laws, there were particular provisions that facilitated *de facto* adoptions. Adoptions sometimes began with the placement of a child with a family other than its mother and father, without any formal legal process, or any government oversight. These placements could subsequently be ratified by a

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38 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 291.

39 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 305

40 *Adoption of Children Act 1958* (*Vic)*, ss. 5(b).

41 *Child Welfare Act 1936* (*NSW)*, Part XIX Adoption of Children, s. 167.

court, even if the natural parents had not agreed to it becoming a permanent arrangement, through dispensing with parental consent. Such provisions appeared in the ACT, Northern Territory, Queensland, South Australian and Victorian laws.[42]

Consent given by young mothers

7.48 Another issue raised in the course of the inquiry was whether consent could be lawfully given by a mother who was underage. There was no reference in any state's adoption legislation to any particular age that a mother should have attained before her consent was valid. Further, minutes from the initial meeting of child welfare officers in May 1961 showed that officers agreed that the consent of the mother should be required whether or not she was over or under the age of 21. It was noted that:

> Western Australia raised the question of the consent of the parents of an unmarried mother who is under 21 years, and also that of the putative father. The States felt that these consents were unnecessary.[43]

7.49 A later letter from a Tasmanian parliamentary drafter also mentioned the issue briefly:

> Mr. Smith [a state official] is querying whether the consent of a minor is valid. When he discussed this with me some time ago I told him that the law is that generally speaking the consent of a minor is valid so long as he could appreciate what he is doing.[44]

7.50 This was confirmed by evidence given to the committee from a Tasmanian government representative, who indicated 'my understanding is that in all of the acts there has never been a requirement about the age'.[45]

Discussion about consent provisions

7.51 All of the available briefs forwarded by state child welfare officers for distribution prior to the initial conference in May 1961 mentioned the issue of consent. The brief from Tasmania suggested that, while parents who have no prospect of providing a home or parental relationship to their child should not be able to withhold consent to adoption, care should be taken in obtaining the consent of a mother:

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42 The South Australian law was the only one of these to set a minimum time requirement for the child to have lived with the adopting parents before consent could be dispensed with, ss 6(iv).

43 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Uniform Adoption Legislation: Interstate Conference held at Sydney, New South Wales from 29th to 31st May 1961, folio p. 178, digital p. 44.

44 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, The Adoption of Children Bill, Tas comments, folio p. 83, digital p. 138.

45 Ms Jane Monaghan, Tasmanian Department of Health and Human Services, *Proof Committee Hansard*, 16 December 2011, p. 38.

> Particular care is needed to ensure that the mother of a child—particularly an ex-nuptial child—is not forced by apparent circumstances or persuaded to consent to an adoption, without knowing fully what alternative there may be, and without knowing fully the significance of what she is doing in consenting to adoption.
>
> It is considered that the consent to adoption in such cases should be taken by a responsible statutory authority, competent to provide the mother with all necessary information as to alternatives, and not having any prejudiced interests.[46]

7.52 The brief from the Western Australian Department, which appears to suggest that the rights of the mother are of less importance than those of the child or adoptive parents, nonetheless recognises her rights has a mother:

> This situation has historically conferred upon her [a natural mother] the right to decide—
>
> (a) whether she keeps the child (and against the opinions and wishes of all comers);
>
> (b) whether she will consent to its adoption.[47]

7.53 Attitudes of the period were patronising towards unmarried mothers, and supportive of adoption as a process. Despite this, ministers involved in the uniform law process were, like the officials quoted above, concerned that consent be freely given. The South Australian Attorney-General considered the problem in the context of determining who should be involved in certifying that consent was properly given:

> The difficulty arises in some of the country areas. If the onus were put on the local doctor or the matron of the local hospital you might get pressure put on the doctor or the matron by the relatives of the mother.[48]

7.54 Queensland's Minister for Health, Dr Noble, was clearly aware that the widespread use of sedatives during and after labour could create problems for the taking of a legitimate consent. Indeed, he apparently believed that being affected by sedatives would prevent a consent being valid:

> A mother who was sedated in the post-natal period might claim that because of the sedation she did not realise what she was doing. This would be a protection [ie. of the mother's rights in any legal action].[49]

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46 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio 45, digital p. 197.

47 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption—from the Welfare Viewpoint, WA briefing paper, folio p. 8, digital p. 245.

48 Transcript of SCAG meeting, 16 June 1961, p. 22.

49 Transcript of SCAG meeting, 16 June 1961, p. 22.

7.55 This concern that mothers should consent freely was not uniformly felt, but was at times firmly expressed as the following exchange between the attorneys-general and health ministers reveals:

> HON C. ROWE [New South Wales]: I think all this is tied up with not getting the mother's consent too soon and allowing her time to really make up her mind about what she wants to do.
>
> SIR GARFIELD BARWICK [Commonwealth]: If you leave the child with the young mother too long, it builds itself into the affections of a person who has no chance of looking after it.
>
> HON. C. ROWE: That mother has prior right morally and legally, and I think we should leave it that way.
>
> SIR GARFIELD BARWICK: Everything but the economic ability to look after it.
>
> HON C. ROWE: But I think we must recognise the rights of the natural mother in these matters.
>
> HON. H.W. NOBLE [Queensland]: I think the interests of the child are the first thing to be considered...
>
> HON C. ROWE: I would agree on general principles that the interests of the child should be important, but I hate taking away a mother's rights completely too quickly.
>
> HON. F.H. HAWKINS: But you do not take them away. She gives them away. It is a question of whether you let her take them back.
>
> THE CHAIRMAN [Victoria's Attorney-General Hon. A.G. Rylah]: That is so. She gives them away at a time when, I think it is fair to say, many mothers are not quite capable of bringing sound judgment to bear on the matter.[50]

7.56 The exchange shows that the New South Wales Minister was very concerned about freedom of consent, as was the Victorian Attorney-General, and that these concerns mirror those expressed in the archival records by senior officials from Tasmania and New South Wales.

