

PARLIAMENT OF VICTORIA

LEGISLATIVE ASSEMBLY

Legal and Social Issues Committee



Inquiry into responses to historical forced adoption in Victoria

Parliament of Victoria
Legislative Assembly Legal and Social Issues Committee

Ordered to be published

VICTORIAN GOVERNMENT PRINTER
August 2021

PP No 261, Session 2018-2021
ISBN 978 1 922425 39 3 (print version), 978 1 922425 40 9 (PDF version)

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About the Committee

Functions

The Legal and Social Issues Standing Committee is established under the Legislative Assembly Standing Orders Chapter 24—Committees.

The Committee's functions are to inquire into and report on any proposal, matter or thing connected with—

- the Department of Health and Human Services
- the Department of Justice and Community Safety
- the Department of Premier and Cabinet and related agencies.

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This report is available on the Committee's website.

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Terms of reference

Inquiry into responses to historical forced adoption in Victoria

On 28 May 2019, the Legislative Assembly agreed to the following motion:

That this House refers, an inquiry into support services and responses to the issue of historical forced adoptions in Victoria to the Legal and Social Issues Committee for consideration and report no later than 31 December 2020.*

* The reporting date was changed to mid-August 2021.

Chair's foreword

Together with my colleagues, we present the final report to the Inquiry into responses to historical forced adoptions in Victoria. The report contains 56 recommendations that we hope strongly contributes to people's healing and provides the necessary supports to address the injustices of the past.

In 2012, the Victorian Parliament apologised for the profound harms past adoption practices caused to mothers, fathers, sons and daughters. Members of Parliament from all political parties came together to acknowledge the thousands of mothers and babies separated through unethical, deceitful and immoral policies and practices, and the immeasurable pain this caused.

At the time of the apology, several measures were promised by the Victorian Government to support people affected by historical forced adoption. These complemented measures introduced by the Australian Government in response to the landmark Senate Inquiry into this issue. Since then, some measures have been implemented although the ongoing benefits have been limited. The need for further action prompted the referral of this inquiry to the Committee.

From the outset, the Committee was determined to hear from as many people as possible who were affected during this inexcusable time in Australia's history. We continued to accept submissions throughout the entire Inquiry process in the hope of encouraging people to come forward, especially those who had not spoken about their experiences before. These submissions further exposed the trauma and ongoing injustices imposed on mothers, the harms inflicted on people who are adopted from the moment they were taken from their mothers, and the impacts on fathers, adoptive parents and other family members.

Despite the challenges posed by COVID-19, the Committee continued its work and held face-to-face public hearings in Melbourne and regional areas and online. We heard firsthand exactly what mothers have experienced and we witnessed their incredible strength as they spoke about justice, truth and recognition. The Committee acknowledges the mothers who have tirelessly advocated over the years for public recognition and to bring responsible government and non-government organisations to account. With recommendations to establish a comprehensive redress scheme and remove the statute of limitations, both without delay, the Committee hopes this report builds upon mothers' efforts for justice. All organisations need to take responsibility for their policies and practices of the past.

The Committee also heard from many people who are adopted, nearly all of whom had negative adoption experiences. Tragically, babies were taken from their mothers who were unfairly judged as unfit to raise them, yet many babies were placed with unsuitable and sometimes unsafe adoptive families. Understandably, this has adversely

affected people's health and wellbeing. The Committee recommends that a stand-alone inquiry be undertaken to further explore the impacts on adopted people. It also recommends the immediate introduction of integrated birth certificates.

The Committee heard that while the Victorian Parliament and National apologies contributed to healing and reconciliation, they were only the beginning of that journey and should have been accompanied with long-term and meaningful action. The 56 recommendations in this report are therefore long overdue. If implemented by the Victorian Government, the recommendations will enhance the capacity of people to address the trauma of historical forced adoption. Particularly, through the provision of specialised and flexible mental health support services, and various measures to improve access to adoption records and to make it easier for people to search and reconnect with their family. The Committee also recommends measures to improve the operation and transparency of current adoption laws to ensure the mistakes of the past are not repeated.

The Committee is grateful to everyone who generously shared their time, expertise and ideas during the Inquiry. In particular, I acknowledge every person who so bravely shared their personal experiences with us. Your evidence broadened our understanding of the relevant issues and informed our recommendations to the Victorian Government.

I would like to thank my colleagues, Committee Members Christine Couzens MP, Michaela Settle MP, David Southwick MP, Meng Heang Tak MP, Brad Battin MP and former Deputy Chair, James Newbury MP, for their contributions and commitment to this inquiry. On behalf of the Committee, I also thank the Committee secretariat, Yuki Simmonds, Richard Slade, Rachel Macreadie, Katherine Murtagh and Catherine Smith, for their hard work and support throughout the inquiry.

Once again, thank you everyone for your valuable contribution.

A handwritten signature in black ink, appearing to read 'Natalie Suleyman', followed by a horizontal line.

Natalie Suleyman
Chair and Member for St Albans

Executive summary

Chapter 1: Introduction

The introduction details the Inquiry's Terms of Reference (ToR), the context surrounding the Inquiry and the Inquiry process.

On 28 May 2019, the Legal and Social Issues Committee (the Committee) received ToR to inquire into support services and responses to the issue of historical forced adoption in Victoria. The Committee interpreted this to broadly imply what measures or avenues for recourse, if any, have been implemented to support mothers and others who were also subject to the former policies and practices of forced adoption. What are the gaps in the provision of support and how can individuals' needs be supported further?

On 25 October 2012, the former Premier of Victoria, the Hon Ted Ballieu MP, delivered the Victorian Parliamentary Apology for Past Adoption Practices and acknowledged that these past practices were unethical, immoral and unconscionable. On 21 March 2013, the former Prime Minister of Australia, the Hon Julia Gillard MP, delivered the National Apology for Forced Adoptions and apologised for policies and practices that forcibly separated mothers and their babies, describing them as unethical, dishonest and, in many cases, illegal.

These apologies followed the 2012 Senate's Community Affairs References Committee's Inquiry into the *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry). The Senate Inquiry made numerous recommendations to assist national and state governments to address the consequences of historical forced adoption, however, these have only been partially implemented.

For this inquiry, the Committee was hopeful that mothers would find the courage once again to share their experiences to assist the Committee to further expose the abuse that they suffered, the ongoing injustices and the trauma that has never left them. The Committee also stated from the outset that it would consider all issues raised in submissions and at public hearings. This allowed consideration of various matters relating to the forced separation of mothers from their babies and it also drew attention to the harms inflicted on the babies who were forcibly removed from their mothers at birth. Their rights were also disregarded and for many this has resulted in lifelong trauma.

Throughout the Inquiry, the Committee became aware of the contested view about the term 'forced adoption'. The Committee heard that it does not capture the forcible separation of a mother and their baby. The term is not used in the report to describe the experiences of mothers, however, the broad term of 'historical forced

adoption' is used when discussing the overarching subject matter. Further, the Committee's reference point for using other common language to describe people affected by historical forced adoption was the Senate Inquiry.

The Committee received 114 submissions and held 11 days of public hearings in Bendigo, Geelong, Melbourne and Wodonga. The Committee is grateful to all inquiry participants who generously shared their time and insights during the Inquiry, and those individuals who bravely shared their personal experiences.

Chapter 2: Social and historical context

According to the Department of Justice and Community Safety, there were nearly 40,000 adoptions arranged in Victoria between 1958 and 1984. The evidence received by the Committee and previous inquiries into this subject matter in other jurisdictions indicates that many mothers who gave birth around this time were subject to the policies and practices of historical forced adoption. This included sending mothers to maternity homes with harsh conditions, forcibly restraining mothers when they gave birth, immediately separating newborn babies and mothers often against their will and, pressuring or coercing mothers into signing consent forms.

The Committee does not believe that historical forced adoption was a reflection of the values and attitudes of society at the time. Rather, there is evidence that the practices were the result of deliberate policy decisions made at government and institutional levels.

Victoria had several adoption acts over the historical forced adoption period, starting with the *Adoption of Children Act 1928* (Vic). In the early 1960s, governments around Australia began discussions on developing model adoption legislation in response to concerns about the operation of the legislation, including the potential for malpractice in private adoption agencies. The model legislation also aimed to strengthen the consent process and ensure informed and free consent was provided by mothers. Sadly, the Committee learnt that the additional legal protections for mothers were not adequately policed or enforced.

The former Victorian Premier, the Hon Ted Baillieu MP, apologised for past adoption practices on 25 October 2012. While some institutions that also played a part in historical forced adoption have apologised, many have not. The Committee also heard that apologies are more than just words: they need to be accompanied by concrete actions and the response to date from governments and non-government organisations has been inadequate.

To this end, the Committee makes two recommendations directed at organisations that facilitated adoptions during the historical forced adoption period to reflect on their involvement, apologise and include personalised statements of responsibility as part of a Victorian redress scheme.

Chapter 3: Experiences of mothers

One of the Committee's key objectives during this inquiry was to listen to mothers whose babies were taken from them and provide them with an opportunity to share their experiences. The Committee heard many harrowing and heartbreaking accounts from mothers and was incredibly grateful to those who came forward. The Committee also acknowledges the many mothers for whom the pain of their experience and the secrecy imposed on them has deprived them of the chance to speak out.

The Committee heard from mothers who were shunned, shamed and treated with contempt by their families, communities and staff at maternity homes and hospitals when they were pregnant: a time when they should have been supported. Mothers felt scared, lonely and isolated throughout their pregnancies, during the labour and after their newborn babies were taken from them. They were treated cruelly by staff, provided with sub-standard medical care and many were left traumatised by the birthing experience.

The Committee heard that mothers were coerced or forced into providing consent to the adoption of their baby. Consent provisions under Victoria's adoption laws were consistently contravened, including the right of mothers to revoke their consent within 30 days. Mothers were consistently not informed of their legal rights and the Victorian Government and organisations did not adequately protect these rights. Mothers also reported being given drugs that impaired their ability to give fully informed consent.

Many mothers have tried to access their medical records to better understand what happened to them in hospital. Yet, the Committee heard that this has been an unnecessarily challenging process, with mothers being told their records were lost or destroyed, or they have faced other bureaucratic barriers.

The Committee makes recommendations to improve the process for accessing hospital records for mothers, including that a specific application form be developed, fees waived and that applicants be informed as to why their records cannot be located. Additionally, the Committee recommends that the Victorian Government encourage all organisations involved in historical forced adoption to identify all records in their possession and make these more readily available via the Victorian Government Adoption Information Service.

Chapter 4: Ongoing effects on mothers

The trauma experienced by mothers has had long-lasting impacts on their relationships, careers and health and wellbeing. The Committee heard that grief, sadness, shame and guilt stays with mothers throughout their lives. It has impacted their ability to form trusting and meaningful relationships with partners and subsequent children and to live their lives to their full potential.

For mothers, the trauma arising from the experience of being forcibly separated from their newborn baby and the mistreatment from families, maternity homes and hospitals has compounded over time. This has caused complex trauma and affected their mental, social and physical health. Mothers reported experiencing depression, post-traumatic stress disorder, anxiety and suicidal thoughts, as well as ongoing physical health complications. The Committee heard that mothers suffer disenfranchised grief, which occurs when grief is not directly acknowledged or openly mourned.

Mothers also shared with the Committee their experience of reuniting with their child, now adult, who was forcibly removed from them. The associated pain and trauma has meant reunions can be an emotionally challenging time for both mothers and people who are adopted. For many, the relationship has been difficult to navigate at times but generally positive, whereas for others, the inability to reconcile and heal has led to a breakdown in the relationship.

The need for acknowledgement and recognition of what mothers have been through was a key issue in the Inquiry. Without this, healing cannot occur. This requires increased community awareness of historical wrongdoings and what mothers endured under the policies and practices of historical forced adoption. The Committee makes several recommendations aimed at increasing awareness and recognition, including that responsible institutions be encouraged to display their own memorials, establishing a permanent site for the *Without Consent* exhibition in Victoria, creating a website and designating an annual day to commemorate the policies and practices of historical forced adoption in Victoria.

Chapter 5: People who are adopted

As the Inquiry progressed, an increasing number of people who were forcibly adopted provided evidence to the Committee. The Committee came to understand that there are common themes arising from people's experiences of being adopted, but the impact of adoption varies from person to person.

The Committee learned that adoption is created through traumatic loss when mothers and babies are forcibly separated. Separation trauma often continues throughout a person's life, can be stored somatically in the body and exists even for people who had positive lived experiences with their adoptive families. The Committee also heard about the impact that the early separation of a newborn baby from its mother can have on child development.

The Committee was told that society has a fairy-tale like perception of adoption, which is often different to the reality of the lived experience of people who are adopted. The Committee heard that many adopted people struggle with their identity and often feel like outsiders in their families and communities. Feelings of rejection, the threat of rejection and a fear of future rejection are common for adopted people who can also struggle to trust people and form healthy relationships.

Compared to the general population, people who are adopted report worse wellbeing and mental health outcomes. Adopted people live with unresolved loss, grief and trauma that often manifests as mental illness, including suicidal ideation. Similar to mothers, adopted people also experience disenfranchised grief.

It was evident throughout the Inquiry that there is a clear lack of research into the experiences of adopted people and the effects of adoption—forced or otherwise. Consequently, the Committee recommends that the Victorian Government advocate for the Australian Institute for Family Studies to conduct a follow up study to *Past adoption experiences: National research study on the service response to past adoption practices*, and for a specific inquiry into the experiences and the effects of adoption on adopted people.

The Committee also explored the process for discharging an adoption order and heard that it is not well publicised, nor is it a streamlined process. The Committee recommends the introduction of a no-fee, no-fault procedure to discharge an adoption order and that the Victorian Government publish an electronic and hardcopy step-by-step guide to discharging an adoption.

Chapter 6: Effects of historical forced adoption on other people

The Committee is aware that the impacts of the policies and practices of historical forced adoption are wide-ranging. It also affects fathers, adoptive parents, siblings, subsequent children, extended families, grandparents and the broader community. The Committee did not receive extensive evidence from these different groups, but nevertheless, the Committee believes understanding their experience is important to recognise the detrimental effects of historical forced adoption.

For fathers, the Committee understands that they often felt sidelined and powerless in the face of pressure from their families and communities throughout the pregnancy and during the adoption process. They were often deliberately excluded and not named on birth certificates so their consent was not needed. Fathers also experienced feelings of loss, guilt and regret that affected their mental and physical health.

The Committee heard that adoptive parents were often ignorant of the realities of the policies and practices of historical forced adoption and were not provided with the support they needed to raise a child who was adopted.

The Committee received some evidence from the subsequent children of mothers, who had to reconcile what happened to their siblings or half-siblings and navigate fraught relationships throughout the reunion process. The Committee also received evidence that highlighted the intergenerational trauma caused by historical forced adoption, both on the children of people who are adopted and subsequent children of mothers.

Chapter 7: Redress schemes

The Committee heard that for many inquiry participants redress is an important step towards recognition and healing. It is also a way for organisations and governments to demonstrate accountability and compensate people for what happened. For many mothers, the concept of redress was complicated, because, although it has symbolic value, nothing will compensate them or their children for the loss they suffered.

There are a range of redress schemes in Australia to address historical wrongs, including the National Redress Scheme (NRS) for people who experienced institutional child sexual abuse. The NRS has three components: a redress payment, counselling and psychological support and a direct personal response from responsible institutions.

In 2020, the Victorian Government announced the establishment of a \$10 million Stolen Generations Redress Scheme. The Committee heard from Ian Hamm, Chair of the Stolen Generations Reparations Steering Committee, at a public hearing. He discussed the potential elements of that redress scheme, including the need for significant compensation, broad eligibility criteria, a low evidential threshold and wraparound support services for applicants.

The Committee strongly believes that mothers who were forcibly separated from their babies should be entitled to redress and recommends that the Victorian Government establish a scheme. The scheme should comprise financial compensation, counselling support and a direct personal response from responsible organisations, such as mothers' homes, hospitals and adoption agencies. The Government should work with responsible institutions to ensure their involvement in the scheme, however, the Committee believes it is not essential for the scheme's creation. The Committee also recommends that the Victorian Government establish and fund a legal advice and referral service to ensure that mothers make informed decisions.

As the Committee heard that people who are adopted have also been adversely impacted, particularly those who were forcibly adopted into unsuitable families through negligent screening processes, it recommends the Victorian Government consider establishing a redress scheme for this cohort.

Chapter 8: Statute of limitations

There was strong support from inquiry participants to remove the statute of limitations to allow people affected by the policies and practices of historical forced adoption to seek compensation from responsible institutions through the courts.

The *Limitation of Actions Act 1958* (Vic) (Limitations Act) sets time limits for the instigation of personal injury claims. Time limits exist to ensure the interests of justice are served and claims are made as soon as possible, although the Limitations Act allows for extensions for personal injury actions of any period if it is deemed just and reasonable.

Victoria was the first jurisdiction in Australia to remove the statute of limitations on child sexual abuse through the *Limitation of Actions Amendment (Child Abuse) Act 2015* (Vic). Since then, many survivors of institutional sexual abuse have launched legal proceedings and some have received significant payouts.

In the context of historical forced adoption, *Arthur v State of QLD* is the most well-known claim to date. In this case, Judge John Byrne dismissed Lily Arthur's application for an extension, concluding there was only an 'assertion' of coercion and claimed that her recollections were distorted by time, emotions and a preoccupation with retribution. The Committee notes this case was in 2004, before there was broader recognition of the illegal practices that occurred during the period of historical forced adoption. It illustrates, however, the barriers that mothers may encounter in establishing claims.

In examining this issue, the Committee was aware that pursuing civil litigation can be a costly process and may not be the best option for the pursuit of justice for some. However, it also acknowledges the illegal and improper conduct that people were subject to and the need for people to seek accountability. The Committee affirms the position of the Senate that people should not be hindered by the statute of limitations where illegality is alleged and recommends an immediate amendment to the Limitations Act to exclude those affected by historical forced adoption from the operation of the limitations period under that Act.

The significant injury test under the *Wrongs Act 1958* (Vic) (Wrongs Act) is another barrier to civil litigation for people affected by historical forced adoption. The Wrongs Act includes a 'significant injury test' that requires a person to demonstrate that their injury is 'significant' to be able to make a claim for damages. The Committee heard that it is difficult to assess psychiatric impairments for historical forced adoption due to the passage of time. The Committee recommends that the Victorian Government investigate removing the requirement to prove a significant injury has been suffered as a result of forced adoption under the Wrongs Act.

Chapter 9: Birth certificates

In Victoria, birth certificates are issued by the Registry of Births, Deaths and Marriages (BDM). Children are issued with a new birth certificate when they are adopted, which supersedes the original. An overarching theme in the Inquiry evidence is that amended birth certificates represent the erasure of adopted people's identity and a falsehood that needs to be corrected. Some inquiry participants recommended the introduction of integrated birth certificates as a way to address this.

Integrated birth certificates have been recommended at different times in Victoria and in other Australian jurisdictions over the last decade, but are yet to be implemented in Victoria. Integrated birth certificates are available in South Australia, Western Australia and New South Wales, although inconsistencies exist across the three jurisdictions.

The Committee notes that not all people who are adopted want an integrated birth certificate. However, the Committee believes that people should have the choice of obtaining a birth certificate that recognises their parents and adoptive parents. The Committee recommends that the Victorian Government immediately implement integrated birth certificates upon request to adopted people. These certificates should have equal legal status with amended birth certificates and be provided free of charge (for an initial certificate).

Chapter 10: Accessing information and family reunification

Accessing adoption information and searching for and reconnecting with family were significant themes raised by inquiry participants. The Committee heard from mothers and people who are adopted about the challenges of accessing their records but the overwhelming need to fill in the missing pieces.

Tens of thousands of people have applied for their adoption records since the introduction of the *Adoption Act 1984* (Vic). The Adoption Act established open adoption on the principle that information could be shared between parties to an adoption and contact could be made. The Committee heard, however, that fewer mothers apply for their records because many are unaware of their rights. The Committee therefore recommends that the Victorian Government undertake a public education campaign to promote the rights of parents to access adoption records and information about their children.

In Victoria, people are required to request their adoption records through an Adoption Information Service (AIS): the Government AIS or one of four approved agencies. The Committee heard that there is a need to streamline access to adoption records and it recommends that the Victoria Government cease the operation of approved agencies and centralise all adoption information requests through the Government AIS. It also recommends that the section 87 mandatory interview be removed due to people finding it patronising and disempowering.

Once a person has their adoption information, they can search for family, either by themselves or with the help of a search agency. The Government and the Victorian Adoption Network for Information and Self-Help (VANISH) are the primary search support organisations in Victoria. The Committee makes several recommendations to enhance the search process, including clarifying the rights of parents to access information from the BDM Register, waiving BDM search and certificate fees for people affected by historical forced adoption, and greater support for the use of DNA testing as a search tool. The Committee also recommends that the Victorian Government fund VANISH on an ongoing and flexible basis to ensure the provision of a comprehensive post-adoption support service in Victoria.

Further, some inquiry participants raised the sensitive issue of how to notify people if a parent or an adopted person dies. The Committee recommends that the Victorian Government explore how people should be notified in the case of a person's death, taking into account any privacy concerns.

The Committee also heard that family reunification is complex and challenging and it recommends that the Victorian Government offer specialist adoption-informed counsellors to support people through this time and then on an as needs basis.

Chapter 11: Mental health and emotional support services

The Committee learned that mental health and emotional support services in Victoria are not effectively responding to the needs of people affected by historical forced adoption. Inquiry participants reported inadequate access to these services due to limited availability, costs, or services not being attuned to their needs. This is despite funding at both the state and national level to enhance the provision of support services to this cohort.

The Australian Government's Forced Adoption Support Services (FASS) program began in 2013 after the National Apology. Relationships Australia Victoria (RAV) is Victoria's FASS service provider. The Committee learned that Victoria's FASS program has been marred by slow progress, a lack of awareness and errors in the design and implementation of its operational guidelines. Despite numerous recommendations for the provision of trauma-informed counselling, this service was not initially provided through FASS, with RAV only offering a counselling service in Victoria since 2019.

To allow more people affected by historical forced adoption to access mental health and emotional support services, the Committee recommends that VANISH be funded to deliver a low-cost, or preferably free, state-based specialised mental health support service. This would build on VANISH's existing register of specialised health professionals and networks. The service must be ongoing and flexible to allow episodic access, as well as embrace innovative support services to give people choice.

The Committee learned that most health professionals are not aware of historical forced adoption and frequently dismiss or minimise the associated mental health impacts and trauma. VANISH developed a two-day professional development training on past and forced adoption practices, and the Australian Psychological Society (APS) developed training on the policies and practices of forced adoption for general and mental health practitioners. The Committee believes that both training courses should always be available to health professionals for free or at a highly subsidised rate. It recommends that the Victorian Government fund VANISH to deliver its training on a regular basis and facilitate the delivery of the APS training throughout Victoria. The Committee also recommends that BDM staff participate in the VANISH training, along with staff working in the community services sector.

Inquiry participants almost unanimously endorsed peer support groups as an effective mental health and emotional support service. The Committee recommends that the Victorian Government review the operation of the current peer support group network for historical forced adoption across Victoria, with the aim of enhancing it. The Committee also supports the establishment of independent support groups.

Chapter 12: Going forward: the future of adoption

The Committee's focus throughout the Inquiry was on historical forced adoption, yet many inquiry participants raised concerns about current adoption practices. The Committee recognised that addressing these concerns was important to avoid repeating the mistakes of the past. Some inquiry participants stated in their evidence that adoption is never in the best interests of the child and should not exist.

Adoptions in Victoria are currently administered under the *Adoption Act 1984 (Vic)* (Adoption Act), which was subject to an extensive review by the Victorian Law Reform Commission (VLRC) in 2017. Many of the VLRC recommendations remain to be implemented. In 2019–20, 21 children were adopted in Victoria. However, comprehensive statistics relevant to the Victorian context are difficult to find but are an important accountability measure. Consequently, the Committee makes two recommendations to ensure better reporting on key adoption statistics in Victoria each year.

Inquiry participants raised concerns about the integrity of Australia's intercountry adoption program and the growing trend of international students who are seeking information on how to place a child for adoption. The Committee recommends that the Victorian Government ensure adoption advice is specialised and culturally appropriate. As concerns were also raised about the adoption of Aboriginal and Torres Strait Islander children, the Committee recommends strengthening the implementation of the Aboriginal and Torres Strait Islander Child Placement Principles in the Adoption Act. The Committee also heard about the operation of consent provisions in current adoptions and supports the recommendations made by the VLRC in relation to consent, including increasing efforts to identify the father and extending the revocation period.

A key facet of the Adoption Act was the introduction of open adoptions, which enshrined the right for people who are adopted and natural parents to have an ongoing relationship. However, the Committee heard that the realities of open adoption often means that contact does not happen in the best interests of the child. The Committee makes several recommendations to improve this process, including mandating the use of adoption plans. The Committee also recommends retaining original birth certificates for people who are adopted in the future, reflecting the need to change a practice that has been in place since 1928.

Further, inquiry participants raised concerns about the use of adoption and other care orders in the child protection context. Specifically, that an inadequately resourced child protection system and social pressures on single mothers may create a political and social climate similar to the one present during the historical forced adoption period. Inquiry participants also advocated for family preservation and family reunification as

the first preference in the permanency hierarchy in the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic), followed by permanent care orders and long-term care orders. In response to concerns raised, the Committee recommends removing adoption as an option in the child protection context.

The Committee concludes with several suggestions on how the Victorian Government can ensure the future of Victoria's adoption policy is one that prioritises the best interests of the child, promotes transparency, provides a tailored service and adequate and meaningful support to all relevant parties.

Recommendations

2 Social and historical context

RECOMMENDATION 1: That the Victorian Government encourage organisations that were operating during the historical forced adoption period in Victoria to reflect on their involvement and policies and practices at the time and issue apologies for harm caused. The apologies should be delivered in accordance with the five criteria of effective apologies as identified in the Inquiry into *Commonwealth contribution to former forced adoption policies and practices*.

39

RECOMMENDATION 2: Statements of responsibility or individualised apologies from institutions and organisations operating during the historical forced adoption period in Victoria should be included in a historical forced adoption redress scheme in Victoria.

39

3 Experiences of mothers

RECOMMENDATION 3: That the Victorian Government require all public hospitals directly involved in historical forced adoptions to develop a specific application form for mothers and people who are adopted to request their hospital records. These forms must be published clearly on hospital websites, alongside apologies for their role in historical forced adoptions. Private hospitals should be strongly encouraged to do the same.

90

RECOMMENDATION 4: That the Victorian Government require all public hospitals directly involved in historical forced adoptions to waive all fees for mothers requesting to access their hospital records. This includes waiving the application fee under the *Freedom of Information Act 1982 (Vic)* on the grounds of causing 'hardship'. Private hospitals should be strongly encouraged to do the same.

91

RECOMMENDATION 5: That the Victorian Government strongly encourage organisations involved in historical forced adoptions to establish projects to identify all records still in their possession and make information about those institutions and records available to the Government Adoption Information Service.

92

RECOMMENDATION 6: That the Victorian Government require all public hospitals directly involved in in historical forced adoptions to provide an explanation to information applicants as to why a hospital record cannot be located, including details of when and how records were destroyed if relevant.

92

4 Ongoing effects on mothers

RECOMMENDATION 7: That the Victorian Government update the wording of the *Taken Not Given* memorial plaque to acknowledge that the memorial does not reflect the diverse views of those affected by the policies and practices of historical forced adoption in Victoria. 127

RECOMMENDATION 8: That the Victorian Government immediately consult with stakeholders regarding a new location for the *Taken Not Given* memorial. 128

RECOMMENDATION 9: That the Victorian Government encourage institutions involved in historical forced adoptions consult with mothers and other affected people to create and display a commemorative memorial or plaque. 128

RECOMMENDATION 10: That the Victorian Government make *Without Consent* a permanent exhibition in Victoria and consult with stakeholders to determine an appropriate location. 130

RECOMMENDATION 11: That the Victorian Government advocate to the Australian Government to extend the National Archives of Australia’s funding to document the testimony of people affected by historical forced adoptions until June 2022. 130

RECOMMENDATION 12: That the Victorian Government establish a website that includes all relevant information about historical forced adoption in Victoria, including the experiences of mothers and other people affected, the apologies made by government and non-government organisations, and information on how to access records, support services or to find out more information. 131

RECOMMENDATION 13: That the Victorian Government designate one day each year to commemorate historical forced adoptions in Victoria, in consultation with those affected by historical forced adoptions. The Committee considers that 25 October, the anniversary of the Victorian Parliamentary Apology for Past Adoption Practices would be suitable. 132

5 People who are adopted

RECOMMENDATION 14: That the Victorian Government advocate to the Australian Government to fund the Australian Institute for Family Studies to conduct a follow up study to *Past adoption experiences: National research study on the service response to past adoption practices*. The Committee proposes that the study should:

- have a public awareness campaign to reach as many participants as possible
- seek perspectives from people affected by historical forced adoptions, including adopted people, mothers, fathers, children of adopted people, extended family and adoptive parents
- be an ongoing research project for the Australian Institute for Family Studies
- explore issues relating to separation trauma and abandonment, loss and disenfranchised grief, identify, relationship dysfunction and intergenerational effects.

169

RECOMMENDATION 15: That the Victorian Government undertake an inquiry into the experiences and the effects of adoption on adopted people for the purposes of:

- understanding the lived experiences of adopted people
- examining the effects of adoption on adopted people
- informing adoption legislation, policy and practices
- exploring options to specifically recognise the separation, loss and grief of adopted people
- raising awareness of the challenges facing adopted people.

172

RECOMMENDATION 16: That the Victorian Government implement Recommendation 70 of the Victorian Law Reform Commission in its *Review of the Adoption Act 1984* to introduce a no-fee, no-fault procedure for applications to discharge an adoption order. 182

RECOMMENDATION 17: That the Victorian Government publish a step-by-step guide for discharging an adoption on the websites of the Department of Justice and Community Safety, the Supreme Court of Victoria and the County Court of Victoria. 182

7 Redress

RECOMMENDATION 18: That the Victorian Government establish a redress scheme for mothers whose babies were forcibly removed from them without delay. The redress scheme should comprise the following: a monetary payment, counselling and psychological support and a direct personal response from relevant institutions and organisations. The redress scheme should be guided by the following principles:

- The redress scheme should operate on the principle of do no further harm.
- The evidentiary threshold should be ‘reasonable likelihood’ that the mother and baby were forcibly separated, given the passage of time, the loss of records and to prevent retraumatising applicants.
- The eligibility criteria should be broad and include mothers who gave birth in Victoria and mothers who gave birth interstate but now reside in Victoria, to account for the fact that many mothers were sent interstate for their pregnancy and birth or moved interstate due to the trauma.
- The process should be straightforward, and applicants should be supported with legal and counselling support.
- Applicants may choose to accept one, two or all of the components of the redress scheme.
- There should be a fixed payment to acknowledge the forced removal of mothers’ babies, rather than an assessment matrix.
- Counselling should be lifelong and available on an episodic basis.
- Counselling should also be offered to other family members in recognition of the intergenerational effect of historical forced adoption.
- Mothers should not be precluded from accessing the redress scheme if they have made a civil claim.

220

RECOMMENDATION 19: That the Victorian Government work with responsible institutions and organisations to guarantee their involvement in the redress scheme, including reimbursement for redress payments and/or lifelong therapeutic support for redress recipients. Sanctions should be considered for institutions and organisations that do not commit to the scheme within a set timeframe of its establishment by the Victorian Government.

220

RECOMMENDATION 20: That the Victorian Government use its position on the National Federation Reform Council (formerly the Council of Australian Governments) to advocate for historical forced adoption redress schemes in other states and territories.

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RECOMMENDATION 21: That the Victorian Government establish and fund a legal advice and referral service to ensure that applicants to the redress scheme receive free, independent legal advice and make informed decisions about their options in relation to accessing redress and/or civil litigation. 222

RECOMMENDATION 22: That the Victorian Government consider establishing a redress scheme for people who were forcibly adopted, especially those who were placed in institutions or adopted into unsuitable families. 223

8 Statute of limitations

RECOMMENDATION 23: That the Victorian Government immediately seek to amend the *Limitation of Actions Act 1958* (Vic) to exclude those affected by forced adoption from the operation of the limitations period under that Act. 239

RECOMMENDATION 24: That the Victorian Government investigate removing the requirement to prove a significant injury has been suffered as a result of the separation of mother and baby in relation to personal injury claims made under the *Wrongs Act 1958* (Vic). 241

9 Birth certificates

RECOMMENDATION 25: That the Victorian Government convey that original birth certificates are not valid legal documents in a considerate manner to minimise distress to people who are adopted. 248

RECOMMENDATION 26: That the Victorian Government implement integrated birth certificates without delay, issued to people who are adopted upon request and that they be legal proof of identity of equal status to other birth certificates. 264

10 Accessing information and family reunification

RECOMMENDATION 27: That the Victorian Government undertake a public education campaign to promote the rights of parents to access adoption records and information about their children. 279

RECOMMENDATION 28: That the Victorian Government implement Recommendation 86 of the Victorian Law Reform Commission’s *Review of the Adoption Act 1984*:

The current requirement for an applicant for access to information to be interviewed by an approved counsellor in section 87 of the Adoption Act should be replaced with an obligation on the Secretary [of the Department of Justice and Community Safety] to:

- a. offer applicants counselling before providing them with access to information
- b. advise an applicant if the information could reasonably be expected to be distressing to the applicant.

286

RECOMMENDATION 29: That the Victorian Government waive any court costs or fees for a person applying to obtain information that was previously redacted or withheld under the *Adoption Act 1984* (Vic).

290

RECOMMENDATION 30: That the Victorian Government require the Adoption Information Service to provide a full report on lost or destroyed records and/or adoption information, including the search process and any evidence of destruction, for example, the report of fire or flood.

294

RECOMMENDATION 31: That the Victoria Government cease the operation of adoption information services within approved agencies and centralise Victoria’s Adoption Information Service.

297

RECOMMENDATION 32: That the Victorian Government fund the Victorian Adoption Network for Information and Self Help on an ongoing and flexible basis to ensure the provision of a comprehensive post-adoption support service in Victoria.

