

# Chapter 5

## Commonwealth role: social security and benefits system

### Introduction

5.1 The financial circumstances of many of the relinquishing mothers was reported to be one of the key factors in the decision making process which led to the adoption of their children. As such the question of whether the Commonwealth social security apparatus provided financial options to enable otherwise unsupported mothers to keep and raise their children is central to establishing the Commonwealth's role in former forced adoption policies and practices.

5.2 Monash University's submission explained why social security benefits are such an important consideration:

[T]he Australian social security context has important bearing on adoption in that it can create or severely delimit choices available to individuals, primarily single mothers, with respect to their capacity to care for their children. Through successive social security regimes, the Commonwealth government effectively regulated which types of individuals were considered eligible to form families and which types of families were considered worthy of preservation by restricting access to support to certain categories of individuals and their children. While single mothers were eligible for the Commonwealth Maternity Benefit, introduced in 1912, they were generally excluded from the expanded social security benefits introduced from the 1940s... While single (unwed) mothers could, in some circumstances, access unemployment, sickness or special benefits, and, from 1964, Commonwealth-subsidised state payments for mothers who were ineligible for the widows' pension, these provisions were less well known; and, in any case, offered a lower level of security than that available through a Commonwealth pension.<sup>1</sup>

### Commonwealth constitutional head of power (s 51(xxiiiA))

5.3 In 1901, the Constitution granted the Australian Government power to make laws for the peace, order and good government of the Commonwealth with respect to invalid and old age pensions.<sup>2</sup>

5.4 However, between 1901 and 1946, the Australian Government legislated more broadly across a range of social services, relying upon the spending power in Section 81 of the Constitution:

#### Consolidated Revenue Fund

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1 Monash University, *Submission 37*, p. 2.

2 Section 51(xxiii) of Australia's Constitution.

**81.** All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

5.5 The Pharmaceutical Benefits Case (1945) raised doubts about the constitutionality of social services legislation passed in this manner.<sup>3</sup> This led the Chifley Government and the Menzies Opposition to agree to confirm the constitutionality of the legislation by amending Section 51 of the Constitution.

5.6 On 28 September 1946, the 1946 Australian Referendum was held. It asked the question:

Do you approve of the proposed law for the alteration of the Constitution entitled 'Constitution Alteration (Social Services) 1946'?

5.7 The question was carried with 54.39 per cent of votes cast in favour.<sup>4</sup> Section 51(xxiiiA) was duly inserted into the Constitution granting the Australian Government power to make laws with respect to:

(xxiiiA) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances.

5.8 The *Social Services Consolidation Act 1947* was then passed, amalgamating social services legislation into the *Social Services Act 1947*. That Act ceased on 1 July 1991 to be replaced by the current *Social Security Act 1991*.

## **Commonwealth social security legislation**

5.9 Beginning as early as 1912, the Australian Government provided five forms of financial assistance to mothers: the maternity allowance; child endowment; special benefit;<sup>5</sup> widows' pension; and supporting mother's benefit, all of which are described below.

### ***The maternity allowance***

5.10 In October 1912, Parliament passed the *Maternity Allowance Act 1912*. It provided for a one-off £5 lump sum payment for the birth of a live or 'viable' child but only one allowance was payable where more than one child was born at one birth.<sup>6</sup> At

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3 *Attorney-General (Vic); (ex rel Dale) v Commonwealth* (1945) 71 CLR 237.

4 Australian Electoral Commission, *Referendum dates and results 1906–present*, [http://www.aec.gov.au/Elections/referendums/Referendum\\_Dates\\_and\\_Results.htm](http://www.aec.gov.au/Elections/referendums/Referendum_Dates_and_Results.htm) (accessed 24 March 2011).

5 Available under the *Unemployment and Sickness Benefits Act 1944*.

6 *Maternity Allowance Act 1912*, ss. 5(1).

the time this represented almost twice the average of the minimum weekly wage across Australia.<sup>7</sup>

5.11 The allowance was neither means tested nor subject to tax, and was presented by the Hon. Andrew Fisher PC, Prime Minister and Treasurer as an anti-poverty measure:

[M]any women go through the most trying period of their lives, ill-fed, ill-clad, ill-equipped, without assistance, and with nothing left to them but a proud spirit—a proud womanly spirit, and good luck to them. We intend to put a little between them and dire poverty, without degradation...When this Bill becomes law a woman will know, and everybody acquainted with her will know, that there is £5 awaiting her...That this proposal will relieve misery, I have not the shadow of a doubt.<sup>8</sup>

5.12 No restriction was placed on the eligibility of unmarried women for maternity allowance<sup>9</sup> and there was no character test:

There is no qualification whatever. Each and every one stands on the same level, must make application on the same form, and apply for the money in the same way.<sup>10</sup>

5.13 The provisions of the Act were amended several times from 1926 to 1978. For example, an income test was introduced in 1931 and repealed in 1943.<sup>11</sup> There were also several changes to the structure and levels of the maternity allowance including an increase to £15 for the first child in 1943.