Who should give consent

7.57 It was agreed at the May 1961 conference that a formal consent in writing—as witnessed by an officer of the child welfare department or agency, or a Justice of the Peace or Commissioner for Affidavits—should be obtained in writing from

> (a) both parents and/or guardian(s), in the case of a legitimate child; and

50 Transcript of SCAG meeting, 16 June 1961, pp 26–27.

> (b) the mother or guardians(s) of an illegitimate child. This should apply whether the mother and/or father are/is over or under the age of 21 years.[51]

7.58 It does not appear that any state contemplated a requirement for consent by the father of an ex-nuptial child. The brief from Western Australia was most scathing of fathers of ex-nuptial children:

> The Department sees no reason why the man who has sired a child for which he cannot provide a proper family life should have any rights in its future (except to pay for its maintenance until proper family life is available to it by adoption).[52]

Period between birth and consent

7.59 At the May 1961 conference, state officers expressed their opinions about when the mother should be considered capable of giving consent. The Tasmanian officers noted that while it would be best that consent not be valid for some time after the birth of the child, and until the mother knew what her circumstances were, this would cause 'machinery difficulties'. Therefore the Tasmanian officers recommended that seven days be the minimum period between the birth and any consent to adoption.[53]

7.60 Other states had different views. Victoria considered four days was sufficient, NSW did not favour a time period but considered that certification by a fit and proper person (such as a medical professional) be required, and WA and SA were undecided.[54] However, the states did not accept the UK view that the child should not be removed from his or her mother until the age of six weeks.[55]

7.61 At a meeting in June 1961, officers considered the issue again. The states agreed that a mother 'should not be asked for her consent until 'some proper person (such as her medical adviser) has certified that she is fit to give her consent.'[56]

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51 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio p. 144, digital p. 79.

52 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption—from the Welfare Viewpoint, WA briefing paper, folio p. 7, digital p. 244.

53 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio p. 45, digital p. 197.

54 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 19th to 31st May 1961, folio p. 158, digital p. 66.

55 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Report of the Officers' Conference on the Social Welfare Aspects of Adoption, folio p. 145, digital p. 79.

56 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Summary of Discussion at the Ministerial Conference on Adoption in Brisbane on 16th June 1961, folio p. 198, digital p. 11.

7.62 However, medical professionals did not necessarily support this approach. Professor Rendle-Short, Head of the Department of Child Health, Brisbane, wrote to the National Health and Medicare Research Council in February 1964 noting his concerns that the medical aspects of adoption had not been addressed in the version of the draft bill.[57] He noted that '[s]ome aspects of the Bill as it stands are medically controversial (i.e. Section 26 (2)).'[58] It is not possible to ascertain which version of the draft Bill he was referring to, but the two closest versions of the draft Bill filed closest to and before Professor Rendle-Short's letter present themselves as most likely. Section 26 (2) in both versions related to a mother giving consent to adoption within seven days of her child's birth, provided a legally qualified medical practitioner considered her to be in a fit condition to do so.[59]

Revocation of consent

7.63 A 1961 brief from the Victorian Department explained that the 30 day revocation period was not a point upon which that state would be compromising in any discussions on uniform adoption legislation. Victoria explained that it would be desirable for common consent provisions to be adopted, so that children could be placed with adoptive parents interstate.

> ...a unique provision allows any person executing a consent thirty days in which to revoke the same, failing which the consent becomes legally irrevocable. This overcomes the former insecurity attaching to arrangements and placements for adoption which were capable of upset, and consequent confusion and detriment to the child concerned, by the withdrawal of consent at any time up to the actual making of an Order...
>
> Victoria would not be prepared to relinquish the proven benefits accruing therefrom [ie from these consent provisions].[60]

7.64 Professor David Hambly questioned both the seven day period between birth and consent, and the 30 day period in which to revoke consent, arguing that neither sufficiently upheld the rights of the mother. He contrasted the Australian legislation with the UK position on the issue that 'a mother needs about six weeks to recover

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57 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from Department of Child Health Director, Brisbane Children's Hospital, to Dr. A. Johnson, National Health and Medical Research Council, folio p. 130, digital p. 22.

58 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, letter from Department of Child Health Director, Brisbane Children's Hospital, to Dr. A. Johnson, National Health and Medical Research Council, folio p. 130, digital p. 22.

59 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, draft Adoption of Children bill, 1964, digital p. 79. This is also substantially similar to ss. 26(2) of another version of the draft bill found at digital p. 119.