299

RECOMMENDATION 33: That the Victorian Government clarify and clearly publicise the rights of people to access current information from the Births, Deaths and Marriages Register that may contain identifying information about other people.

304

RECOMMENDATION 34: That the Victorian Government waive Births, Deaths and Marriages’ search and certificate costs for people affected by forced adoption.

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RECOMMENDATION 35: That the Victorian Government endorse the use of DNA testing and develop practices guidelines to support its use as a search tool.

310

RECOMMENDATION 36: That the Victorian Government explore opportunities to notify a natural parent if their child dies and an adult adopted person if their parent dies, taking into account any privacy concerns for all relevant parties. **311**

RECOMMENDATION 37: That the Victorian Government offer specialist adoption-informed counsellors and support workers to people reuniting with family, including as they build their relationship in the post-reunification period. **315**

11 Mental health and emotional support services

RECOMMENDATION 38: That the Victorian Government provide ongoing funding to the Victorian Adoption Network for Information and Self-Help (VANISH) to deliver a low-cost, or preferably free, state-based specialised mental health support service for people affected by historical forced adoptions. The Victorian Government consider the following factors when funding the service:

- people should be able to access support on an ongoing and flexible basis, including episodically in recognition that the negative effects of historical forced adoption are lifelong and can be triggered at different times
- it should offer alternative mental health services outside of traditional therapy, for example art therapy
- it should build upon VANISH's existing brokerage system and register of trauma-informed and specialised counsellors and other health professionals. **340**

RECOMMENDATION 39: That the Victorian Government ensure its funding to Victorian Adoption Network for Information and Self Help (VANISH) to deliver mental health and emotional support services as proposed in Recommendation 38 include a specific allocation of funding for the regular provision of VANISH training to health professionals. **350**

RECOMMENDATION 40: That the Victorian Government facilitate the delivery of the Australian Psychological Society training among health professionals throughout Victoria. **350**

RECOMMENDATION 41: That the Victorian Government require staff at Births, Deaths and Marriages to participate in the Victorian Adoption Network for Information and Self Help professional training on past and forced adoption practices. **351**

RECOMMENDATION 42: That the Victorian Government designate a specialist staff member at Births, Deaths and Marriages with responsibility for overseeing adoption-related information requests. **352**

RECOMMENDATION 43: That the Victorian Government consider how to raise awareness about the effects of historical forced adoption in the community services sector, including through the provision of Victorian Adoption Network for Information and Self-Help training to staff employed in state funded services. **354**

RECOMMENDATION 44: That the Victorian Government, in consultation with key stakeholders, review the operation of the current peer support group network for historical forced adoption, with the aim of enhancing the network across Victoria. **361**

RECOMMENDATION 45: That the Victorian Government develop guidelines and funding criteria for the establishment of independent forced adoption peer support groups. **361**

12 Going forward: the future of adoption

RECOMMENDATION 46: That the Victorian Government require Anglicare Victoria, CatholicCare, Uniting Vic.Tas and Children and Family Services to publicly report on the number of adoption referrals made or counselling provided each year. **369**

RECOMMENDATION 47: That the Victorian Government publicly report on the Department of Justice and Community Safety’s website the numbers of adoption referrals, applications and children placed for adoption each financial year, as well as other key statistics such as the type of adoption, the contact and information exchange conditions in adoption orders, and the age and cultural background of children and parents. **369**

RECOMMENDATION 48: That the Victorian Government monitor the cultural and linguistic diversity of parents considering placing their child for adoption and consider whether more specialised, culturally appropriate support is required. **373**

RECOMMENDATION 49: That the Victorian Government seek to amend the Aboriginal and Torres Strait Islander Child Placement Principles in the *Adoption Act 1984* (Vic) to be consistent with the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic), as recommended by the Victorian Law Reform Commission. **375**

RECOMMENDATION 50: That the Victorian Government provide adequate resourcing to ensure the Aboriginal and Torres Strait Islander Child Placement Principles under the *Adoption Act 1984 (Vic)* and *Children, Youth and Families (Permanent Care and Other Matters) Act 2014 (Vic)* are effectively implemented. 376

RECOMMENDATION 51: That the Victorian Government conducts further research into the level of contact and information exchange between children who are adopted and parents in the context of open adoption in Victoria. 384

RECOMMENDATION 52: That the Victorian Government mandate the use of adoption plans to facilitate identity cohesiveness and continuity for people who are adopted through the right to know natural parents and ongoing contact with their natural family and community. 389

RECOMMENDATION 53: That the Victorian Government seek to amend the *Adoption Act 1984 (Vic)* to retain original birth certificates for people who are adopted in the future. 391

RECOMMENDATION 54: That the Victorian Government seek to implement the legislative amendments recommended by the Victorian Law Reform Commission in regard to consent provisions in the *Adoption Act 1984 (Vic)*. This includes increasing efforts to identify the father of a child, extending the period to revoke consent, ensuring that a parent under 18 has the capacity to provide informed consent and restricting grounds for dispensing consent. 393

RECOMMENDATION 55: That the Victorian Government ensure community organisations providing family and parenting support are adequately resourced to ensure permanency for children. 401

RECOMMENDATION 56: That the Victorian Government remove adoption from the permanency hierarchy in the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014 (Vic)* and restrict the use of adoption on child protection grounds as far as practicable. 406

Acronyms

AASW	Australian Association of Social Workers
ACT	Australian Capital Territory
AHA	Australian Healthcare Associates
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
AIS	Adoption Information Service
ALAS	Adoption. Loss. Adult. Support Australia Inc
APS	Australian Psychological Society
ARA	Adoptee Rights Australia
ARMS	Association of Relinquishing Mothers
ATAPS	Access to Allied Psychological Services
ATSICPPs	Aboriginal and Torres Strait Islander Child Placement Principles
BDM	Births, Deaths and Marriages
BDMR Act	<i>Births, Deaths and Marriages Registration Act 1996 (Vic)</i>
BFA	Baby for adoption
CAFS	Children and Family Services
CCYP	Commission for Children and Young People
CEO	Chief Executive Officer
CFWB	Catholic Family Welfare Bureau
CYF Act	<i>Children, Youth and Families (Permanent Care and Other Matters) Act 2014 (Vic)</i>
COAG	Council of Australian Governments
COVID-19	Coronavirus Pandemic
CRC	Convention on the Rights of the Child
CSMC	Council of Single Mothers and their Children
CSV	Department of Community Services Victoria
Cth	Commonwealth
D.C	Death Certificate
DHHS	Department of Health and Human Services
DJCS	Department of Justice and Community Safety
EMDR	Eye movement desensitisation and reprocessing
FAIWG	Forced Adoptions Implementation Working Group
FASS	Forced Adoption Support Services
FCDC	Family and Community Development Committee

FIND	Family Information Networks and Discovery
FOI	Freedom of information
FOI Act	<i>Freedom of Information Act 1982</i> (Vic)
GP	General Practitioner
IBC	Integrated birth certificate
IPP	Information Privacy Principles
IRM	Independent Regional Mothers
K10	Kessler Psychological Distress Scale
NAA	National Archives of Australia
NFRC	National Federation Reform Council
NGOs	Non-government organisations
NRS	National Redress Scheme
NRS Act	<i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018</i> (Cth)
NSW	New South Wales
PCO	Permanent care order
PROV	Public Record Office Victoria
QLD	Queensland
RA	Relationships Australia
RAV	Relationships Australia Victoria
RWH	Royal Women's Hospital
SA	South Australia
SCCDS	Standing Council on Community and Disability Services
ToR	Terms of Reference
VACCA	Victorian Aboriginal Child Care Agency
VANISH	Victorian Adoption Network for Information and Self Help
VLRC	Victorian Law Reform Commission
Vic	Victoria
WA	Western Australia

What happens next?

There are several stages to a parliamentary inquiry.

The Committee conducts the Inquiry

This report on the Inquiry into responses to historical forced adoption in Victoria is the result of extensive research and consultation by the Legislative Assembly's Legal and Social Issues Committee at the Parliament of Victoria.

We received written submissions, spoke with people at public hearings, reviewed research evidence and deliberated over a number of meetings. Experts, representatives from government and non-government organisations and individuals expressed their views directly to us as Members of Parliament.

A parliamentary committee is not part of the Victorian Government. Our Committee is a group of Members from different political parties. The Legislative Assembly asked us to look closely at an issue and report back. This process helps Parliament do its work by encouraging public debate and involvement in issues. We also examine government policies and the actions of the public service.

You can learn more about the Committee's work, including all of its current and past inquiries, at: <https://www.parliament.vic.gov.au/lisic-la>

The report is presented to Parliament

This report was presented to Parliament and can be found at: <https://www.parliament.vic.gov.au/lisic-la/inquiries/article/4257>

A response from the Government

The Victorian Government has six months to respond in writing to any recommendations we have made.

The response is public and put on the inquiry page of Parliament's website when it is received at: <https://www.parliament.vic.gov.au/lisic-la/inquiries/article/4258>

In its response, the Government indicates whether it supports the Committee's recommendations. It can also outline actions it may take.

Support services

The Committee recognises that the experiences and information contained in this report may be distressing to read. You may want to consider reading this report in a supportive environment.

For search, support and counselling services, contact VANISH:
03 9328 8611
Toll free: 1300 VANISH (1300 826 474)

Alternatively, contact Forced Adoption Support Services (Relationships Australia Victoria):
1800 21 03 13

For crisis support, contact Lifeline:
13 11 14

Or the Blue Knot Foundation:
1300 657 380

That this Parliament expresses our formal and sincere apology to the mothers, fathers, sons and daughters who were profoundly harmed by past adoption practices in Victoria.

We acknowledge that many thousands of Victorian babies were taken from their mothers, without informed consent, and that this loss caused immense grief.

We express our sincere sorrow and regret for the health and welfare policies that condoned the practice of forced separations.

These were misguided and unwarranted, and they caused immeasurable pain.

To the mothers and fathers who were denied the opportunity to love and care for your children, and the pain and trauma you experienced, we are deeply sorry.

To the sons and daughters for whom adoption meant continual anxiety, uncertainty and the deprivation of a natural family connection—we offer our sincere apology.

Today, with all members of the Parliament of Victoria gathered in this house, we acknowledge the devastating and ongoing impacts of these practices of the past.

To all those harmed we offer our heartfelt sympathy and apologise unreservedly.

We undertake to never forget what happened and to never repeat these practices.¹

On 25 October 2012, the Parliament of Victoria apologised unreservedly for the profound harms caused by past adoption practices on mothers, fathers, sons and daughters, that occurred from early last century into the early 1980s but particularly between 1950 and 1975. In delivering the apology on behalf of the Victorian Parliament, the former Premier of Victoria, the Hon Ted Baillieu MP, referred to the practice of forcibly removing babies from their mothers as ‘unethical, immoral and unconscionable’.² In his contribution, the then Opposition Leader and now Premier, the Hon Daniel Andrews MP, spoke of how ‘prematurely separat[ing] a mother and her newborn child against their will is to pervert the order of nature and to betray the basic tenets of civilisation’.³ He pointed to the failure of the government to uphold this rule and of Victoria’s elected representatives who ‘allowed this systematic tragedy to unfurl and thought nil of those it affected, thought nil of the practice they enabled or their obligation to end it’.⁴

On 21 March 2013, the former Prime Minister of Australia, the Hon Julia Gillard MP, delivered the National Apology for Forced Adoptions. This, on behalf of the Australian

1 Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, p. 4771.

2 Ibid., p. 4772.

3 Ibid., p. 4773.

4 Ibid.

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people, took responsibility and apologised for the 'policies and practices that forced the separation of mothers from their babies'.⁵ The Hon Gillard described these policies and practices as 'unethical, dishonest and in many cases illegal'.⁶

Both the State and National apologies acknowledged the profound and lifelong trauma and pain of mothers, many of whom have fought tirelessly for the truth to be told and for public acknowledgement.

At the time of the Victorian apology, several measures were promised by the Victorian Government to support people:

As of today we are removing fees charged when people affected by adoption search for their family information through the family information networks and discovery service. We will provide enhanced access to specialised counselling and support in rural, regional and metropolitan Victoria, including new professional development for counsellors in post-adoption psychotherapy. We will also support the development of an integrated birth certificate, which shows the names of one's parents and adopted parents on the one document, in conjunction with the national reforms involving birth and adoption records, and we will introduce legislation to this place to amend the Adoption Act 1984 to allow mothers and fathers in Victoria to receive identifying information about their daughters and sons in line with what occurs in other states.⁷

These measures coincided with some of the recommendations from the 2012 Senate's Community Affairs References Committee's Inquiry into the *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry). Since then, some of these measures promised by the Victorian Government have been implemented, others have not or have but with limitations. The same can be said for many of the recommendations from the Senate Inquiry.

1.1 Current inquiry

On 28 May 2019, the Legal and Social Issues Committee (the Committee) received a terms of reference (ToR) from the Legislative Assembly to inquire into support services and responses to the issue of historical forced adoption in Victoria. The Committee interpreted this to broadly imply what measures or avenues for recourse, if any, have been implemented since the delivery of the Victorian Parliamentary apology to support mothers and others who were also subject to the former policies and practices of forced adoption. What are the gaps in the provision of support and how can individuals' needs be supported further?

At the beginning of the Inquiry, the Committee drew heavily on the valuable work of the Senate Inquiry, including its historical review of adoption laws in Australia and

⁵ Attorney-General's Department, Australian Government, *National Apology for Forced Adoptions*, 26 March 2013, <<https://www.ag.gov.au/families-and-marriage/publications/national-apology-forced-adoptions>> accessed 25 May 2021.

⁶ Ibid.

⁷ Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, p. 4779.

most importantly, the testimonies of mothers from around Australia. The Committee was hopeful that mothers would again find the courage to share their experiences with this current inquiry, not for the purpose of questioning their truth but to assist the Committee further expose the abuse that they suffered, the ongoing injustices and the trauma that has never left them. While the ToR refers to 'historical' forced adoption, for the mothers there is nothing historical about what happened to them and how it plays into their everyday lives.

The Committee is aware that there were calls among some mothers for a Victorian Parliamentary inquiry long before the Senate Inquiry and the State and National apologies. The Committee acknowledges the pain and frustration of these mothers who have advocated for recognition and justice among governments, other responsible institutions and the broader community. Building on these efforts, the Committee intends for this inquiry to explore avenues for justice. This significant period in Australia's history deserves ongoing and widespread attention, particularly from state and national governments. Continued acknowledgment of the grief and trauma experienced by mothers and actions to address the harms is essential to their healing.

Further, the Committee stated from the outset that it would consider all issues raised in submissions and at public hearings. This allowed the Committee to consider various matters relating to the forced separation of mothers from their babies, including access to hospital and adoption records, searching for natural relatives and family reunification. Importantly, it has allowed attention to be drawn to the harms inflicted on the babies who were forcibly removed from their mothers at birth. Their rights were also disregarded and for many this has resulted in lifelong trauma.

While some people believe that the Inquiry should only focus on mothers, there is a broader recognition that these babies were also victim to the policies and practices of historical forced adoption. The Committee agrees with this view and it welcomed evidence from people who are adopted. This was not to silence mothers or in any way diminish their grief and trauma. As an impartial body, the Committee was not interested in silencing anyone throughout its investigations.

The Committee did not receive extensive evidence from fathers or adoptive parents, although this does not diminish their role and the long-lasting effects on them. In his evidence to the Committee, the Hon Nahum Mushin AM stated that 'forced adoption has affected hundreds and hundreds of thousands of people'.⁸ This inquiry presents an important opportunity to demonstrate the enormity of historical forced adoption.

1.2 Inquiry process

The Committee commenced its call for submissions in early November 2019 through advertising in *The Age* and regional newspapers, an extensive stakeholder mailout and through the Parliament of Victoria's Facebook account. The Committee received 114 submissions from various inquiry participants, including individuals, community

⁸ The Hon Nahum Mushin AM, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 22.

1 and social service organisations, advocacy and support groups, peak bodies and non-government organisations. Appendix A lists all participants that made a submission to the Inquiry.

The Committee received submissions in three forms: public, name withheld and confidential. Due to the sensitive nature of the Inquiry, the Committee accepted all requests for confidentiality or name withheld without question. The Committee also agreed not to publish private records of individuals and to redact third party names and some dates and places if deemed necessary to protect the privacy of individuals.

The initial closing date of submissions was 3 February 2020, with the intention to commence public hearings in April 2020. However, as COVID-19 was unfolding at this time, the hearings were delayed due to restrictions. The Committee agreed to extend the submission period while the restrictions continued. Due to the ongoing interest in the Inquiry, the Committee later agreed to continue accepting submissions throughout the inquiry process. It is unusual for a committee to continue to accept submissions for this long, however in this instance, the Committee did not want to deny anyone that opportunity, especially those who had not spoken about their experiences before. In holding this space for participants, the Committee doubled the number of submissions received. In some cases, people were supported to prepare their submission with the help of an oral historian, or with counselling.

The commencement of the public hearings was delayed due to COVID-19 restrictions in Melbourne and the Committee's commitment to hold them in-person rather than remotely via video link. This was considered appropriate for this inquiry given the sensitive nature of the evidence. Counselling support was available at every public hearing and also offered to witnesses following their appearance at a public hearing if they needed it.

Eleven days of public hearings were held between December 2020 to July 2021 in Melbourne, Kangaroo Flat, Geelong and Wodonga. While the Committee was scheduled to hold hearings in Mildura, these were cancelled on two separate occasions due to the re-introduction of COVID-19 restrictions. Some hearings were conducted via video link with organisations and interstate witnesses. A list of public hearing participants is provided in Appendix A.

It is useful to note that the Department of Justice and Community Safety was invited to appear at a public hearing, however, it declined the Committee's invitation. In lieu of attending a hearing, the Department responded in writing to questions from the Committee. This proved very helpful and the Committee is grateful to the Department for providing comprehensive responses in the set timeframe.

The Committee is grateful to all inquiry participants who generously shared their time and insights during the Inquiry, and those individuals who bravely shared their personal experiences. The Committee is aware that while providing evidence can be cathartic, revisiting the past can also be painful and confronting. As stated by Michele Hutchins, who supported some people to make submissions and also made a submission herself, '[t]here is a great sense of justice in an inquiry that allows them to share their

testimonies, to finally have a voice, and to be heard'.⁹ Many individuals advised of the difficulty in preparing their evidence but stated that a key motivation was to speak on behalf of the many people, mothers in particular, who remain silent or who are no longer alive. In her evidence, Yvonne May told the Committee:

The reason I thought I would come today is not so much for me—well, yes, for me—but for these other women, these broken women. The kind in my group who go to counselling, then they stop. They maybe do not have contact with their child, and they say, 'I'm going to just go and knock on their door and say, "I'm your mother ..."'. I do not think they know where to turn to. They are lost, and there are quite a few lost souls out there in this situation.¹⁰

The Committee also wants to acknowledge the extensions that were sought for the tabling date of this report. The original reporting date was 31 December 2020, which was later extended to 30 June 2021 to account for the delays caused by the COVID-19 restrictions. The final reporting date was mid-August 2021.

1.3 Language

Throughout the Inquiry, the Committee became aware of the contested view about the term 'forced adoption'. Some inquiry participants argued that it does not capture the experience of being forcibly separated from their child and in effect trivialises what actually took place.

The Victorian Adoption Network for Information and Self-Help (VANISH) also raised the issue of terminology in its submission, stating that it can be value-laden and political. It also stated that the term 'forced adoptions' was not commonly used up until the Senate Inquiry, which noted in its report that it exclusively dealt with forced adoptions, making it clear that it was not examining issues outside the context of force or coercion.¹¹ It defined forced adoption as:

when children were given up for adoption because their parents, particularly their mothers, were forced to relinquish them or faced circumstances in which they were left with no other choice.¹²

VANISH indicated that while this terminology and definition was a relief for some mothers who felt that it validated their experience, others rejected the term of forced adoption because it does not reflect their experience of having their child abducted or stolen. Similarly, research by the Australian Institute of Family Studies found that some mothers object to its use because the 'primary event was an illegal separation

⁹ Michele Hutchins, *Submission 97*, received 21 May 2021, p. 2.

¹⁰ Yvonne May, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 29.

¹¹ VANISH Inc., *Submission 53*, received 18 June 2020, pp. 18–19; Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. 3.

¹² Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 4.

1

between them and their baby—whether or not the baby was subsequently adopted’.¹³ In her evidence to the Committee, Lyn Kinghorn quoted from a letter she wrote to the Hon Marise Payne MP, the Federal Minister for Women, where she stated that she did not suffer from forced adoption, she suffered from the policies and practices of adoption and it was her daughter who suffered forced adoption.¹⁴ Further, as has also been noted in evidence, some babies were not adopted for months later and spent considerable time in children’s homes or other out-of-home care settings.¹⁵

In evidence to the Committee, the forcible removal of babies from mothers at birth and the subsequent adoption of those babies was described in various ways among inquiry participants. Common terms used include abducted, stolen, forced, coerced, illegal, unethical, medical malpractice and negligent. The Committee does not contest any of these terms, with accounts of experiences as explored in Chapter 3 reflecting all of these descriptions.

For the purpose of this report, it is necessary to use a broad term that captures both the forcible separation of mother and baby, regardless of illegality, and the primary objective of the policies and practices, being adoption. The Committee will not refer to the experience of mothers as forced adoption, although it will use the term when discussing the overarching subject matter.

1.3.1 Other terminology

Finding common language to describe the people affected by forced adoption is also challenging and at times contentious. The Committee’s first reference point was the Senate Inquiry, which addressed the issue of how to appropriately and sensitively describe the various groups:

Mothers who were forced to give up children for adoption generally reject the terms ‘birth mother’ or ‘biological mother’, and some reject ‘natural mother’. The preferred term is often simply ‘mother’. However, this may be unacceptable to an adoptive mother who has raised a child. The same applies to fathers. In a similar way that many submitters to the inquiry find the term ‘relinquishing mother’ insulting and inaccurate, many adoptive parents reject the term ‘adopters’.

Some people who did not grow up with their natural mothers and fathers also raised the issue of language with the committee. People who were born in 1950s–70s, and are now middle aged, do not appreciate being referred to as ‘adopted children’. Others do not favour the term ‘adoptee’ either.¹⁶

¹³ Daryl Higgins, Pauline Kenny and Sam Morley, *Forced adoption national practice principles: guidelines and principles for specialist services*, Australian Institute of Family Studies, Melbourne, 2016, p. 6.

¹⁴ Lyn Kinghorn, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 29.

¹⁵ Daryl Higgins, Pauline Kenny and Sam Morley, *Forced adoption national practice principles*, p. 6.

¹⁶ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 2.

In attempting to balance the sensitivities of language and the need to communicate with a wide audience, the report outlined guiding language principles which continue to be relevant:

- ‘mother’ to describe a person who has given birth to a child. If further clarification is required, ‘natural mother’ and ‘adoptive mother’ is used to distinguish between parties
- similar distinctions are made between ‘natural fathers’ and ‘adoptive fathers’, and ‘natural parents’ and ‘adoptive parents’ where necessary
- ‘baby’ and ‘child’ is used to describe adoption processes, but ‘adopted person’ or ‘person who is adopted’ is used to describe a person who was adopted and is now an adult.¹⁷

VANISH also outlined the language it uses when describing people affected by forced adoption. These are outlined in Box 1.1.

BOX 1.1: Terminology of people affected by historical forced adoption

- Mother refers to a mother separated from her child or children through past adoption practices. Mothers are frequently referred to using qualifying terms such as biological, birth, first, genetic, natural or relinquishing. These terms do not recognise the extent of the relationship and that, in the majority of cases, mothers maintained a psychological relationship with, and longing for, their child. It is argued that some terms relegate mothers to non-parents or breeding machines.
- Father refers to a father separated from his child or children through past adoption practices. Fathers are also frequently referred to using qualifying terms such as biological, birth, first, genetic, natural or relinquishing and again, this does not recognise the extent of the relationship.
- Adopted person or adoptee refers to an individual who was legally adopted as a baby or child and who is now an adult.
- Late discovery adoptee refers to an individual who finds out they are adopted in adolescence or adulthood.
- Adoptive mother, father, parent(s) refers to the mother and/or father who legally adopted a child or children.
- Family member refers to a relative of the people listed above including their parents, partners/spouses, children, siblings, grandparents, aunts, uncles, cousins, nieces, and nephews.
- Adoption community refers to people personally affected by adoption plus professionals, academics and others who have an interest in, and understanding of, adoption-related issues.

Source: VANISH Inc., *Submission 53*, p. 18.

¹⁷ Ibid., p. 3.

1.4 Outline of report

The report is divided into the following twelve chapters:

- Chapter 1 introduces the Inquiry's ToR, outlines the inquiry process and use of appropriate language.
- Chapter 2 provides an overview of the social and historical context at the time of historical forced adoption, in addition to the adequacy of apologies and actions by the Victorian Government and non-government organisations.
- Chapters 3 and 4 consider the impact of historical forced adoptions on mothers whose newborn babies were forcibly removed from them.
- Chapter 5 considers the impact of historical forced adoptions on the lives of people who are adopted.
- Chapter 6 considers the impact of historical forced adoptions on other people, such as fathers and adoptive parents.
- Chapter 7 explores the establishment of a redress scheme for historical forced adoption.
- Chapter 8 examines the statute of limitations legislation and the case for removing it in the context of historical forced adoption, in addition to the significant injury test.
- Chapter 9 discusses the issue of birth certificates for people who are adopted.
- Chapter 10 examines how to enhance existing processes for people accessing their adoption records and searching for natural family, as well as support for family reunification.
- Chapter 11 provides an overview of specialised support services established at the state and national levels, their effectiveness in helping people affected by historical forced adoption and the current gaps in service delivery.
- Chapter 12 explores the theme of not repeating the mistakes of the past in the context of current adoption laws.

2 Social and historical context

The committee rejects the claim that forced adoptions took place as an inevitable result of the conservative societal attitudes of the 1950s to 1970s.¹

The view that historical forced adoptions in Victoria were not a product of their time is one that is strongly supported by the Committee. As is explored in this chapter, dissenting opinions advocating for greater protection for mothers and children were ignored. Rather, condemnatory attitudes within society and among the medical profession, combined with Victoria's adoption laws, enabled and sanctioned unethical and illegal adoption practices to occur.

This chapter also provides an overview of historical forced adoption in Victoria and the government and non-government responses to date. It includes discussion on what the former policies and practices were, when they occurred, the extent of past actions and the role of the Victorian Government in allowing the practices to occur. Further, the Committee considers the crossover between forced adoption, the Stolen Generations and Forgotten Australians.

Lastly, the chapter deliberates on the adequacy of apologies made and actions taken by the Victorian Government and non-government organisations. When considered in the context of multiple past inquiries and reviews into adoption practices—in Victoria, federally, interstate and internationally—the Committee considers the lack of tangible reparation or action for those affected by historical forced adoptions particularly disconcerting.

2.1 Key statistics and time frames

The policies and practices of historical forced adoption in Victoria occurred over an extended period of time that also saw multiple legal and social changes. The Senate's Community Affairs References Committee, in its Inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry), observed that much of the evidence it received related to the period between the late 1950s and mid-1970s. While the Senate did not restrict the scope of its inquiry based on the time, it did acknowledge that from the late 1970s both adoption laws and societal values towards single mothers and adoption in Australia changed rapidly.²

The Senate Inquiry's view is supported by some of the mothers who provided evidence to this inquiry. For example, June Smith submitted that the late 1950s to early 1970s is the only period in Victoria when 'babies were targeted to be removed from their young

1 Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. 19.

2 *Ibid.*, pp. 8–10.

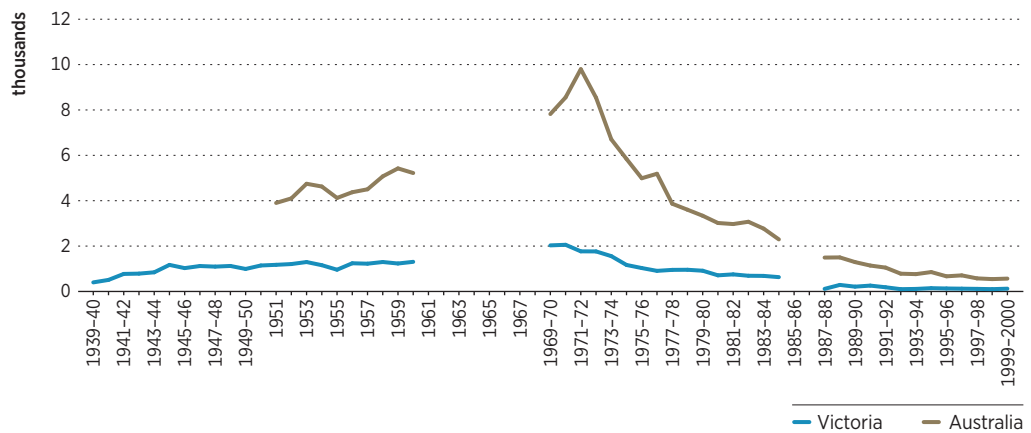
mothers ... WITHOUT the written authority of the mother' [emphasis in original].³ The Victorian Adoption Network for Information and Self-Help (VANISH) presented an alternative view and proposed that the period considered for the Inquiry cover 1940 to 1989. VANISH stated that if the Committee considered the relevant period to end in 1975, this would exclude more than 10,000 adoptions organised from 1975 to 1984. The Committee is also aware of forced adoptions occurring during this period. Further, maternity homes remained open and closed adoptions were still arranged for many years after 1975:

Maternity Homes (which were also sometimes called 'Mothers and Babies' Homes) and Children's Homes were still in existence in Victoria until the late 1980s to early 1990s, indicating that the same practices would have still been in existence during this time. Closed adoptions were still occurring, with mothers still being shamed and coerced into signing the consent to adopt forms and infants still being removed and adopted by strangers.⁴

Based on the evidence received, the Committee does not believe it necessary to restrict the scope of the time period. What was of most concern to the Committee throughout its deliberations was the act of forced separation of mothers and babies and the subsequent impact, rather than when it took place.

While there are some gaps in the data, the Senate Inquiry collated contemporary statistics on the number of adoptions that occurred in Australia and Victoria from 1939 to 2000. The Department of Justice and Community Safety told the Committee there were 39,357 adoptions arranged in Victoria from 1958 to 1984.⁵

Figure 2.1 Number of adoptions in Australia and Victoria, 1939 to 2000



Source: Adapted from Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, Appendix 4.

³ June Smith, *Submission 10*, received 29 January 2020, p. 5.

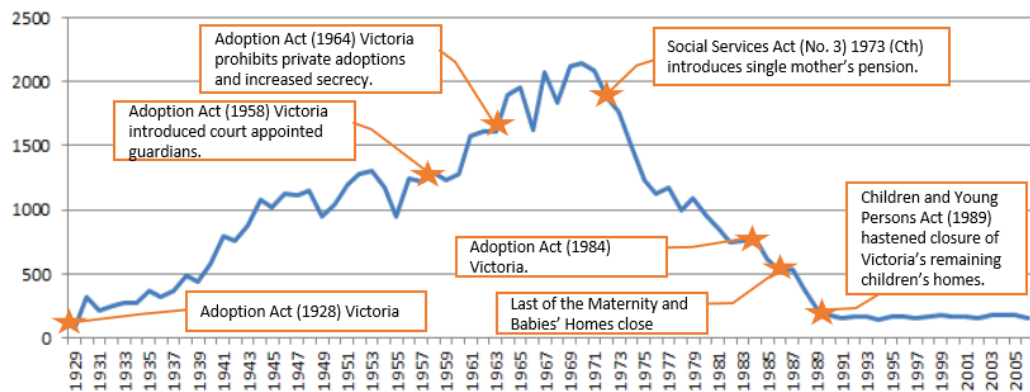
⁴ VANISH Inc., *Submission 53*, received 18 June 2020, pp. 21–22.

⁵ Rebecca Falkingham, Secretary, Department of Justice and Community Safety, correspondence, 29 June 2021, p. 1.

The Senate Inquiry discussed that adoptions increased at a time when Australia's population was also rapidly increasing. When accounting for population growth from 1950 to 1970, the *rate* of adoptions relative to population size did increase significantly from 1950 to 1971, although at a more modest rate when considering the *number* of adoptions in isolation.⁶

VANISH provided the Committee with a useful graph that compared the number of adoptions in Victoria with key legislative and social changes. This is reproduced in Figure 2.2

Figure 2.2 Number of adoptions in Victoria and key legal and social changes, 1929 to 2006



Source: VANISH Inc., *Submission 53*, p. 21.

Figure 2.2 shows that adoptions in Victoria reached its highest in 1971, at about 2,150.⁷ This mirrors the peak in adoptions in Australia.⁸ After this, the number of adoptions began to decrease and when the *Adoption Act 1984 (Vic)* (1984 Adoption Act) was introduced, adoptions had reduced to roughly 750 per year in Victoria. The remainder of the maternity and baby homes operating in Victoria closed in the late 1980s, and the number of adoptions plateaued at a low rate after the closure of Victoria's last children's homes in 1989.⁹

The Senate Inquiry outlined that it is impossible to know how many of these adoptions were forced.¹⁰ However, VANISH submitted to the Committee that 'through the many personal accounts provided by people affected and former staff and medical practitioners, we know these practices were all too common'.¹¹

⁶ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 8.

⁷ VANISH Inc., *Submission 53*, p. 21.

⁸ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 6.

⁹ VANISH Inc., *Submission 53*, p. 21.

¹⁰ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 10.

¹¹ VANISH Inc., *Submission 53*, p. 23.

The Senate Inquiry noted that the decline in adoptions after 1971–72 was strongly correlated with a decline in birth rates among women, particularly teenage women. This can be attributed to more effective abortion legislation, the introduction of contraception and improved family planning advice.¹² Other factors that may have contributed to both a decline in birth and adoption rates included greater financial support for mothers,¹³ although both VANISH and the Senate Inquiry observed that adoptions were already decreasing when the Australian Government introduced the Supporting Mothers Benefit in 1973.¹⁴ Changes in social attitudes towards single mothers were also a contributing factor and is discussed further in Section 2.3.1.