5.14 The *Maternity Allowance Act 1912* was repealed in October 1978, so that no maternity allowance was payable for births occurring on or after 1 November 1978.<sup>12</sup>

### ***Child endowment***

5.15 In March 1941, a national scheme of child endowment was introduced. The *Child Endowment Act 1941* provided for the payment of an endowment at the rate of 5 shillings (s) per week to all children under the age of sixteen years, in excess of one child in each family. The scheme covered families, children residing in private

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7 Vamplew, W., *LAB 116-123, Minimum Weekly Wage of Male Adults, Colonies and States, 1891-1984, Australia's Historical Statistics*, Fairfax, Syme and Weldon Associates, p. 155.

8 The Hon. Andrew Fisher PC, Prime Minister and Treasurer, *House of Representatives Hansard*, 24 September 1912, p. 3323.

9 However, the maternity allowance (as well as child endowment, the widows' pension and supporting mother's benefit) was not payable to all women. Exclusions initially included 'Asiatics and Aboriginal natives of Australia, Papua or the islands of the Pacific'. See *Maternity Allowance Act 1912*, ss. 6(1)(2).

10 The Hon. Andrew Fisher PC, Prime Minister and Treasurer, *House of Representatives Hansard*, 24 September 1912, p. 3322.

11 *Financial Emergency Act 1931* (No. 10 of 1931) and *Maternity Allowance Act 1943* (No. 16 of 1943), respectively.

12 *Social Services Amendment Act 1978* (No. 128 of 1978). The allowance was re-introduced on 1 February 1996 albeit in a different form.

charitable institutions and children boarded out by the states.<sup>13</sup> The marital status of the parents was not a factor in the payment of the benefit.

5.16 Child endowment was payable from 1 July 1941 and the claim of a parent or guardian had to be based on actual responsibility for maintenance and not on a natural relationship.<sup>14</sup>

5.17 The child endowment was not subject to a means test, was not regarded as income for personal income tax purposes, and was to be absolutely inalienable. It was introduced during a time of hardship and, it was stressed, for the benefit of the child:

[T]he Government has formed the definite view that the circumstances of war make the measure I introduce today even more necessary and appropriate than in time of peace...[It is imperative] that the most urgent needs of the community have first claim on the reduced national income available for civil purposes. Child endowment will help to ensure that the exigencies of war do not take away from our children necessary food and clothing.<sup>15</sup>

5.18 There were numerous changes to the provisions of the *Child Endowment Act 1941* from 1942 to 1976. For example, in 1950 eligibility for the endowment was extended to the first child in a family.<sup>16</sup> From June 1976, the child endowment was replaced by family allowance.<sup>17</sup>

### ***Widows' pensions***

5.19 In May 1942, the government introduced the *Widows' Pensions Act 1942*. The Act resulted from the findings of an inquiry conducted by the Commonwealth Joint Committee on Social Security, which reported:

It has long been recognized both in Australia and other countries that widows with dependent children are in a particularly unhappy position...In the majority of cases the widows are without private means and must therefore work for a living in default of outside assistance. In that case they deprive their children of essential parental care and supervision. In caring for their children widows are performing a national service, and are entitled to community assistance both for themselves and for the one child not covered by child endowment.<sup>18</sup>

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13 The Hon. Harold Holt MP, Minister for Labour and National Service, *House of Representatives Hansard*, 27 March 1941, pp 340–341.

14 The Hon. Harold Holt MP, Minister for Labour and National Service, *House of Representatives Hansard*, 27 March 1941, p. 342.

15 The Hon. Harold Holt MP, Minister for Labour and National Service, *House of Representatives Hansard*, 27 March 1941, p. 338.

16 *Social Services Consolidation Act 1950*

17 *Social Services Legislation Amendment Act 1982*

18 Joint Committee on Social Services, *Interim Report*, 24 September 1941, p. 8.

5.20 The pension was introduced from 30 June 1942 with three different categories of eligible widows. The first category—Class A—comprised widows maintaining at least one child under the age of 16 years. The other two categories applied to widows without dependent children.

5.21 For Class A widows the maximum rate of pension was £1 10s per week, subject to automatic quarterly review based on movements in the retail price index ('C' Series).<sup>19</sup>

5.22 The Act broadly defined the term 'widow':

It has been decided to include as widows, de facto widows, a woman who is not legally named, but who lived on a bona fide permanent domestic basis for the three years immediately preceding the death of the man with whom she lived; a deserted wife who has taken legal action against her husband for desertion; a woman who has been granted a divorce and has not remarried; and a woman whose husband or de facto husband is an inmate of a hospital for the insane.<sup>20</sup>

5.23 Under this criterion unmarried mothers were not entitled to this benefit unless they could prove they had been in a domestic relationship for three years.