60 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 99, digital p. 133.

physically and psychologically from the effects of confinement'.[61] Further, Hambly suggested that the courts should 'be given a discretion to allow a consent to be revoked after the expiration of the prescribed period', but notes that such discretion would depend on the paramountcy provision.[62] In other words, the onus would fall on the natural mother to show that returning the child to her would better satisfy the paramount consideration of the act, namely, the promotion of the welfare and interests of the child.

7.65 The issue of consent, and the contrast between Australian and UK legislation, was also mentioned in a 1962 letter sent by St Joan's Alliance International, a Catholic feminist group founded in the early twentieth century, to the Commonwealth Attorney-General in the context of the development of the model bill. It is useful to quote the letter at length because is illustrates a complex view about the rights of mothers and their babies. St Joan's Alliance contrasted the adoption provisions of the NSW Child Welfare Act with those of the UK legislation, in most cases suggesting that the UK provisions were preferable. In particular, UK legislation, upon which the original Australian legislation was based, gave mothers much more time to revoke consent. Organisations such as St Joan's considered such a policy worthy of replicating in Australia:

> The young mother, emotionally disturbed before and after her confinement, is in no fit state in the period of sometimes only a week to ten days after her confinement to make such a decision. This applies even in the case of the mother who has been quite definite all along about having her child adopted. A hasty decision may make the mother wonder for the rest of her life whether she has made the right choice, or whether she was stampeded and forced into it. To prevent this, it would seem advisable to set a time (say a minimum of 6 weeks) within which the mother could make up her mind, or revoke her decision if the papers had already been signed. The British Adoption Act (sec. 4, subsection 3a) states: 'A document signifying the consent of the mother of an infant shall not be admissible unless—the infant is at least six weeks old on the date of the execution of the document.' This may not be altogether practical here where the mothers often come from country districts or interstate, and may wish to have the papers signed and their part of the adoption finalised before leaving the hospital; but the six weeks could be given as a time within which the mother could change her mind should she so desire...
>
> A form of consent to adoption should give all details…stating that the mother's consent is in fact voluntary and that her legal rights have been fully explained to her. It has been found in practice that very few unmarried mothers change their minds after the consent has been given for adoption, but the right to do so should be safeguarded...

61 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 313.

62 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 312.

> The adopting parents should have the same consideration, say three months probationary period before the final adoption order is made. Whatever the age of the child at placement, this is sound practice for both child and adoptive parents…For instance some conditions adverse to adoption cannot be detected when the baby is only a few weeks old…Parents can benefit from counselling during the period of adjustment from a responsible agency. The agency during probationary period should be given an opportunity with the child in the home to confirm the rightness of its selection of the placement...
>
> In the British law the time stated is at least 3 months; (sec 2, subsection 6) in the United States the common practice ranges from 6 to 12 months. This provision is not necessarily embodied in the law...
>
> In the case of the child who has been abandoned or left to the care of the state or in an institution, special effort should be made to ensure that he or she should be made available for adoption at the earliest possible moment. Parents for selfish or misguided reasons often withhold consent to adoption for years—the child becoming less and less 'adoptable'...
>
> There should be legal provision for termination of parental rights in the interest of the child where it has been determined that in all probability will not be able to perform their parental duties, but are unable or unwilling to relinquish their child...
>
> In such cases the rights of the child should take precedence over the rights and wishes of the parents.[63]

7.66 There are several ideas that are discernible in the position of St Joan's Alliance:

- that the rights of the young single mother should be protected;
- that it is important that the child and adoptive parents are well-matched; and
- that protection of the child should take precedence in those cases where parents are incapable of providing for their child but refuse to sign consent forms.

7.67 The fact that St Joan's Alliance did not consider the first and third points to be inconsistent illustrates the organisation's view that young single mothers were not necessarily incapable parents. This stands in contrast to claims that, at that time, society as a whole considered young unmarried mothers incapable of providing for their children.

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63 NAA, A432 1966/2404 Part 1, *Uniform Adoption Legislation*, St Joan's International Alliance letter to Attorney-General Barwick, 4 August 1962, folio pp 158–163, digital pp 40–45.

Dispensing with consent

7.68 Hambly had expressed concern about the court having the option to dispense with parental consent if 'there are any other special circumstances by reason of which the consent may properly dispensed with.' This phrase was used in all legislation with the exception of that enacted in NSW.[64] He suggested that giving the court such discretion may leave open the potential for mothers' consent to be dispensed with unfairly. Hambly considered that courts, mindful that the child's welfare and interest were of paramount concern, might feel compelled to 'harshly' dispense with the mother's consent.[65]

General consent

7.69 Some child welfare officers considered that it was poor practice to require consent to be given to adoption by a particular couple or person (specific consent). Meeting minutes from 1963 recorded that:

> Most States take the view that particular consents should not be allowed on the ground that (a) they lend themselves to baby-farming; and (b) they enable the natural parent to know who the adopters are. Others take the view that it would be contrary to natural justice not to allow a parent or parents to specify a particular person as the only person who may adopt the child. A compromise would be to allow particular consents in respect of relatives only.[66]

7.70 The suggestion was thus made that consents be made *general* rather than specific. *General consent* gave the department or agency—agencies are discussed later in this chapter—the ability to place the child with any approved parents, for example Miss X consented to her child being adopted by any parents approved and selected according to the law in the particular state.