2.2 Policies and practices of forced adoption

The policies and practices of charities, non-government organisations and hospitals in Victoria have been thoroughly documented in previous inquiries.¹⁵ The Committee also received evidence regarding former practices and policies of forced adoption during the course of this inquiry. These policies and practices cover a broad range of behaviours, incidents and procedures, including:

- sending expectant mothers away from their homes, families and communities, sometimes into maternity homes with harsh conditions
- mothers being subject to degrading or abusive treatment in institutions and being made to feel shameful, unworthy and unfit to be mothers
- marking the hospital records of mothers as ‘Baby For Adoption’ regardless of their intentions
- coercing, duping or pressuring mothers to sign consent forms or dispensing of consent altogether
- mothers being given drugs that affected their ability to make informed decisions
- providing lower quality medical and welfare care to single mothers, as well as mothers being used to train medical students, being sexually assaulted by medical professionals or mothers experiencing maltreatment or neglect
- mothers being forcibly restrained during labour or sheets being used during labour to shield the newborn from the mother’s view
- separating mothers and children immediately after birth
- informing mothers and fathers that the child had died when this was false

¹² Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, pp. 8–9.

¹³ Council of Single Mothers and their Children, *Submission 23*, received 3 February 2020, p. 4.

¹⁴ VANISH Inc., *Submission 53*, p. 21.

¹⁵ *Ibid.*, p. 23; Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 9.

- denying mothers information about their rights, potential government benefits or details of their child's birth
- placing children with adoptive parents without proper screening processes
- placing children into institutions and/or using them for medical experiments
- lying to people who are adopted about the circumstances surrounding their adoption
- excluding fathers from the adoption or decision-making processes.¹⁶

As part of its investigations, the Committee was interested to explore the policies at the time and how they were initiated. Julian Pocock, the previous Director of Public Policy and Practice Development at Berry Street, while recognising that these views are his own and not that of Berry Street, described to the Committee that before 1956, Berry Street's principal focus was supporting young mothers for up to two years after the birth of her child, by providing access to resources, guidance and shared care arrangements. The aim was to enable women to retain custody and care for their children. After 1956, infertile couples became Berry Street's main client and the focus changed to supporting them to adopt a child. Julian Pocock elaborated on this in his evidence to the Committee, stating:

what I am putting on the table is a call for the Committee to really name these practices for what they actually were. I am not suggesting that ... every mother who went through something called an adoption process during that period was subjected to the abduction of their children, but a significant proportion were.¹⁷

...

it seems to me that it is completely inescapable to reach any other conclusion if a mother who has given birth to her child has expressed again and again her desire to remain with her child is physically and forcibly removed from her child ...¹⁸

The Senate Inquiry outlined that the Royal Women's Hospital (RWH) indicated that 15–30% of births to single mothers from the 1950s to early 1970s resulted in adoptions arranged by the hospital.¹⁹ The Australian Institute of Family Studies (AIFS) quoted Dr D. F. Lawson of the RWH in reference to historical forced adoption:

Society saw 'adoption of ex nuptial children as a means of protecting children from their single mothers, who were often thought to be unfit parents, and also as a means of punishing their mothers'. For example, Lawson (1960), an obstetrician, paid little or no heed to the possible impact of adoption on the mother. Advice to his medical colleagues to deal with the 'big problem' of 'single girls who become pregnant' instead promoted the presumed positive benefits for the child, with no mention of the mother:

¹⁶ VANISH Inc., *Submission 53*, pp. 23–26; Julian Pocock, *Submission 57*, received 25 May 2020, pp. 8–9.

¹⁷ Julian Pocock, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 32.

¹⁸ *Ibid.*, p. 33.

¹⁹ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 9.

The prospect of the unmarried girl or of her family adequately caring for a child and giving it a normal environment and upbringing is so small that I believe for practical purposes it can be ignored. I believe that in all such cases the obstetrician should urge that the child be adopted. In recommending that a particular child is fit for adoption, we tend to err on the side of overcautiousness. 'When in doubt, don't' is part of the wisdom of living; but over adoptions I would suggest that 'when in doubt, do', should be the rule.²⁰

In the same speech, Dr Lawson said:

The last thing that the obstetrician might concern himself with is the law in regard to adoption.²¹

The Senate Inquiry discussed the implications of a staff member of the RWH making these statements: it implies that Dr Lawson was aware of alternative views on the appropriate way to administer adoptions.²² The Committee also considers that it demonstrates the existence of policies that aimed to deliberately and forcibly remove children from their mothers.

In Victoria, there were 22 agencies approved as private adoption agencies—charities that were authorised by the relevant minister to approve adoptions—in 1966–67, including the Berry Street Babies Home and Hospital, Catholic Family Welfare Bureau, Hartnett House, Mission of St James and St John, RWH and the Queen Victoria Hospital.²³ By 1980, this had been consolidated to the following nine agencies:

- Australian Jewish Welfare and Relief Society
- Catholic Family Welfare Bureau
- Child Care Service of the Uniting Church
- Lutheran Adoption Agency
- Latter Day Saints Social Service Adoption Agency
- Mercy Maternity Hospital
- Mission of St James and St John
- Queen Victoria Memorial Hospital
- Royal Women's Hospital.²⁴

20 Daryl Higgins, Australian Institute of Family Studies, *Unfit mothers ... unjust practices?: Key issues from Australian research on the impact of past adoption practices*, 2011, <<https://aifs.gov.au/publications/family-matters/issue-87/unfit-mothers-unjust-practices>> accessed 10 June 2021 (with sources).

21 Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 212.

22 *Ibid.*, pp. 212–213.

23 Department of Health and Human Services, *Records from private adoption agencies*, 24 April 2019, <<https://www.findingrecords.dhhs.vic.gov.au/faqs/private-adoption-agencies>> accessed 2 June 2021.

24 *Ibid.*

In addition, there was a range of maternity homes, hospitals and baby homes located around Victoria, including the Grattan Street Home for Unwed Mothers; Kedesh Maternity Home, Kew; Melbourne City Mission Maternity Home, Brunswick; St Joseph's Foundling Hospital, Broadmeadows; The Foundling Hospital and Infants' Home, Melbourne; The Haven Maternity Home, North Fitzroy; and the Vaucluse Hospital, Brunswick.²⁵ These were often run by religious and community service organisations.²⁶

Testimony from mothers who were sent to these institutions as young, pregnant and, often, unwed women 'highlight the barbaric realities' of past practices, where women were subject to cruel and demeaning treatment from authority figures, including health professionals, the religious community, medical institutes, maternity homes and social workers, as well as their families and communities.²⁷

The policies and practices of historical forced adoption caused serious and complex trauma and had substantial long-term impacts on the psychological wellbeing of a range of parties, including mothers, fathers, the adopted person, extended family and siblings, grandparents, adoptive families and the broader community.²⁸ The testimony and experiences of mothers and adopted people subject to historical forced adoption are explored further in subsequent chapters.

2.2.1 Role of the Victorian Government

While many of the policies and practices of historical forced adoption were performed by charities, hospitals and other non-government organisations, the Victorian Government still played a role through its policy decisions, actions and failure to act.

The role of the state in allowing the systemic abuse of young women was acknowledged in the 2012 Victorian Parliament apology. The former Victorian Premier, the Hon Ted Baillieu MP, stated:

Sadly this state did not restrict or condemn these practices, nor did the state provide or require support or alternatives for parents faced with a pregnancy out of wedlock. On the contrary, these practices were effectively sanctioned, and in the process the stigma and harmful social and religious attitudes of the day were reinforced. No financial, legal or psychological support was provided, and adoption was assumed to be the only possible option for unmarried pregnant women.²⁹

²⁵ For a full list see National Archives of Australia, *Institutions*, n.d., <<https://forcedadoptions.naa.gov.au/resources/institutions>> accessed 2 June 2021.

²⁶ Public Record Office Victoria, *Finding your story: a resource manual to the records of the Stolen Generations in Victoria*, Public Record Office Victoria, North Melbourne, 2005, p. 39.

²⁷ VANISH Inc., *Submission 53*, p. 23.

²⁸ Royal Australian and New Zealand college of Psychiatrists, *Submission 12*, received 30 January 2020, p. 1; Relationships Australia Victoria, *Submission 15*, received 27 April 2020, p. 4.

²⁹ Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, p. 4772.

The Hon Daniel Andrews MP, the Leader of the Opposition at the time, stated:

we failed ... when elected representatives of this state allowed this systematic tragedy to unfurl and thought nil of those it affected, thought nil of the practice they enabled or their obligation to end it.³⁰

The Hon Christine Campbell MP, the former Member for Pascoe Vale, acknowledged:

Governments and the health system permitted these and other inhumane and unethical practices to take place in our hospitals and in organisations that received government support and backing. We actively worked against the interests of mothers ...³¹

As were all state governments, the Victorian Government was responsible for drafting, enacting and enforcing adoption laws. Enforcement of these laws was essential to ensure provisions aimed at protecting mothers were effective in practice.³²

Under Victoria's adoption laws, the Government was responsible for approving private adoption agencies and it supported the practice of private adoption agencies approving potential adoptive parents.³³ The Victorian Government supported private adoption agencies facilitating adoptions, despite concerns raised in other states about the potential for malpractice in these agencies.³⁴ This is discussed further in Section 2.5.

After the introduction of the *Adoption of Children Act 1964* (Vic), the Director of Social Welfare became the legal guardian of any child whose mother had signed a general consent for adoption, up until an adoption order was made. The Director had to report to the Court, before an adoption order was made, on whether the potential adoptive parents were suitable parents of 'good repute and are fit and proper persons to fulfil the responsibility of parents' and that the welfare of the child would be 'promoted' by the adoption. The Court then had to be satisfied these requirements had been met before adoptive parents were granted legal custody of a child.³⁵ Therefore, the Victorian Government had a responsibility to ensure both adoption agencies were acting ethically and to ensure potential adoptive parents were suitable.³⁶

Lastly, the Victorian Government had a role in ensuring that adoption agencies informed pregnant women about the provision of adequate support structures for single mothers. A briefing in 1961 developed by the Victorian Government stated:

In Victoria, any parent (or parents) contemplating the surrender of her child for adoption, is encouraged to approach an appropriate one of the [adoption] agencies previously referred to. She is there fully advised about community services available

³⁰ Ibid., p. 4773.

³¹ Ibid., p. 4777.

³² Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 177.

³³ Ibid., pp. 170, 66–67.

³⁴ Ibid., pp. 168–169.

³⁵ Ibid., p. 167.

³⁶ Ibid., pp. 170, 176.

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.³⁷

Evidence received during the course of this inquiry suggested that mothers were not made aware of the possibility that financial support existed. Further, the quality of the support services provided by the private adoption agencies, as discussed earlier, was problematic.

2.3 Social attitudes at the time

As part of its investigations, the Committee found it useful to consider the social and broader policy context surrounding historical forced adoption. This was not to justify what occurred, but to recognise how the societal attitudes and values of the time enabled forced adoption practices and permitted the silencing of alternative views.

The Committee acknowledged from the Inquiry's onset that the policies and practices of forced adoption was not a product of the time. As was established in the Senate Inquiry and discussed further below, such adoptions occurred despite the evidence and professional opinions about the negative impacts of forcibly separating a child from their mother at birth.

The Committee notes that in the post-World War II era, attitudes towards single mothers was one of 'disdain'.³⁸ Most of the mothers subjected to historical forced adoptions were young and unmarried. However, some mothers were married and fought to keep their child, or had been deserted, widowed or had separated from the father.³⁹ For example, Merle Kelly became pregnant and married shortly after finding out, three weeks before her 18th birthday. Six weeks before giving birth, Merle Kelly discovered that the man she had married already had a wife and three children. Merle Kelly told the Committee that she was informed by the court that as the marriage was 'bigamous', she was not entitled to any government support. She received inferior medical treatment at the hospital throughout the birth of her daughter, was not allowed to see her and was forced to sign the adoption papers. Merle Kelly later found out that her husband had been allowed to see her daughter.⁴⁰ Another mother, Christine Poulton, married the father of her child after the birth and remained married for 52 years.⁴¹ Christine Poulton was told her child was stillborn, however, she has been unable to confirm this as she has been unable to locate a death certificate. Christine Poulton still does not know whether her child is alive or dead.

³⁷ Ibid., p. 169.

³⁸ Ibid., p. 25.

³⁹ VANISH Inc., *Submission 53*, p. 23.

⁴⁰ Merle Kelly, hearing, Wodonga, 18 May 2021, *Transcript of evidence*.

⁴¹ Christine Poulton, *Submission 92*, received 12 June 2021.

A reoccurring theme among inquiry participants was the role of the patriarchy in perpetuating negative and discriminatory attitudes against single mothers. At a public hearing, Marilyn Murphy told the Committee:

What brought about this insidious situation? I have asked myself this question many times over the years. Patriarchy—in particular religious patriarchy and misogyny, males in white collars and dresses who blame women for the downfall of mankind. Forced adoption was numbers for their church, dollars in the coffers for future generations. Secondly, males in white coats—medicos—giving subordinate females orders to do their dirty work. And of course all those attached to these hierarchies that would benefit from the spoils that were our sons and our daughters.⁴²

Many mothers spoke to the Committee about being treated with contempt and punished for falling pregnant. June Smith submitted:

Society as a whole damned us mothers, we were treated without respect, and promoted and perpetrated as worthless, having loose morals ...⁴³

Lyn Kinghorn told the Committee:

Our communities, our families, Christian and medical institutions and government authorities all treated us as receiving the punishment we deserved. To this day some still hold to this belief. Where could mothers find care and compassion? It was years of suffering in lonely silence and condemnation before we dared find and support each other.⁴⁴

Nancy Johnson wrote of the shame she felt:

We were given a ring to wear on our wedding finger to hide the shame ... Told to ask God's forgiveness for the terrible sin I committed, no man would marry a second hand woman if he knew I had a child outside marriage. I would not make a good mother, this hurts me now.⁴⁵

Lynda Klingberg wrote:

Society saw me as a bad girl, not worthy, my child frowned upon. I had brought shame and embarrassment to my family. I felt isolated, adrift, alone.⁴⁶

The stigmatisation of pregnancy out of wedlock and the associated prejudice towards single mothers closely aligned with society's growing support for adoption, which was promoted in Australia in the post-World War II era as the alternative to institutional care.⁴⁷ Prior to the 1950s, children living in poverty were commonly institutionalised,

⁴² Marilyn Murphy, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 19.

⁴³ June Smith, *Submission 10*, p. 9.

⁴⁴ Lyn Kinghorn, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 1.

⁴⁵ Nancy Johnson, *Submission 8*, received 20 January 2020, p. 2.

⁴⁶ Lynda Klingberg, *Submission 36*, received 28 February 2020, p. 1.

⁴⁷ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 19.

a policy designed to remove children from destitution and provide them with care. Following World War II, there were many more widows and single mothers, coupled with increasing rates of infertility. In order to address both issues, adoption began to be favoured over institutionalisation and it was also identified by the medical profession as a way to manage growing rates of infertility.⁴⁸

According to the Senate Inquiry, attitudes towards adoption, single mothers and families experiencing poverty in the 1950s and 1960s indicated ‘a general intolerance of individuals and families who did not fit the idealised family unit’ and was combined with a sense of entitlement that legitimate couples should have children:

This powerful mix of intolerance and sense of entitlement appears to have partly manifested itself in the adoption practices of the era, encapsulated by the belief that if children were born to people of ‘low moral standard’ or poverty, they should be adopted by infertile couples of better social standing so as to ensure the best interests of the child were being looked after.⁴⁹

This enabled the policies and practices utilised by professionals and institutions that characterised the adoption industry—such as coercing mothers into signing consent or intentionally omitting fathers from birth certificates—to occur. These existed alongside a growing acceptance of adoption as a social policy that was underpinned by adoption legislation. This is discussed further in Section 2.5 and 2.6.

Historical forced adoption was grounded in the popular ‘clean break theory’ of the time, which justified the removal of children on the premise that ‘the best outcome for both the mother and child is achieved when the child is adopted at birth and no further contact occurs between them’.⁵⁰ This was grounded in the belief that newborns were a ‘blank slate’ and that the psychological attributes and financial circumstances of a married couple had a greater impact on the development of a child than the ‘genetics’ of single mothers or impoverished households. Consequently, the justification was used that adoption was the option that best served the welfare and interests of the child.⁵¹

The Hon Andrews, the then Opposition Leader, stated in his apology to those affected by historical forced adoption that:

A theory was held that with a clean break mothers would feel no grief and children no void. This theory said that children can be commodities and that mothers can be replaceable. This theory was applied without restraint, but this theory was bankrupt.⁵²

The Committee is aware that some social workers and professionals during this period did not ascribe to the clean break theory. The Senate Inquiry found that:

⁴⁸ Ibid., pp. 21–22; Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, Consultation Paper, Melbourne, August 2016, p. 12.

⁴⁹ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 24.

⁵⁰ Ibid., p. 12.

⁵¹ Ibid., pp. 22–23.

⁵² Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, p. 4773.

The conduct of the period was not the product of some uncontested acceptance about separating unmarried mothers from their babies. It was the product of decisions made, almost certainly at the institutional level, that decided to accept certain professional opinions, and to disregard (to varying degrees) the professional guidance of social workers of the time.⁵³

Similarly, Michele Hutchins, a person who is adopted and arts psychotherapist who works with people affected by historical forced adoptions, submitted to the current inquiry that:

the dramatic negative impacts of separation and adoption were well understood by professionals as far back as the 1940s (see Florence Clothier, 'The Psychology of the Adopted Child,' 1943) but have been consistently ignored, like an inconvenient truth.⁵⁴

The Committee also rejects claims that forced adoption was considered in the best interests of the child, as demonstrated by international conventions of the time. Principles under the 1959 United Nations Declaration of the Rights of the Child include:

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

...

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.⁵⁵

Concerns were also raised about the treatment of mothers during this period, including by senior public officials, academics, women's groups, journalists and community

⁵³ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, pp. 213–214.

⁵⁴ Michele Hutchins, *Submission 97*, received 21 May 2021, p. 7.

⁵⁵ United Nations Human Rights Office of the High Commissioner, *Declaration of the Rights of the Child (1959)*, n.d., <<https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/1DeclarationoftheRightsoftheChild%281959%29.aspx>> accessed 2 June 2021.

members. There are records of government discussions in the 1960s about ensuring mothers were not coerced into adoption.⁵⁶ It is widely accepted, however, that mothers' rights were completely disregarded, including those reflected in Article 25 of the 1948 Declaration of Human Rights:

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.⁵⁷

Further, as discussed throughout the report, concerns were raised about the transparency of the adoption consent process, the suitability of adoptive parents and an absence of scrutiny of private adoption agencies and the potential for malpractice in those agencies.⁵⁸

It is a fact that forced adoptions 'happened at a time when people knew it was morally wrong to forcibly separate a mother and child'.⁵⁹

2.3.1 Changes in attitudes towards single mothers and adoption

The decline in adoptions from the 1970s and the increase in unmarried women who kept their babies was driven by various economic, social and legislative influences, including:

- greater social acceptance of raising children outside registered marriage, accompanied by an increasing proportion of children being born outside marriage;
- increased levels of support being available to lone parents (e.g., the Supporting Mother's Benefit, introduced in 1973)
- increased availability and effectiveness of birth control; and
- declining birth rates.⁶⁰

The Committee notes that the decline can also be attributed to factors such as second-wave feminism; single mothers speaking about their rights; growing financial and social independence of single mothers; more vocal feminist and single mother lobby groups; consumer rights groups increasing awareness of health care issues; national adoption forums and other prominent publications written by mothers.⁶¹ VANISH also told the Committee that those affected by historical forced adoptions were instrumental in advocating for change in the 1970s and 1980s. This included through the Association of Relinquishing Mothers, formed in 1982; the Geelong

⁵⁶ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, pp. 143, 146, 176.

⁵⁷ United Nations, *Universal Declaration of Human Rights*, n.d., <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 2 June 2021.

⁵⁸ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, pp. 143–146, 176.

⁵⁹ Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, p. 4777.

⁶⁰ Pauline Kenny, et al., *Past adoption experiences: National research study on the service response to past adoption practices*, Australian Institute of Family Studies, Melbourne, 2012, p. 9 (with sources); See also Australian Institute of Health and Welfare, *Submission 20*, received 3 February 2020, p. 5.

⁶¹ Parliament of New South Wales, Legislative Council Standing Committee on Social Issues, *Releasing the past: adoption practices 1950–1998*, December 2000, pp. 39–40.

Adoption Program, formed in 1983; Jigsaw Victoria, formed in the early 1970s; the National Council for Single Mothers and their Children, formed in 1969; as well as researchers and academics.⁶²

In a submission to the Committee, the Australian Institute of Health and Welfare noted:

Changes in Australian adoption procedures paralleled a shift in social attitudes—from adoptions being seen as providing a service for adults, to the wellbeing of children being paramount.⁶³

Further, legal changes reduced reliance on adoption as a means of providing long-term support for children. Alternative legal orders—such as permanent care orders in Victoria—transfer parenting responsibilities for a child to a person other than the legal parent and became a replacement for adoption orders.⁶⁴

2.4 Broader policy context

It is important to consider the broader child welfare policy context during the period when historical forced adoption was at its peak, particularly as it relates to other significant groups such as the Stolen Generations, Forgotten Australians and Former Child Migrants. These groups were all subject to similar reviews and Senate inquiries from the late 1990s onwards.⁶⁵

In his evidence to the current inquiry, Julian Pocock, who worked as the Executive Officer of the Secretariat of National Aboriginal and Islander Child Care and Director of Public Policy and Practice Development at Berry Street, advised that the Stolen Generations, Forgotten Australians and those affected by historical forced adoptions:

are separate ... [but] entwined systemic abuses of families, children and childhoods. They all involved system wide planning and cooperation between the State and charitable, often church based, non-government organisations. They persisted and thrived through active and brutal repression of the voices of the very people the State and non-government institutions claimed to be serving.⁶⁶

2.4.1 Forgotten Australians

The Forgotten Australians, or care leavers, refers to children placed in care—either in government or non-government institutions or foster homes—across Australia from the

⁶² VANISH Inc., *Submission 53*, p. 39.

⁶³ Australian Institute of Health and Welfare, *Submission 20*, p. 7.

⁶⁴ *Ibid.*, p. 5.

⁶⁵ Parliament of Australia, Human Rights and Equal Opportunity Commission, *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, April 1997; Parliament of Australia, Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, August 2004; Parliament of Australia, Senate Community Affairs Reference Committee, *Lost Innocents: righting the record*, August 2001

⁶⁶ Julian Pocock, *Submission 57*, p. 2.

1920s to 1990s.⁶⁷ It is estimated that 500,000 children, including some of Aboriginal and Torres Strait Islander descent, were placed in care as ‘state wards’. Children were placed in care because they were orphans, born to single mothers, had experienced family separations or domestic violence situations, or because the parents were unable to cope due to financial hardship or crisis. They were often ‘hidden’ away in institutions and ‘forgotten’ about by society when placed in care. Many children were subject to physical, emotional and sexual abuse; neglected; humiliated; deprived of basic services like food, healthcare and education; or more generally not nurtured or treated with love and affection.⁶⁸

The Committee acknowledges that the practices Forgotten Australians were subject to occurred at a similar time to forced adoption practices and there is overlap between the groups. For instance, the Senate Inquiry into *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children* highlighted the experiences of teenage girls living in institutional care who became pregnant and had no choice but to give their child up for adoption, and expectant teenage mothers who were placed in institutions and expected to work during the pregnancy. The report noted that the removal of babies typically occurred through duress or deception and mothers were not informed of alternative options.⁶⁹ Some mothers had their child removed for adoption after being abused in an institution.⁷⁰

VANISH discussed in its submission that some children who were adopted were subsequently removed from their adoptive parents and put into care after an adoptive parent died, the parents divorced or separated, the adoption failed or the parents had their own biological child.⁷¹ The Committee also heard throughout the Inquiry of mothers being placed in maternity homes during their pregnancies, another form of institutionalisation, and newborn babies going into care prior to being adopted. These experiences are explored further in later chapters.

2.4.2 Stolen Generations

While the Committee did not receive many submissions from Aboriginal and Torres Strait Islander mothers or people who are adopted, it is important to recognise the particularly damaging practice of forced adoption in the context of the Stolen Generations. Adoption was one means of removing Aboriginal and Torres Strait Islander children from their communities during the Stolen Generations.⁷² This occurred under a

⁶⁷ Parliament of Australia, Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, p. 3.

⁶⁸ *Ibid.*, p. xv.

⁶⁹ *Ibid.*, pp. 107–109.

⁷⁰ VANISH Inc., *Submission 53*, p. 86.

⁷¹ *Ibid.*, p. 27.

⁷² Parliament of Australia, Human Rights and Equal Opportunity Commission, *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, p. 41.

policy of assimilation and a process of colonisation and genocide that began over two hundred years ago.⁷³

The Victorian Aboriginal Child Care Agency (VACCA) informed the Committee that the forcible removal of Aboriginal and Torres Strait Islander children through adoption should be understood in terms of the ‘overwhelmingly repressive and coercive’ environment they were in. VACCA noted that some key ways in which forced adoption in the context of the Stolen Generations are different include:

- At the time of historical forced adoptions, there was already in place a substantive number of laws and policies across successive generations and decades, which were specifically designed to control and regulate the movement, freedom, rights and lives of Aboriginal people ...
- The existence of widespread systemic racism and discriminatory and dehumanising attitudes towards Aboriginal people, and a context of coercion and discrimination that created an environment of fear and repression at this time. This context meant that ‘voluntary consent’ was impossible, even if this was given.
- The general environment of pressure on Aboriginal parents to give up children as part of assimilation and ‘protection’ policies and societal attitudes.⁷⁴

The *National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, or the *Bringing them home* report, explained that the *Adoption of Children Act 1928* (Vic) allowed anyone to arrange an adoption and the *Adoption of Children Act 1964* (Vic) was more regulated as adoption agencies had to be approved. The Aborigines Welfare Board was one of the approved private adoption agencies. Further, it was common to coerce or pressure Aboriginal and Torres Strait Islander mothers into providing consent to an adoption or to dispense of their consent.⁷⁵ Dispensation of consent often occurred and was nearly always justified on the grounds the child had been neglected or was unwanted. VACCA informed the Committee that this was often an erroneous belief.⁷⁶

In addition, some adoptive parents returned Aboriginal or Torres Strait Islander children they did not want, some Aboriginal parents unknowingly agreed to relinquish children under the belief the child would be placed in temporary care, and some other Aboriginal parents could not locate children who had been adopted by a private agency.⁷⁷ In some cases, Aboriginal children were taken overseas. Many of these children and their descendants have been unable to return home or connect with their communities, families, country and culture.⁷⁸

⁷³ Victorian Aboriginal Child Care Agency, *Submission 28*, received 13 February 2020, p. 3.

⁷⁴ Ibid.

⁷⁵ Parliament of Australia, Human Rights and Equal Opportunity Commission, *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, pp. 41, 56.

⁷⁶ Victorian Aboriginal Child Care Agency, *Submission 28*, p. 6.

⁷⁷ Parliament of Australia, Human Rights and Equal Opportunity Commission, *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, p. 56.

⁷⁸ Victorian Aboriginal Child Care Agency, *Submission 28*, p. 6.

Adoptive parents and families that were not Indigenous, but who adopted Aboriginal and Torres Strait Islander children reported to the *Bringing them home* inquiry that:

they responded to appeals that stressed the unwanted nature of these children and how they faced a lifetime in an institution. They feel they were deceived by not being told the circumstances under which the children were removed from their families.⁷⁹

The *Bringing them home* report further illustrated that concerns were raised in the late 1960s about the informal or unauthorised separation of Aboriginal children from their mothers. Government reports from the late 1960s also recognised that ‘the interests of Indigenous children were best served by keeping them in their own communities’, despite the number of Aboriginal children forcibly removed rising from 1973 to 1976.⁸⁰

Several submissions to the Inquiry highlighted the particularly adverse impact of forced adoption on Aboriginal and Torres Strait Islander mothers and people who are adopted. VACCA submitted:

Aboriginal survivors of forced adoptions experience multiple layers of trauma. The Stolen Generations not only suffered the same loss, grief and trauma as most Aboriginal people due to the removal from land, forced re-dispersal to missions and reserves, loss of economic security and denial of culture; they also suffered from the removal from family and community, and a loss of identity under assimilation policies.⁸¹

One case that demonstrates the link between forced adoption and the Stolen Generation was shared with the Committee by Ian Hamm, Chair of the Board of Directors, First Nations Foundation and Chair of the Stolen Generations Reparations Steering Committee and was mentioned in VACCA’s submission. James Savage, born Russell Moore, was an Aboriginal child from Swan Hill who was forcibly removed from his mother, Beverly Moore Wyman, without her consent in 1963. He was adopted by American parents and taken to the United States at six years old. Russell Moore did not fit in, experienced racial prejudice and harsh treatment by his adoptive family, and subsequently experienced a range of social problems, such as becoming homeless and an alcohol and drug dependency. He was sentenced to life in prison after being convicted of murdering a woman in the course of a violent robbery. Russell Moore became aware of his Aboriginal heritage during the trial and Beverly learnt that he was living in the United States. Russell and Beverly met while Russell was in prison, and Beverly campaigned for Russell to be extradited to Australia, but this did not happen. Beverly passed away while Russell was in prison.⁸²

A day prior to giving evidence to the Committee, Ian Hamm found out that Russell had passed away. Ian Hamm said:

⁷⁹ Parliament of Australia, Human Rights and Equal Opportunity Commission, *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, p. 57.

⁸⁰ *Ibid.*, p. 58.

⁸¹ Victorian Aboriginal Child Care Agency, *Submission 28*, pp. 8–9; See also Royal Australian and New Zealand college of Psychiatrists, *Submission 12*, p. 1; Healing Foundation, *Submission 30*, received 24 February 2020.

⁸² Ian Hamm, Chair, Stolen Generations Reparations Steering Committee, hearing, Melbourne, 4 June 2021, *Transcript of evidence*, p. 4; Victorian Aboriginal Child Care Agency, *Submission 28*, p. 7.

His life course was determined when he was a week old, and it ended the other day.

The thing that makes that poignant for me, given I went through the same adoption home, Salvation Army adoption home, and he was adopted 10 months before me: I often think if Charlie and Mary Hamm, my adopted parents, had turned up 10 months earlier and his adopted parents had turned up 10 months later, that would have been me in a prison in the United States and Russell Moore would have become Ian Hamm and he would be the one sitting here today. That is the lottery of what the removal of children and the subsequent outcomes have been.⁸³

Further, Ian Hamm had an adoptive sister who passed away in the past few months. He said:

She never came to terms really with trying to find her place in the world, and I think that is true. That can be true of any adoptees, but it is particularly true for the Aboriginal stolen children as well.⁸⁴

The Victorian Government has committed to the establishment of a Stolen Generations Redress Scheme. This is discussed in Chapter 7.

2.5 Victoria's adoption laws

Adoptions were first legislated in Victoria through the *Adoption of Children Act 1928* (Vic), which legitimised existing informal adoptions. It did not ban private adoptions or enforce secrecy about parentage.⁸⁵ Later, the *Adoption of Children Act 1958* (Vic) was introduced to consolidate a range of legislative amendments. Both the 1928 and 1958 Acts included a requirement that the court appoint a person 'to safeguard the interests of the child in adoption proceedings before the court',⁸⁶ but did not adequately protect the rights of mothers.⁸⁷ At this point, Victoria was the only state to enforce a 30-day revocation period for consent, in all other states consent could be revoked at any point before making an adoption order.⁸⁸ There were no age requirements to consent provisions and consent could be dispensed with on a wide range of grounds.⁸⁹

Some mothers drew the Committee's attention to practices that occurred specifically under the *Adoption of Children Act 1958* (Vic), including covert baby trafficking and child abduction. June Smith submitted to the Committee that she, and many other mothers, had their children abducted from them.⁹⁰ Lyn Kinghorn's child was taken from

⁸³ Ian Hamm, *Transcript of evidence*, p. 4.

⁸⁴ *Ibid.*

⁸⁵ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, p. 10.

⁸⁶ *Adoption of Children Act 1928* (Vic) s 10 (3); *Adoption of Children Act 1958* (Vic) s 11(2); Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, p. 10.

⁸⁷ See Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, p. 13.

⁸⁸ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 156.

⁸⁹ *Ibid.*, pp. 156–157.

⁹⁰ June Smith, *Submission 10*, pp. 7–8.

her in 1963, and she informed the Committee that after comparing her medical records to the findings of the Senate Inquiry:

I fully realised the extent of the crimes committed against me and that my precious baby had been ABDUCTED for adoption. My 'no' was illegal to ignore. I was unaware that I had had my breasts bound until I received my medical file. I was traumatised over the years as to why I bottle fed her and had not breast fed her. I understand now this was illegal assault in preparation for her abduction. [emphasis in original]⁹¹

In her evidence to the Committee, Brenda Coughlan of Independent Regional Mothers also spoke about the 'criminal policies and practices and the abduction of their newborn babies under the 1958 adoption legislation and covert baby trafficking'.⁹² Both Lyn Kinghorn and Brenda Coughlan spoke about the specific policies at Victorian hospitals during this time that endorsed the permanent separation of babies from unwed mothers.⁹³

Between 1961 to 1964, the states and Commonwealth discussed the development and enactment of model adoption laws across Australia. One of the reasons for enacting model legislation was that concerns had been raised about malpractice in adoption agencies.⁹⁴ When debating the model legislation, the New South Wales (NSW) Department said:

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 ...

(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.).⁹⁵

Brenda Coughlan reasoned to the Committee that the discussions about model legislation is evidence of the existence of policies and practices that violated mothers' human rights.⁹⁶ The Senate Inquiry also recognised these concerns, noting the lack of scrutiny and control of private adoption agencies was a concern for several Australian states.⁹⁷

⁹¹ Lyn Kinghorn, *Submission 11*, received 30 January 2020, p. 2.

⁹² Brenda Coughlan, Spokesperson, Independent Regional Mothers, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 3.

⁹³ Lyn Kinghorn, *Submission 11*, p. 5; Brenda Coughlan, *Transcript of evidence*, pp. 1–2.