5.24 The provisions of the Act were amended many times from 1943 to 1983, most notably by the *States Grants (Deserted Wives) Act 1968*. This Act provided for mothers who did not fit the definition of 'widow' and were therefore not eligible for a widow's pension:

Broadly, they are deserted wives during the first 6 months of desertion, wives during the first 6 months of the husband's imprisonment, deserted de facto wives and de facto wives of prisoners and other unmarried mothers.<sup>21</sup>

5.25 In the Second Reading Speech, the then Minister for Social Services, the Hon. Mr William Wentworth MP described how women within the scope of the *States Grants (Deserted Wives) Bill 1968* had previously sought financial assistance from state and territory governments. However, the availability and level of assistance varied across the jurisdictions:

The aim of this legislation is to provide incentive for a more uniform level of assistance, with the Commonwealth sharing half the cost involved...The determination of eligibility and the rates of assistance will remain the responsibility of each State, but the Commonwealth expects that the

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19 There is a useful table depicting increases in the widows' pension from July 1942 to November 1982 at <http://www.fahcsia.gov.au/about/publicationsarticles/research/occasional/Documents/op12/sec8.htm#tbl14> (accessed 3 February 2012).

20 The Hon. Mr Edward Holloway MP, Minister for Social Services and Minister for Health, *House of Representatives Hansard*, 14 May 1942, pp 1239–1240. Note that not all women were eligible for a pension: 'aliens' and certain 'Aboriginal natives' were excluded.

21 The Hon. Mr William Wentworth MP, Minister for Social Services, *House of Representatives Hansard*, 2 May 1968, p. 1060.

existing practice of the States in making individual hardship the test of eligibility for assistance will continue, and that the States will in general raise benefit payments approximately to the level of those payable to a class A widow under Commonwealth legislation.<sup>22</sup>

5.26 In 1969–1970, Commonwealth expenditure under the *States Grants (Deserted Wives) Act 1968* amounted to \$1.9 million. In 1972–1973 that expenditure had increased to \$9.7 million.<sup>23</sup> This assistance operated in tandem with another benefit provided by the Australian Government under the *Social Services Act (No. 3) 1973*.

### ***Special Benefit***

5.27 Another benefit utilised to assist lone parents, although not designed specifically for the purpose, was Special Benefit, introduced under the *Unemployment and Sickness Benefits Act 1944*. In response to questions on notice asked at the committee's hearing in Adelaide on 26 October 2011 the Department of Education, Employment and Workplace Relations (DEEWR) informed the committee of how the benefit operated.

5.28 According to DEEWR, the benefit was paid to those people who:

by reason of age, physical or mental disability or domestic circumstances or any other reason were unable to earn a sufficient livelihood for themselves and their dependents. In determining whether hardship was present, the Director-General of Social Services was impelled to give consideration to:

- Whether the claimant had any money;
- If without money, the circumstances which led to this situation; and
- The time elapsed since the claimant had money available to themselves.<sup>24</sup>

5.29 The benefit was paid at the discretion of the Director-General of Social Services and 'the maximum rate for this benefit was the same as for unemployment or sickness benefit'.<sup>25</sup> An example of who could claim the benefit was given by the Minister who introduced the Bill in 1944:

[T]he Government envisage Special Benefit would be claimed by people in particular circumstances, such as a young woman who was required to

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22 The Hon. Mr William Wentworth MP, Minister for Social Services, *House of Representatives Hansard*, 2 May 1968, pp 1060–1061.

23 Parliament of Australia Parliamentary Library, Social Policy Group, *Social Security Payments for People Caring for Children, 1912 to 2006*, 5 July 2006.  
[http://www.aph.gov.au/library/pubs/online/special\\_partb.htm](http://www.aph.gov.au/library/pubs/online/special_partb.htm) (accessed 16 February 2012).

24 Department of Education, Employment and Workplace Relations (DEEWR), answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

25 Commonwealth Social Services booklet, March 1961, p. 10.

withdraw from the labour force to remain at home to care for aged or disabled parents.<sup>26</sup>

5.30 Throughout the years, the categories of people (including unmarried mothers) who received Special Benefit widened as specific circumstances of hardship arose.<sup>27</sup> Following its introduction in July 1945, Special Benefit was payable to unmarried mothers under a range of specific circumstances. Such circumstances included (but were not limited to):

- Deserted wife or husband in prison for less than six months (not in receipt of state assistance);
- Not qualified for Widows' Pension Class A or Supporting Mothers' (Parents') Benefit (due to six month qualification period or residency requirements), with no recent employment history and unable to qualify for Unemployment Benefit or Sickness Benefit;
- Widows' Pension or Support Mothers' Benefit claimant experiencing hardship during assessment and determination period;
- In immediate hardship during the seven day waiting period for Unemployment Benefit;
- Under the minimum age (16 years) for Unemployment or Sickness Benefit;
- Ex-nuptial confinement up to 12 weeks prior and 6 weeks after the birth of a child (from 1968-69) [emphasis added];
- Expectant mother under 16 years (from October 1973) [emphasis added];
- Obligated to cease work to care for a sick dependent child.<sup>28</sup>