Consent provisions in model legislation

7.71 Consent provisions were greatly expanded after model legislation was drafted. To use Tasmania as an example, 'Division II—Consents to adoptions' of *the Adoption of Children Act 1968 (Tas*), spans nine sections and details who must give consent in which cases, what the effect of consent is, instances in which the Court should not accept the consent (i.e. if the consent was obtained by fraud, duress or other improper means),[67] as well as several other details.

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64 NSW originally omitted the clause, and later inserted an even wider ranging power for the court to dispense with consent.

65 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 314.

66 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, Uniform Adoption Legislation: Report of Officers, Sydney 2–4 December 1963, folio pp. 20–21, digital pp. 222–233.

67 *Adoption of Children Act 1968 (Tas)*, ss. 26(1)(b).

7.72 In some states, statutory rules complemented legislation. For example, the *Adoption of Children Statutory Rules 1969 (Tas)* prescribed additional details in relation to consent, including the consent form that must be used, who may witness a person signing a consent form, and procedures agencies were obliged to follow after taking consent.[68]

When consent should be given

7.73 The ACT, NT, Tasmanian and WA acts and ordinances required consent to be given no less than seven days after the child's birth, or before seven days if a 'legally qualified medical practitioner' signed to attest that the mother was in a fit condition to give it.[69] The corresponding period was five days after the child's birth in Queensland, South Australia and Victoria and three days in NSW.[70]

Type of consent

7.74 The acts and ordinances in each jurisdictions contemplated that *general* consent would be given in most cases, except where consent was given to a relative.[71]

Revocation of consent

7.75 While some states initially disagreed,[72] all states and territories ultimately incorporated Victoria's earlier provisions allowing a 30 day revocation period for consent to adoption. Consent could thus be revoked up to 30 days after it was given, or until the adoption order was made, whichever was earlier.[73]

Dispensing with consent

7.76 Those jurisdictions that had made special provision for parents' consent to be dispensed with for *de facto* adoptions removed these provisions. *De facto* adoption was thus made more difficult. Otherwise, provisions related to dispensing with consent were similar to those that had previously applied.

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68 Adoption of Children Statutory Rules 1969 (*Tas*), Part IV s.15–19.

69 *Adoption of Children Act 1968 (Tas)*, ss. 26(3)(4).

70 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 307.

71 See for example, *Adoption of Children Act 1968 (Tas*), ss. 22(1)(2).

72 See WA suggestion of 14 day revocation period. NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 29th to 31st May 1961, folio p. 158, digital p. 66.

73 For example, *Adoption of Children Act 1967 (SA)*, ss. 24(1).

Adoptive parents

Required characteristics of adopting parents prior to model legislation

7.77 All acts and ordinances specified a number of characteristics that adoptive parents were required to demonstrate. In each state and territory, a child could only be adopted by a married couple (in most cases) or by one person (such as in the case of a mother marrying for a second time and her new husband formally adopting her child). In addition, age requirements applied in every jurisdiction. In some jurisdictions, these requirements varied depending on the gender of the adoptive parent and whether the child was male or female.[74] Other jurisdictions did not make provisions regarding the gender of the child, but required both parents to be at least 21 years older than the child.[75]

7.78 Prior to model legislation, approval of adoptive parents took place at the same time as the adoption application, usually when the child had already been taken into the custody of the adoptive parent.

Debate about adoptive parents and when they should be approved

7.79 Several states' briefs from 1961 noted that the investigation and approval of adoptive parents at the time of an adoption order application sometimes produced unsatisfactory results.[76] The brief from the Victorian Department stressed that prospective adoptive parents should be investigated before a child was placed in their custody:

> There have been some adoption applications the investigation of which showed the applicants to be quite unsuitable to have or continue to have the custody of the child concerned, but who were granted an Order largely because of the 'fait accompli'.[77]

7.80 At the conclusion of the first meeting of child welfare officers in May 1961, five recommendations were made in relation to the placement of children with adoptive parents. The broad intent of their recommendations was that no unrelated person should have custody of a child without being approved by the Department. Victoria and SA recommended that registered agencies should also be able to approve

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74 For example, *Adoption of Children Act 1896 (WA)*, ss. 3–4.

75 For example, *Adoption of Children Ordinance 1938* (*Cth*), s. 4.

76 See for example, NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Social Welfare Aspects of Adoption, Tas briefing paper, folio p. 45, digital p. 197; NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption—from the Welfare Viewpoint, WA briefing paper, folio p. 8, digital p. 245.

77 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 99, digital p. 133.

prospective adoptive parents.[78] This proposal, as part of the broader focus on the welfare and interests of the child, was accepted by the other states.

Approval of adoptive parents in model legislation

7.81 Adoption laws and ordinances enacted following the model bill stipulated that the Director of Child Welfare (or equivalent) became the legal guardian of all children in relation to whom a general consent to adoption had been signed, until an adoption order was made.