⁹⁴ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, pp. 115, 155.

⁹⁵ *Ibid.*, p. 148 (with sources).

⁹⁶ Brenda Coughlan, *Transcript of evidence*, p. 2.

⁹⁷ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, pp. 146, 175.

The enactment of model legislation was further driven by a need to better coordinate adoption between states and several social welfare concerns, including:

- ensuring the consent process was robust, that consent was freely given by mothers and was not dispensed with unfairly⁹⁸
- that there was a risk of private adoption agencies trading, buying or selling children⁹⁹
- that a person would inadvertently discover they were adopted and face legal and personal difficulties as a result¹⁰⁰
- the process of placing children in the custody of the adoptive parents before an adoption order had been made. This was problematic because a mother might revoke her consent after the child had lived with the adoptive parents or the adoptive parents might later be deemed unsuitable.¹⁰¹

The Senate Inquiry concluded:

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.¹⁰²

This is evident by more detailed requirements in various states' Acts about consent and the creation of offences in relation to 'intimidation, payments, duress and the improper witnessing of consents'.¹⁰³ The Senate Inquiry reasoned that this, the discussions taking place during the development of model adoption laws, plus historical evidence from social work professionals, 'suggested that protection of the rights of mothers was a significant concern amongst those involved in adoption law throughout the period in question'.¹⁰⁴

In Victoria, model legislation discussions resulted in the *Adoption of Children Act 1964* (Vic). This prohibited private adoptions and 'increased confidentiality and secrecy measures and ushered in the era of closed adoptions'. It also resulted in the creation of private adoption agencies.¹⁰⁵ In its *Review of the Adoption Act 1984*, the Victorian Law Reform Commission (VLRC) summarised the effects of applying the principles of the model legislation. The legislation imposed

secrecy at all stages of the process, including the taking of consent, the placement of the child, the application for an adoption order, the hearing of the application, record

⁹⁸ Ibid., pp. 155–164.

⁹⁹ Ibid., p. 168.

¹⁰⁰ Ibid., p. 175.

¹⁰¹ Ibid., p. 149.

¹⁰² Ibid., p. 176.

¹⁰³ Ibid., p. 177.

¹⁰⁴ Ibid., pp. 211, 177.

¹⁰⁵ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, p. 10.

keeping and availability of records to the public. A new birth certificate was issued with the adoptive parents' details, and the records of the adoption order and the original birth certificate were kept secret.¹⁰⁶

As discussed earlier, these amendments were based on and further enshrined the 'clean break theory' and belief that closed adoptions were in the best interests of the child.¹⁰⁷ Secrecy was seen to protect all parties to an adoption and to ensure that adoptive parents and natural parents did not discover each other's identity.¹⁰⁸

Consent to adoption was an important facet of the model legislation. Victoria's application of the model legislation provided that consent had to be given by mothers five days post-birth and mothers had 30 days to revoke their consent.¹⁰⁹ Table 2.1 summarises the consent provisions and revocation periods across the 1928, 1958 and 1964 Acts. The Committee acknowledges that often the consent provisions and other legislative requirements of the model legislation were not adequately enforced or policed.¹¹⁰

Table 2.1 Consent provisions in Victoria's adoption Acts

Act	Consent provision	Dispensing of consent	Revocation period
<i>Adoption of Children Act 1928</i> (Vic)	<p>Before an adoption order can be made, written consent must be obtained by every person who either:</p> <ul style="list-style-type: none"> • is a parent or guardian of the child • has custody of the child • is liable to contribute to the support of the child. <p>The court must be satisfied before granting an adoption order that consent is provided and the person understands the effects of the adoption order, particularly that the parent understands the adoption will permanently deprive them of their parental rights. Further, the court must be satisfied that the order is made for the welfare of the child and that no monetary payment or rewards have been made.</p>	<p>Consent can be dispensed if the person:</p> <ul style="list-style-type: none"> • has abandoned the infant • cannot be found • is incapable of providing consent • is not the parent of the child but is a person who the child, as a ward of the state, is boarded out to or employed with • has neglected or refused to contribute to the support of the child. <p>Consent from parents or guardians is not required for any de facto adoptions arranged prior to the introduction of the Act, if this is deemed in the interest of the child.</p>	None outlined in the Act.

¹⁰⁶ Ibid., p. 12.

¹⁰⁷ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 151.

¹⁰⁸ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, p. 12.

¹⁰⁹ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 165.

¹¹⁰ Ibid., p. 177.

Act	Consent provision	Dispensing of consent	Revocation period
<i>Adoption of Children Act 1958</i> (Vic)	<p>Before an adoption order can be made, written consent must be obtained by every person who either:</p> <ul style="list-style-type: none"> • is a parent or guardian of the child • has custody of the child • is liable to contribute to the support of the child. <p>The court must be satisfied before granting an adoption order that consent is provided and the person understands the effects of the adoption order, particularly that the parent understands the adoption will permanently deprive them of their parental rights. Further, the court must be satisfied that the order is made for the welfare of the child and that no monetary payment or rewards have been made.</p>	<p>Consent can be dispensed if the person:</p> <ul style="list-style-type: none"> • has abandoned the infant • cannot be found • is incapable of providing consent • is not the parent of the child but is a person who the child, as a ward of the state, is boarded out to or employed with • has neglected or refused to contribute to the support of the child. <p>Consent from parents or guardians is not required for any de facto adoptions arranged from the commencement of the 1928 Act, if this is deemed in the interest of the child.</p>	<p>Any person who has given consent may revoke it within 30 days by signing a revocation or similar form. The person has seven days after signing the revocation to deliver it to the court.</p>
<i>Adoption of Children Act 1964</i> (Vic)	<p>Consent must be given by the appropriate person:</p> <ul style="list-style-type: none"> • For a legitimate child who has not previously been adopted, the appropriate persons are the parents or guardians of the child. • For an illegitimate child who has not previously been adopted, the appropriate person is the mother or guardian of the child. • For a child who has previously been adopted, the appropriate persons are the adoptive parents or guardians of the child. <p>An adoption order cannot be made if the:</p> <ul style="list-style-type: none"> • consent was not given in accordance with the Act • consent was obtained by fraud or duress • consent was revoked • consent forms had been altered • person was not in a fit condition to give consent or did not understand the nature of the consent • consent was provided by the mother before the birth of the child or within five days of giving birth (unless certified by a medical practitioner that the mother was fit to give consent). <p>A law officer can apply to the court for an adoption discharge, and a court could grant the discharge, if the adoption order or consent was obtained by fraud, duress or other improper means.</p> <p><i>(continued)</i></p>	<p>Consent can be dispensed with if:</p> <ul style="list-style-type: none"> • a person could not be found after reasonable inquiry • a person was not capable of considering whether they should give consent due to their physical or mental condition • a person had abandoned, deserted, persistently neglected or ill-treated the child • a person had failed to discharge the obligations of a parent or guardian • any other special circumstances arose <p>An order by the court that dispenses of consent can be revoked, by or on behalf of the Director-General of Social Welfare or the person whose consent was dispensed with, at any point before the adoption order is made.</p>	<p>Consent could be revoked by serving notice to the court within 30 days of providing consent.</p>

Act	Consent provision	Dispensing of consent	Revocation period
<i>Adoption of Children Act 1964</i> (Vic)	A child older than 12 years must consent to an adoption, unless this was not in their best interest.		
(continued)	It is an offence to make, give or receive payment or rewards for adoptions or the provision of consent (certain exemptions applied); forge consent; personate a person who gave consent; and act as a witness to consent without being satisfied the person is the parent and understood the effect of adoption.		

Source: *Adoption of Children Act 1928* (Vic); *Adoption of Children Act 1958* (Vic); *Adoption of Children Act 1964* (Vic).

During the 1960s, reports on the damage caused by closed adoption practices emerged and the need for people who are adopted and natural parents to know each other was recognised.¹¹¹ From the 1970s, adoption law and practice around Australia changed rapidly, reflecting social change over the period.¹¹² The Victorian Government commissioned a review of the *Adoption of Children Act 1964* in 1978, which garnered much public interest and community input.¹¹³ This review, as well as advocacy, lobbying of politicians, efforts to raise awareness and political support from key figures, resulted in the introduction of the 1984 Adoption Act.¹¹⁴

The 1984 amendments to the Adoption Act were seen as progressive. Victoria was the first state in Australia, and the first jurisdiction in the Western world, to establish open adoptions.¹¹⁵ Importantly, the 1984 Adoption Act allowed people who are adopted over the age of 18 to access their original birth certificate and adoption records, and begin outreach to their natural families.¹¹⁶ This same right was not granted to mothers. An amendment in 2013, following the Victorian parliamentary apology, conferred the right for mothers to access identifying information about their, now adult, adopted children. Prior to this, mothers (and fathers) required the consent of the adopted person.¹¹⁷ Since 1984, there have been many amendments to the 1984 Adoption Act, including increasing access to information and expanding the categories of people who can apply for adoption information.¹¹⁸

The VLRC undertook an extensive review of the 1984 Adoption Act in 2017 and recommended a new Act be drafted and enacted. This has not yet occurred.¹¹⁹

¹¹¹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, pp. 10, 13.

¹¹² Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 4.

¹¹³ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, p. 10.

¹¹⁴ VANISH Inc., *Submission 53*, pp. 39–40.

¹¹⁵ *Ibid.*, p. 40.

¹¹⁶ *Ibid.*, p. 41.

¹¹⁷ *Ibid.*

¹¹⁸ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, p. 11.

¹¹⁹ Victorian Government, *Safe and wanted—an inquiry into the implementation of permanency arrangements*, 2018, <<https://www.dhhs.vic.gov.au/publications/safe-and-wanted-inquiry-implementation-permanency-arrangements>> accessed 27 May 2021.

2.6 Apologies

2.6.1 Government apologies

As discussed in Chapter 1, there have been a number of formal apologies from state and national governments, most of which followed the Senate Inquiry's recommendations¹²⁰:

Recommendation 2: The committee recommends that the Commonwealth Government issue a formal statement of apology that identifies the actions and policies that resulted in forced adoption and acknowledges, on behalf of the nation, the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.

Recommendation 3: The committee recommends that state and territory governments and nongovernment institutions that administered adoptions should issue formal statements of apology that acknowledge practices that were illegal or unethical, as well as other practices that contributed to the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.¹²¹

The Senate Inquiry examined the Canadian Law Commission's research on apologies and endorsed its findings on what constitutes an effective and genuine apology. This is outlined in Box 2.1

¹²⁰ The Western Australian Government issued a formal apology on 19 October 2010, before the Senate Inquiry.

¹²¹ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. vii.

BOX 2.1: Criteria for effective apologies

- Acknowledgment of the wrong done or naming the offence—many victims want wrongdoers to acknowledge what they did and that it was wrong. They are, in effect, asking the wrongdoers to admit to them that they know they violated moral standards. Such admissions validate the injured parties' moral sensibilities, which were violated by the wrongs done.
- Accepting responsibility for the wrong that was done—the apologist must demonstrate to the recipient that he or she accepts responsibility for what happened. By accepting responsibility, the apologist helps restore the confidence or trust of the injured party.
- The expression of sincere regret and profound remorse—the centrepiece of an apology is an expression of sorrow and regret. When the apologist expresses sincere remorse for the wrong committed or permitted to happen, then the person receiving the apology is reassured both that the apologist understands the extent of the injury that was committed and therefore will not allow it to happen again.
- The assurance or promise that the wrong done will not recur—victims need to be assured that the injury they experienced will not happen to them, or anyone else, again. Where official, public apologies are made, victims also want affirmation from the officials responsible that the mistakes of the past are not repeated.
- Reparation through concrete measures—following serious wrongdoing, mere words of apology are not enough to repair damaged relationships. Verbal apologies must be accompanied by concrete measures, such as financial compensation, counselling and other measures. These measures help translate the static message of an apology into an active process of reconciliation and healing. Official apologies, in particular, need to be accompanied by direct and immediate actions.

Source: Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. 22.

The Senate Inquiry recommended that apologies should meet these five criteria and take responsibility for past policies without justifying actions with reference to professional practice or values of the time.¹²² The Australian Government issued an apology on 21 March 2013, and all jurisdictions, except the Northern Territory, have now issued apologies that meet most criteria discussed by the Senate Inquiry.¹²³

As discussed previously, the Parliament of Victoria delivered an apology on 25 October 2012, led by the former Premier the Hon Ted Baillieu MP. Other contributors included the former Opposition Leader, Hon Daniel Andrews MP; the former Deputy Premier and Leader of the Nationals, Hon Peter Ryan MP; the former Leader of the Greens, Greg Barber MLC; the former Member for Pascoe Vale, the

¹²² Ibid., p. 9.

¹²³ VANISH Inc., *Submission 53*, pp. 44–45.

Hon Christine Campbell MP; and the Hon Mary Wooldridge MP, the former Minister for Mental Health, Minister for Women's Affairs and Minister for Community Services.

Many inquiry participants conveyed to the Committee that they experienced feelings of validation and elation during and immediately following the apologies. However, given the limited follow-up action since the apologies, those feelings have since subsided and replaced, once again, with disappointment, frustration and despair.

Barbara Pendrey submitted:

I went to Canberra for the apology which was delivered by Julia Gillard. She was amazing and it felt genuine. In my life now I find an apology worthless.¹²⁴

One mother expressed to the Committee at a public hearing that the 'government apology' was 'hollow words. It means nothing'.¹²⁵ Another mother told the Committee:

I went to the Victorian Parliamentary Apology in Melbourne. I listened to the premier and others say sorry. I did not expect to get much out of it but as it turned out I did. It was so good to hear someone say they were sorry never before had I heard such words ... but that feeling soon passed. What did it really mean? A few words and a light buffet stand up lunch. I decided not to attend the apology in Canberra.¹²⁶

One submitter, a person who is adopted, said:

The Victorian government continues to drag its heels (sic) on implementing the recommendations from the review of the Act of 1984, this shows us in the adoptee cohort that the apology was just lip service and not a heartfelt understanding of the government wrongs and desire to support us in healing.¹²⁷

2.6.2 Non-government organisation apologies

The Committee is also aware of the various non-government organisations that have apologised for past adoption practices in Victoria and those that have not. Some of the organisations that have issued apologies include:

- RWH on 23 January 2012¹²⁸
- Uniting Church Victoria Tasmania on 28 February 2012¹²⁹
- Australian Nursing and Midwifery Federation on 22 October 2013¹³⁰

¹²⁴ Barbara Pendrey, *Submission 1*, received 14 November 2019, p. 1.

¹²⁵ Name Withheld 1, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 12.

¹²⁶ Name Withheld, *Submission 37*, received 28 February 2020, p. 4.

¹²⁷ Name Withheld, *Submission 34*, received 28 February 2020, p. 3.

¹²⁸ Royal Women's Hospital, *Apology to mothers and families for past forced adoption policies and practices*, 23 January 2012, <<https://www.thewomens.org.au/about/our-history/timeline/timeline-2000-to-now/2012-apology>> accessed 11 June 2021.

¹²⁹ Uniting Church in Australia, Synod of Victoria and Tasmania, *UCA Statements: Key Uniting Church statements and resolutions*, n.d., <<https://victas.uca.org.au/news-events/uca-statements>> accessed 11 June 2021.

¹³⁰ Australian Nursing and Midwifery Federation, *ANMF apology to mothers, fathers and children affected by forced adoption practices*, 22 October 2013, <<https://www.anmf.org.au/news/entry/anmf-apology-to-mothers-fathers-and-children-affected-by-forced-adoption>> accessed 11 June 2021.

- Anglican Diocese of Melbourne on 17 October 2012¹³¹
- Monash Health on behalf of the Queen Victoria Memorial Hospital on 20 March 2013¹³²
- Berry Street on 21 March 2013¹³³
- MacKillop Family Services, representing the Sisters of Mercy, the Sisters of St Joseph and the Christian Brothers in 2013.¹³⁴

In a public hearing, CatholicCare informed the Committee that an apology had been drafted, was going through an approval process and should be published soon.¹³⁵

The Committee heard concerns from inquiry participants about the quality of some of the apologies. VANISH submitted that some apologies were considered disappointing as they:

- failed to consult with stakeholders regarding the content and how their apology should be delivered;
- provided an apology without notice and/or in inaccessible ways rather than providing an opportunity for individuals affected to attend or witness the apology;
- most importantly, failed to take responsibility for their policies and practices that were illegal and unethical and the lifelong impacts on those affected; and/or
- minimised the extent of the practices, or their involvement, or both.¹³⁶

VANISH outlined that the apologies of the Anglican Diocese of Melbourne, NSW Anglicare, Catholic Health, Uniting Church, Australian Nursing Federation, Berry Street, Monash Health and RWH did not take full responsibility for their unethical or illegal practices or minimised the extent of their involvement.¹³⁷

In his evidence to the Committee, Julian Pocock spoke of his experience developing Berry Street's apology. He explained that the apology was written in consultation with two previous clients: Lyn Kinghorn and GR, their families, adopted children and adoptive families. Julian Pocock expressed to the Committee that the apology was 'well received at the time', but believes:

¹³¹ Archbishop Philip Freier, 'Archbishop Philip Freier's Melbourne Synod charge', Speech delivered at 50th Melbourne Synod, Melbourne, 25 October 2012.

¹³² Herald Sun, *Monash Health apologises for Queen Victoria Memorial Hospital forced adoptions*, 21 March 2013, <<https://www.heraldsun.com.au/leader/south-east/monash-health-apologises-for-queen-victoria-memorial-hospital-forced-adoptions/news-story/e4dd2a9dfd463cfd2fccbda0a7f3d951>> accessed 11 June 2021.

¹³³ Berry Street, *Berry Street apology for forced adoption of children*, 21 March 2013, <<https://www.berrystreet.org.au/about-us/our-history/apologies-to-those-who-suffered-harm-in-our-care/berry-street-apology-for-forced-adoption-of-children>> accessed 11 June 2021.

¹³⁴ MacKillop Family Services, *Apology to former residents*, n.d., <<https://www.mackillop.org.au/about-mackillop/our-history/apology-to-former-residents>> accessed 11 June 2021.

¹³⁵ Netty Horton, Executive Director, CatholicCare, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 39.

¹³⁶ VANISH Inc., *Submission 53*, p. 45.

¹³⁷ *Ibid.*, pp. 45–47.

The faded impact of the Berry Street apology is due to it failing to honestly acknowledge, in plain English, the truth of what happened to Lyn, GR and doubtless many more, [that] their children were abducted.¹³⁸

Julian Pocock, Lyn Kinghorn and GR advocated to include a sentence outlining what abduction is to invite readers of the apology to consider whether the practices constituted abduction. It was not intended to be an admission of guilt.¹³⁹ Julian Pocock advocated to the Committee that apologies need to ‘acknowledge the truth’ and use the word abduction to successfully find ‘truth, justice and healing for mothers’:

a child has been taken in an unauthorised way out of the care of a mother, permanently placed beyond her reach where she can never contact the child, she can never find the child, she cannot communicate with the child, and this is done without her consent—then what is it if it is not abduction?¹⁴⁰

Another apology that received extensive attention was that of the RWH, which was criticised by numerous inquiry participants. The apology included the statement:

The past practices at the RWH, and elsewhere in the nation, were in keeping with social attitudes, available financial support, and medical and social work knowledge and beliefs of the time ... The Royal Women’s Hospital acknowledges that, whatever the intentions and beliefs of the time, past adoption practices caused lasting consequences for many relinquishing mothers, and sometimes also for their children and their extended families.¹⁴¹

The Senate Inquiry was also highly critical of the RWH apology and questioned the organisation’s finding that there was ‘no evidence of illegal practices at the RWH and no evidence of hospital-wide policies that discriminated specifically against single mothers’. This finding was made in the report, *Confinement and delivery practices in relation to single women confined at the Royal Women’s Hospital 1945–1975*, which was submitted by the RWH to the Senate Inquiry.¹⁴² This report was produced by Emeritus Professor Shurlee Swain, who had unlimited access to the records and archives of RWH. The report outlined that while no evidence of illegal practice or systemic policies had been found, ‘many single mothers suffered as a result of the practices conducted at the hospital and the attitudes of some of the staff’.¹⁴³ The RWH maintained this position before the Committee at a public hearing and also acknowledged the criticism of its apology. Lisa Lynch, the Acting Chief Executive Officer, stated in her evidence:

We also acknowledge that despite the commissioning of the Swain report and the public apology in 2012 there are some mothers who feel that this is not enough, that the

¹³⁸ Julian Pocock, *Submission 57*, p. 6.

¹³⁹ *Ibid.*

¹⁴⁰ Julian Pocock, *Transcript of evidence*, p. 33.

¹⁴¹ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 202.

¹⁴² Dr Sue Matthews, Chief Executive Officer, Royal Women’s Hospital, correspondence, 27 April 2021.

¹⁴³ Dale Fisher, Chief Executive, Royal Women’s Hospital, *Submission to Senate Community Affairs Reference Committee Inquiry into the commonwealth contribution to former forced adoption policies and practices*, submission to Parliament of Australia, Community Affairs Reference Committee, *Commonwealth contribution to former forced adoption policies and practices*, 2012.

Women's has not done enough to publicly acknowledge the pain and hurt that we have caused, and we would like an opportunity to address this in the future.¹⁴⁴

This contradicts the accounts of mothers who gave birth at RWH during the historical forced adoption period. Chapter 3 explores these experiences. Further, as discussed in Section 2.3, the RWH's claim that its practices reflected the social attitudes of the time has been rejected by both the Senate Inquiry and this inquiry.¹⁴⁵

Emeritus Professor Swain provided a submission to the Committee's Inquiry and appeared at a public hearing in a personal capacity. While Professor Swain did not reference the RWH report, she did state:

[the pressure placed on social workers] to declare more and more mothers potentially unfit so that they could meet the needs of their patients, because they wanted to give them a baby. So it is those kinds of pressures, and you will have heard stories that are more extreme versions of that ... in private hospitals and all kinds of places. And all I would say about those stories is the longer I research this, the more I believe them. They called it a black market at the time, but that pressure, those competing pressures, going on all the time made actions which were even outside the law possible, but inside the law they reduced the options available to mothers. It is that pressure that corrupts.¹⁴⁶

2.6.3 Following an apology

Apologies acknowledge harm and allow governments and institutions to take responsibility for past actions. Apologies contribute to healing and reconciliation, but are only the beginning.¹⁴⁷ Lyn Kinghorn summarised it well when she told the Committee '[a]pologies are empty without direct and immediate action'.¹⁴⁸ The Committee is of the view that many of the apologies, including the Victorian Parliament's apology, do not reflect the full criteria for effective apologies as developed by the Canadian Law Reform Commission. This view was shared by various participants.

As Leanne Matton told the Committee:

The federal and state governments have made formal apologies, but they have offered no compensation for costs incurred by the need for therapy and counselling, the cost of searching and all the other losses that go along with this practice, particularly for those of us whose adoptions fail. For me it is like saying, 'I'm sorry for burning your house down, but I'm not going to pay for it'.¹⁴⁹

¹⁴⁴ Lisa Lynch, Acting Chief Executive Officer, Royal Women's Hospital, hearing, Melbourne, 20 July 2021, *Transcript of evidence*, pp. 4, 7.

¹⁴⁵ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, pp. 201–207.

¹⁴⁶ Emeritus Professor Shurlee Swain, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 3.

¹⁴⁷ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 193.

¹⁴⁸ Lyn Kinghorn, *Submission 11*, p. 8.

¹⁴⁹ Leanne Matton, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 11.

Sharyn White of Adoptee Rights Australia spoke to the Committee the day after the eight-year anniversary of the National Apology. Reflecting on this, she told the Committee:

yesterday went by as a blip. There was no media recognition of that. Everybody who probably came out of the woodwork at the time of the apologies has basically either given up or worse, because of the promises that we were made and the expectations we had at that time, and then it has all really basically come to nothing.

As Sue Miiller-Robbie, a mother and experienced social worker, wrote:

My personal and work experience has led me to the belief that forced adoption was government-sanctioned abuse of vulnerable, powerless young women and that the response, to date has been totally inadequate and in fact has contributed to the serious social and mental health impacts experienced by those affected by these policies.¹⁵⁰

The recent public practice of saying sorry for past wrongs, (Julia Gillard 3/2013) has been helpful to validate individual experiences and challenge the validity of societal beliefs, which sadly continue to be held by some sections of our community however it is only a starting point not an end one. I believe that real healing from the hurt caused only happens when all voices are heard, not silenced. When the true level of hurt, pain and suffering is acknowledged, validated, publicly stated and documented. And those responsible take all steps necessary to right the wrongs, offer reparation and ensure that such practices can never be repeated in the future.¹⁵¹

The Committee recognises that saying sorry is not enough to address the trauma of historical forced adoptions and to facilitate healing. For apologies to have long-term, meaningful impact, they need to be followed up with action. Otherwise, they compound the effects of trauma. As one person who is adopted expressed to the Committee:

We know the first step to healing is acknowledgement, and the apology has made space for that, but in witnessing my mum's experience, that was only the start. And to truly heal, they only have meaning when actions are taken. And as with much trauma, the pain lies often less in the event but rather in the ongoing response from our institutions: the secrecy, the disbelief. We are seeing that very present right now. And the lack of action from the initial inquiry I guess exacerbates the original harm from our institutions—from being told to forget, to never remember, and to move on, as my mother was.¹⁵²

Table 2.2 lists the approved private adoption agencies, maternity homes and hospitals operating in Victoria during the relevant period and whether they have apologised for their role in historical forced adoptions. The apologies of those institutions who have apologised are reproduced in Appendix B.

¹⁵⁰ Sue Miiller-Robbie, *Submission 100*, received 31 May 2021, p. 8.

¹⁵¹ *Ibid.*, p. 9.

¹⁵² Name Withheld, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 3.

Wilhelmina Marshall, a mother, told the Committee at a public hearing that:

it [the Committee's inquiry] would have been a perfect opportunity for the churches, charities, hospitals, medical staff, doctors and bureaucrats—for everyone that was involved with those adoption practices—to come on board and extend their sincere apologies to us and say sorry as well, also offering us assistance wherever possible. The acknowledgement of wrongdoing would have been an integral healing step forward for us.¹⁵³

Consequently, the Committee recommends that the institutions listed in Table 2.2 reflect on their involvement in historical forced adoption and what they have done to address the harms caused. Those institutions that have not apologised should genuinely consider whether it is appropriate that they do so.

RECOMMENDATION 1: That the Victorian Government encourage organisations that were operating during the historical forced adoption period in Victoria to reflect on their involvement and policies and practices at the time and issue apologies for harm caused. The apologies should be delivered in accordance with the five criteria of effective apologies as identified in the Inquiry into *Commonwealth contribution to former forced adoption policies and practices*.

Further, additional statements of responsibility or action from non-government organisations should form part of a redress scheme in Victoria. Relationships Australia Victoria recommended to the Committee that the hospitals, institutions, agencies or private clinics involved in forced adoption should acknowledge and recognise the harm they have caused through a direct personal response or apology to individuals.¹⁵⁴ This is explored further in Chapter 7.

RECOMMENDATION 2: Statements of responsibility or individualised apologies from institutions and organisations operating during the historical forced adoption period in Victoria should be included in a historical forced adoption redress scheme in Victoria.

¹⁵³ Wilhelmina Marshall, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 27.

¹⁵⁴ Relationships Australia Victoria, *Submission 15*, p. 10.

Table 2.2 List of institutions operating during the historical forced adoption period in Victoria and their apologies

Institution	Current responsible institution	Apology
Aborigines Welfare Board, 1957–68	Victorian Government	Yes
Anglican Diocese of Melbourne	Anglican Diocese of Melbourne	Yes
Australian Association of Social Workers (AASW)	Australian Association of Social Workers	No. AASW did 'acknowledge' the harm caused to mothers in a submission to the Senate Inquiry and 'acknowledged' the Australian Government apology through a media release but has not issued a specific apology.
Australian Jewish Welfare and Relief Society (1936–2001)	Jewish Care (Victoria) Inc.	No
Australian Medical Association	Australian Medical Association	No
Australian Nursing and Midwifery Federation	Australian Nursing and Midwifery Federation	Yes
Ballarat Female Refuge (1867–1921) and Ballarat Town and City Mission Rescue and Children's Home (1921–41)	Ceased to exist	No
Beaconsfield Babies' Home (1915–46)	Berry Street	Yes
Berry Street Babies' Home and Hospital (1964–75). This was preceded by the Victorian Infant Asylum (1877–1902), Victorian Infant Asylum and Foundling Hospital (1902–06) and Foundling Hospital and Infants' Home (1906–64)	Berry Street	Yes
Bethany Babies Home (1928–77), Geelong Female Refuge (1868–1928)	Bethany Community Support	No
Baxter House Maternity Hospital (1954–88)	Geelong Hospital	No
Ballarat Base Hospital	Ballarat Health Services	No
Box Hill Hospital (1956–current)	Box Hill Hospital	No
Carlton Refuge (1854–1949)	Ceased to exist	No
Catholic Family Welfare Bureau (1953–98)	CatholicCare	No. CatholicCare told the Committee they are in the process of issuing an apology.
Child Care Service of the Uniting Church	Uniting Church Victoria Tasmania	Yes
Church of England Diocesan of Gippsland (St Mary's)	Anglican Diocese of Gippsland	No
Church of Christ, Department of Social Services	Church of Christ	No
Commonwealth Government	Commonwealth Government	Yes

Institution	Current responsible institution	Apology
Echuca District Hospital (1882–1993)	Echuca Regional Health	No
Evangelical Lutheran Church of Australia (1836–current)	Lutheran Church in Australia (Victorian District)	No
Fairfield Girls' Memorial Home (1922–73)	Uniting Church Victoria Tasmania	Yes
Footscray and District Hospital (1953–72), followed by Western General Hospital (1972–89)	Footscray Hospital, Western Health	No
Hartnett House (1955–82). Amalgamated from Melbourne City Mission Maternity Home (1900–55) and Melbourne City Mission Toddlers' Home (1935–55)	Melbourne City Mission	No. Melbourne City Mission has apologised to the Forgotten Australians but not specifically for historical forced adoption in Victoria.
Lutheran Adoption Agency	Unknown	No
Latter Day Saints Social Service Adoption Agency	Melbourne Stake Relief Society	No
MacKillop Family Services	MacKillop Family Services	Yes
Melbourne Stake Relief Committee of the Church of Latter-Day Saints	Melbourne Stake Relief Society	No
Melbourne Family Care Organisation (1965–87)	Oz Child	No
Methodist Department of Child Care, later merged with the Presbyterian Social Services Department to form the Presbyterian and Methodist Child Care Service (1971–77)	Uniting Church Victoria Tasmania	Yes
Methodist Babies' Home (1929–74) or Copelen Street Family Centre	Uniting Church Victoria Tasmania	Yes
Mercy Maternity Hospital, later renamed Mercy Hospital for Women	Mercy Health	No. Catholic Health Australia and the Sisters of Mercy issued a joint apology during the Senate Inquiry but a tailored apology to those affected by historical forced adoptions in Victoria has not been issued.
Mission of St James and St John, Kedesh Maternity Home (1926–86)	Anglicare	No. Anglicare has supported the national apology to survivors of institutional child sexual abuse and the NSW Anglican Church has issued a forced adoption apology but a tailored apology to those affected by historical forced adoptions in Victoria has not been issued.
Mission to the Streets and Lanes (1886–1997)	Anglicare	No
Presbyterian Babies' Home (1928–77)	Uniting Church Victoria Tasmania	Yes
Presbyterian Sisterhood Home (1909–78)	Uniting Church Victoria Tasmania	Yes

Institution	Current responsible institution	Apology
Preston and Northcote Community Hospital (1942–59)	Northern Health took stewardship in 2003	No
Queen Victoria Memorial Hospital	Monash Health	Yes
Royal Women's Hospital	Royal Women's Hospital	Yes
St Gabriel's Babies' Home (1935–74)	Anglicare	No
St George's Hospital (1912–49)	Community of the Holy Name	No
St John of God Hospital	St John of God Health Care	No
St Joseph's Receiving Home (1902–85) and Grattan Street Home for Unwed Mothers	MacKillop Family Services	Yes
St Joseph's Foundling Hospital (1901–75)	MacKillop Family Services	Yes
St Joseph's Nursery (1959–76)	MacKillop Family Services	Yes
St Joseph's Receiving Home (1902–85)	MacKillop Family Services	Yes
St Vincent's Airlie Hospital	Unknown	No
Salvation Army	Salvation Army	No. The Salvation Army NSW, Queensland and Australian Capital Territory has apologised but an apology specific to Victoria has not been issued.
Seventh Day Adventist Welfare Organisation	Seventh-day Adventist Church	No
The Harbour (1898–1994)	The Salvation Army	No
The Haven Maternity Home (1897–1988)	The Salvation Army	No
The Victorian Society for the Prevention of Cruelty to Children	Children's Protection Society	No
Uniting Church Victoria Tasmania	Uniting Church Victoria Tasmania	Yes
Vaucluse Hospital (1930–56)	Brunswick Private Hospital	No
Victoria Government	Victoria Government	Yes
Victoria Police	Victoria Police	No
Wangaratta Hospital	Unknown	No
Warrnambool Hospital	St John of God Health Care	No
Winston Private Hospital (1942–56)	Ceased to exist	No

Source: This table is collated based on research and internet searches, as well as the webpages <https://www.findingrecords.dhhs.vic.gov.au/faqs/private-adoption-agencies> and <https://forcedadoptions.naa.gov.au/resources/institutions>. This list does not imply any wrongdoing, it is simply a record of institutions operating at the time. It is also not exhaustive. Appendix B includes the apologies made by the relevant organisations.

2.7 Previous reviews and inquiries into historical forced adoptions

The matter of historical forced adoption has been examined in various jurisdictions over many years. It was evident to the Committee that this has contributed to the frustration of many inquiry participants who have been advocating for truth and justice for numerous years and want to see change.

The Committee recognises that it is retraumatising for mothers to relive their experiences repeatedly, particularly when inquiry recommendations are not implemented by relevant governments and the issue of historical forced adoption does not gain traction in the broader community. The Committee hopes this report contributes to change and helps mothers achieve justice, acknowledgement and healing.