### *Supporting mother's benefit*

5.31 In May 1973, a new benefit was created—the supporting mother's benefit—to take effect from 3 July 1973:

The classes of women to whom the new benefit will be payable under this Bill are unmarried mothers, including deserted de facto wives and de facto wives of prisoners; and (b) married women not living with their husbands (deserting wives) or wives who have been separated for various other reasons, provided that the women be living with, and have the custody, care and control of a child (or children) of whom they are the mothers. These women are those who are not at present eligible for a widow's pension under the Social Services Act and who, with their children, have been

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26 Bill payment for all carers of aged or disabled was introduced by the Commonwealth Government in November 1985.

27 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

28 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

subject to discrimination in the level of assistance available to them in the past.<sup>29</sup>

5.32 The supporting mother's benefit was payable at the same rate and subject to the same means test as the Class A widow's pension. At its inception, the supporting mother's benefit maximum rate for one child under six was \$32. This gradually increased to \$64.95 in May 1978 and \$95.25 in November 1982.<sup>30</sup>

5.33 The benefit was payable from six months after birth of the child or separation, whichever was later. In the interim, the states and territories, together with the Commonwealth, under the *States Grants (Deserted Wives) Act 1968* were responsible for providing financial assistance to mothers. Not all mothers received this provisional assistance:

There will...be some women who will become eligible to the supporting mother's benefit who have not received state assistance because they would have been excluded by the state means tests.<sup>31</sup>

5.34 The *States Grants (Deserted Wives) Act 1968* did not achieve uniform financial assistance for Australian mothers. To address this and other anomalies, the Australian Government proposed that, in future, all cash social welfare payments be made by the Commonwealth:

At the present time, pensions and benefits from the Australian and State government authorities are complicated and confused by their conflicting means testing for benefits, by anomalies and by a perplexing range of benefits which have developed in a spasmodic way. If the Australian Government assumes responsibility for all personal benefit payments it will relieve the States of these financial programs which they often find to be beyond their resources.<sup>32</sup>

5.35 The *States Grants (Deserted Wives) Act 1968* was repealed from 30 June 1982, at which time the six month qualifying period for the supporting mother's benefit was also repealed.

5.36 The supporting mother's benefit was subsumed into the supporting parents' benefit from 10 November 1977, then the sole parent pension from 1 March 1989 and then the parenting payment (single) from 20 March 1998.

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29 The Hon. William Hayden MP, Minister for Social Security, *House of Representatives Hansard*, 22 May 1973, p. 2382.

30 Department of Families, Housing, Community Services and Indigenous Affairs, *Occasional Paper No. 12, Family Income Supplement*: <http://www.fahcsia.gov.au/about/publications/articles/research/occasional/Documents/op12/sec8.htm#tbl14> (accessed 24 March 2011).

31 The Hon. William Hayden MP, Minister for Social Security, *House of Representatives Hansard*, 22 May 1973, p. 2383.

32 The Hon. William Hayden MP, Minister for Social Security, *House of Representatives*, 22 May 1973, p. 2383.

## Availability of information on Commonwealth social security benefits

5.37 Many women who gave evidence to this inquiry felt that they were not advised of all the information on available financial support through the Commonwealth social security benefits system.

5.38 A number of submitters believed that there was no other option available to them than adoption, and this was on purely financial grounds. The committee received comments that cited the lack of information as a key factor in their decision to relinquish their child:

For unmarried, pregnant women adoption was assumed to be the only possible path because of lack of financial and other support;<sup>33</sup>

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I was given no information about financial support available to help me keep my baby. I was given no choices other than adoption;<sup>34</sup>

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No alternatives to adoption were given to me by the department of community welfare. I was not provided with information of any sort of foster care or financial assistance for unmarried mothers.<sup>35</sup>

5.39 Other women have suggested that there was sufficient financial support available and that they were deliberately misled and that information that would have broadened their options was kept from them:

[T]he adoption industry systematically lied to unsupported mothers about their rights, their options, financial assistance and legally available alternatives that would enable them to keep their babies or to at least allow free and informed decision to be made as the law decreed.<sup>36</sup>

5.40 This sentiment was echoed by other witnesses:

Whether or not the mothers' consent was informed of the availability of financial assistance and other aids to help her keep her child or of the known potential for long-term mental health issues associated with adoption are considerations that take on serious implications when examined as omissions relative to the gross breach of common law parental rights constituent with the unauthorised removal of the child at birth.<sup>37</sup>

At no time before I was given this document to sign was I told alternatives to adoption or any of the financial and material assistance which I now

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33 Benevolent Society, *Committee Hansard*, 29 April 2011, p. 17.