7.82 The Director of the Child Welfare Department was also obliged to provide a report to the Court on the following matters before an adoption order could be made:

> (a) the applicants are of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child;
>
> (b) the applicants are suitable persons to adopt that child, having regard to all relevant considerations, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the applicants, and any wishes that have been expressed by a parent or guardian of the child, in an instrument of consent to the adoption of the child, with respect to the religious upbringing of the child; and
>
> (c) the welfare and interests of the child will be promoted by the adoption.[79]

7.83 Thus the court was required to be satisfied of the above matters, which were more detailed than previous provisions in some states, *before* adoptive parents took custody of the child.[80] The legislation in some states allowed the court to make interim orders for adoption, however such orders could only be made in favour of people that 'the Court could lawfully make an order for the adoption of that child by those persons.'[81]

Private adoption agencies

Operation of private adoption agencies prior to the model bill

7.84 In Victoria in the early sixties, all adoptions other than those of state wards were arranged by agencies. In NSW, less than half of adoptions were arranged by

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78 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio p. 146, digital p. 78.

79 *Adoption of Children Ordinance 1965 (Cth)*, ss. 19(1).

80 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 284.

81 For example, *Adoption of Children Ordinance 1965 (Cth)*, ss. 38(3).

agencies. In South Australia, agencies worked with the Department, and in Queensland, Tasmania and WA, agencies had no role in arranging adoptions.[82]

7.85 States had different, and often ardent, views about whether adoption agencies should be allowed to arrange adoptions. This was reflected in legislation enacted both prior to, and after, discussions about a model adoption bill. Prior to the model bill, adoption agencies were legal in Victoria, NSW and South Australia.

Debate about private adoption agencies

7.86 NSW Under Secretary Hicks' brief linked the operation of agencies to 'malpractice' in adoption arrangements. Minutes from the first child welfare officers' meeting in May 1961 demonstrate that officers considered that 'the most crucial stage in the process of adoption is the placement of the child' requiring the expertise of 'qualified and experienced social workers'.[83] The minutes also noted that:

> One State representative said there appeared to be abnormally high incidence of delinquency amongst adopted children of a particular age group in his State, which he suspects is the result of bad matching.[84]

7.87 At the conclusion of the first conference in May 1961, NSW, Tasmania and WA still considered that only the department should be responsible for adoptions:

> All representatives at the Conference were of the opinion that there was a tendency creeping in which almost could amount to buying and selling of children. Private agencies or individuals have been suspect concerning the favours afforded to various individuals desiring to adopt children...
>
> There is also some suspicion that private groups, who are recognised in the field of adoption, have been trading. The Directors, with one exception, were firmly of the opinion that individual State control was necessary.[85]

7.88 The outlying state with respect to this matter was Victoria. Its brief circulated prior to the meeting painted a positive picture of agencies:

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82 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio pp 146–7, digital pp 145–146; letter from Qld Director of State Children Department Clark to AGD Secretary Yuill, 26 May 1961, folio p. 121, digital p. 106.

83 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio 147, digital p. 77.

84 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio 147, digital p. 77.

85 NAA, A 432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Uniform Adoption Legislation: Interstate Conference held at Sydney, New South Wales from 29th to 31st May 1961, folio p. 171, digital p. 52.

> In Victoria, any parent (or parents) contemplating the surrender of her child for adoption, is encouraged to approach an appropriate one of the agencies previously referred to. She is there fully advised about community services available to her not only with respect to adoption, but also to enable her to consider retaining her child if that be her desire. She need not, and should not, feel forced by any circumstance to have her child adopted. Voluntary services are available to help her through confinement, to find employment, to care for the child while she is employed, or Governmental financial aid may enable her to care for her child herself.
>
> Should she determine, however, to have the child adopted, the agency is properly equipped, or if not it would refer the mother to one which is equipped, to take the child into care, assess his special needs, and arrange his placement with selected suitable adoptors capable of meeting these needs, to the satisfaction of the interests of all parties.[86]

7.89 Although Victoria was an outlier, it was not alone in its support of non-government agencies. The Australian Council of Social Service (ACOSS) in its submission to the AGD in relation to the model bill supported the role of such agencies. ACOSS, representing eight membership organisations, noted that its organisations unanimously agreed that:

> 1. Adoptions arranged by individuals over whom the community has no control should be prevented as the community has a responsibility to protect the child and the rights and interests of all concerned.
>
> 2. It is an important function of voluntary agencies as well as governmental agencies to provide adoption services.
>
> 3. Non-Governmental agencies should be registered in order to ensure their conformity with certain specific standards of practice.
>
> 4. The statutory authority responsible for licensing and for setting and maintenance of standards should be representative of both governmental and voluntary agencies...[several other recommendations followed][87]

7.90 Victoria later noted that such agencies were already well-established and their exclusion was not contemplated in that state.[88] However, this view was not widely held. In 1964, the Commonwealth Attorney-General Sir Garfield Barwick summarised that:

> I think I may properly say that the majority of the states take the view that, whilst the agencies can take a real and important part in arranging adoptions, the control of adoption should be exercised by the Directors of

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86 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 99, digital p. 133.

87 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation*, Australian Council of Social Service, Statement on Uniform Adoption Legislation, folio p. 9, digital p. 310.

88 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, folio pp 198–199, digital pp 10–11.