2.7.1 Australian parliamentary inquiries

Commonwealth contribution to former forced adoption policies and practices

The Senate Inquiry was referred in November 2010 to the Community Affairs References Committee and the final report was tabled in February 2012. It received 418 submissions, held 10 days of public hearings and travelled to all capital cities except Darwin. The report focused on the contribution of Commonwealth policies and practices to forced adoption and the Commonwealth's role 'in developing a national framework to assist states and territories to address the consequences'.¹⁵⁵

The Senate Inquiry made 20 recommendations, including that:

- state and territory governments and non-government institutes apologise, acknowledge the unethical or illegal past adoption practices and take responsibility for former practices
- Commonwealth and state governments establish 'affordable and regionally available' counselling and professional support services that are tailored to the needs of those affected by historical forced adoption practices
- the Commonwealth fund peer support groups to promote public awareness, document evidence, assist with information services and organise memorial events
- the Commonwealth lead discussions on a financial reparation scheme
- governments and responsible institutions establish grievance mechanisms to receive and address complaints

¹⁵⁵ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 1.

- integrated birth certificates are introduced in all states and a process is established to add fathers' names to birth certificates
- new principles governing post-adoption information and contact processes are introduced
- the Commonwealth fund family tracing and support services, states extend existing Find and Connect information services to include adoptions, non-government organisations identify all records in their possession and make these available to those seeking their records, and more generally the process for access to information be easier and cheaper
- the Commonwealth commissions an exhibition that documents the experience of those affected by historical forced adoption.¹⁵⁶

An Australian Government Forced Adoptions Implementation Working Group (FAIWG) was created to track the progress of the recommendations, although it was disbanded in June 2014. FAIWG was chaired by the Hon Nahum Mushin AM, who gave evidence to this inquiry, and comprised members representing a range of people affected by historical forced adoption in Australia. Representing Victoria, this included Gary Coles, father; Leigh Hubbard, adoptee; and Senator Bridget McKenzie, Senator for Victoria. In its final report, published in December 2014, FAIWG indicated that its work was 'collegial' and 'well-received', but was sometimes 'challenging' given the complex nature of providing effective support to people affected by forced adoption. Further, 'despite the best efforts of all involved, it was not possible to achieve desired outcomes in an optimal timeframe in all instances'.¹⁵⁷

Some of the key initiatives implemented by the Australian Government included \$11.5 million in funding for 'concrete measures', including \$5 million to improve access to support services, counselling and record searches; \$3.5 million to increase the capacity of the Access to Allied Psychological Services (ATAPS) program to refer people to health professionals and to develop training for mental health professionals; and \$1.5 million to the National Archives of Australia (NAA) to document people's experiences of historical forced adoption through a website and exhibition.¹⁵⁸ A national framework for implementing recommendations was established through the Standing Council on Community and Disability Services (SCCDS).¹⁵⁹

VANISH submitted to the current inquiry that the only recommendations fully implemented in Victoria were the government apology and adding fathers to original birth certificates without having to apply to court. It indicated that limited to no progress has been made regarding grievance mechanisms, a redress scheme and birth certificate changes, while other recommendations have made some progress.¹⁶⁰ In regard to partially implemented recommendations, VANISH commented:

¹⁵⁶ Ibid., pp. viiii-xii.

¹⁵⁷ Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, Australian Government, Canberra, 2014, p. 3.

¹⁵⁸ Ibid., p. 7.

¹⁵⁹ VANISH Inc., *Submission 53*, p. 44.

¹⁶⁰ Ibid., pp. 78, 57-58.

- The SCCDS is not coordinated well and the absence of central oversight means the progress of implementing recommendations is not monitored.
- The funding of \$11.5 million provided by the Australian Government is not adequate.
- The National Apology coincided with a leadership spill that detracted from media attention that should have been dedicated to historical forced adoption and raising awareness of the issue. This was devastating to mothers and others affected by forced adoptions.
- The ATAPS funding was hard to access, inadequately publicised and it is not known if the funds were used by people affected by historical forced adoptions. The training developed by the Australian Psychological Society to assist mental health professionals diagnose and treat those affected by historical forced adoptions appears to have a high drop-out rate for online courses and does not have a broad enough reach.
- Specialised support and counselling provided through the Forced Adoption Support Services (FASS), which in Victoria is contracted to Relationship Australia Victoria essentially duplicates the services provided by the State, uptake has been poor and satisfaction rates are low.
- The small grants program of \$5,000 has resulted in some positive outcomes in Victoria, but the process can be overly bureaucratic, the selection criteria restrictive and giving grants to the religious organisation responsible for historical forced adoptions is problematic.
- Changes to post-adoption information and contact services have mostly been achieved in Victoria, but there are limitations to the service and it is not advertised widely.
- The family tracing and support service designated in Victoria duplicates the role of existing organisations and has been awarded to an organisation with little expertise in historical forced adoption.
- Replacing Victoria's state-based find and connect service relating to adoption with a federal service, Find and Connect, contradicts the intention of the Senate Inquiry's recommendation.
- VANISH is not aware if any principles for accessing personal information have been established in Victoria, but generally, people experience difficulties accessing their records.
- The exhibition to document the experiences of those affected by historical forced adoptions has been partially accomplished. The NAA's online curation, the Forced Adoption History Project, and the travelling exhibition, *Without Consent*, generally received positive feedback. However, the exhibition's reach was limited and the Forced Adoption History Project is not taking any additional accounts from those affected by historical forced adoptions.¹⁶¹

161 Ibid., pp. 44–56, 58–61.

VANISH's comments are supported by FAIWG, which also noted in its *Final report to The Honourable Scott Morrison MP Minister for Social Services* that monitoring of ATAPS had not been optimal and it received a large number of complaints about the program. Further, problems with ATAPS worsened due to Victoria reducing the remaining available funds when the program finished in June 2014.¹⁶² FAIWG made several further recommendations to the Australian Government to enhance the implementation of recommendations, including that it improve community awareness about historical forced adoption, designate 21 March as a memorial day and commit to providing ongoing funding for services dedicated to people affected by historical forced adoption.¹⁶³ The implementation of these recommendations has been mixed.

Inquiry into local adoption

The House of Representatives Standing Committee on Social Policy and Legal Affairs conducted an *Inquiry into local adoption* in 2018. This inquiry considered how to establish a nationally consistent local adoption framework in Australia and the viability of using adoption as an alternative to out-of-home care to create stability and permanency for children.¹⁶⁴ The inquiry discussed that adoption rates in Australia are the second lowest in the developed world, but Australia simultaneously has a growing number of children in out-of-home care. The report identified a key barrier to increasing adoption in Australia is the 'fear of repeating the mistakes of past forced adoption policies and practices'.¹⁶⁵

The report recommended a national framework for adoption, one that specifically prioritises legal permanency for children, open adoption as an alternative to out-of-home care, facilitating foster care as a means to adopt and that 'family preservation and cultural considerations are important, but not more important than the safety and wellbeing of the child'.¹⁶⁶

The recommendations from the report were contested, as evidenced by the inclusion of a Labour Party Dissenting Report which did not support the Committee's view as it 'ultimately poses a return to Australia's reprehensible legacy of permanently removing First Nations children from their families'.¹⁶⁷

2.7.2 State parliamentary inquiries

Prior to the Senate Inquiry, the Parliament of Tasmania tabled the report, *Inquiry into adoption and related services between 1950 and 1988* in 1999 (Tasmanian Inquiry) and the Standing Committee on Social Issues at the Parliament of NSW tabled the report

¹⁶² Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, p. 11.

¹⁶³ *Ibid.*, pp. 17, 21.

¹⁶⁴ Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption*, November 2018, p. xi.

¹⁶⁵ *Ibid.*, pp. 5–6, viii–x.

¹⁶⁶ *Ibid.*, pp. xvii–xviii.

¹⁶⁷ *Ibid.*, p. 103.

Releasing the past: adoption practices 1950–1998 in 2000 (NSW Inquiry). There were similarities in the key findings and recommendations made by these inquiries, but also key differences.

The NSW Inquiry was described as ‘lengthy, complex and challenging’ and differed from the Senate Inquiry in that it acknowledged differing views on adoption at the time, but reasoned ‘that to a large degree adoption practices reflected the values and attitudes prevalent in the 1950s and 1960s’.¹⁶⁸ The NSW Inquiry received over 300 submissions, heard from 57 witnesses and made 20 recommendations.¹⁶⁹

Recommendations included additional funding to the Post Adoption Resource Centre to develop a post-adoption resource kit; grants for adoption counselling, training and research; funding specific to rural and regional areas; increased uniformity of laws across states; a public acknowledgement from the NSW Government of the ‘misguided’ and sometimes unlawful practices that may have occurred; public education campaigns; and funding for mothers to collate and publish testimonies of their adoption experiences.¹⁷⁰

The Tasmanian Inquiry received 59 submissions and collected evidence from 40 witnesses at public hearings. Its main findings were that past adoptions had significantly affected those who gave evidence and if the emotional effects were known at the time, many adoptions would not have occurred. Further, the Inquiry made no definitive conclusion about whether the practices were unethical or unlawful. It recommended the provision of free counselling, waiving search fees for adoption documents, making the medical history of natural families available to the adoptive parents and people who are adopted, greater scrutiny of current adoption and foster care systems and that those who contributed to the Inquiry should be supported to publish their accounts as an important historical document.¹⁷¹

2.7.3 Comparable Senate inquiries

Bringing them home: national inquiry into the separation of Aboriginal and Torres Strait Islander Children from their families

The *Bringing them home* report was published in 1997 and considered the ‘past and present practices of separation of Indigenous children from their families’.¹⁷² Its 54 recommendations included funding to document the testimony of the Stolen Generations, the making of reparation and compensation, the creation of a national

¹⁶⁸ Parliament of New South Wales, Legislative Council Standing Committee on Social Issues, *Releasing the past: adoption practices 1950–1998*, pp. xii–xiii.

¹⁶⁹ *Ibid.*, pp. xiv–xvi, 1

¹⁷⁰ *Ibid.*, pp. xiv–xvi.

¹⁷¹ Parliament of Tasmania, Joint Select Committee, *Inquiry into adoption and related services 1950–1988*, 1999, pp. 11–13.

¹⁷² Parliament of Australia, Human Rights and Equal Opportunity Commission, *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, p. 15.

'Sorry Day' to commemorate the Stolen Generations, increased professional training on the effects of forcible removal, funding for family reunion work, prohibitions on the destruction of records and increased access and preservation of records.¹⁷³

A key recommendation of the report was an apology to the Stolen Generations. In comparison to the apology for historical forced adoptions, it took many years for this to be implemented. The former Prime Minister, the Hon John Howard MP, did not issue a full apology on the grounds that current generations should not accept guilt for past actions. He also believed the laws at the time were just and deemed to be in the best interests of the child, and that an apology may have consequences in terms of liability. An apology was eventually made on 13 February 2008 by former Prime Minister, the Hon Kevin Rudd MP.¹⁷⁴ This apology was considered 'a symbolically potent and practically meaningful event' and was 'delivered sensitively in an appropriate setting and context'.¹⁷⁵ Further, while a commitment to a reparation scheme was not made, the apology was 'accompanied by significant undertakings to improve the material, physical and psychological wellbeing of Indigenous Australians more broadly'.¹⁷⁶

The Healing Foundation, a national Aboriginal and Torres Strait Islander organisation, published a report 20 years after *Bringing them home*, which collated the response of governments and implementation of recommendations. The Healing Foundation remarked that while some progress had been made, 'there has never been a collaborative and systematic attempt to address the recommendations the report made'.¹⁷⁷ Positive outcomes included the apology, the opportunity for members of the Stolen Generations to tell their stories, increased support for family reunion services and a greater focus on the wellbeing of Aboriginal and Torres Strait Islander communities. However, generally, the Government response was reported as underfunded, incoherent and badly coordinated.¹⁷⁸

An apology was issued in Victoria by the then Premier, the Hon Steve Bracks MP, on 9 August 2006. This met most of the key elements of a meaningful apology and most people were satisfied with the content of the apology, although stakeholders also expressed several reservations. This included an absence of accompanying concrete measures and that the delivery of the apology lacked an appropriate sense of occasion and ceremony.¹⁷⁹

¹⁷³ *Bringing them home, Report recommendations*, n.d., <<https://bth.humanrights.gov.au/the-report/report-recommendations>> accessed 10 June 2021.

¹⁷⁴ Coral Dow, Parliament of Australia, *Sorry: the unfinished business of the Bringing them home report*, 2008, <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0708/BringingThemHomeReport> accessed 10 June 2021.

¹⁷⁵ Parliament of Australia, Community Affairs References Committee, *Lost Innocents and Forgotten Australians revisited* June 2009, p. 18.

¹⁷⁶ *Ibid.*, pp. 18–19.

¹⁷⁷ Healing Foundation, *Bringing them home 20 years on: an action plan for healing*, 2017, p. 6.

¹⁷⁸ *Ibid.*, p. 7.

¹⁷⁹ Parliament of Australia, Community Affairs References Committee, *Lost Innocents and Forgotten Australians revisited* pp. 29–30.

Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children

The *Forgotten Australians* report was published in 2004. This made 39 recommendations, including apologising for past practices; that state governments should consider removing the statute of limitations; establishing a national reparations fund; creating complaints and grievance mechanisms; increasing access to information and records; providing advocacy, support and counselling services; increasing health care, aged care and housing that caters to the needs of care leavers; increasing recognition through memorials and exhibitions; and creating an oral history project.¹⁸⁰

In 2009, the Senate's Community Affairs References Committee published a progress report on the implementation of recommendations and found:

despite some areas of improvement, the implementation of the recommendations of the *Forgotten Australians* report has in many ways been poor, and most particularly in critical areas where leadership is required by the Commonwealth government, both to ensure adequate recognition of the historical truths acknowledged in its original response, and to fashion a truly coordinated national response that delivers practical services and outcomes for those who suffered the horrific abuse and shameful neglect in care over the last century.¹⁸¹

Initially, the Commonwealth did not issue an apology based on the justification that it did not have responsibility for past practice.¹⁸² However, former Prime Minister, the Hon Kevin Rudd MP, gave an unqualified apology on 16 November 2009.¹⁸³ Subsequently, the Victorian Government provided funding to agencies supporting Forgotten Australians, including VANISH, the Care Leavers Australasia Network and the Child Migrants' Trust. The Victorian Government also undertook a consultation process to enable Forgotten Australians to contribute to the design of a support service and used their views to inform the tender process for the new support service. The funding was awarded to Berry Street, in partnership with Relationships Australia Victoria.¹⁸⁴

2.7.4 Other inquiries and Victorian reviews

Review of the *Adoption Act 1984*

In 2017, the VLRC published its report, *Review of the Adoption Act 1984*, and acknowledged that:

Adoption law and practice deeply and intimately affects those to whom it applies. The effects are life-long. They do not cease upon the adopted child reaching adulthood.

¹⁸⁰ Parliament of Australia, Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, pp. xix–xxviii.

¹⁸¹ Parliament of Australia, Community Affairs References Committee, *Lost Innocents and Forgotten Australians revisited* p. 207.

¹⁸² *Ibid.*, p. 16.

¹⁸³ Alliance for Forgotten Australians, *Apologies*, n.d., <<https://forgottenaustralians.org.au/about/apologies>> accessed 10 June 2021.

¹⁸⁴ Open Place, *Our story so far*, n.d., <<https://www.openplace.org.au/about-us/our-story-so-far>> accessed 16 June 2021.

They have intergenerational impacts and consequences. The effects reverberate widely. They involve significant social and moral issues affecting society as a whole.¹⁸⁵

Several of the VLRC's recommendations impacted people affected by historical forced adoption, including that:

- integrated birth certificates be made available for all future and past adoptions
- financial grants and post-adoption support services be made available to people who are adopted, natural parents, adoptive parents and other parties to an adoption
- access to adoption information be improved.¹⁸⁶

These are explored in greater depth in subsequent chapters.

National research study on the service response to past adoption practices

In 2012, AIFS published a *National research study on the service response to past adoption practices*, which aimed to improve the evidence base and understanding of issues related to former adoption practices. It included the experience and perspectives of mothers, people who are adopted, fathers, adoptive parents, other family members and service providers, and considered all past adoption practices, not just experiences of force. It had a particular focus on support services provided to affected individuals and best practice in this area.¹⁸⁷ As similar issues are canvassed in this inquiry, it is not necessary to discuss this report in depth.

Royal Commission on human relationships

In 1997, a Royal Commission on human relationships published an extensive report that included reference to 'the social, economic, psychological and medical pressures on women in determining whether to proceed with unplanned or unwanted pregnancies'. It made over 500 recommendations, many of which were not acted upon, but were considered pivotal in advancing discussions on traditionally taboo topics.¹⁸⁸

The report considered adoptions and drew the conclusion that adoption was generally seen as the least-preferred option for women experiencing unwanted pregnancies.¹⁸⁹ It observed that an increasing number of unmarried mothers, including teenagers, were keeping their children.¹⁹⁰ The Royal Commission discussed that some institutions raised concerns about this trend in terms of the ability of young single mothers to raise a child,

¹⁸⁵ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, Melbourne, 2017, p. vi.

¹⁸⁶ Ibid., pp. xxvii-xli; VANISH Inc., *Submission 53*, pp. 129-131.

¹⁸⁷ Kenny, et al., *Past adoption experiences*, pp. xi-xii.

¹⁸⁸ Analysis & Policy Observatory, *Royal Commission on Human Relationships*, n.d., <<https://apo.org.au/node/34438>> accessed 10 June 2021.

¹⁸⁹ Commonwealth of Australia, *Royal Commission on Human Relationships: Final report Volume 4: The family*, Australian Government Publishing Service, Canberra, 1997, p. 112.

¹⁹⁰ Ibid., p. 102.

as well as how this would impact the number of couples looking to adopt, but took the view that young mothers should be supported to learn how to raise their child.¹⁹¹ Further, the Royal Commission stated:

We do not consider that there should be any special rules for dispensing with consent merely on the basis that the mother is young and single. We believe that the first right of a child is that its natural parent be given every possible assistance to care for the child. Attempts to help the family as a whole should come before consideration of the question of adoption.¹⁹²

The Royal Commission received reports on the pressures placed on women to place their babies for adoption, including from hospitals, adoption agencies, families and the father.¹⁹³ While it did not specifically address these reports, the Royal Commission emphasised the need for pre- and post-adoption support services and recommended that state governments reconsider the requirement for adoption records to be sealed.¹⁹⁴

2.7.5 International reviews

The Committee understands that the issue of forced adoption is not unique to Australia. Ireland and Canada have also undertaken inquiries into past adoption practices and there is current advocacy in the United Kingdom for an apology to be made to mothers.

The shame is ours: forced adoptions of unmarried mothers' babies in post-war Canada

In June 2018, the Standing Senate Committee on Social Affairs, Science and Technology in Canada undertook an inquiry titled *The shame is ours: forced adoptions of unmarried mothers' babies in post-war Canada* (Canadian Inquiry). The Canadian Inquiry confirmed that forced adoption practices were widespread in Canada and also noted similarities with the practices and the culture of secrecy in Australia.¹⁹⁵ The Inquiry recommended a formal apology be issued by the Canadian Government; reparations, including through improved counselling, a public awareness campaign, and an online means for mothers and people who are adopted to share their stories; improved access to adoption files; and that the Government call on religious and child welfare organisations to examine their roles in forced adoption practices and accept responsibility for any harms caused.¹⁹⁶

¹⁹¹ Ibid., pp. 102–104.

¹⁹² Ibid., p. 106.

¹⁹³ Ibid., p. 107.

¹⁹⁴ Ibid., pp. 107, 112.

¹⁹⁵ Parliament of Canada, Standing Senate Committee on Social Affairs, Science and Technology, *The shame is ours*, July 2018, pp. 1, 13–14.

¹⁹⁶ Ibid., pp. 17–18.

Mother and baby homes: Commission of investigation final report, Ireland

In Ireland, an investigation was recently undertaken into the operation of mother and baby homes. The extensive report, *Mother and baby homes: Commission of investigation final report* was published in October 2020 and considered the period from 1922 to 1998, a period that saw rapid social and institutional change and a diverse range of mother's experiences. The report noted that unmarried women who became pregnant were often treated harshly by both the father of the child and their families and this was condoned by the Church. Often, however, the institutions were the only place women could seek refuge when they did not have the support of the father or family. Many women had no choice but to enter a mother and baby home. Adoption was not legal in Ireland until 1953: before this period, most children stayed in institutional care and afterwards, adoption became the most likely outcome.¹⁹⁷ The report concluded that 'legal adoption was a vastly better outcome than the alternatives previously available',¹⁹⁸ and that while mothers had limited choice, there was little evidence that the children were forcibly taken from their mothers.¹⁹⁹ The report noted in particular that they did find practices equivalent to what was uncovered in Australia's Senate Inquiry.²⁰⁰

The report was criticised by the survivors of the mother and baby homes, who were hurt, disappointed and angered by the findings. The survivors rejected the Commission's finding that there was little evidence of the forcible removal of children based on their own lived experience.²⁰¹ The Ireland Prime Minister, Micheál Martin, apologised in Parliament on 13 January 2021, as did the Catholic Church in Ireland.²⁰²

The Commission found that some of the most concerning aspects of the mother and baby homes in Ireland included a very high infant mortality rate for illegitimate children (almost twice the national average and 15% of all children in institutions), poor living conditions, traumatising birth experiences and while physical abuse was uncommon many mothers suffered emotional abuse and the environment was 'cold and seemingly uncaring'.²⁰³ The Commission recommended that improvements should be made to family tracing and information access and that redress be provided through counselling and medical support.²⁰⁴

197 Department of Children, Equality, Disability, Integration and Youth, 'Executive summary', in, *Mother and baby homes: Commission of investigation final report*, Ireland, 2021, pp. 1-4.

198 Ibid., p. 4.

199 Department of Children, Equality, Disability, Integration and Youth, 'Recommendations', in, *Mother and baby homes: Commission of investigation final report*, Ireland, 2021, p. 9.

200 Department of Children, Equality, Disability, Integration and Youth, 'Executive summary', p. 9.

201 BBC News, *Irish mother and baby homes commission to be dissolved*, 28 February 2021, <<https://www.bbc.com/news/world-europe-56197478>> accessed 24 June 2021; BBC News, *Irish mother-and-baby homes: Survivors angered by inquiry findings*, 16 February 2021, <<https://www.bbc.com/news/world-europe-56083615>> accessed 24 June 2021.

202 Microsoft News, *Ireland makes landmark apology for church-run homes, where thousands of infants died*, 13 January 2021, <<https://www.msn.com/en-us/news/world/ireland-makes-landmark-apology-for-church-run-homes-where-thousands-of-infants-died/ar-BB1cJqO3>> accessed 24 June 2021.

203 Department of Children, Equality, Disability, Integration and Youth, 'Executive summary', pp. 4-6.

204 Department of Children, Equality, Disability, Integration and Youth, 'Recommendations', p. 1.

United Kingdom

In the United Kingdom, demands for the Government to follow in the footsteps of Australia and apologise for historical forced adoptions have resurfaced this year. It is estimated that up to 250,000 unmarried women were coerced into giving their babies up for adoption in the 1950s to 1970s.²⁰⁵ Requests for an apology were first made in 2018, after the Government rebuffed calls for an inquiry into historical forced adoption on the grounds that there was insufficient justification for it.²⁰⁶

²⁰⁵ BBC News, *Mothers demand apology over forced adoptions*, 25 May 2021, <<https://www.bbc.com/news/uk-57231621>> accessed 11 June 2021.

²⁰⁶ Movement for an Adoption Apology, *Press and media coverage*, n.d., <<https://movementforanadoptionapology.org/press>> accessed 11 June 2021; Harriet Sherwood, *The Guardian*, *MPs to demand apology for forced adoptions in UK*, 7 July 2018, <<https://www.theguardian.com/society/2018/jul/07/mps-to-demand-apology-forced-adoptions-uk>> accessed 11 June 2021.

3

Experiences of mothers

We deplore the shameful practices that denied you, the mothers, your fundamental rights and responsibilities to love and care for your children. You were not legally or socially acknowledged as their mothers. And you were yourselves deprived of care and support.

To you, the mothers who were betrayed by a system that gave you no choice and subjected you to manipulation, mistreatment and malpractice, we apologise.

We say sorry to you, the mothers who were denied knowledge of your rights, which meant you could not provide informed consent. You were given false assurances. You were forced to endure the coercion and brutality of practices that were unethical, dishonest and in many cases illegal.

We know you have suffered enduring effects from these practices forced upon you by others. For the loss, the grief, the disempowerment, the stigmatisation and the guilt, we say sorry.¹

One of the most important components of this inquiry was listening to mothers whose newborn babies were forcibly removed from them and giving them the time and a safe space to share their heartbreaking and traumatic experiences. The Committee understands that for mothers, there is power and healing in being able to speak their truth. Brenda Coughlan of Independent Regional Mothers (IRM) stated in her evidence to the Committee:

Truth stands alone and is irrevocable, and it is about human lives. Mothers, including Indigenous and young migrant girls, did not give up their babies, they were already gone—babies abducted, motherhood exterminated to make mothers dead to their own newborn babies.²

This is amplified when the truth has been hidden behind a cloak of secrecy, shame and stigma for many years. As Sandra Collins submitted:

My purpose in telling my story is to reclaim my sense of dignity that was stolen from me. Every step I take towards my healing frees me from my traumatic past.³

Many mothers spoke of their own truth and experience of being subject to the policies and practices of historical forced adoption. Many also spoke on behalf of other women who could not contribute to this inquiry as their silence continues to be compelled by

1 Attorney-General's Department, Australian Government, *National Apology for Forced Adoptions*, 26 March 2013, <<https://www.ag.gov.au/families-and-marriage/publications/national-apology-forced-adoptions>> accessed 25 May 2021.

2 Brenda Coughlan, Spokesperson, Independent Regional Mothers, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 1.

3 Sandra Collins, *Submission 105*, received 28 June 2021, p. 1.

the shame and secrecy that was imposed upon them. Lyn Kinghorn told the Committee at a public hearing:

I read this statement today on behalf of not only June and myself, but also for those who just could not survive the lies and cover-ups—mothers who suffered abduction only to learn their children had died or were institutionalised, mothers who never knew there was an inquiry or apologies, mothers who could not keep up the fight. I believe many are still held silent by the perceived shame, or the perceived shame still held over them by others. Please support us, we who have lived this perceived shame, by saturating Victoria and beyond with the truth.⁴

The culture of secrecy, humiliation and stigma was felt by mothers at every stage of their journey and it continues to impact and traumatise them.⁵ Nancy Johnson expressed this when she said:

We were told to start a new life as if nothing had happened ... I felt a failure, I did not share with anyone, living a lie and my dark secret I kept buried ... I have to carry the stigma until the day I die.⁶

Barbara Pendrey wrote of her experience in her submission, stating:

The fear, shame, isolation, loneliness, the sense of abandonment was overwhelming ... I went into robotic mode and have stayed that way, I think, ever since.⁷

The evidence received by the Committee highlighted the ‘systematic disempowerment’⁸ of mothers throughout the pregnancy, birth, adoption process and life afterwards. This was reinforced by families, religious institutions, health professionals, governments and society more broadly.

The evidence from mothers is discussed in the next two chapters. This chapter uses the testimonies from submissions and public hearings to follow the sequential trajectory of mothers’ experiences: from mistreatment during their pregnancies at home, in the community, in maternity homes and hospitals, through to their mistreatment during the adoption process. It concludes by considering mother’s experiences accessing their hospital records.

The Committee has strived to use the evidence of mothers as much as possible in this chapter, however, due to a large amount of evidence received, some of which is also confidential, the Committee recognises that not every experience has been included. The Committee hopes it has done justice to mothers and that this chapter accurately reflects most of their experiences.

⁴ Lyn Kinghorn, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 2.

⁵ *Ibid.*, p. 1; June Smith, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 3.

⁶ Nancy Johnson, *Submission 8*, received 20 January 2020, p. 1.

⁷ Barbara Pendrey, *Submission 1, Attachment 1*, received 14 November 2019, p. 1.

⁸ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. 44.

The Committee is grateful to all mothers who relived the trauma in order to provide evidence. It was incredibly valuable to hear from mothers first hand and use their evidence to inform the recommendations of this report.

The Committee acknowledges that some of the content of this chapter may be distressing or challenging to read. If you require assistance, please reach out to the contacts listed on page xxxix of this report.

3.1 Experiences of mothers at home, in their communities and at maternity homes

Many mothers who became pregnant described themselves as being young, innocent and naive.⁹ Robyn Flanagan submitted:

Being young, scared and vulnerable I felt powerless to assert myself to seek support.¹⁰

Some women referred in their evidence to the vulnerability of young women at that time due to limited sex education and the power imbalance between men and women. For example, Judy McHutchison explained in her submission that young women who became pregnant in the early to mid-20th century were not typically provided with sex education:

Despite the enourmous [sic] power imbalance between men and women, women were required to negotiate unchaperoned dating with men usually over a period of years. In a culture which condoned and encouraged the sexual exploitation of women, women were very vulnerable. Knowledge of the means to avoid pregnancy was deliberately withheld by the school system, by the medical profession and often by a women's own parents.¹¹

This was reflected in the following quotes from mothers:

Like many mothers of loss, I was from a family where sexual relationships were not discussed. My parent's ignorance and my age and vulnerability has caused more trauma in my life than I could ever have imagined.¹²

Uninformed in contraception, conception and pregnancy, I was unaware of the changes to my body until I became repeatedly physically ill and a friend gently told me I was 'pregy'.¹³

⁹ Yvonne May, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 27; Yvonne May, *Submission 69*, received 25 June 2020, p. 27; Name Withheld, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 21; Thelma Adams, *Submission 40*, received 2 March 2020, p. 1; Name Withheld, *Submission 51*, received 22 March 2020, p. 1; Sue Miiller-Robbie, *Submission 100*, received 31 May 2021, p. 1; Wilhelmina Marshall, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 25.

¹⁰ Robyn Flanagan, *Submission 65*, received 17 June 2020, p. 1.

¹¹ Judy McHutchison, *Submission 72, Attachment 1*, received 26 June 2020, p. 3.

¹² Name Withheld, *Submission 112*, received 28 July 2021, p. 1.

¹³ Name Withheld, *Submission 111*, received 16 July 2021, p. 2.

The Committee also received evidence of women's pregnancies being the result of rape. Judith Hendriksen wrote that she became pregnant after being raped, but because she did not receive any sex or consent education, she did not know this until many years later.¹⁴ Further, Lynda Klingberg submitted:

it was the sign of the times that parents, mothers didn't speak of sex education, my mum never did. Pity, that conversation may have stopped the ongoing trauma I now suffer. It is always with me, relentless.¹⁵

After becoming pregnant, young women had to then face their families and communities. The Committee heard that some women tried to keep their pregnancies secret for as long as possible or tried to ignore the pregnancy altogether.¹⁶ When they did tell their families, mothers reported feeling humiliation, shame and guilt.¹⁷ A mother wrote in her submission:

Being an unmarried mother was seen as terrible from all of society. What would people say? Would there be talking behind our backs? I felt a lot of shame and guilt. This was magnified when I went home and told my parents.¹⁸

Another mother stated:

When I found out I was pregnant the shame & guilt that was put on you was so hurtful, you had no support it was just expected that you wouldn't keep your baby, being from a small country town was the worst part for my mother, the shame to the 'family name' was all I can remember her saying.¹⁹

Mothers described to the Committee the reaction they received from their families and communities when telling them they were pregnant, including being placed under pressure to have abortions.²⁰ While some families were supportive,²¹ others were not.²² As Judy Stiff wrote in her submission:

When I told my parents they were in shock, devastated, My mum was hysterical, Dad tried to commit suicide.²³

¹⁴ Judith Hendriksen, *Submission 78*, received 9 September 2020, p. 2.

¹⁵ Lynda Klingberg, *Submission 36*, received 28 February 2020, p. 1. See also Name Withheld 3, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 37; Judith Hendriksen, *Submission 78*, p. 1.

¹⁶ Name Withheld, *Submission 37*, received 28 February 2020, p. 1; Thelma Adams, *Submission 40*, p. 1; Marilyn Murphy, *Submission 61*, received 3 June 2020, p. 1; Yvonne May, *Submission 69*, p. 1; Margie Broughton, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 44; Emma Maher, *Submission 107*, received 30 June 2021.

¹⁷ Lynda Klingberg, *Submission 36*, p. 1; Debra Thurley, *Submission 68*, received 24 June 2020, p. 1; Name Withheld, *Submission 51*, p. 1; Name Withheld, *Submission 111*, p. 3.

¹⁸ Name Withheld, *Submission 51*, p. 1.

¹⁹ Name Withheld, *Submission 109*, received 22 July 2021, p. 1.

²⁰ Judy Stiff, *Submission 66*, received 17 June 2020, p. 1; Wilhelmina Marshall, *Submission 71*, received 26 June 2020, p. 1; Name Withheld, *Submission 51*, p. 1; Lyn Kinghorn, *Submission 11*, received 30 January 2020, p. 3.

²¹ Barbara Pendrey, *Submission 1, Attachment 1*, p. 1; Dawn Smallpage, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 42; Yvonne Stewart, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 19; Jennifer Howe, *Submission 96*, received 5 May 2021; Name Withheld 3, 18 May 2021, *Transcript of evidence*, p. 37; Name Withheld, *Submission 112*, p. 1.

²² Yvonne May, *Submission 69*, p. 1; Yvonne Hunter, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 3; Name Withheld 2, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 15; Name Withheld, *Submission 59*, received 3 June 2020, p. 1; June Smith, *Transcript of evidence*, p. 4; Name Withheld 1, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 15.

²³ Judy Stiff, *Submission 66*, p. 1.