34 Ms Robyn Cohen, *Committee Hansard*, 16 December 2011, p. 17.

35 Ms Margaret Singline, *Committee Hansard*, 16 December 2011, p. 20.

36 Origins Victoria, *Committee Hansard*, 20 April 2011, pp 17–18.

37 Origins SPSA Inc., *Committee Hansard*, 29 April 2011, p. 25.

know was available to me and which was my entitlement at law to be told about.<sup>38</sup>

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I was not given information on financial assistance that would enable me to keep my son.<sup>39</sup>

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No-one told me. They told me that there was nothing available, that I would have to get a job and that, if I did give it to my parents, I was putting financial pressure on my parents as well.<sup>40</sup>

5.41 An internal report to the Commonwealth Department of Social Security circa 1957 raised concerns about the availability of information about benefits:

Special Benefits and publicity. Attention has been drawn to the fact that precedents to special benefits are not realised by the public and so cases can be cited of great hardship suffered unnecessarily.

e.g. a girl in a country town found actually starving, did not know she was eligible for a special benefit. Perhaps in the distribution of social services booklets, all post offices should have a copy in a conspicuous place for use by the public...It is the right of all citizens to be made fully aware of benefits for which they may be eligible.<sup>41</sup>

5.42 The NSW Legislative Council's Standing Committee on Social Affairs also reported in 2000 that they had heard similar evidence regarding the advice given to mothers:

One of the main concerns raised by mothers who participated in this inquiry is that they were not properly advised about the availability of income support and other alternatives if they chose to keep their babies. Even if information was provided, many say they were told the level was insufficient to support themselves and their child. A large number of mothers have indicated that the failure of adoption professionals to provide them with complete and accurate advice about alternatives to adoption was a critical factor in their decision to relinquish their child.<sup>42</sup>

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38 Ms Kate Howarth, *Committee Hansard*, 29 April 2011, pp 58–59.

39 Ms Laraine Murray, *Submission No. 77*.

40 Ms Lisa McDonald, Adoption Research and Counselling Service, *Committee Hansard*, 1 April 2011, p. 33.

41 University of Melbourne Archives, 86/123, Report – Child Endowment, item 8/3, p. 21.

42 NSW Legislative Council, Standing Committee on Social Affairs, *Releasing the Past—Adoption Practices 1950–1998—Final report*, Report No. 22, Parliamentary Paper No. 600, December 2000, p. 35, para 3.63.

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## Analysis of the benefits available

5.43 One key question that arises from the description of the Commonwealth benefits potentially available to mothers is whether they would have provided enough support to allow an otherwise unsupported mother to raise her child.

5.44 The Child Endowment and the Maternity Allowance provided support to mothers regardless of their financial circumstance, although racial criteria were applied. As discussed previously in this chapter Child Endowment was a regular payment of 5s per week paid to those who had responsibility for maintenance of a child regardless of their natural relationship. To put this figure into perspective the average weekly wage was around \$10,<sup>43</sup> so the child endowment benefit represented only 5 per cent of the average weekly wage and was therefore far from sufficient for an unsupported mother to provide for herself and her child.

5.45 The Maternity Allowance was also not means tested. It was a substantial sum at the time of introduction, representing almost twice the average of the minimum weekly wage. However it was a one off payment and therefore could not contribute significantly to the ongoing maintenance of a mother and her child.

5.46 The availability of Special Benefit for otherwise unsupported mothers has been difficult for the committee to quantify due to its highly discretionary nature. The Act did not explicitly exclude unmarried mothers from receiving it, however the committee received evidence that they did not generally receive this benefit.<sup>44</sup>

5.47 DEEWR provided statistical information about recipients of special benefit from 1964 to 1981.<sup>45</sup> The figures show that the recipients of Special Benefit were overwhelmingly women. They provide some breakdown of the types of circumstance under which the recipients were eligible for this benefit. There is no category specifically for unmarried or single mothers. However, at least prior to 1968, it can be inferred from the available data that only a small proportion of the approximately 2000 women who received the benefit at some point during the year could possibly have been single mothers. In 1964, for example, the main category in the data that might have included single mothers<sup>46</sup> was 'other'. The number of recipients was just 180, and this may have included men receiving it for reasons completely unrelated to supporting children. When this small number is contrasted with the number of adoptions in that year (likely to have been around 6000), it is clear that special benefits were highly unlikely to have played a role in supporting single mothers.

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43 ABS, *Average weekly earnings, Australia, 1941 to 1990*, cat. no. 6350.0

44 See for example, June Smith, *Submission 83*, as well as the statistics provided by DEEWR in their answer to question on notice, 26 October 2011 (received 9 December 2011), Attachment E, discussed in the next paragraph.