> Child Welfare. On the other hand, one State (Victoria) apparently feels that agencies should be allowed to take a greater degree of responsibility and to perform some of the functions that the Bill gives to the Director. In the two Territories, where the Commonwealth has the responsibility for policy, there are no adoption agencies now, or likely to be for some time, so that the problem does not really arise.[89]

7.91 As mentioned earlier in this chapter, another idea was presented by NSW Child Welfare Under Secretary Hicks in his original brief circulated to the states. His proposal for an 'Adoption Tribunal' included the suggestion that it consist of a Supreme Court judge (to be responsible for legal matters), a psychiatrist and a child welfare expert.[90]

Adoption agencies under 1960s legislation

7.92 Under model legislation passed in ACT, NSW, South Australia, Tasmania and Victoria during the 1960s, authority to arrange adoptions was given to the Director of Child Welfare (or equivalent), and approved agencies.

7.93 This result is somewhat surprising given the considerable opposition to agencies, particularly from NSW officers. However, there had been strong lobbying from the adoption agencies and their representatives. ACOSS had written to AGD in February 1964 expressing its disappointment that private agencies were not contemplated in adoption arrangements in a draft of the model bill (AGD had provided ACOSS with a confidential draft of the bill with the approval of SCAG).[91] Later reviewing this turn-about, Hambly asserted that as the Victorian legislation was the first to be enacted, earlier opposition in other states to private adoption agencies was subsequently tempered.[92]

7.94 However, the conditions with which adoption agencies were to comply in order to gain approval varied by jurisdiction. The acts and ordinances in ACT, NSW and Victoria have similar provisions in relation to private adoption agencies. However, the NSW Adoption of Children Regulations 6–8 included a further three and a half pages of rules for private adoption agencies, relating to: what organisational

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89 Letter from Sir Barwick of 4 February 1964, quoted in NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation—Material prepared by States,* AGD Minute Paper 60/2474, digital p. 348.

90 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States, Uniform Adoption Legislation—Material prepared by States,* Some notes on the Principles and Practices of Adoption—New South Wales, folio p. 14, digital p. 237.

91 NAA, A432 1966/2404 Part 3, *Uniform Adoption Legislation,* Transcript of a meeting of the Standing Committee of Attorneys-General, 23 January 1964, folio p. 86, folio p. 101.

92 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review,* vol. 281 (1967–68), p. 285.

information must be provided by agencies, and when; who may be employed by the agency; and details about its finances.[93]

7.95 Western Australia continued not to make provision for adoption agencies, but did not expressly prohibit the involvement of third parties. Queensland continued not to allow for either private adoptions or agencies.[94]

Record keeping and privacy

Record keeping and privacy prior to model legislation

7.96 All pre-1960s acts and ordinances included provisions designed to maintain the privacy of parties to adoption, and also provisions to ensure accurate record keeping. The states and territories made different rules in order to balance these concerns.

7.97 In the first instance, all jurisdictions required the court to furnish the Registrar-General (of the relevant office of Births, Deaths and Marriages) with a copy of each adoption order.

7.98 In ACT, NT, Queensland and SA, the word 'adopted' was written in the margin of the original birth certificate. These jurisdictions kept a separate *Register of Adopted Children*. Entries in the *Register of Adopted Children* were able to be traced to entries in the general register of births, but only by the Registrar-General or his delegate. General members of the public could not view the register, any index relating to such, nor the original birth certificate, without the permission of a court. Instead, people could apply for a search to be made of the *Register of Adopted Children* in order to produce a birth certificate, which would have the same legal effect as an original birth certificate. In SA, however, adopted persons could apply to view their own original records once they had turned 17 years old.

7.99 In NSW, Tasmania and WA, the Registrar-General received records of adoption orders periodically; in WA for example, not less than every six months.[95] In WA, the details of the adoption replaced those on the original birth certificate, which could not be viewed without the permission of a court. In the states of NSW and Tasmania, the legislation itself did not provide further direction on the issue of record keeping, except that the adoption order had to be registered according to the rules of the court (NSW), or the Governor (Tasmania).

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93 Adoption of Children Act 1965 (NSW) Regulations 6–8; Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), p. 307.

94 Professor David Hambly, 'Adoption of Children: An Appraisal of the Uniform Acts', *Australian Law Review*, vol. 281 (1967–68), pp 283–289.

95 For example, *Adoption of Children Act 1896 (WA)*, s. 12.

7.100 The jurisdictions also took slightly different approaches to privacy in court hearings. In Queensland and SA, matters relating to the making of adoption orders were to be heard *in camera* (in private). The legislation that applied in ACT, NSW, NT and Victoria specified that the court could decide if proceedings should be heard *in camera* or in public. The Tasmanian and West Australian acts were silent on this issue.

Debate about record keeping and privacy

7.101 The Victorian brief from 1961 noted that the 'sealing of the child's previous registration of birth and substitution of one in which he is recorded as the child of the adoptors' was one of the two principal effects of an adoption order.[96] The brief later noted the problem of adoptive parents viewing the original birth certificate of the child for identification, noting that there were some cases of parents 'seeking out a natural mother upon such knowledge, and causing embarrassment to her'.[97]

7.102 A record of proceedings from the May 1961 meeting of child welfare officers considered several issues related to privacy. All states agreed that:

> (a) Natural parents should not be able to ascertain the names of the adopters (except where placed with relatives).
>
> (b) Adopting parents should be able to change the Christian names of the child (surname automatically changed).
>
> [and]
>
> Agreed that normal Extracts, giving date of birth only be issued. [98]

Record keeping and privacy following model legislation

7.103 Following the development of the model bill, the clean break theory was enshrined to a greater extent in legislation, rather than just being a matter of practice.[99] The theory, as applied to record keeping, meant that a new birth certificate was issued with the adopted parents' details, and the record of the adoption order and the original birth certificate were kept secret. The procedure, as set out in the ACT ordinance and mirrored in other states' acts and regulations, required the Registrar-

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96 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 96, digital p. 136. The other 'principal effect' is listed as 'his being deemed thereafter for all purposes a child of the adoptors and not of his natural parents'.