Frequently, mothers were not given any say over what would happen to their children. The decision was made for them, as Thelma Adams submitted:

we went to the doctor and found out I was over 6 months pregnant. From then on I felt I became the little girl over in the corner while everyone made the decisions—I was never sure what was going on.²⁴

Another example came from Debra Thurley, who wrote:

I have looked back constantly as to why I had no voice in the decision made and why I did not protest loudly but I had been brought up to be seen and not heard.²⁵

Upon finding out about the pregnancy, some fathers absconded and offered no support.²⁶ One mother told the Committee: ‘My boyfriend disappeared after I told him’.²⁷ Another mother shared her experience, saying:

My boyfriend, the father of the child, who later became my husband, also did not want his parents to be aware of the pregnancy, and it is only now that he is residing in a nursing home that I am not controlled and can put my feelings in the open without fear of repercussions. On my return after giving birth, my mother insisted I still marry him as no one else would want me after such a shameful experience.²⁸

The power imbalance between men and women further continued when women were unfairly held solely responsible for the pregnancy and carried the shame and stigmatisation, while fathers rarely faced any consequences. June Smith told the Committee:

Information presented to me over decades by mothers is that most fathers turn their backs on their pregnant girlfriends, many denying paternity. No father of our children, no grandparents of our children have ever been damned and discredited as we mothers have been cruelly maligned for their own failure to face their own responsibilities towards these mothers and their children.²⁹

Another mother told the Committee:

What annoys me the most is: what about the father? You know, he did not want us. They go off on their merry way. I am not having a go at men—please do not misread that. It is just that we are the ones that cop it, and we are the bad girls, and on you go. I am not a bad girl.³⁰

²⁴ Thelma Adams, *Submission 40*, p. 1.

²⁵ Debra Thurley, *Submission 68*, p. 1. See also Barbara Pendrey, *Submission 1, Attachment 1*, p. 1.

²⁶ Judy Stiff, *Submission 66*, p. 1.

²⁷ Name Withheld, *Submission 51*, p. 1.

²⁸ Name Withheld, *Submission 83*, received 24 March 2021, p. 1.

²⁹ June Smith, *Transcript of evidence*, p. 4.

³⁰ Name Withheld 1, 18 May 2021, *Transcript of evidence*, p. 15.

Other fathers did provide support to mothers, or wanted to but were prevented from doing so by their own parents. For example, it was decided that Lynda Klingberg would marry the father of her child, but her mother-in-law later withdrew her consent to the marriage (which was needed as they were under 21). Lynda Klingberg's first child was forcibly removed from her as she was unmarried, but she went on to marry the father and have three more sons.³¹ Elizabeth Edwards also described to the Committee that her husband 'lovingly supported me throughout my pregnancy and he was quite prepared to financially support our baby', but she signed the consent papers 'under duress', being told that if she did not, her husband would be charged with carnal knowledge. Elizabeth Edwards' parents, particularly her mother, were not supportive of Elizabeth's desire to keep her baby.³² The impact of historical forced adoptions on fathers is discussed further in Chapter 6.

The culture of secrecy and shame was so strong that many mothers were hidden in their own homes, ostracised and sent away to maternity homes. In her submission, Patricia Gall reflected on the stigmatisation and secrecy around pregnancy:

But while secrecy surrounding adoption and adoption itself relied on the stigma of 'illegitimacy' it also relied on shaming mothers into submission and stigmatizing young vulnerable ordinary men and women, expectant mothers—who I hesitate to say—[were] preyed upon.³³

While many mothers were sent to maternity homes, some remained at home during the pregnancy. One mother told the Committee:

when I was at home staying with my parents on their dairy farm, I was asked to hide, to go to my bedroom when anybody came over so they thought I wasn't home. I was something to be ashamed of.³⁴

Lynda Klingberg wrote in her submission:

I stayed at home trying to be invisible keeping mostly to my room. My room was a sanctuary where I could lovingly talk to my baby and tenderly stroke my tummy. I would tell my baby how much I loved and wanted him.³⁵

Thelma Adams outlined in her submission that her boyfriend's family sent her to a maternity home, but her own family brought her back because she was so homesick. She spent the remainder of her pregnancy hidden at home, locked in her bedroom when anyone visited, feeling lonely and scared. Whenever she went to the doctor she had to 'bob down in the car' and enter through a side door so no one would see her.³⁶

³¹ Lynda Klingberg, *Submission 36*, p. 1.

³² Elizabeth Edwards, Adoptions Origins Vic. Inc., hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 7.

³³ Patricia Gall, *Submission 29*, received 18 February 2020, p. 154. See also Name Withheld 3, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 28.

³⁴ Name Withheld, *Submission 51*, p. 1.

³⁵ Lynda Klingberg, *Submission 36*, p. 36. See also Barbara Pendrey, *Submission 1, Attachment 1*, p. 1; Karen Linton, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 8; Yvonne Stewart, *Transcript of evidence*, p. 19; Name Withheld 1, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 11.

³⁶ Thelma Adams, *Submission 40*, p. 1.

3.1.1 Experiences in maternity homes

After spending a period of time at home, the majority of women were sent to maternity homes, including across state borders where no one would know them.³⁷ They were ostracised from their community, reinforcing feelings of shame and secrecy. It is important to remember for most of the women, it was the first time they had spent time away from their family home and they were frightened. The Committee heard from mothers who found their time in maternity homes lonely, isolating and traumatising. One mother wrote:

My time at St Josephs was lonely and I was sad and very homesick and the two sisters in charge seemed to be indifferent to us all. I'm not sure what I expected but it was like I was invisible. They were very unapproachable and showed no kindness whatsoever. I managed to make some friends here but at the end of the day we were all alone.³⁸

Mothers compared the homes to 'prisons':³⁹ they were placed in either dormitories or rooms consisting of small cubicles or spaces with limited privacy, small iron beds and communal showers.⁴⁰ Life in the homes was regimented, impersonal and barbaric.⁴¹ Mothers explained that if they received mail or letters from their friends or family, they were often opened and censored.⁴²

Mothers were required to work in the homes, often undertaking menial and physically demanding tasks like scrubbing floors or working in the laundry.⁴³ Mothers also told the Committee they were given false identities and made to wear wedding rings when they left the home, reinforcing the culture of secrecy and shame.⁴⁴

Occasionally, there were rays of hope. Mothers made friends with other mothers in the home, received letters or were allowed visits from their families or the father of their unborn baby.⁴⁵ One mother wrote in her submission:

³⁷ Barbara Pendrey, *Submission 1, Attachment 1*, p. 1; Name Withheld, *Submission 83*, p. 1; Marilyn Murphy, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 20; Name Withheld, *Submission 109*, p. 1; Name Withheld, *Submission 112*, p. 1; Name Withheld, *Submission 111*, p. 3.

³⁸ Name Withheld, *Submission 37*.

³⁹ Nancy Johnson, *Submission 8*, p. 1; Marilyn Murphy, *Submission 61*, p. 1; Jennifer Howe, *Submission 96*, p. 2; Barbara Pendrey, hearing, Melbourne, 4 June 2021, *Transcript of evidence*, p. 11.

⁴⁰ Nancy Johnson, *Submission 8*, p. 1; Name Withheld, *Submission 35*, p. 1; Name Withheld, *Submission 83*, p. 1; Sue Miiller-Robbie, *Submission 100*, p. 2; Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 15.

⁴¹ Barbara Pendrey, *Submission 1, Attachment 1*, p. 1; Name Withheld, *Submission 83*, p. 1.

⁴² Thelma Adams, *Submission 40*, p. 1; Barbara Pendrey, *Submission 1, Attachment 1*; Rosemary Neil, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 20; Name Withheld 3, 18 May 2021, *Transcript of evidence*, p. 2.

⁴³ Name Withheld, *Submission 35*, p. 1; Name Withheld, *Submission 83*, p. 1; Christine Poulton, *Submission 92*, received 12 June 2021, p. 1; Sue Miiller-Robbie, *Submission 100*, p. 2; Name Withheld, *Submission 106*, received 29 June 2021, p. 1; Cherylyn Harris, *Submission 33, Attachment 1*, received 28 February 2020, p. 1; Patricia Gall, *Submission 29*, p. 28; Margie Broughton, *Transcript of evidence*, p. 44; Rosemary Neil, *Transcript of evidence*, p. 20; Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 15; Name Withheld, *Submission 51*, p. 1; Jennifer McRae, *Submission 82*, received 15 May 2021, p. 2; Name Withheld 3, 18 May 2021, *Transcript of evidence*, p. 2.

⁴⁴ Nancy Johnson, *Submission 8*, p. 1; Barbara Pendrey, *Submission 1, Attachment 1*, p. 1; Rosemary Neil, *Transcript of evidence*, p. 20; Name Withheld 3, 18 May 2021, *Transcript of evidence*, p. 2.

⁴⁵ Name Withheld, *Submission 35*, pp. 1–2.

Thankfully a girl came about a month later who I felt comfortable with, so thankfully we became good friends which helped.⁴⁶

Some mothers were treated with kindness by staff at the homes or hospitals,⁴⁷ although the prevailing experience that was shared with the Committee was that the staff and conditions at the maternity homes were cold, uncaring and cruel. Mothers were continuously subject to emotional abuse and told they were bad, shameful, dirty and did not deserve to raise their child.⁴⁸ Nancy Johnson told the Committee at a public hearing:

We were told to ask for God's forgiveness for the terrible sin that we had committed. 'No man would marry a second-hand woman if they knew I had a child outside marriage'. 'I would not make a good mother'. This hurts me now.⁴⁹

One submitter wrote to the Committee about her mother's experience at St Joseph's:

At St Josephs, the nuns repeatedly told my mother she was dirty, not fit to be a mother and she had done this to herself. Not only this, she was told that she must work to make her keep. Heavily pregnant women being told to scrub floors, do laundry and sew, day in and day out, brings to mind images that you might see watching 'A Handmaid's Tale.' But it was real, it happened to thousands of women, and the effects are still felt, and will continue to be felt until this is properly addressed.⁵⁰

Other mothers reflected in their evidence:

I guess they had to be strict and firm in order to run the home efficiently, but surely they could have smiled as they passed. Instead we were made to feel worthless and so very bad.⁵¹

Over the three months that I was there there were many talks with the sister, who always made me feel ashamed and a disgrace to society.⁵²

Treatment was barbaric, I often wondered if prisoners were treated more humanely ... Of course we were in disgrace, dirty little pregnant girls, which we were reminded of daily by Matron.⁵³

The Committee also heard from a mother who was sexually assaulted in the maternity home. Jennifer Howe wrote in her submission:

Although I was only 15 I had the nerve to abscond from this 'prison' (after being sexually abused a number of times by a male in the laundry as were the others) and we were told

⁴⁶ Ibid., p. 1.

⁴⁷ Margie Broughton, *Transcript of evidence*, p. 45; Name Withheld, *Submission 109*; Name Withheld, *Submission 111*, pp. 3-4.

⁴⁸ Name Withheld, *Submission 35*, p. 2; Name Withheld, *Submission 83*, p. 1; Name Withheld, *Submission 37*, p. 1; Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 15; Yvonne Hunter, *Transcript of evidence*, p. 6.

⁴⁹ Nancy Johnson, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 13.

⁵⁰ Name Withheld, *Submission 106*, p. 1.

⁵¹ Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 24.

⁵² Name Withheld 3, 18 May 2021, *Transcript of evidence*, p. 37.

⁵³ Name Withheld, *Submission 83*, p. 1.

if we said anything he would put us in the big dryers that you could not open from the inside and we would be severely injured or killed. I was also sexually abused by a nun ...⁵⁴

Jennifer Howe also wrote:

The nuns were the most cruel and cold tormentors. While I suspect that was the result of their training and beliefs, they could have chosen to be compassionate ... the worst of their torment was the premeditated comments resulting in mentally leaving scars which never heal ...⁵⁵

The Committee heard from two nurses, Pat Smith and June Ryan, who respectively worked at St Joseph's Foundling Hospital in Broadmeadows from 1943–45 and 1946–47.⁵⁶ Pat Smith wrote:

For me it was an eye opener into how the church had power of family life and its control over its members. To me it was heart rending to hear and see babies (wrenched in one particular case) removed from their mothers in such a heartless way. I can still hear the cries of the mother knowing that she would never see the baby again.⁵⁷

June Ryan wrote about one mother in the home who shared her story with June. She wrote:

Her reason for opening up to us was clear—she had finished the weaning of her beautiful baby boy and 'adoption day' was coming very soon. She had heard the wailing of the other mothers when their baby was taken from them.⁵⁸

The Committee was shocked by the treatment of mothers in these homes and by their communities and families. The Committee found this particularly distressing considering mothers' families and these institutions should have protected, supported and nurtured them during what was already a challenging and strenuous period of their lives.

3.2 Experiences of mothers in hospitals and treatment by health professionals

Chapter 2 summarised the policies and practices that mothers were subjected to in hospitals, including being discriminated against, being subjected to degrading or abusive treatment and receiving lower levels of medical care by staff. This left mothers feeling powerless, shameful and unworthy. The Committee received evidence of these practices, including medical malpractice and unethical behaviour, across numerous Victorian institutions.

⁵⁴ Jennifer Howe, *Submission 96*, p. 2.

⁵⁵ *Ibid.*, p. 5.

⁵⁶ Pat Smith, *Submission 91*, received 11 May 2021, p. 1; June Ryan, *Submission 90*, received 11 May 2021, p. 1.

⁵⁷ Pat Smith, *Submission 91*, p. 1.

⁵⁸ June Ryan, *Submission 90*, pp. 3–4.

3.2.1 Before the birth

The negative attitudes from medical professionals and social workers towards mothers was apparent in evidence received by the Committee. Mothers were not educated about the birthing process and what to expect, even while having contractions, when tests were performed on them or when they were taken into the delivery room.⁵⁹ Mothers were not provided with any information, support or empathy.⁶⁰ Deborah Thurley described this in her submission:

When it came to delivery, I was uninstructed on birthing and when the pain came, I was thrashing in my bed uncontrollably. I was laughed at by the nurses ...⁶¹

Similarly, Yvonne May wrote:

The birth was horrendous and so scary, screaming women and me who said not a word. No words of help or encouragement. Absolutely nothing. No Doctor or Nurse, explaining the forceps delivery and the pain, and what I had been through. Suffering never ever talked about. Treated as an ignorant, stupid, girl. No explanation of what my body had been through and it's [sic] effects.⁶²

In an appearance before the Committee, Yvonne May further stated '[t]he social workers were appalling ... They were the most horrible people I have ever met'.⁶³

Another mother said '[t]he routine of hospital visits became something I dreaded, we were treated so badly'.⁶⁴

In some cases, mistreatment by medical professionals included sexual assault, as June Smith told the Committee,⁶⁵ in addition to Brenda Coughlan who spoke of mother's bodies being 'sexually violated in the most brutal manner imaginable'.⁶⁶

The Committee also received evidence that mothers were discriminated against and received lower levels of care and medical treatment when compared to married mothers.⁶⁷

⁵⁹ Lynda Klingberg, *Submission 36*, p. 1; Name Withheld, *Submission 37*, p. 1; Barbara Pendrey, *Submission 1, Attachment 1*, p. 2; Merle Kelly, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 40; Karen Linton, *Transcript of evidence*, p. 8; Name Withheld, *Submission 111*, p. 4.

⁶⁰ Yvonne May, *Submission 69*, p. 1; Debra Thurley, *Submission 68*, p. 1; Merle Kelly, *Transcript of evidence*, p. 40; Name Withheld, *Submission 51*, p. 1; Name Withheld, *Submission 109*, p. 1.

⁶¹ Debra Thurley, *Submission 68*, p. 1.

⁶² Yvonne May, *Submission 69*, p. 2.

⁶³ Yvonne May, *Transcript of evidence*, p. 27.

⁶⁴ Name Withheld, *Submission 35*, p. 2.

⁶⁵ June Smith, *Transcript of evidence*, p. 5. See also Jennifer Howe, *Submission 96*, p. 9; Brenda Coughlan, *Transcript of evidence*, p. 8.

⁶⁶ Brenda Coughlan, *Transcript of evidence*, p. 2.

⁶⁷ Merle Kelly, *Transcript of evidence*, p. 40; Name Withheld, *Submission 35*, pp. 2-3; Marilyn Murphy, *Transcript of evidence*, p. 20; Sue Miiller-Robbie, *Submission 100*, pp. 3-4; Jennifer McRae, *Submission 82*, p. 3; Name Withheld, *Submission 83*, p. 1; Karen Linton, *Submission 108*, received 1 July 2021, p. 2; Name Withheld, *Submission 111*, pp. 5-6.

I was treated by the staff very badly. No one attended to me until she was almost born. Repeatedly told I was only an unmarried mother and there were more important mothers to attend look after.⁶⁸

Another example is from Karen Linton who referred to her treatment as outlined in her hospital records:

The GP [general practitioner] that tracked it [Karen's medical records] down for me—his comment was, 'You were treated abysmally and you were treated like a guinea pig'. He said, 'They knew when you were 5½ months pregnant that you had pre-eclampsia, and they should've taken steps to protect you and they didn't'. And he said, 'The medication that they put you on to keep you sedated was gross harm'—and just the whole process.⁶⁹

The heartless treatment Karen Linton suffered at the hospital was further demonstrated when she told the Committee:

I had also gone into cardiac arrest twice, and I remember that the nurse told me that she had contacted my mother at work to tell her I had arrested before giving birth and that they needed to come in; they did not think I would make it. And then the nurse said, 'Then you arrested again', and that was the tone: 'You arrested—again. And we rang your parents and they were still at work'. And she just turned and she said, 'That shows you just how much they loved you. They could not even be bothered coming to see you when you were dying'.⁷⁰

Sometimes, mothers were used for educational purposes for health students or inexperienced health professionals.⁷¹ One mother told the Committee:

At some time I was wheeled into a room where there were several young interns. They are here to learn and so each of them did an internal examination of me. I look up and notice these young men are not much older than myself. As well as the hurting and it all being uncomfortable I was immensely embarrassed. It was intrusive and I wished I could have died right then.⁷²

Deborah Thurley described a similar experience in her submission, stating:

I was subjected to internal examinations instructed to be performed by each of six interns. I was surrounded by them. Again, I was voiceless and felt completely shamed and degraded.⁷³

⁶⁸ Name Withheld, *Submission 35*, pp. 2–3.

⁶⁹ Karen Linton, *Transcript of evidence*, pp. 9–10.

⁷⁰ *Ibid.*, p. 9.

⁷¹ June Smith, *Transcript of evidence*, p. 5; Merle Kelly, *Transcript of evidence*, p. 40; Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 15; Name Withheld, *Submission 89*, received 25 May 2021, p. 4; Sue Müller-Robbie, *Submission 100*, p. 2.

⁷² Name Withheld, *Submission 37*, p. 2.

⁷³ Debra Thurley, *Submission 68*, p. 1.

Many mothers told the Committee their medical files were marked 'A' for adoption or 'BFA' for baby for adoption.⁷⁴ This indicated to 'medical staff to take the baby from the mothers at birth and prevent her seeing the child' and was done without any consultation with mothers and regardless of their wishes.⁷⁵ It was also done before mothers had signed consent forms (often under duress). The Committee considers this just one example of the systemic disempowerment of mothers in a system that took away their autonomy, independence and ability to control their lives.

3.2.2 During and after the birth

Distressingly, the Committee heard that mothers were given drugs before and after the birth without discussion or their approval.⁷⁶ One mother told the Committee:

I was induced and sedated. I have no memory of my baby's birth. I was only ever told that it was a boy, and I was never allowed to see him. I was alone and scared.⁷⁷

Another mother wrote in her submission:

Physically I think all went well. I can't say for sure, because instead of the natural labour I wanted and had prepared so painstakingly for, suddenly a mask was over my face and all I knew was gas. Vile gas, and hands holding it down. I have no memory of anything else. Nothing hurt—because it was all a nothing.⁷⁸

For some mothers, being given drugs meant they could not remember the birth of their child:

I do not remember having her. I was in a ward, in a dark room, and a man kept coming in every now and then, and he gave me needles up and down my spine. I think that is why I am frightened of needles now, because—I do not know what they were. Yes, I just do not remember being in labour. I do not remember having her.⁷⁹

Brenda Coughlan described to the Committee at a public hearing what mothers were subject to:

brutal, barbaric, sexual crimes during pregnancy, [and] who were lulled 'into medicated delirium'—Daniel Andrews's words—without consent and suffered the abduction of newborn babies.⁸⁰

⁷⁴ Nancy Johnson, *Submission 8*, p. 1; Name Withheld, *Submission 89*, p. 5; June Smith, *Transcript of evidence*, p. 5; Judy McHutchison, *Submission 72*, p. 4; Name Withheld, *Submission 109*, p. 1.

⁷⁵ Lynelle Long, *Submission 77*, received 1 September 2020, p. 4.

⁷⁶ Debra Thurley, *Submission 68*, p. 1; Nancy Johnson, *Submission 8*, p. 1; June Smith, *Submission 10*, received 29 January 2020, p. 22; Marilyn Carr, *Submission 50*, received 19 March 2020, p. 1; Name Withheld, *Submission 51*, p. 2; Judith Hendriksen, *Submission 78*, p. 1; Christine Poulton, *Submission 92*, p. 1; Jennifer Howe, *Submission 96*, p. 4; Sandra Collins, *Submission 105*, p. 1; Nancy Johnson, *Transcript of evidence*, p. 14; Marilyn Murphy, *Transcript of evidence*, p. 20; Barbara Pendrey, *Transcript of evidence*, p. 11; Rosemary Neil, *Transcript of evidence*, p. 22; Elizabeth Edwards, *Transcript of evidence*, p. 7; Brenda Coughlan, *Transcript of evidence*, p. 2; Emma Maher, *Submission 107*, p. 1; June Smith, *Transcript of evidence*, p. 5.

⁷⁷ Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 10.

⁷⁸ Emma Maher, *Submission 107*, p. 2.

⁷⁹ Name Withheld 4, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 32. See also Marilyn Carr, *Submission 50*, p. 8.

⁸⁰ Brenda Coughlan, *Transcript of evidence*, p. 2.

Mothers also told the Committee that a sheet was put up so that mothers could not see their children being born,⁸¹ or they were restrained and tied to the bed.⁸² One mother wrote in her submission that she even suspects she had been blindfolded: she heard her baby cry but could not see as she was in total darkness.⁸³

Alternatively, mothers were given no pain medication and were told, or it was implied, the pain was punishment for their sin.⁸⁴ For example, one mother wrote in her submission:

Then because the afterbirth did not come away, before he manually took the afterbirth away, the nurse said, 'Oh, you'd better give her some painkillers', and he said, 'Oh, no, she's an unmarried mother'. So with that I had a hand up and clawing at my stomach to take it. That was horrendous.⁸⁵

After giving birth, mothers had their breasts bound or were given drugs to suppress the production of breast milk.⁸⁶ As one mother experienced:

It was known my baby was in the breech position and when I went into labour in August 1966 I was taken to RWH [Royal Women's Hospital] for the agonising delivery, no pain relief, and told to be quiet—'you are just an unmarried mother, you should be grateful we help you at all'. With forceps delivery, I was torn to shreds. I could barely walk and was returned to McKean Street where drugs were administered to dry up my milk supply.⁸⁷

Further, Elizabeth Edwards told the Committee at a public hearing:

I recall being administered sleeping drugs and relaxants, as well as stilbestrol [sic], although I was unaware of its— of the insidious effects—side effects. I was not informed that it was to dry up my milk.⁸⁸

The Committee understands that the substandard medical care the mothers received continued post-birth. Many mothers described being placed on the 'veranda' at the RWH:

After I was roughly stitched up and I swear the stitches were worse than the birth I was very sore down there for a very long time after. They then wheeled me to a ward but we went via the basement. The ceilings were very low and everywhere I looked and as far as

⁸¹ Name Withheld, *Submission 37*, p. 2; Nancy Johnson, *Submission 8*, p. 1; Sue Miiller-Robbie, *Submission 100*, pp. 2–3.

⁸² Barbara Pendrey, *Submission 1, Attachment 1*, p. 2; Name Withheld, *Submission 89*, p. 4; Barbara Pendrey, *Transcript of evidence*, p. 11; Brenda Coughlan, *Transcript of evidence*, p. 1; Emma Maher, *Submission 107*, p. 2.

⁸³ Debra Thurley, *Submission 68*, p. 1.

⁸⁴ Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 15; Name Withheld, *Submission 35*, p. 3; June Smith, *Transcript of evidence*, p. 5.

⁸⁵ Name Withheld 2, 31 March 2021, *Transcript of evidence*, pp. 15–16.

⁸⁶ Barbara Pendrey, *Submission 1, Attachment 1*, p. 2; June Smith, *Submission 10*, p. 22; Lyn Kinghorn, *Submission 11*, p. 2; Elizabeth Edwards, *Submission 19*, received 2 February 2020, p. 1; Nancy Johnson, *Transcript of evidence*, p. 14; Jennifer McRae, *Submission 82*, p. 5; Debra Thurley, *Submission 68*, p. 1; Jennifer McRae, *Submission 82, Attachment 2*; Jennifer McRae, *Submission 82, Attachment 3*; Name Withheld, *Submission 83*, p. 1; June Smith, *Transcript of evidence*, p. 5.

⁸⁷ Name Withheld, *Submission 83*, p. 1.

⁸⁸ Elizabeth Edwards, *Transcript of evidence*, p. 7.

I could see there were gurney's everywhere each one of them loaded up with bloodied linen, it was an awful sight and there was a strong smell of blood. I can remember at the time thinking that they probably brought me this way as part of my punishment. My ward was to be the veranda, a long space just outside a large ward.⁸⁹

Other mothers were cruelly placed on wards with other married mothers who had their babies with them:

It was cruel that I'd been left in the room with all the other mums, all who had their babies brought to them from the nursery to cuddle and feed. They were all so happy and had lots of people coming in to share in their joy. It became one big blur of sadness.⁹⁰

Mothers further told the Committee about being told they were disgusting and treated with disdain by medical staff:⁹¹

There was nothing nice about the hospital or the staff. They were rude, abrupt and quite cruel with their comments and very rough with our care. The ward that was beside us and off the veranda was for the other mums—the ones who were married and taking their babies home. I could see them with their babies and hear their babies when they were brought into the ward to be fed. It was hard to watch and hard to see ...⁹²

I was alone and scared, I still remember the nurse coming in, stood against the wall and verbally abused me and told me I was a bad person. I spent Christmas Day alone, It was awful, I was scared, alone and felt like I had ruined other people's lives.⁹³

They just treated us as an assembly line to fall off into the abyss. They could not have cared less about us. They absolutely injured us ... It is indescribable. Nobody to comfort us. We were told to shut up; we had got what we deserved. We were treated like the worst criminal.⁹⁴

For the most part, babies were immediately separated from mothers, in accordance with the clean break theory discussed in Chapter 2.⁹⁵ The Committee heard how distressing it was for mothers to hear their babies cry but not be able to hold or comfort them.⁹⁶ Lynda Klingberg wrote in her submission:

My beautiful baby (I only found out later, after I asked, that I had a son) was born and taken from me so quickly. I was not prepared for the speed in which he was taken. It was

⁸⁹ Name Withheld, *Submission 37*, p. 2. See also Patricia Gall, *Submission 29*, p. 36; Judy Stiff, *Submission 66*, p. 2; Yvonne May, *Transcript of evidence*, p. 27; Thelma Adams, *Submission 40*, p. 1.

⁹⁰ Name Withheld, *Submission 89*, p. 5. See also Christine Poulton, *Submission 92*, p. 1; Sue Miller-Robbie, *Submission 100*, p. 3; Leonie White, *Submission 41*, received 3 March 2020, p. 1.

⁹¹ Debra Thurley, *Submission 68*, p. 1; Merle Kelly, *Transcript of evidence*, p. 40; Name Withheld 3, 18 May 2021, *Transcript of evidence*, p. 2; Name Withheld, *Submission 111*, pp. 5–6.

⁹² Name Withheld 3, *Transcript of evidence*, p. 23.

⁹³ Thelma Adams, *Submission 40*, p. 1.

⁹⁴ Lyn Kinghorn, *Transcript of evidence*, p. 9.

⁹⁵ Rosemary Neil, *Transcript of evidence*, p. 21; Elizabeth Edwards, *Submission 19*; Nancy Johnson, *Submission 8*, p. 1; Name Withheld 1, *Transcript of evidence*, p. 10; Name Withheld 2, *Transcript of evidence*, p. 15; Name Withheld, *Submission 106*, p. 1; Patricia Gall, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 37; Name Withheld, *Submission 35*, p. 1; Yvonne May, *Submission 69*, p. 2; Jennifer McRae, *Submission 82*, p. 5; Emma Maher, *Submission 107*, p. 2.

⁹⁶ Name Withheld 5, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 35.

brutal. I did not see my son as he was taken away (that was not an option given to me). I can still hear his cries as he was taken. I was left bereft, torn and bleeding.⁹⁷

Similarly, Barbara Pendrey wrote in her submission:

I never saw my son. I never held my son. I was just a child a victim of the system. I felt like I was there to be punished and have my spirit broken.⁹⁸

The Committee also heard of circumstances in which mothers were not allowed to see their children, but fathers or the mothers' family were able to see the newborn baby.⁹⁹

Some mothers returned to the maternity homes along with their child but were still unable to see them.¹⁰⁰ The Committee also heard from mothers who could see or hold their children briefly, sometimes by nurses who disobeyed the rules:¹⁰¹

I knew my baby was going to be adopted, (that had been instilled into me by my mother—no other option) but shortly after the delivery while still in RWH, a kind nurse asked if I would like a quick look at him, for which I will be forever grateful. It was gut wrenching knowing that would be the only time I would see his precious face, and things were to get worse.¹⁰²

Another mother described her experience:

I asked for an appointment with the social worker and was taken to her. I told her I wanted to see my baby ... She was very cold and rude, and just said no there is none, then handed me a note to take to a nursery a couple of floors up. At the nursery I stood there with my hand pressed to the window and a nurse wheeled out a little crib ... I couldn't see her face, the bunny rug was wrapped tightly around her. I knocked and asked to would I be able to hold my baby, and the nurse flatly refused, I was too scared to argue. I didn't know who to turn to. In my heart I feel like I'm still at that nursery window, with my hand pressed to the glass begging to see my daughter.¹⁰³

There were also mothers who reported being treated with kindness, although the Committee understands that this was a rare occurrence.

While the Committee did not hear much evidence relating to rapid adoptions, the Committee received some evidence from mothers who had been told their babies were stillborn but who doubted the truthfulness of this. Rapid adoptions occurred when mothers were either told their babies had been stillborn or had their babies removed for adoption, but in reality, the baby was given to a married mother who had given

⁹⁷ Lynda Klingberg, *Submission 36*, p. 1.

⁹⁸ Barbara Pendrey, *Submission 1, Attachment 1*, p. 2.

⁹⁹ Name Withheld, *Submission 51*, p. 2; Merle Kelly, *Transcript of evidence*, p. 40; Karen Linton, *Transcript of evidence*, p. 40.

¹⁰⁰ Name Withheld, *Submission 37*, p. 2; Sue Miiller-Robbie, *Submission 100*, p. 3.

¹⁰¹ Name Withheld, *Submission 37*, p. 2; Dawn Smallpage, *Transcript of evidence*, p. 42; Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 23; Judy Stiff, *Submission 66*, p. 2; Name Withheld, *Submission 83*, p. 1; Name Withheld, *Submission 89*, p. 5; Sue Miiller-Robbie, *Submission 100*, p. 3.

¹⁰² Name Withheld, *Submission 83*, p. 1.

¹⁰³ Name Withheld, *Submission 89*, p. 5.

birth to a stillborn child and was deemed more 'deserving'. This took place without the knowledge or consent of natural mothers.¹⁰⁴ For example, Christine Poulton was told she had given birth to a stillborn child. She was planning on keeping the child, and describes one encounter with a doctor:

Over the next week I became more depressed and sad and when my doctor came to see me, he asked what was wrong. I said about my baby and he said to me 'but you were going to give the baby up for adoption, weren't you?' and I said no, that we were keeping it and we had bought a pram, a bassinet and all clothes and nappies for her. His reply was 'I wish I had known that before!'¹⁰⁵

Christine Poulton wrote in her submission that she was first told she had a son, but was later told she had a daughter. When trying to access her records, Christine Poulton was advised by the hospital there was no record of a death certificate, later she was told the records had been destroyed. Through persistence, Christine Poulton was able to view her records which confirmed she had a daughter, but she still does not know if she is alive.¹⁰⁶

Other examples include Marilyn Murphy, who told the Committee that the adoptive mother of her daughter gave birth to a stillborn in February 1970 and 'received' Marilyn's daughter in July 1970.¹⁰⁷ Peter Austin, a person who is adopted, wrote in his submission that when he contacted his mother later in life, he found out she had been told at the hospital that her child had died at birth.¹⁰⁸ Similarly, Mandy Edwards wrote that her mother gave birth to her first child in 1959 and she 'always believed he had been swapped at birth, after being told he was stillborn'.¹⁰⁹

3.3 Experiences of mothers during the adoption process

It is clear from the evidence discussed in previous sections that young women suffered as a result of systemic disempowerment, which they were up against from the moment their pregnancy became known. A ploy to silence them and remove their capacity to advocate for their rights, the voices of mothers were silenced and their right to make decisions was also disregarded during the adoption process. Mothers were vulnerable, had no advocates and the power of the church and state ensured they had no control over their circumstances.¹¹⁰ As Hannah Spanswick said at a public hearing:

In 1964, as a young, unsophisticated 18 year old, finding myself with an unplanned and unexpected pregnancy, I soon became a cog in the wheel of the adoption industry, whereby the aim was to find babies for infertile couples who were respectfully married and financially secure, of which I was neither.¹¹¹

¹⁰⁴ Yvonne May, *Submission 69*, p. 1.

¹⁰⁵ Christine Poulton, *Submission 92*, pp. 1-2.

¹⁰⁶ *Ibid.*, p. 1.

¹⁰⁷ Marilyn Murphy, *Submission 61*, p. 2.

¹⁰⁸ Peter Austin, *Submission 63*, received 10 June 2020, p. 1.

¹⁰⁹ Mandy Edwards, *Submission 80*, received 11 November 2020, p. 1.

¹¹⁰ Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, p. 4775.

¹¹¹ Hannah Spanswick, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 2.