45 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), Attachment E.

46 The category 'woman caring for sick parent, relative or child' could have included a single mother caring for a sick child, but this would not be relevant to the discussion here, as it would only have been available while a child was ill.

5.48 The 1965 Department of Social Services instruction manual for Unemployment, Sickness and Special Benefits describes the circumstances where Special Benefit should not be paid. Under the section, 'Women deserted by husband without just cause for less than six months', it specifically states that:

Benefit should not be granted where the claimant would not be eligible for a pension after she had been deserted for six months.<sup>47</sup>

5.49 This excludes unmarried women who would not meet the three year criterion required to be considered a de facto relationship under the *Widows' Pension Act 1942*, thereby excluding a great many of the mothers whose children were adopted. The Department also required that any claims about the length of time a couple had spent together before the 'desertion' 'be substantiated by statements from three other reputable citizens'.<sup>48</sup>

5.50 The procedure set out in the manual gives the impression that the Commonwealth's guidelines would have inhibited receipt of Special Benefit to unmarried mothers.

5.51 One of the submitters to the inquiry, June Smith, commented specifically on this issue:

According to the legal criteria, under the Social Services Act for payment of Special Benefit, single mothers would have been eligible for payment, though not one mother received this payment until two years prior to the introduction to the Single Mothers Benefit when payment was finally made to them. Although the criteria for Special Benefit had not changed in any way since 1947!<sup>49</sup>

5.52 The committee examined records held by Melbourne University Archives that belonged to Ms Theresa Wardell, a prominent social worker of the 1950s, 1960s and 1970s. Ms Wardell was contracted by the Commonwealth in 1957 to do a study of aspects of how adequately Commonwealth benefits, including Special Benefit, were providing support for children.<sup>50</sup> Notes made by her during a visit to South Australia poignantly confirm the view that Special Benefit was not available other than temporarily:

Unmarried mother who keeps her child. In great need after 6 wks when [Special Benefit] ceases – she can then go on [Unemployment Benefit] or get a job – if girl under 21 (lower wages) she can't possibly retain child and

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47 DEEWR, answer to question on notice, 26 October 2011, Supplementary Information: Department of Social Services, *Instructions for Unemployment, Sickness and Special Benefit, October 1958*, Issue no. 8 (1965), 2/J/8, p. 66.

48 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), Attachment E.

49 *Submission 83*, p. 7.

50 University of Melbourne Archives, 86/123, Extract of Director General's [of Commonwealth Department of Social Services Social Welfare Branch?] memo to Public Service Board, 1957, file 7/16.

work. These girls usually alone. Other countries give a living allowance for girl to stay at home and care for child. Australia's attitude still a punitive one.<sup>51</sup>

5.53 Ms Wardell's notes from her visit to Queensland were more cryptic but implied unmarried mothers were accessing the welfare system to some degree:

Family Allowance section Miss Clark, counter clerk [ie. Ms Wardell was making notes from a conversation]. Women only interviewers for [Family Allowance] counter. Woman claimants only have ?floor to sit on—many women afraid to talk at the counter in spite of side shields, esp. Unmarried mothers (comment – special room available off counter in [Unemployment Benefit and Special Benefit] section).<sup>52</sup>

5.54 The criteria for the benefit was broadened in 1968 to provide for 'Ex-nuptial confinement up to 12 weeks prior and 6 weeks after the birth of a child',<sup>53</sup> however this was already available under sickness benefit and simply transferred to Special Benefit.<sup>54</sup>

5.55 By way of summary, the Australian Government's social services legislation provided assistance to young unmarried mothers in the form of the lump sum maternity allowance (from 1912), child endowment for a first child (from 1950), supporting mother's benefit (from 1973), and potentially via state and territory grants (from 1968). Only the maternity allowance and the child endowment were universal benefits and therefore available to unsupported mothers.

5.56 The committee heard from commentators who concluded that there was insufficient ongoing support in the form of Commonwealth Social Security benefits before the restrictions on the supporting mother's benefit were removed in 1973:

In terms of the first of the terms of reference, about the role of the Commonwealth, it seems to me that basically from a legal point of view, it was the lack of financial assistance. Prior to 1973 the Commonwealth did not provide any means to enable single women to keep children.<sup>55</sup>

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At the time probably there were the social beliefs in society about single parenthood and the Commonwealth took no responsibility to provide income support in the way of finances for single parents. The majority of

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51 University of Melbourne Archives, 86/123, Notes for South Australia, p. 2, file 8/6, highlighting in original.