97 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Adoption of Children in Victoria, draft Victorian brief, folio p. 96, digital p. 136.

98 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 29th to 31st May 1961, folio p. 162, digital p. 62.

99 NSW Law Reform Commission, *Report 69 (1992) – Review of the Adoption of Children Act 1990: Summary Report*, 16 December 1991, http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R69SUMCHP2 (accessed 22 February 2012).

General to 're-register' the birth of a child when he or she was adopted. Any person who made a search of the register, or applied for a birth certificate, would receive information as it appeared on the re-registered record.[100]

7.104 In much the same way, the original birth certificate, with a notation to the effect that an adoption had taken place, would not be made available to any person unless a court considered such a document was required as evidence.[101] In the ACT, NSW, Northern Territory, Queensland, South Australia and Victoria, the amended legislation also required the Registry of Births, Deaths and Marriages to keep a *Register of Adopted Children*, and an index relating to such. These were also unavailable to public inspection except with the approval of a court.[102]

7.105 The states also agreed that adoption hearings should be held *in camera*, although NSW considered that discretion should be maintained for the judge to open the court if this was in the 'public interest to do so'.[103]

Offences and penalties

Offences and penalties prior to model legislation

7.106 Prior to 1961, most adoption laws did not establish offences for unlawful adoption practices. The exceptions were Queensland and Victoria. In both states, money could not change hands in relation to an adoption:

> It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the Director to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parents or guardian any such payment or reward.[104]

7.107 The penalty in both states was a maximum of £50. In Victoria, it was also an offence for a natural parent to take away a child from the adoptive parents, or to detain the child with such an intention.[105] This offence carried a penalty of two years' imprisonment. In Queensland, non-compliance with any provision of the Act (other than that mentioned above) carried a penalty of £20.[106] This is a relatively small

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100 *Adoption of Children Ordinance 1965 (Cth),* Regulation 11.

101 For example, to ensure two relatives did not marry. This was also the position under legislation in several jurisdictions prior to the 1960s. *Adoption of Children Ordinance 1965 (Cth),* Regulation 11(6).

102 *Adoption of Children Ordinance 1965 (Cth)* s. 60.

103 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States,* draft Report of the Officers' Conference on the Social Welfare Aspects of Adoption, 8 June 1961, folio p. 139, digital p. 86.

104 *Adoption of Children Act 1935–52 (Qld),* s. 14(1).

105 *Adoption of Children Act 1958 (Vic),* s. 8(4).

106 *Adoption of Children Act 1935–52* (*Qld),* s. 22.

penalty compared to the £200 or 12 months imprisonment applied 'for neglecting, ill-treating or exposing children' under the Victorian *Children's Welfare Act 1958*.[107]

Debate about offences and penalties

7.108 Victoria noted in its 1961 brief that some payments had been exchanged in breach of its Act.[108] At the May 1961 meeting of child welfare officers, all states agreed that sections similar to those in the UK Act relating to the *prohibition of certain payments* and *restrictions on advertising* be incorporated into Australian legislation.[109]

Offences and penalties in 1960s adoption legislation

7.109 The model bill contemplated nine separate areas of offences in relation to adoption and all of the jurisdictions ultimately passed legislation establishing those offences.[110] These in broad terms included the following:

- Natural parents seeking to remove a child from adopting parents;
- Making or receiving a payment in relation to an adoption;
- Unauthorised persons making adoption arrangements;
- Unauthorised persons publishing an advertisement in relation to adoption services or indicating a willingness to be a party to an adoption;
- Publishing the details of parties to adoption enabling them to be identified;
- Making a false statement in relation to a proposed adoption;
- Impersonating a person from whom consent to adoption was required;
- Presenting a forged consent to adoption; and
- Improperly witnessing a consent.[111]

7.110 Penalties were stipulated for each offence: in most cases the penalty was £200 or imprisonment for three months.[112] (The £200 fine applied the offences against children as described above under the *Children's Welfare Act 1958* (Vic) were unchanged in 1965. However, by 1965, penalties applied to offences in acts for unrelated purposes in Queensland had increased correspondingly. For example,

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107 *Children's Welfare Act 1958 (Vic),* ss. 71(1).

108 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States,* Adoption of Children in Victoria, draft Victorian brief, folio p. 96, digital p. 136.

109 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States,* Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 19th to 31st May 1961, folio p. 156, digital p. 68.

110 *Adoption of Children Ordinance 1965 (Cth),* ss. 46–54.

111 *Adoption of Children Ordinance 1965 (Cth),* ss. 46–54.