A mother wrote in her submission regarding the adoption of her daughter in 1988:

There was an undisclosed view held by the agency that there were better carers for my daughter than me. There was no exploration of my desire to parent, no exploration of the support available to me in my home-town, no involvement of my parents or partner in the conversation about my daughter's future, no challenging the processes that channelled babies like mine to middle class, married couples. The agency knew exactly where they were sending my daughter. I was totally at their mercy.¹¹²

Judy McHutchison, a mother and adoption reform advocate who has also undertaken academic research on the issue of forced adoption, wrote in her submission that adoptions were largely arranged by religious bodies that behaved like 'child trafficking cartels' and monopolised services available to mothers.¹¹³ The implication of this is that:

Via the media, the cartels promoted a very selective narrative of 'adoption' to the general public ... the narrative was more realistic single mothers faced with an unplanned pregnancy would have been forewarned rather than being blindsided. Long before they became pregnant, they had already imbued the propaganda that the cartels promoted in the media. So when confronted with adoption later in their pregnancy Mothers were not braced against it as they otherwise would have been.¹¹⁴

In 2012, the RWH commissioned Emeritus Professor Shurlee Swain to prepare an independent report to assist management to understand the hospital's historical role in adoptions, particularly in respect to single women birthing at the hospital from 1945 to 1975. The purpose of the study was to examine the policies, practices and staff attitudes to understand how these affected the experiences of those women at the time.

The RWH provided this report as a submission to the Senate's Community Affairs References Committee's Inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry) and advised that the study 'found no evidence of illegal practices at RWH and no evidence of hospital-wide policies that discriminated specifically against single mothers'.¹¹⁵ While the report acknowledged that many single mothers suffered as a result of the practices conducted at the hospital and attitudes of some staff, it also stated:

In hindsight, these women feel that they were coerced into signing consent: being told that the only alternative to adoption was for their child to grow up in an orphanage. Single mothers were further humiliated when told that it was not permitted for the father's name to appear on the birth registration of their illegitimate child.¹¹⁶

¹¹² Name Withheld, *Submission 112*, p. 1.

¹¹³ Judy McHutchison, *Submission 72*, p. 2.

¹¹⁴ *Ibid.*, pp. 2-3.

¹¹⁵ Dale Fisher, Chief Executive, Royal Women's Hospital, *Submission to Senate Community Affairs Reference Committee Inquiry into the commonwealth contribution to former forced adoption policies and practices*, submission to Parliament of Australia, Community Affairs Reference Committee, Commonwealth contribution to former forced adoption policies and practices, 2012, pp. 1-2.

¹¹⁶ *Ibid.*, p. 8.

The Senate Inquiry questioned the viability of this finding by the RWH, stating:

the committee queries whether the conclusion that it could find ‘no evidence of illegal practices at the RWH and no evidence of hospital-wide policies that discriminated specifically against single mothers’ may be premature. The accounts of women, who were obviously eyewitnesses to their own mistreatment, must be taken seriously as evidence.¹¹⁷

At a public hearing for this inquiry, Lisa Lynch, Acting Chief Executive Officer at the RWH acknowledged:

We did not do enough to advocate for vulnerable single women throughout those four decades in the way that we proudly and unapologetically do for vulnerable and marginalised women today. Every woman who walks through the doors of the Women’s is entitled to safe, high-quality, compassionate care. This was clearly not the experience of the mothers and babies who experienced forced adoption at our hospital, and for this we are sorry.¹¹⁸

Despite this, and despite acknowledging that coercive practices did occur,¹¹⁹ the RWH maintained that the findings of its study were accurate. Lisa Lynch stated:

I would agree with the statement that there were no illegal practices found at the Women’s in relation to our role in forced adoption practices. In my introductory remarks I have commented on the Women’s Hospital’s view around and acknowledged our regret in our role in forced adoption practices and some of the examples of practices that were contained in that report and also some of the lived experience descriptions of what had occurred during their time at the Women’s and apologised for that. But I certainly stand by the findings in relation to our role in those practices not being considered illegal.¹²⁰

This was supported by Leanne Dillon, General Counsel, who told the Committee she agrees, but:

the only qualification I would make—and Professor Swain makes that in her report itself—is that she did not talk to every single woman and she did not review every single record, and so we do acknowledge that her report in effect was a sample of women that she spoke to and a sample from looking at the archival records that we hold. I think that is just the comment that I would make. There has been nothing that has come to our attention since that report was released that would suggest otherwise for us.¹²¹

Like the Senate Inquiry, the Committee also received evidence that casts doubt on the conclusions drawn by the RWH.

¹¹⁷ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 207.

¹¹⁸ Lisa Lynch, Acting Chief Executive Officer, Royal Women’s Hospital, hearing, Melbourne, 20 July 2021, *Transcript of evidence*, p. 3.

¹¹⁹ Leanne Dillon, General Counsel, Royal Women’s Hospital, hearing, Melbourne, 20 July 2021, *Transcript of evidence*, p. 9.

¹²⁰ Lisa Lynch, *Transcript of evidence*, p. 7.

¹²¹ Leanne Dillon, *Transcript of evidence*, p. 7.

3.3.1 Unethical and illegal practices

The unethical and illegal practices and policies of historical forced adoption were acknowledged in the Victorian Parliamentary Apology for Past Adoption Practices. The Hon Ted Baillieu MP, former Premier of Victoria, declared:

In many cases the babies were forcibly removed by practices that were unethical, immoral and unconscionable. Young mothers were routinely compelled, coerced and given no realistic choice other than to relinquish their babies for adoption. Their birth experiences were often brutal and highly traumatic. We have all heard or read the many harrowing accounts from mothers who were subjected to the use of shackles and drugs or had blankets and pillows placed over their faces. These vulnerable young women were denied information and freedom of choice. They were bullied and victimised by the very ones in whom they were expected to place their trust, including medical and legal personnel and welfare officers. Many never saw or held their child. They have understandably been traumatised ever since.

...

We say sorry for the moral arrogance, for the flawed justification, for the heartless approach of authorities and institutions.¹²²

Greg Barber MLC, Leader of the Greens, stated in his contribution:

mothers and fathers ... were pressured into giving up their babies by their families, institutions—both state and private—social workers, doctors, nurses and those who they rightly expected to help them. There was evidence of consent not properly taken. There was evidence of coercion ... Hundreds of women who gave birth in hospitals and other institutions between the late 1950s and the 1970s said that laws were broken or that there was unethical behaviour on the part of staff in those institutions.¹²³

The Hon Christine Campbell MP stated in her contribution:

The law was systematically broken with impunity. Theoretically the purpose of adoption laws was to protect a mother's right to raise her child, and this was broken. There was no advocacy and no truly independent third party to assist the mothers.¹²⁴

...

I acknowledge that what happened with adoption in this state over many decades was against the law. The actions to forcibly remove babies from their mothers was considered child stealing under the provisions of the Criminal Law Practice Statute 1864 right through to the Victorian Crimes Act 1958.¹²⁵

¹²² Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, p. 4772.

¹²³ *Ibid.*, p. 4775.

¹²⁴ *Ibid.*, p. 4776.

¹²⁵ *Ibid.*, p. 4777.

The Hon Christine Campbell MP also provided a useful summary of the unethical and illegal practices that occurred during the historical forced adoption period:

We recognise and acknowledge that many past practices and policies denied people their human rights, they were abusive and unlawful, and they also contravened the codes of professional conduct of many in the medical profession.

The multiple abuses and unlawful practices which took place included depriving mothers of information about their rights to keep their babies, lying to mothers about the material assistance that was then available to them and the supports to which they were entitled, and lying to mothers about the outcomes of keeping their babies. They included coercing mothers into signing adoption papers and having people other than the mothers sign the adoption papers. In many cases the legal status of those papers was never properly explained and a copy never given to the mother. In other cases those papers were misrepresented to the mothers as formalities and in some cases even as death certificates. Lack of informed consent included the failure to explain the consequences of signing the papers and the right to revoke, which was both a denial of the mother's rights and entrapment.¹²⁶

The New South Wales Parliament's *Inquiry into adoption practices: second interim report* also considered unethical and illegal practices. Justice Chisholm, Family Court Judge, advised the Standing Committee on Social Issues when asked about whether mothers were the legal guardians of their children before consent was signed:

My view is that the mother remained guardian of the child until she gave consent. That is, till then she had all the rights of a parent over the child. I think that means that, in theory, any actions in relation to the child by somebody else would have had to be with her consent. So my answer to the question would be that if somebody, a social worker or someone at a hospital or somebody else, prevented the mother from having contact with or access to the child prior to her giving consent, that would not be authorised. That would be as unauthorised as if any other person stopped a parent having contact with their child. The only exception I can think of would be where there was some medical emergency which required urgent intervention, but the situation, I think, is exactly the same as it would have been with any other parent and a child.

But there is no doubt, in my mind anyway, that the mother had exactly the same rights to the child as any other parent, and anything done to the child without her consent would have been just as wrong as if it was done to any other parent. So the fact that adoption was looming and that inquiries had been made and that the mother was, let us assume, unmarried, young, all that stuff, makes no difference. I do not think there is any doubt about that.¹²⁷

Patricia Gall also touched on this in her submission, stating:

I believe that both State and Church are guilty of violating my human rights and Common Law Parental rights primarily by denying me access to my babies at birth and

¹²⁶ Ibid., p. 4776.

¹²⁷ Parliament of New South Wales, Legislative Council Standing Committee on Social Issues, *Inquiry into adoption practices: second interim report*, June 2000, p. 152.

after. This occurred before a consent to adoption could be signed by me. I clearly asked to hold them—in fact I was reduced to begging to embrace my babies. This could fall under the Crimes Act, a Federal Offence, taking the baby by improper means.¹²⁸

In evidence to this inquiry, the Committee heard that mothers were physically separated and forcibly removed from their newborn babies. Mothers described their children being ‘ripped’¹²⁹ from their arms, abducted¹³⁰ or that ‘our babies were often taken without our consent and literally stolen at birth’.¹³¹ In her submission, Lyn Kinghorn described her experience:

I suffered this crime of illegal abduction of my first baby after her birth on the 24th of December 1963, when I was seventeen. After she was born, I lovingly and eagerly cared for her for one precious week. Then, on the 31st of December 1963 I was brutally physically and forcefully removed from the Royal Women’s Hospital without her. On seeing a nurse arrive from Berry Street, I ran to a nurse for help. She put her arms around me and said ‘go home and be a good girl.’ I screamed the whole way back to Berry Street, where the matron came out and yelled at me ‘I hope you have learned your lesson.’ Under law I was the binding and legal guardian for my baby.¹³²

As discussed in Chapter 1, mothers drew the Committee’s attention to the distinction between the act of removing a child through abduction and the subsequent act of adoption. Lyn Kinghorn explained in a public hearing:

I believe the recognition of mothers in the statement of ‘forced adoption’ diminishes the true action of abduction. Mothers suffered abduction to facilitate forced adoption of our abducted babies. I feel our history would be more truthful if it was recognised as it truly was: abduction for adoption.¹³³

Similarly, in her submission, June Smith wrote that forced adoption is the experience of mothers’ children and the truth of her experience is that her son was abducted from her.¹³⁴

As discussed in Section 3.2.2, some mothers were subject to the practice of rapid adoption. Another illegal practice that took place was money being paid or donations being made by adoptive parents to secure a child for adoption.¹³⁵ Wilhelmina Marshall told the Committee:

I also found out later that [redacted] adoptive parents paid the Brisbane hospital \$25 for my son. I know that does not seem much, but at the time that was probably a week’s

¹²⁸ Patricia Gall, *Submission 29*, p. 2.

¹²⁹ Marilyn Murphy, *Submission 61*, p. 1.

¹³⁰ Leonie Horin, *Submission 113, Attachment 2*, received 28 July 2021, pp. 3–4.

¹³¹ Judith Hendriksen, *Submission 78*, p. 1. See also Patricia Gall, *Transcript of evidence*, p. 37; Brenda Coughlan, *Transcript of evidence*, p. 1.

¹³² Lyn Kinghorn, *Submission 11*, p. 2.

¹³³ Lyn Kinghorn, *Transcript of evidence*, p. 1.

¹³⁴ June Smith, *Submission 10*, p. 2.

¹³⁵ Lyn Kinghorn, *Transcript of evidence*, p. 9; Name Withheld 1, 18 May 2021, *Transcript of evidence*, p. 15; Leonie Horin, *Submission 113, Attachment 2*, p. 3.

wages, right—which leads me to ask, what other financial transactions took place, and since when did a little human being become a chattel or a commodity without any rights?¹³⁶

3.3.2 Consent

The Committee considers that the way mothers' consent was systemically and callously disregarded is a significant indicator of the existence of harsh and unethical policies and practices of historical forced adoption in Victoria. As Judy McHutchison wrote in her submission:

The treatment of mothers leading up to the signing of adoption consents was a premeditated and systematic abuse of their human rights in order as Farrar (1996) states 'to exploit the fertility [sic] of young vulnerable women'. Mothers were importuned with statements such as: if they loved their babies they would give them up; it was 'selfish' to keep their children; and they would have children of their 'own' one day. Perhaps nothing was more potent in the social workers arsenal than the separation of mothers from their babies at birth and the indecent haste in which mothers were forced to sign adoption consents. There is no consent when there is no understanding of what is taking place and/or no perceived choice.¹³⁷

Alternatively, mothers gave evidence to the Committee that they signed consent before the baby was born, a practice that was against the law at the time.¹³⁸ Further, as discussed in Chapter 2, adoption legislation at the time mandated that consent to an adoption could not be signed within five days of a mother giving birth. The Committee heard from mothers who were given adoption papers to sign before the five-day period, a clear breach of the law.¹³⁹

Chapter 2 also discussed that under the *Adoption of Children Act 1964* (Vic) an adoption order could not be made if consent was obtained by fraud or duress, or if the mother was not in a condition to give consent or understand the nature of consent.¹⁴⁰ The Committee received multiple examples from mothers, discussed below, that undoubtedly breached the laws of the time. Further, the consent provisions in the 1964 adoption legislation were introduced to ensure that consent was freely given and informed and to protect the rights of mothers.¹⁴¹ There is evidence to suggest that this was not followed by adoption agencies, nor was it effectively monitored by the Victorian Government.

¹³⁶ Wilhelmina Marshall, *Transcript of evidence*, p. 26.

¹³⁷ Judy McHutchison, *Submission 72, Attachment 1*, p. 5 (with sources).

¹³⁸ Marilyn Carr, *Submission 50*, p. 1.

¹³⁹ Hannah Spanswick, *Transcript of evidence*, pp. 2–3; Merle Kelly, *Transcript of evidence*, p. 40.

¹⁴⁰ *Adoption of Children Act 1964* (Vic).

¹⁴¹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, Melbourne, 2017, pp. 155–164, 211.

The Committee heard numerous examples of mothers being coerced and pressured into signing consent forms under duress.¹⁴² This included pressure from the staff at maternity homes and hospitals and the families of either the mothers or fathers.

In her evidence to the Committee, Karen Linton spoke of the power imbalance between herself and the hospital social worker, which resulted in her signing the adoption papers:

I was marched off into a room with a social worker who sat me at a table and said, 'You're now signing the papers'. And I said, 'I don't want to sign the papers. I don't want to give up my son'. And she said, 'You've got to sign them, no ifs or buts. You're under 18 and we're telling you what to do and you're going to sign this paperwork. These are the choices: you either sign it and let your son go to a good home with a good family who will bring him up or we will make him a ward of the state and when he is old enough he will be placed in an orphanage'. I still did not want to sign it. ... She grabbed my hand, put a pen in it and put it on the paper, and she said, 'You are signing this'. I was crying and she said, 'Shut your snivelling up or I will slap your face'. And I just kept saying I did not want to do it. And she said, 'I've told you once and I will tell you again: you've got no rights, you're not having this baby. This is what's going to happen today: you're not leaving this office until you have signed the paper', and she was getting my hand and telling me I had to sign the paper. So I eventually signed it and left, and I did not want to live.¹⁴³

Similarly, Barbara Pendrey wrote in her submission:

I was told by the matron at the home I couldn't leave until I signed the adoption papers ... I remember feeling so out of control it was like people who didn't know me or care were making huge demands on me. Just being told what to do like I wasn't human or I didn't have any feelings.¹⁴⁴

Mothers also spoke of being threatened to sign adoption papers, as reflected in Thelma Adams' submission:

I never saw a social worker until it was time to sign the adoption papers, I remember sitting with my head down and the social worker telling me to sign and I didn't want to, I wouldn't answer her so she said to me If I didn't sign the form, I would go to a girls home and my baby would go to a home anyway—I signed the paper. This is the biggest question I want answered—How could this possibly be legal?¹⁴⁵

Wilhelmina Marshall wrote in her submission:

I was a victim of forced adoption, forced and co-hersed [sic] and bullied to sign legal documents, adoption papers, with hands shaking and tears streaming, a young

¹⁴² Judy Stiff, *Submission 66*, p. 2; Cherylyn Harris, *Submission 33, Attachment 3*, p. 2; Hannah Spanswick, *Transcript of evidence*, p. 2; Wilhelmina Marshall, *Transcript of evidence*, p. 26; Name Withheld, *Submission 111*, p. 6.

¹⁴³ Karen Linton, *Transcript of evidence*, p. 9.

¹⁴⁴ Barbara Pendrey, *Submission 1*, p. 2.

¹⁴⁵ Thelma Adams, *Submission 40*, p. 1.

frightened, vulnerable young girl with no support from anyone. The word duress is insufficient.¹⁴⁶

Further, Lyn Kinghorn submitted:

I was sent alone to sign consent for adoption. I was told if I didn't sign, she would be raised in an orphanage.¹⁴⁷

In her submission, Leonie White referred to her mother's role in her signing consent:

my mother that showed no compassion for the situation she just kept telling me it was all over and we were going to sign the Adoption Papers and get on with the rest of our live, (easier said than done) I remember telling her I wasn't going to sign them, that I wanted to keep the baby. She told me if I didn't sign them she would and we were never to talk about it again.¹⁴⁸

Mothers were told they could not leave the maternity homes unless they signed adoption consent papers¹⁴⁹ and were pressured by social workers or hospital staff who threatened to charge the fathers with carnal knowledge if they did not sign the consent forms.¹⁵⁰ Some mothers also told the Committee that they signed adoption papers without being informed of what they were, or they were so traumatised and drained by their pregnancy and birth experience that they did not fully comprehend the significance of signing:

There were more papers for me to sign after the birth of my child. I suppose these were the adoption papers. I was not in a good spot emotionally at this time so just did as I was told.¹⁵¹

It was May 3rd when I headed into the city for my appointment with the social worker ... She handed me a papers to sign that she said had been missed when I signed myself out of hospital. I never even looked at them I was so anxious and afraid, just wrote my name ... She smiled and said "Oh now, now, it's too late dear the baby has gone to her family" ... Years later, and after years of fighting the adoption laws changed and I received my adoption paper work. I saw May 3rd was the day I supposedly signed the adoption papers, the ones I was handed by that social worker. I have always blamed myself for that for not being more aware.¹⁵²

The Committee also heard about consent being given while mothers were feeling the effects of pain medication or drugs.¹⁵³ Hannah Spanswick, who only found this out after accessing her records, told the Committee:

¹⁴⁶ Wilhelmina Marshall, *Submission 71*, p. 1.

¹⁴⁷ Lyn Kinghorn, *Submission 11*, p. 2.

¹⁴⁸ Leonie White, *Submission 41*, p. 1.

¹⁴⁹ Barbara Pendrey, *Submission 1, Attachment 1*, p. 3.

¹⁵⁰ Elizabeth Edwards, *Submission 19*; Elizabeth Edwards, *Transcript of evidence*, p. 7.

¹⁵¹ Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 24.

¹⁵² Name Withheld, *Submission 89*, pp. 6-7.

¹⁵³ Nancy Johnson, *Transcript of evidence*, p. 14.

The adoption papers were presented to me ... within 45 minutes of receiving a narcotic injection, which makes a complete mockery of any notion of informed consent.¹⁵⁴

Similarly, Judith Hendriksen wrote in her submission:

I was in a state of shock ... with indescribable grief at the loss of my baby but wasn't in a fit state to have any perception of these facts at the time plus Was so shut down with prescription drugs.¹⁵⁵

The age of mothers also impacted their ability to fully understand the implications of adoption and give informed consent. For example, Hannah Spanswick told the Committee:

at 18 I was unable to open up a bank account in my own name, prevented from obtaining a driver's licence and forbidden to marry without parental consent.

But according to those who had taken charge of my situation, deemed that I was sufficiently mature and adult enough to sign what was ostensibly a legally binding document giving away the rights to the child that I had carried and borne.¹⁵⁶

Some mothers told the Committee they do not remember signing consent forms or adoption papers:¹⁵⁷

The nuns just gave you papers to sign all the time. You never knew what you were signing. She was a scary nun, the head one, and I still cannot even remember signing the adoption form.¹⁵⁸

As discussed in Section 3.2.1, the Committee also heard that mothers had their files marked 'A' or 'BFA' before they had signed consent forms. Judy McHutchison told the Committee:

During the 1960's hospital social workers stamped the medical files of vulnerable mothers with a code (UB- or BFA etc). This code direct the medical staff to take the baby from the mother at birth and prevent her seeing her child. It was most common not to seek the Mothers permission to do this nor to even inform her that this was to happen.¹⁵⁹

For example, one mother wrote in her submission:

I was pushing and pushing, wrists held down by the nurses either side of me, and eventually at 3.20 am my baby was born. I cried out to hold my baby but they said no, it says on your file, BFA, babe for adoption. I protested saying no, but no one cared. The midwife picked up my baby and wrapped her in a blanket ... The midwife left, baby in her arms followed by the nurses. I was hysterical, left alone, distraught and afraid.¹⁶⁰

¹⁵⁴ Hannah Spanswick, *Transcript of evidence*, p. 3.

¹⁵⁵ Judith Hendriksen, *Submission 78*, p. 2.

¹⁵⁶ Hannah Spanswick, *Transcript of evidence*, p. 2. See also VANISH Inc., *Submission 53*, received 18 June 2020, p. 25.

¹⁵⁷ Name Withheld, *Submission 51*, p. 2; Nancy Johnson, *Submission 8*, p. 2; Nancy Johnson, *Transcript of evidence*, p. 13.

¹⁵⁸ Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 17.

¹⁵⁹ Judy McHutchison, *Submission 72*, p. 4.

¹⁶⁰ Name Withheld, *Submission 89*, p. 5.

This practice demonstrates that it was assumed that babies would be given up for adoption, regardless of the wishes of the mother.

Based on the evidence received in this inquiry and to the Senate Inquiry, the Committee acknowledges that these practices and policies were widespread in Victorian hospitals.

3.3.3 Adoption as the only choice

The Committee heard from various mothers that adoption was the only option they were given,¹⁶¹ as reflected in the following quotes:

After the consultation the doctor and I advised my father that I wouldn't have an abortion. It was expected that I would then have the baby adopted. I tried to think of other alternatives, a way I could keep my baby but there was no financial and material assistance, no support. It felt like adoption was the only option.¹⁶²

After a few days ... [the social worker] came and talked to me about adoption. There was no counselling, or options set out to me. I wanted to keep my sweet baby girl.¹⁶³

I knew my baby was going to be adopted, (that had been instilled into me by my mother—no other option).¹⁶⁴

The Committee understands the treatment of some mothers' in maternity homes and hospitals was manipulative and deliberately deceptive:¹⁶⁵

We were told daily how bad we were and that we had to give up our baby as that was our 'PENANCE'. [emphasis in original]¹⁶⁶

To this day I can still hear the words of the social worker ... who said, 'If you really love your baby, you'll give him up for adoption'. And on another occasion, 'You know you can't possibly look after this child, and one day, when you get married, you'll have children of your own ... During the months the almoner spent undermining my abilities to mother my own child.'¹⁶⁷

Lyn Kinghorn described this behaviour as 'grooming':

Young, vulnerable, single expectant mothers were groomed by abusers with, 'This isn't your baby. You will have one of your own one day. Don't be selfish. Your baby needs a mum and a dad'—and then denying the fathers access to the mothers and children—'You can't give this baby what it needs. We have a married couple more deserving than you, and they can give this baby all it needs. You're bad, and your baby will be ashamed

161 Debra Thurley, *Submission 68*, p. 1; Yvonne May, *Submission 69*, p. 1; Nancy Johnson, *Submission 8*, p. 1; Karen Linton, *Transcript of evidence*, p. 8; Patricia Gall, *Submission 29*, p. 31; Yvonne Stewart, *Transcript of evidence*, p. 19; Name Withheld, *Submission 59*, p. 1; Nancy Johnson, *Transcript of evidence*, p. 14; Name Withheld, *Submission 112*, p. 1; Name Withheld, *Submission 111*, p. 3.

162 Name Withheld, *Submission 51*, p. 1.

163 Name Withheld, *Submission 59*, p. 1.

164 Name Withheld, *Submission 83*, p. 1.

165 Patricia Gall, *Submission 29*, p. 31.

166 Name Withheld, *Submission 35*, p. 2.

167 Hannah Spanswick, *Transcript of evidence*, p. 3.

of you. You should be ashamed of yourself. Don't let anyone know how bad you've been. Tell no-one about this' ... mothers were groomed for the adoption plan of being told constantly they were unsuitable and blamed and identified as abandoners and relinquishing ...¹⁶⁸

Information on rights

Chapter 2 outlined that the Victorian Government and institutions had a responsibility to inform mothers of financial and other community support services available to them before adoption was considered. The Senate Inquiry also considered the provision of information on support, concluding:

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.¹⁶⁹

The Committee heard that mothers were often not informed of their rights and the financial support available to them, either before the birth of their child or during the adoption process.¹⁷⁰

I was never made aware of my legal rights or indeed that I had any legal rights at all by those who abused me and stole my son.¹⁷¹

As the Victorian Adoption Network for Information and Self-Help (VANISH) outlined in its submission to the Inquiry, withholding this information meant mothers' consent was not fully informed as they were not aware of all their options.¹⁷²

Similarly, Judy McHutchison wrote in her submission:

The health and social welfare systems colluded in order to induce single mothers to relinquish their children to adoption. Information on alternatives were withheld.¹⁷³

June Smith, in her submission to the Senate *Inquiry into children in institutional care*, explained:

Never did she arrange for the almoner to see me, nor for any other professional that could have helped me. She breached her duty of care and denied me my right to be treated like other mothers in the hospital. She denied me my maternity. Her treatment

¹⁶⁸ Lyn Kinghorn, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 30.

¹⁶⁹ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 113

¹⁷⁰ Name Withheld, *Submission 51*; Hannah Spanswick, *Transcript of evidence*, p. 2; Margie Broughton, *Transcript of evidence*, p. 45; Wilhelmina Marshall, *Transcript of evidence*, p. 25.

¹⁷¹ June Smith, *Submission 10*, p. 4.

¹⁷² VANISH Inc., *Submission 53*, p. 25.

¹⁷³ Judy McHutchison, *Submission 72, Attachment 1*, p. 4 (with sources).

of me was unconscionable and breached her fiduciary duty of care, she violated my human rights as a mother. She cruelly promoted adoption above my rights to know of alternative options to keep my own child.

I was not informed of the Social Welfare benefits that were available to me at that time and had been available since 1945 in the term of Special Benefits, contrary to what we now hear from the social workers of yesterday. Nor was I informed of foster care until I could find a job and place to live. I was not advised that I could seek maintenance, nor that subsidised child minding facilities were available to mothers who had to work full time.¹⁷⁴

Revocation period

The Committee heard from mothers who were told they had 30 days to revoke their consent, but this was not adhered to. In her submission, Patricia Gall wrote that being told she had 30 days to revoke her consent when there was no real likelihood that she could do this was akin to obtaining her consent through deception:

Telling me my child was mine even if I signed must have been how they tricked me into signing. For had I known its implications, signing would have been unthinkable.¹⁷⁵

Sometimes, mothers attempted to get their child back within the 30 days, but were told, often falsely, that the child had already been adopted.¹⁷⁶ Wilhelmina Marshall told the Committee:

At the time of signing the adoption papers a few days later, I was told that there was a 30 day cooling off period, which gave me some hope ... We were able to work things out and decided to pick up [redacted] and get married. I contacted the Department of Family services and I advised them of our intentions, (for it was still within the 30 days time frame). [The staff member] advised me that it was too late, [redacted] had already been adopted out. I advised her of the 30 days and she replied no, 30 days or adoption which ever came first.¹⁷⁷

Later, Wilhelmina Marshall found out her son had been adopted after the 30 day revocation period. Similarly, Rosemary Neil told the Committee:

I knew that at 30 days I could go back and try and get my baby back, so I went back into the Royal Melbourne and took the things with me that I had prepared. The girls at the desk laughed at me and said, 'What do you think you're doing here?'. And I said, 'Well, I was told that within 30 days, and I have got my documents here'. And they said, 'Oh, no. You've got to go to the courthouse'.¹⁷⁸

¹⁷⁴ June Smith, submission to Senate Standing Committees on Community Affairs, Inquiry into Children in Institutional Care, 2003, pp. 3-4.

¹⁷⁵ Patricia Gall, *Submission 29*, p. 44.

¹⁷⁶ Judy Stiff, *Submission 66*, p. 2; Elizabeth Edwards, *Transcript of evidence*, p. 7.

¹⁷⁷ Wilhelmina Marshall, *Submission 71*, p. 2.

¹⁷⁸ Rosemary Neil, *Transcript of evidence*, p. 21.

Another example of obtaining consent through deception and not adhering to the 30 day revocation period is Sue Miiller-Robbie's experience. In her submission, Sue Miiller-Robbie wrote that she had not decided about whether to keep her child and decided to return home, three hours from Melbourne, to plan her next steps. She was told by the Sister at Hartnett House to sign the consent form, to save herself the long trip back to Melbourne:

'... you have 28 days to think about it and we cannot do anything until that time is up. It will save you the long trip back down here if that's what you decide'. I had no reason not to believe her so I signed the piece of paper.¹⁷⁹

Sue Miiller-Robbie then decided to keep her child. She rang Hartnett House:

The voice on the other end of the phone replied, 'he is not here, you knew that we had an outbreak of chicken pox in the house when you left, so it was decided that we should get as many babies out of the home as we could, we had a couple who wanted to adopt your baby so we let him go'. Numbness, horror and disbelief overwhelmed me.¹⁸⁰

Sue Miiller-Robbie was told the adoptive father of her child was a barrister, the mother a nurse and they were excited to finally have their own baby.¹⁸¹ Later, she found out the adoptive father was a linesman and the adoption was finalised over 6 months after her son was born.¹⁸²

Mothers also told the Committee they were not informed that there was a 30 day revocation period for their consent.¹⁸³ Merle Kelly told the Committee at a public hearing:

On day three after a difficult delivery I was taken to the social worker's office. I was not told that I had 30 days to reconsider my decision, and with no other option available I was forced to sign the papers.¹⁸⁴

3.3.4 Babies going into homes

The Committee heard from mothers who were forced to give their child up for adoption and later found out their children had been placed in homes or became wards of the state, either permanently or for a period before their adoption. In her submission, Judy McHutchison said:

Whilst the Mother signed an adoption consent, the baby may not make it through the quality assessment. Children were placed in institutions when they failed the quality assessment.¹⁸⁵

¹⁷⁹ Sue Miiller-Robbie, *Submission 100*, p. 3.

¹⁸⁰ *Ibid.*, pp. 3-4.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*, p. 6.

¹⁸³ Cherylyn Harris, *Submission 33, Attachment 2*. See also VANISH Inc., *Submission 53*, p. 25.

¹⁸⁴ Merle Kelly, *Transcript of evidence*, p. 40.

¹⁸⁵ Judy McHutchison, *Submission 72*, p. 4.

VANISH also discussed this in its submission, stating:

Some infants were deemed 'not fit for adoption' because of perceived problems with their health or appearance, such as having red hair, and so remained in the child welfare system, usually as 'wards of state' and often without their mother's knowledge.¹⁸⁶

June Smith also told the Committee: '[m]any of our children were never adopted. Some of our babies ended up in orphanages'.¹⁸⁷ Of her own experience, Karen Linton told the Committee:

it took over three months for his adoption papers to be signed because he had been ill. I did find that he was told that he was in intensive care for a while and then he was placed in a foster carer's home until he was deemed fit to be adopted.¹⁸⁸

Further, a mother advised the Committee:

I was told she would be going in the family and I had months to change my mind. I kept thinking, 'She's with the family. If I take her out and then I can't cope, it's going to cause emotional, probably, damage', but she was in the nursery for nine weeks ... but they told me she was with the family and she was not and I could have changed my mind.¹⁸⁹

The Committee also heard that some adoptions were arranged for people who were connected to hospitals and maternity homes or who were friends of staff. Marilyn Carr told the Committee:

I have since found out that the nuns kept my baby in the hospital because one of the nuns that work there, her niece wanted a baby, so they kept her.¹⁹⁰

Similarly, Emma Maher wrote in her submission that she agreed with the hospital that her child would go to a father who was a school teacher and his wife. Emma Maher later found out what really happened:

Despicable, unforgivable, irretrievable fraud. It seems that about the same time I was in East Melbourne polishing floors and working out details of that Adoption Agreement, in a small village 150kms north-west of Melbourne, a woman with family connections in the Catholic Church was planning to use her Bishop-cousin to short-circuit due process at St Vincent's Hospital and thereby have her pick of the prettiest baby girl that came up for adoption next month.¹⁹¹

The Committee heard that mothers were consistently lied to and that many only found out what happened to their child later when accessing their adoption records. The experiences of children who were adopted is explored in Chapter 5.

¹⁸⁶ VANISH Inc., *Submission 53*, p. 27.

¹⁸⁷ June Smith, *Transcript of evidence*, p. 2.

¹⁸⁸ Karen Linton, *Transcript of evidence*, p. 10.

¹⁸⁹ Name Withheld 1, 18 May 2021, *Transcript of evidence*, p. 16.

¹⁹⁰ Marilyn Carr, *Submission 50*, p. 2.

¹⁹¹ Emma Maher, *Submission 107*, pp. 2–3.