52 University of Melbourne Archives, 86/123, Notes for Queensland, p. 2, file 8/6, highlighting in original.

53 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

54 DEEWR, answer to question on notice, 26 October 2011 (received 9 December 2011), p. 2.

55 Adoption Jigsaw, *Committee Hansard*, 1 April 2011, p. 19.

women I believe would be relinquishing because of financial reasons. They really had no choice unless they had family support.<sup>56</sup>

5.57 The Council of Single Mothers and their Children (CSMC) Victoria cited their founder, Rosemary West, who described her experience:

For me, the penny dropped when I was pregnant in 1962 and asked the hospital social worker about social security benefits. She told me that I had broken the rules, and there was nothing for me. Girls like me were threatening the institution of marriage, she said, and if I cared for my child I would give her up.<sup>57</sup>

5.58 Another founding member of the CSMC, Rosemary Keily, is cited in the submission from the Royal Women's Hospital, Melbourne:

In a 1972 submission to the Australian Council of Social Services (ACOSS), Rosemary Kiely argued that 'a single mother who is without family support and who is unable to live cheaply in a housekeeping position is unable to afford independent accommodation at the present rate of benefits'. These restricted financial provisions made self-sufficiency a near impossibility.<sup>58</sup>

5.59 Dr Kathy MacDermott prepared a discussion paper for the Human Rights Commission in 1984 on the *Rights of Relinquishing mothers to Access to Information Concerning their Adopted Children*, and she reached the same conclusion.<sup>59</sup> Likewise, the NSW Parliamentary Committee reported in 2000 that state benefits alone would not be sufficient to sustain a mother and child:

According to a social worker writing in 1968, the Department's allowance did not provide a 'livable' income. Personal knowledge of some of these mothers trying to manage on this allowance has shown that they can only do so if they receive additional help from the voluntary relief-giving agencies such as the Smith Family. If they are trying to manage on their own the only alternative for them is to return to work once they have arranged day care for the child such as a day nursery or a daily minder. Alternatively, they may take a live-in job with the baby which occasionally works out well but which is often full of hazards.<sup>60</sup>

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56 Adoption Research and Counselling Service, *Committee Hansard*, Perth, 1 April 2011, p. 29.

57 Rosemary West, 'How Single Mothers Overcame Discrimination' in E. Baldry and T. Vinson, (eds), *Actions Speak: Strategies and Lessons from Australian Social and Community Action*, 1991, cited in Council of Single Mothers and their Children (CSMC) Victoria, *Submission 303*.

58 R. Kiely, 'Disadvantages of the Present Scheme for Assisting Single Mothers,' in The Council for the Single Mother and her Child (Vic) pamphlet, Melbourne, c.1972, Kiely's emphasis, cited in The Royal Women's Hospital, Melbourne, *Submission 399*, p. 13.

59 Kathy MacDermott, *Rights of Relinquishing mothers to Access to Information Concerning their Adopted Children*, Human Rights Commission, Canberra, July 1984, p. 3.

60 NSW Legislative Council, Standing Committee on Social Affairs, *Releasing the Past – Adoption Practices 1950-1998 – Final report*, Report No. 22, Parliamentary Paper No. 600, December 2000, p. 33, para 3.54.

5.60 The NSW Committee also heard that other barriers were put in place that could prevent a mother accessing benefits:

To qualify for any of the State social welfare allowances, the mother was required to make an affiliation statement, which involved identifying the father of her child. The statement was used by the Department to pursue an action for maintenance either in court or by way of a voluntary agreement. The requirement to name the putative father was a significant disincentive for a woman who might otherwise qualify because she might not want to name him. If the woman was less than 16 years of age, the young woman might not want to expose the putative father to a prosecution for carnal knowledge.

According to a former senior departmental officer, Mr Barry Francis, many women found affiliation proceedings extremely humiliating because they had to provide extensive details of their sexual relationships to a district officer and then in court. If they qualified for this allowance, further embarrassment was likely as they were required to collect their cheques in person from local church or community halls, rather than receive a payment in the mail like many other recipients.<sup>61</sup>

5.61 However this committee received some evidence that when combined, Commonwealth and state benefits may have provided an adequate income for an unsupported mother. Origins NSW submitted an article from 1954 that discussed a variety of Commonwealth and state social security benefits available to 'unmarried mothers':

Unmarried mothers throughout Australia can receive financial assistance before and after their confinement from the Commonwealth Social Services Department. The usual sickness benefit payments are available to these mothers for six weeks before and six weeks after their confinement. The rates are: £1/11 weekly for girls aged 16 to 18 years; £2/0/0 for the 18 to-21-years age group; and £2/10/0 for the 21-and-over group. In addition, if the mother decides to keep her child she can also receive a 5/- weekly payment for it for six weeks after its birth. As well as these benefits, unmarried mothers can claim child endowment of 5/- a week for the first child and the maternity allowance of £15 for the first child. In NSW, under section 27 of the Child Welfare Act an unmarried mother who wants to keep her child but cannot afford to support it may apply to the Child Welfare Department for regular payments.<sup>62</sup>

5.62 The committee did not receive authoritative information about exactly what state benefits were available in each state or territory. However some information that conveyed the national situation is included in the Summary of Proceedings of the

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61 NSW Legislative Council, Standing Committee on Social Affairs, *Releasing the Past – Adoption Practices 1950-1998 – Final report*, Report No. 22, Parliamentary Paper No. 600, December 2000, p. 33, para 3.55.