112 *Adoption of Children Ordinance 1965 (Cth),* ss. 46–54.

offences under the *Aboriginals Preservation and Protection Act 1939–46* were penalised by a £50 fine or three months. Similar offences under the replacement *Aborigines' and Torres Straight Islanders' Affairs Act 1965* attracted a penalty of £100 or six months' imprisonment.[113])

Discussion

7.111 The previous section examined key provisions of adoption legislation and compared their effect before and after the development of model legislation. Child Welfare Ministers, and their Departments, saw adoption law reform as an opportunity to improve adoption arrangements, and to increase the emphasis on the child's interests and welfare.

7.112 The greatest difficulties identified by the states were those that arose from the practice whereby a child was placed with adoptive parents *before* the adopting parents had been approved, and *before* the mother's consent became irrevocable. In response, all states enacted very similar provisions to ensure that only approved applicants could gain custody of a child, and provided for a 30 day consent revocation period, intended to provide stability for the child as well as to safeguard mothers and give surety to adoptive parents.

7.113 The second major concern of Child Welfare Ministers was the control and operation of private adoption agencies. There was less unanimity amongst the states about the regulation of private adoption agencies. As a result, state legislation following the model bill had different provisions that permitted or regulated private adoption agencies.

7.114 Thirdly, Child Welfare Ministers were concerned about the difficulties adopted people might face legally or personally if they discovered inadvertently that they were adopted. They were also concerned that some administrative or legal processes required the production of documents that would disclose a person's adopted status. This was regarded as problematic because of the stigma at that time associated with having been born out of wedlock. In order to address this problem, provisions were introduced requiring adoption hearings to be heard *in camera*, and requiring the re-issue of birth certificates with the details of the adopting parents.

7.115 However, this chapter has also showed that not only Ministers and public servants, but also non-government agencies and members of the public, recognised that there were problems with how adoptions were arranged. The Commonwealth was involved in these discussions and were aware of the issues and policy options. Provisions of a model adoption bill as debated and decided upon by state Child Welfare Ministers represented one solution to these problems. However, there were certainly other opinions and options for the regulation of adoptions.

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113 *Aboriginals Preservation and Protection Act 1939–1946* (*Qld)*, ss. 28, 32; *Aborigines' and Torres Strait Islanders' Affairs Act 1965 (Qld)*, ss. 69(3).

7.116 It was argued in the previous chapter that the attorneys-general considered legal matters relating to adoption because their expertise and interest was in the law. The reforms of the so-called 'social welfare' aspects of the legislation, as discussed by Child Welfare Ministers, were similarly influenced by their particular priorities. It is therefore no surprise that the Child Welfare Ministers considered the 'welfare and interests of the child paramount'.

7.117 The committee recognises the limitations of legislation in addressing an issue that was also controlled to some extent by individuals' circumstances, including family, religion, economic status, and prevailing social mores. Nonetheless, the fact that the UK enacted such different legislation shows that the way forward chosen by the Australian Child Welfare Ministers was not the only possible approach.

7.118 For example, the UK legislation contemplated a six week probationary period in which the child would be in the custody of the adoptive parents before the adoption order was made. This was designed to ensure that the 'match' was suitable for all parties, and gave the mother extra time to consider her consent to adoption. At the May 1961 conference of social welfare officers, SA, Tasmania and Victoria considered that a three month probationary period merited consideration,[114] but the proposal was later dropped and did not appear in any state's legislation.

7.119 Other commentators, such as academics, journalists, women's groups and members of the public, also expressed opinions about how adoptions could be better arranged. Present-day legislation is informed by a range of consultative mechanisms; lobby groups and individuals can email comment to governments, transparency is demanded by the public and it is quite normal for societal views to be divided. Some submitters to the inquiry recounted that 'that's just how it was then' or 'everyone believed that a closed adoption was in everyone's best interest'.[115] The committee is not convinced that this was the case. Certainly, those attitudes were prominent and expressed in public. However, as is the case today, societal views were divided and the remedies to problems of adoption arrangements identified by bureaucrats and legislators represented a single solution, not the only solution, to these issues. As professionals charged with developing policy options, the public servants of the period had responsibility to consider the range of evidence and views available. As representatives of the governments of Australia's states, the ministers took responsibility for making the choices that they did, amongst the options available to them.

7.120 The committee believes that preventing the coercion of mothers into agreeing to adoption was not the primary policy issue that concerned the ministers. However, ministers and officials did want to ensure that such coercion did not take place. This is

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114 NAA, A432 1961/2241 Part 1, *Uniform Adoption Legislation—Material prepared by States*, Memorandum: Uniform Adoption Legislation—Meeting of State Child Welfare Officers held in Sydney 29th to 31st May 1961, folio p. 163, digital p. 61.

115 For example, see Ms A. Allitt, *Submission 412*, p. 3.

evident from documents recording discussions that took place during the development of uniform adoption laws. It is most obvious through the far more detailed requirements inserted into the acts about what constituted consent, including the requirements that consent be taken a number of days after birth and be properly witnessed. It was also illustrated by the creation for the first time of offences, in relation to intimidation, payments, duress and the improper witnessing of consents.

7.121 Sadly, the evidence received by the committee suggests that these offences were not adequately policed, or the new provisions enforced. In spite of the changes, the committee received accounts from mothers indicating that actions that would have constituted offences under the new legislation continued to occur after the mid-1960s. The committee therefore concludes that the provisions in the model legislation designed to protect mothers were not fully effective in practice.