62 *The Australian Women's Weekly*, 'Should she surrender her baby?', 8 September 1954, p. 26, viewed 20 September 2011, <http://nla.gov.au/nla.newsarticle46448400>, cited in Origins SPSA Inc., *Supplementary Submission 170 (h)*, p. 54.

Ninth Annual Conference of Administrators of Child Welfare held in Canberra in 1968. This records a discussion of State Administrators on the issue of means testing of social welfare benefits for 'deserted wives and certain other categories of "widows" unmarried mothers etc. to uniform rates based on the Social Service pension payable to A class widows'.<sup>63</sup>

5.63 The context of the discussion was around whether the Commonwealth would fund 50 per cent of the costs involved in the states increasing their social welfare benefits to this category of people. The states and territories reported on how they means tested their social welfare benefits to this group:

- South Australia—Allows nothing in the bank. Assistance given is to relieve destitution only.
- Northern Territory—Some allowance is made where there is money in the bank if it can be demonstrated that it is needed for something else.
- New Guinea—No assistance is given when there is a disclosure of assets.
- Queensland—Up to \$400 is allowed in a bank account.
- Western Australia—Allows some money in a bank account.
- Tasmania—The supplementation of income with some welfare assistance is possible.
- Victoria—Will allow up to \$600 where there is one child and additional for extra children.<sup>64</sup>

5.64 While this does not provide details on the amounts that were available from states and territories for social welfare for mothers and their children, it does paint a picture of inconsistency in state welfare provision across the country.

5.65 The Australian Association of Social Workers (AASW) Journal published a submission to the Commonwealth Minister for Social Services lobbying for support for mothers who could not receive the Widows Pension on various grounds including being an unmarried mother. The submission summarised the availability of state benefits to otherwise unsupported woman who did not meet the Commonwealth criteria for benefits:

In all States the amounts paid vary considerably and are usually dependent upon the deserted wife being without adequate income or savings, being responsible for the care of her children. In some cases additional assistance is available, subject to the means test for that item, including milk, school books, handouts of clothes, etc. In some States all medical bills are paid for the mother.<sup>65</sup>

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63 Summary of Proceedings of the Ninth Annual Conference of Administrators of Child Welfare held in Canberra in 1968, provided by Origins SPSA Inc., *Supplementary Submission 170 (h)*, Fourth attachment, p. 28.

64 Summary of Proceedings of the Ninth Annual Conference of Administrators of Child Welfare held in Canberra in 1968, provided by Origins SPSA Inc, *Submission 170, Part Four*. p. 28.

65 Australian Association of Social Workers, *Australian Journal of Social Work*, May 1967, p. 21.

5.66 The submission also highlighted that receiving benefits from the States would disqualify a mother from receiving Special benefit from the Commonwealth:

In all States (except Victoria) deserted wives are entitled to receive State assistance, and for this reason forfeit eligibility to receive Special Benefit.<sup>66</sup>

*Committee view*

5.67 The committee received no evidence from unmarried mothers who did receive Special Benefit for the purposes of raising a child, so cannot presume to know whether or not the provision of the benefit was a long term solution for an unmarried mother. If it were an ongoing payment then perhaps it would have provided enough income to support both the mother and the child, However if it was accessed under the same conditions as sickness benefit, which was a time-limited benefit for the duration of the confinement, then it would not have been adequate. The only remaining option for an unsupported mother would then have been to access state benefits, which differed across the country.

5.68 The committee understands and agrees that various benefits and allowances from both the Commonwealth and some of the individual states, when combined, would have provided a reasonable amount of short-term funding to an unsupported mother. However the AASW submission to the Commonwealth suggests that receiving state assistance was an automatic bar on receiving Special Benefit, the only benefit that didn't explicitly exclude unmarried mothers. The figures quoted in the article supplied by Origins NSW do not appear to offer the ongoing financial support that would have allowed unsupported mothers to keep their babies. The article also refers to benefits available in New South Wales, which may not have applied in other states.

5.69 The committee believes that information provided to mothers during and immediately following the birth of their child was in some cases woefully short of what should have been available. There is insufficient evidence to allow the committee to determine whether the failure lay at the national level or whether it was a result of inadequate practices in hospitals and other state- or privately-run institutions.

5.70 Regardless of the quality of the information, however, the committee concludes that there was not appropriate government funding available to mothers prior to 1973 that would have provided the ongoing financial support necessary for mothers to keep their babies if they lacked any private source of income or family assistance.

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66 Australian Association of Social Workers, *Australian Journal of Social Work*, May 1967, p. 21.