3.4 Mothers access to hospital records

The Committee heard from many mothers that the life-long impacts of what they experienced at the hands of hospitals is further exacerbated when hospitals do not provide them with access to their hospital records. Mothers reported facing a number of challenges, including being told that their records were lost or destroyed or that they only received them after applying pressure or submitting an application through the *Freedom of Information Act 1982* (Vic) (FOI Act).

Mothers told the Committee that accessing their hospital records had been essential to help them understand what happened in the lead up and during the birth of their baby, particularly for those who could not recall certain details. For example, Lyn Kinghorn wrote in her submission:

I received my medical file from the hospital over 25 years later. When I re-read these records against the findings of the Senate Report in 2012, I fully realised the extent of the crimes committed against me and that my precious baby had been abducted for adoption. My ‘no’ was illegal to ignore. I was unaware that I had had my breasts bound until I received my medical file. I was traumatised over the years as to why I bottle fed her and had not breast fed her. I understand now this was illegal assault in preparation for her abduction.¹⁹²

In a public hearing, a mother told the Committee that it was only when she received her hospital records that she understood why she could not remember the birth:

And the drugging—my sheet is three pages long, of all the medications, the hospital medications, that they gave for the labour. That is how I found out why I could not remember my baby’s birth.¹⁹³

In Mandy Edwards’ submission, she spoke about her mother’s endeavour to find out what happened to her son who she believed had been swapped at birth after being told he was stillborn.¹⁹⁴ Mandy’s mother, Helen, applied to the RWH and received ‘three scant pages’, while also being advised that records from that era were destroyed in a fire:

In about 2007, I assisted Mum on her journey to locate her records from the Royal Women’s Hospital, via a Freedom of Information Application. We soon discovered that our hopes were dampened when we were told by the Records Officer, that due to a fire where the hospital records were stored in 1959, that all the records during the 1950’s were destroyed.¹⁹⁵

¹⁹² Lyn Kinghorn, *Submission 11*, p. 2.

¹⁹³ Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 14.

¹⁹⁴ Mandy Edwards, *Submission 80*, p. 1.

¹⁹⁵ *Ibid.*, p. 2.

Christine Poulton also discussed in her submission how she attempted to search for the truth about her 'stillborn' child in her hospital records, however, she faced numerous barriers:

[They gave] me lots of reasons why they could not let me have them (everything from 'they were destroyed, we only have one line in a book stating it was a boy and was stillborn, it was-on microfiche film but you cannot have them because there are other peoples information on it').¹⁹⁶

Finally, with the help of her doctor, Christine Poulton was granted access to her records, although she had to view them with an employee at the hospital, who told her that if she 'found what I needed to know he would destroy the other records'.¹⁹⁷

Barbara Pendrey wrote in her submission about her search for her records from the doctor's private files. She even contacted the doctor's family to try to obtain them:

Hospital records need to be made available so I can understand what really happened and what I was given and how much and for how long. I have written to many places they have come back with private doctors kept their own records. I even contacted the doctor's son so see if he knew anything about the records. I understood anything to do with adoption belonged to the government.¹⁹⁸

Another mother told the Committee that she could not overcome the bureaucratic barriers to accessing her hospital records:

When I tried to get my papers I was just sent around in circles all the time. I just wanted to actually read my papers from the hospital, but no, that was not happening.¹⁹⁹

Unsatisfied with the response, the mother paid an administrative fee to the hospital to release the records, but this also resulted in nothing:

I did pay, and after a while I heard nothing and rang back. No, that was not enough; that was only to pay for the initial form and you had to pay again to get the papers. And then I got told that because the hospital had changed they did not have those papers anymore. They were somewhere, but they did not know where they were. I do not know why—the doctor would be dead now.

June Smith discussed in her submission when she approached the RWH for her records in the context of inquiring about redress. She was told that they had no record of her being a patient at the Hospital, yet she had given birth to all of her four children there:

Within the past few years I approached this hospital seeking compensation from them for their past abuse of me and the illegal removal of my son Michael. Their first contact

¹⁹⁶ Christine Poulton, *Submission 92*, p. 2.

¹⁹⁷ *Ibid.*, pp. 2-3.

¹⁹⁸ Barbara Pendrey, *Submission 1*, p. 1.

¹⁹⁹ Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 17.

to me was to inform me that their hospital had no records of me and that I had never been a patient in their hospital! I had given birth to four children at this hospital!²⁰⁰

June Smith then submitted a freedom of information (FOI) application and she received the same explanation from RWH and no records were released.²⁰¹

Leonie White also requested her full records through the FOI process after receiving only partial and general information:

In 2012 under FOI I requested my medical records from the Royal Womens hospital, I requested all information relation that were administered to me during my very long labour ... I was sent general information so I contacted the Hospital Records Dept. and was told that they were more than likely in a sealed box which they were not authorised to open. Therefore I would have to be happy with what I had received.²⁰²

The Committee also heard of instances where mothers requested records and were initially told none were available. However, once some pressure was applied, the records were located and released.

In her evidence, Marilyn Murphy told the Committee:

When I approached St Anne's, now known as the Mercy hospital, it was very protracted. Finally I got the information. I will bring my partner in crime along here with me—we travelled the lobbying road in Western Australia. They could not find her records until such time as she said, 'I'll go to the media'. They quickly found those records, didn't they?²⁰³

Similarly, a mother told the Committee how she was initially told by the hospital that her records were no longer available but her GP then assisted her to access them:

Dr [redacted] told me I needed to apply for my medical records so I could get some information on what was going on, and I did. And they told me they were no longer available; they had gone. His words were, 'Like hell they have', and he rang them and I now have a book of every bottle my baby had.²⁰⁴

She had previously reached the stage where the FOI request had been unsuccessful, and like other mothers, was ready to give up:

I have got the freedom of information paperwork here, and it tells me that it is not available. The other girls just get to that stage, and it is like, 'What do we do now?'.²⁰⁵

²⁰⁰ June Smith, *Submission 10*, p. 16.

²⁰¹ Ibid.

²⁰² Leonie White, *Submission 41*, p. 3.

²⁰³ Marilyn Murphy, *Transcript of evidence*, p. 23.

²⁰⁴ Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 11.

²⁰⁵ Ibid., p. 13.

Mothers also spoke about how when accessing their records, it was clear that they contained misinformation and/or basic errors that raised broader questions about the truth for mothers and demonstrated how institutions disregarded their right to access high-quality and empathetic care. Barbara Pendrey explained in her submission:

I went into Kildonah [sic] & Presbyterian Babies Home. The paper work said I was admitted on the 20th December 1965. I know this is wrong as I was in the home for my 16th birthday which was on the 17 December 1965. I remember that very clearly as my parents sent me a present.²⁰⁶

In light of this revelation, she asked:

These untruths leave so many questions, what else did they lie about. I have since worked out this lie as I was only 15, they needed me to be 16 due to laws and children.²⁰⁷

Meryl Carr told the Committee how her records revealed that the doctor that was caring for her and her baby had lied on their medical notes. The doctor claimed to have known her mother, but in reality her mother had died many years before:

No. family history, now, he's referring to my mother, I'm sure of it. It says: *Girl's mother has been known to me for the past 12 years*. My mother was dead. And I didn't know who the hell he was ... and so this is signed by, this is the doctor's report, signed by a [redacted].²⁰⁸

A mother wrote in her submission that one of the most distressing elements of receiving records was the double standard about the truth and secrecy. She stated that the father's name were deliberately kept off birth certificates and records because it 'was not really a good look'.²⁰⁹ However, despite making her live with the secret for her entire life, someone at the hospital had actually reported the father's name in the record without her knowledge:

Then when [redacted] and I got all my other records I was reading through them and I saw [redacted] name, and I thought, 'I never did that. I never put his name on my information', and the pages do not add up. I spoke to [redacted] and she said that she went with [redacted] years later and they put it down, just in case there was anything needed. Things like that, that are just—why make me keep the secret?²¹⁰

Destruction of records

The Committee heard multiple examples of medical records being lost or destroyed. It acknowledges that it is devastating for mothers and people who are adopted to be advised by hospitals that their records are not accessible. A mother told the Committee:

²⁰⁶ Barbara Pendrey, *Submission 1*, p. 1.

²⁰⁷ Ibid.

²⁰⁸ Meryl Carr, *Submission 50*, p. 7.

²⁰⁹ Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 13.

²¹⁰ Ibid.

At the same time, I tried to start to understand and remember more about my story. I visited the Queen Victoria hospital to help me. After 15 years, I also tried to find my hospital records. I was very upset and angry when I was notified that they had been destroyed.²¹¹

Understandably, the mother questioned ‘what right did they have to do that!’²¹²

In its submission, VANISH also outlined that lost or destroyed medical records is a problem for mothers and this information is often conveyed to mothers in an insensitive manner with no regard for how it might affect them.²¹³ VANISH told the Committee that the claim that records are lost or destroyed is ‘common enough’ that people affected by historical forced adoptions understand it as a means to shirk responsibility: an ‘automatic response by institutions as a way of fobbing them off’.²¹⁴ For example, an inquiry participant wrote in their submission that they were lied to about the availability of their records. They were told the records had been destroyed by a fire at the hospital, yet they knew there was no such fire.²¹⁵

The Committee also received evidence from people who are adopted about the destruction of records. SallyRose Carbines dealt not only with a five-year delay to receive her adoption records, but also with her hospital file being destroyed. She explained that she wanted more information about the time between her birth and adoption but the records had been destroyed in a fire:

I did try and get my records from, as I said, the Diamond Valley hospital, just to find out that—I had a mystery. I had no idea how long I was in that hospital. I would imagine they would not have sent a brand new baby home, so there must have been a few weeks, I would imagine. I would have liked that history, but I was told that had been destroyed. I had to go through freedom of information to try and get that, but that had been destroyed—the information.²¹⁶

Further, Benita Rainer experienced being able to access hospital records after initially being told they did not exist:

So I wrote to the hospital asking for information. They said nothing was available. This was in 1975. Undeterred, I went in person to the hospital, up to the medical records library, and asked the woman if I could find out my time of birth from my birth card, as I was interested in Astrology and needed my birthtime. She had a look and came back and said she couldn’t find it. Then she said that there was one more place she could look, and came back with it. I think she was a supportive person. She held the card in her hand and told me my birthtime. I asked if I could see the card and she handed it to me. There was the address of my mother at her parents’ home.²¹⁷

211 Name Withheld, *Submission 51*, p. 3.

212 Ibid.

213 VANISH Inc., *Submission 53*, p. 95.

214 Ibid.

215 Name Withheld, *Submission 87*, received 4 May 2021, p. 2.

216 SallyRose Carbines, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 26.

217 Benita Rainer, *Submission 88*, received 6 May 2021, p. 1.

3.4.1 Enhancing the release of hospital records to mothers

The Committee is concerned that mothers are largely unaware of their rights to access hospital records and that hospitals do not proactively encourage or support mothers to request and receive their records. At a public hearing, the RWH recognised that it could improve its processes for access to records. Leanne Dillon, General Counsel, advised the Committee:

Access to records held by the Women's is an area where we are looking to implement some process improvements immediately, with a view to removing the cost burden and also streamlining our application process. While the Women's does not hold records now relating to adoptions, it does continue to hold the medical records of mothers and babies ... While this information is on the Department of Health website, we acknowledge that we could be clearer in communicating information about the records that we hold and so we are now looking to update our website with this information.²¹⁸

She further stated:

we do receive a number of requests from people who are expecting to actually get their adoption record, not their medical record, and so I think we can absolutely improve the information that is available on our website so people are a little bit clearer when they come to us. And then in terms of improving the process of access, we recently became aware that we had been charging some of these women for access to their records. So as soon as, I guess, management became aware of that, bearing in mind that the freedom of information process is largely an administrative-type process under the Freedom of Information Act, we have also taken that decision to waive all fees and charges for access to records.²¹⁹

The Committee is concerned that hospitals are not managing and releasing information in a way that reflects contemporary standards of transparency, accountability and fairness. The Committee is strongly of the view that hospitals and agencies need to significantly improve how they identify and release the records of mothers in their care whose newborn babies were forcibly removed from them. The same respect should be shown to people who are adopted. An application form specific to adoption-related medical records could ensure that people receive a better service when accessing their medical records, rather than record requests being incorporated into broader access to information processes.

RECOMMENDATION 3: That the Victorian Government require all public hospitals directly involved in historical forced adoptions to develop a specific application form for mothers and people who are adopted to request their hospital records. These forms must be published clearly on hospital websites, alongside apologies for their role in historical forced adoptions. Private hospitals should be strongly encouraged to do the same.

²¹⁸ Leanne Dillon, *Transcript of evidence*, p. 3.

²¹⁹ *Ibid.*, p. 4.

Further, the Committee finds it concerning that people have been charged a fee to access their medical records at the RWH. When asked why this occurred, Leanne Dillon told the Committee that it was not 'deliberate', but happened because there was no awareness at the senior management level until recently that this was an issue for mothers.²²⁰ The RWH has stopped charging fees to access hospital records for mothers affected by historical forced adoptions and said they would reimburse any mothers who had been charged in the past.²²¹

Administrative fees to access hospital records can also be charged under the FOI Act and the *Health Records Act 2001* (Vic). The Committee strongly believes that the practice of charging mothers and people who are adopted an administrative fee to access their records at public hospitals should immediately cease. Under the FOI Act, application fees can be 'waived or reduced, whether or not the fee has been paid, if the payment of the fee would cause hardship to the applicant'.²²² The Committee considers that being subjected to the policies and practices of historical forced adoption and the distress created by accessing medical records would qualify as causing hardship.

RECOMMENDATION 4: That the Victorian Government require all public hospitals directly involved in historical forced adoptions to waive all fees for mothers requesting to access their hospital records. This includes waiving the application fee under the *Freedom of Information Act 1982* (Vic) on the grounds of causing 'hardship'. Private hospitals should be strongly encouraged to do the same.

The Committee further considers that access to medical records could be improved if hospitals took a more proactive approach. The Senate Inquiry recommended:

non-government organisations with responsibility for former adoption service providers (such as private hospitals or maternity homes) establish projects to identify all records still in their possession, make information about those institutions and records available to state and territory Find and Connect services, and provide free access to individuals seeking their own records.²²³

This recommendation includes the medical records of mothers:

Not all adoption information is contained in the official adoption records held by state authorities. The hospitals, homes or institutions that the women gave birth in, or spent time in as part of their birthing experience, also hold important information such as medication received, or the circumstances that caused the mother to consent to the adoption.²²⁴

The Committee supports this recommendation.

²²⁰ Ibid., pp. 5–6.

²²¹ Ibid., p. 6.

²²² *Freedom of Information Act 1982* (Vic) s 17 2 (b).

²²³ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 275.

²²⁴ Ibid., p. 273.

RECOMMENDATION 5: That the Victorian Government strongly encourage organisations involved in historical forced adoptions to establish projects to identify all records still in their possession and make information about those institutions and records available to the Government Adoption Information Service.

VANISH recommended implementing an additional accountability measure where records are claimed to be lost or destroyed. Its view is that an Adoption Information Service (AIS) should have to explain what it has done to find the information and what other options are available to locate it. VANISH advised that in the case of a destroyed file, the AIS should be required to: 'provide the details regarding when and why this occurred, including evidence such as the report of the fire or flood'.²²⁵

The Committee endorses this accountability measure and believes that in the case of medical records, hospitals should be required to provide a full report on lost or destroyed records, including the search process and any evidence of destruction, for example, the report of the fire or flood.

RECOMMENDATION 6: That the Victorian Government require all public hospitals directly involved in in historical forced adoptions to provide an explanation to information applicants as to why a hospital record cannot be located, including details of when and how records were destroyed if relevant.

225 VANISH Inc., *Submission 53*, p. 95.

4 Ongoing effects on mothers

We will always remember. We will not ever wear the pretence of denial. We will not attempt a feeble silence. We will always remember, because to forget is to discredit the courage of so many—the many affected who came forward with their stories, who revealed their broken lives, who exposed the acts committed inside our hospitals and institutions and demanded that they cease. If we failed society, then they restored it—those mothers and children who stood up to be seen and asked us to read the darker chapters of our history. We debate this historic motion today because of their efforts. Yet there were many more who were so broken in anguish they could not bear to divulge their past. We cannot forget those who took many years to relive their memory and we cannot forget those who are as yet unknown.¹

This chapter builds on Chapter 3 and considers the ongoing effects of mothers having their newborn babies taken from them on their subsequent relationships, careers and lives, health and wellbeing, and reunions with their now adult children. It explores the evidence received by the Committee on how these experiences have impacted many aspects of mothers' lives on a continuing basis, as reflected in these two quotes from mothers:

This entire experience has stayed with me forever and changed the person I should be.²

Mothers whose babies were abducted at birth have travelled through many storms and trials of life, never to be the same again—striving to regain their dignity, hiding broken hearts behind their smiles, but beneath the surface suffering indescribable grief, pain and trauma, and still being treated as the criminal.³

The chapter concludes by considering the need for further acknowledgement and recognition of what mothers have experienced and makes recommendations on how this can be achieved.

4.1 Common ongoing effects

Our stories are similar, and they are different.⁴

The Committee heard that every mother's experience of having their baby forcibly removed was unique and the ongoing effects have also been different for all mothers. Yet there are many commonalities that reinforce just how damaging the policies and practices of historical forced adoption were. Yvonne May told the Committee in reference to a support group she attends:

1 Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, p. 4773.

2 Name Withheld 3, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 23.

3 Brenda Coughlan, Spokesperson, Independent Regional Mothers, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 1.

4 Name Withheld 5, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 36.

The woman know the pain and suffering, we have all experienced. Wish it had been around when I was pregnant. It is comforting to hear similar experiences to mine, and it builds a sisterhood of understanding and love, although the experiences are so different and varied. We are all very damaged women, who survived the trauma of having a child taken, the consequences we live with forever.⁵

4.1.1 Grief, sadness, shame, guilt and secrecy

Mothers received no support or counselling at the time of being separated from their babies, rather they were sworn to secrecy. Each mother's experience was highly traumatic and it continues to shape them today. This is shameful. The Committee acknowledges that it is not a shame that should ever have been carried by mothers, but rather should be carried by government and non-government institutions that punished these women when they were young and vulnerable. As expressed by Lyn Kinghorn in her evidence to the Committee:

Our communities, our families, Christian and medical institutions and government authorities all treated us as receiving the punishment we deserved. To this day some still hold to this belief. Where could mothers find care and compassion? It was years of suffering in lonely silence and condemnation before we dared find and support each other. Please try to imagine: brutal forced removal from our babies, then tossed out alone with no-one to console or even recognise or acknowledge our grief. We lived through the whispers and the accusations—hard, nasty, cruel, upstanding communities reminding us this was our deserved punishment.⁶

Consequently, the Committee heard time and time again of mothers feeling overwhelming grief, loss and pain.⁷ Mothers wrote in their submissions:

The ongoing trauma, guilt, grief and loss is with me every day and night. My family unit will never be complete. I am broken.⁸

most birth Mum's felt we didn't have a choice, it was taken from us, I personally lost a part of me forever, I have my son in my life now but their wasn't a day & still isn't a day when I don't think about what life could & should have been with my son with me ... the fear of worthlessness you live with every day is ongoing but we try each day & keep going with life, some days you just think & feel how do I keep going, when will all this pain end, but you then realise it won't stop you have to live with it forever.⁹

Brenda Coughlan from Independent Regional Mothers (IRM) told the Committee:

⁵ Yvonne May, *Submission 69*, received 25 June 2020, p. 2.

⁶ Lyn Kinghorn, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 1.

⁷ Hannah Spanswick, *Submission 9*, received 27 January 2020, p. 1; Robyn Flanagan, *Submission 65*, received 17 June 2020, p. 1; Debra Thurley, *Submission 68*, received 24 June 2020, p. 1; ARMS (Victoria), *Supplementary evidence*, supplementary evidence received 25 June 2020, p. 2; Nancy Johnson, *Submission 8*, received 20 January 2020, p. 1; Name Withheld 1, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 10; Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 27; Hannah Spanswick, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 3; Wilhelmina Marshall, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 26; Emma Maher, *Submission 107*, received 30 June 2021, p. 4.

⁸ Lynda Klingberg, *Submission 36*, received 28 February 2020, p. 1.

⁹ Name Withheld, *Submission 109*, received 22 July 2021, pp. 1–2.

The torture, horror, pain, loss, suffering and grief of one's baby abduction can never be erased, because when hope is lost, the trauma is unimaginable.¹⁰

Further, Yvonne May wrote in her submission:

No emotional support, I was on a downward spiral that changed my life forever. Suffering and guilt began. I just had given birth to an invisible [sic] child. He never ever felt my touch till he was 48 years old. No wonder I grieved for 48 years and still do, what a disaster.¹¹

The Committee heard mothers repressed their grief as they were told to forget about what happened or as a survival mechanism.¹² Two mothers wrote in their submissions:

I watched as they drove away, absolutely shattered. She was gone. I went to my room and cried my heart out ... Sometime later the head sister sent for me. I didn't want to go I felt sure I was to be reprimanded as I had been told countless times that this was not to be my baby and that I had to get over it and forget it. To my surprise she was nice and she was kind. I had never seen her like this before. She told me my grief would pass that in twelve months that baby would be no more that she would be a toddler and I would have moved on. She was wrong.¹³

A number of times when there has been a family death or our pets died, the pain and grief I felt, I automatically pushed down. This was a strategy that has helped me to survive but as a result stopped me feeling anything or dealing with anything.¹⁴

Further, Yvonne May submitted:

I now know it was my resilience that saved me and allowed me to survive this. Traumatized, but I survived. As stated my pregnancy was a secret I kept until about 6 years ago. Then I had the courage to tell my horrific story to others.¹⁵

It was evident to the Committee that disenfranchised grief was common for mothers. In its submission, the Victorian Adoption Network for Information and Self Help (VANISH) discussed that '[g]rief is "disenfranchised" when it is connected to a loss that is not openly acknowledged, socially supported or publicly mourned'.¹⁶ This is demonstrated by the following quotes from mothers:

Now I understand I had experienced emotional trauma and suffered a huge loss. My feelings were a normal, natural reaction to what I had experienced. It was silent grief.¹⁷

No matter how many words are written or spoken, no matter how many meetings and discussions are held, nothing can ever come close to expressing or understanding the

¹⁰ Brenda Coughlan, *Transcript of evidence*, p. 3.

¹¹ Yvonne May, *Submission 69*, p. 2.

¹² Name Withheld, *Submission 51*, received 22 March 2020; Wilhelmina Marshall, *Transcript of evidence*, p. 26.

¹³ Name Withheld, *Submission 37*, received 28 February 2020, p. 3.

¹⁴ Name Withheld, *Submission 51*, p. 2.

¹⁵ Yvonne May, *Submission 69*, p. 1.

¹⁶ VANISH Inc., *Submission 53*, received 18 June 2020, p. 34.

¹⁷ Nancy Johnson, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 14.

grief, the pain, the trauma a mother carries in her heart following the abduction of her baby that grew inside her womb.¹⁸

For me years of torment, not knowing where my baby was not allowed to tell anyone grieving my loss it was like someone ripped out my heart.¹⁹

You learn to hide all of the pain, grief etc from everyone you cry alone somewhere safe, the shower, you weren't suppose to show your true feelings of loss.²⁰

In her submission, Hannah Spanswick also compared the loss of a child through adoption to the loss of another child to cancer:

With the latter, I can visit my son's grave, lay flowers and continue to feel a connection to him, through the life we shared together. There are memories and photographs to prove his existence. I can talk about him openly because my family and friends shared in his loss and grieved with me. None of that exists or applies to the child I lost through adoption. Being a 'birthmother' can be a solitary and lonely experience.²¹

Further, VANISH outlined that '[t]rauma combined with a process of disenfranchised grief and loss can mean that the memory of one particular event comes to taint all other experiences'.²² For example, specific days and anniversaries act as triggers for mothers, causing the pain and grief to resurface:²³

Throughout my life I would experience triggers for this trauma—her birthday, Christmas, mother's day, when I see a baby or child around the same age, TV shows—all of these things would trigger the trauma and feelings.²⁴

Yvonne Hunter expressed a similar experience to the Committee at a public hearing:

How do you forget their first birthday or any birthday—I missed 55 of them—every Christmas, his first day of school, his first girlfriend, graduation? And do not even ask me how Mother's Day affects me.²⁵

The secrecy and shame imposed on and felt by mothers was also a common experience shared with the Committee,²⁶ as reflected in the following quotes:

¹⁸ Brenda Coughlan, *Transcript of evidence*, p. 4.

¹⁹ Judy Stiff, *Submission 66*, received 17 June 2020, p. 3.

²⁰ Name Withheld, *Submission 109*, p. 1.

²¹ Hannah Spanswick, *Submission 9*, p. 1.

²² VANISH Inc., *Submission 53*, p. 34.

²³ Karen Linton, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 9; Name Withheld 2, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 16.

²⁴ Name Withheld, *Submission 51*, p. 2.

²⁵ Yvonne Hunter, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 3.

²⁶ Thelma Adams, *Submission 40*, received 2 March 2020, p. 2; Marilyn Murphy, *Submission 61*, received 3 June 2020; Debra Thurley, *Submission 68*, p. 1; Judy McHutchison, *Submission 72*, received 26 June 2020, p. 2; Name Withheld, *Submission 83*, received 24 March 2021, p. 1; ARMS (Victoria), *Supplementary evidence*, pp. 2-3; Robin Turner, *Submission 5*, received 16 January 2020, p. 1; Nancy Johnson, *Submission 8*, p. 1; Margie Broughton, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 45; Karen Linton, *Transcript of evidence*, pp. 9-10; Yvonne Stewart, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 20; Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 12; Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 15; Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 29; Name Withheld, *Submission 35*, p. 4; Marilyn Murphy, *Submission 61*, pp. 1-2; Name Withheld 3, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 3; Name Withheld, *Submission 109*, p. 1.

I felt like one of my limbs had been removed, a part of my heart was wrenched from me, when I left him at the RWH [Royal Women's Hospital] and I have never been a complete individual since—the shame I have felt ever since never leaves me.²⁷

I feel sad, damaged and lonely as a result of all this. I have always felt inferior around my family and friends, the shame never goes. The if only's take over your thoughts and depression is ever present.²⁸

The loss of a child through adoption can cause very complicated reactions due to the secrecy, the grief, guilt, shame and loneliness I have had for so long.²⁹

We were so, so young and had no idea; I had no idea. Mum just did not speak. She never spoke at all about me, and it was nothing—it was like nothing happened. We were marked, and our children were marked. They would never have got over the shame of it either. It is just a horrible thing.³⁰

Further, Sue Miiller-Robbie wrote in her submission:

So my life based on lies and silence began, the naïve county girl soon got lost in the reality of life as a shameful women. An 'unmarried mother', who give [sic] her child up to adoption. My identity was now dominated by shame, guilt, powerlessness, fear, secrecy and isolation. The fear of people finding out my secret and the constant wondering what they would think of me, took over my thoughts and actions.³¹

Marilyn Carr stated:

But the shame, there's nothing worse than the shame. I still feel ashamed.³²

At a public hearing, Yvonne Hunter told the Committee:

I believed the reasons and the lies that were told to me: I was a disgrace, I would bring shame of my family, I was the scourge of the earth.³³

June Smith also spoke about this at a public hearing, stating:

You were told to never ever talk about it. I never told anyone. My mum and dad never knew. My siblings did not know. Nobody knew. I was on my own, and for 36 years I did not tell anyone. I told two husbands, and they told me never to speak of it again. Nobody knew.³⁴

²⁷ Name Withheld, *Submission 83*, p. 2.

²⁸ Name Withheld, *Submission 35*, p. 5.

²⁹ Name Withheld, *Submission 51*, p. 4.

³⁰ Name Withheld 5, 31 March 2021, *Transcript of evidence*, p. 36.

³¹ Sue Miiller-Robbie, *Submission 100*, received 31 May 2021, p. 4.

³² Marilyn Carr, *Submission 50*, received 19 March 2020, p. 9.

³³ Yvonne Hunter, *Transcript of evidence*, p. 3.

³⁴ June Smith, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 9.

As these quotes reveal, mothers were frequently told by medical professionals, staff at maternity homes and their families to forget about what happened and remain silent.³⁵ Nancy Johnson wrote in her submission:

We were told to start a new life as if nothing had happened ... I did not share with anyone, living a lie and my dark secret I kept buried.³⁶

Further, Margie Broughton told the Committee in a public hearing:

It was traumatic for me for the entire nine months, alone with the shame and guilt, and walking out of the hospital alone, without my son, after being told, 'Go away and forget this ever happened to you' and 'We don't want to see you back here again'. These words have echoed through five decades.³⁷

The Committee is aware that sometimes the secrecy and silence was internalised by mothers based on the shame that has followed them throughout their lives. As Sue Miiller-Robbie submitted:

The significant difference between this marriage and my previous one was that I was not silenced or controlled ... Sadly, I was now the person maintaining my silence having internalised all the judgements and fear related to others finding out my secret and what they would mean for my family and me.³⁸

Another mother wrote:

I am writing my story, putting memories on paper in the hope it may help me to become a better person. I still push those memories away, as that was how we were told to deal with the trauma of losing my child and get on with my life. I still get the thoughts of shame and guilt, 'how could I have done such a thing?'.³⁹

Many mothers also spoke to the Committee about feeling guilty for what happened to them, which seriously impacted their mental health and wellbeing. One mother submitted:

I went in normal and came home a total introvert, and that is how it has been since. Feeling guilt and shame totally no self worth ... if you get told often enough that you are worthless you believe it.⁴⁰

³⁵ Yvonne Hunter, *Transcript of evidence*, p. 3; Karen Linton, *Transcript of evidence*, p. 9; SallyRose Carbines, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 24; Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 11; Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 16.

³⁶ Nancy Johnson, *Submission 8*, p. 1.

³⁷ Margie Broughton, *Transcript of evidence*, p. 45.

³⁸ Sue Miiller-Robbie, *Submission 100*, p. 5.

³⁹ Name Withheld, *Submission 51*, p. 3.

⁴⁰ Name Withheld, *Submission 35*, p. 4. See also Name Withheld, *Submission 83*, p. 2; ARMS (Victoria), *Supplementary evidence*, p. 2; Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 10; Sue Miiller-Robbie, *Submission 100*, p. 9.

Similarly, Lynda Klingberg wrote in her submission:

The ongoing trauma, guilt, grief and loss is with me every day and night. My family unit will never be complete. I am broken ... The past trauma is ongoing and will always be. This burden of grief I carry with me, defining me.⁴¹

Thirdly, Patricia Gall told the Committee:

We were told to keep it as a dark secret, but now I know as an adult, I know from experience, to keep this secret compels a force of strength, of self-control, that can make us feel guilty keeping it. That is how we were told we were a shame on family, a shame on the community. We were told we were not fit to be mothers. I was made to feel selfish if I did not give the baby up, and that has made me feel guilty, dishonest.⁴²

Experiencing low self-esteem and confidence throughout their lives was also a theme consistently raised with the Committee.⁴³ Debra Thurley wrote: 'I came home soulless with a completely damaged self-esteem'.⁴⁴ Another mother expressed how she felt after the birth of her child:

From this time my self esteem and confidence became very, very low. In fact, I would say I didn't have any at all. I needed to feel loved and looked for it from anywhere. This need for LOVE has never diminished. Even though I have a family who loves me, I still feel very alone because of that period of my life! [emphasis in original]⁴⁵

Despite being told to forget about the pregnancy, birth and adoption, these traumatising experiences followed mothers through their lives and impacted subsequent relationships, careers and mental health and wellbeing. Hannah Spanswick stated in her submission:

Losing a child through adoption leaves a lasting wound that never heals irrespective of whether or not a subsequent relationship is established ... I continue to suffer from the effects of my loss, regardless of the effort I make to integrate my experience into daily life.⁴⁶

4.2 Effects on subsequent relationships

The Committee heard the experience of having their babies taken from them often damaged mothers' ability to form intimate relationships in the long-term.⁴⁷ Yvonne May described this well when she wrote:

⁴¹ Lynda Klingberg, *Submission 36*, p. 1.

⁴² Patricia Gall, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 14.

⁴³ Name Withheld, *Submission 83*, p. 2; Wilhelmina Marshall, *Transcript of evidence*, p. 26.

⁴⁴ Debra Thurley, *Submission 68*, p. 1.

⁴⁵ Name Withheld, *Submission 51*, p. 2.

⁴⁶ Hannah Spanswick, *Submission 9*, p. 1.

⁴⁷ Karen Linton, *Transcript of evidence*, p. 10.

So the consequences of adoption, spreads its cold fingers to so, so many lives ... children, families, friends. I am in my seventies now, and the suffering, loss, pain, guilt, continues.⁴⁸

Further, Margie Broughton told the Committee:

Lack of trust in personal relationships was a constant over the decades, the grief after trauma and pain subsides—but it never really leaves completely.⁴⁹

The daughter of one mother wrote in her submission that:

The secrecy, shame and humiliation left its mark, and followed my mum throughout her life. Further babies, marriages and friendships couldn't heal what had happened or erase the memories ... Due to her repressed trauma and internalised shame, she did not believe she was lovable or deserved love.⁵⁰

The Committee understands that low self-esteem and feelings of worthlessness resulted in some women landing in damaging relationships because they felt underserving of love and care.

4.2.1 Partners

Many mothers described to the Committee how their experiences impacted their relationship with their partners. Some mothers married the father of the child that was forcibly removed from them, either staying together permanently or later divorcing because the loss was too painful.⁵¹ Jennifer Howe wrote in her submission that: '[m]y decent husband has not gone looking elsewhere he is devoted to me. He has done nothing but support me while battling his own demons'.⁵²

Conversely, Elizabeth Edwards wrote that her child was taken from her on 21 November 1963. A year earlier she had become engaged to the father of her child and married him in June 1964. Their daughter was adopted at 15 months of age, at which point they had been married for around ten months. Elizabeth and the father divorced in 1990 because they were 'both forever negatively impacted by the loss of our first child'.⁵³

For some mothers, they formed long-lasting relationships with other partners who were not the father of their child, but they were not supportive and the relationship eventually resulted in separation:

48 Yvonne May, *Submission 69*, p. 3.

49 Margie Broughton, *Transcript of evidence*, p. 45.

50 Name Withheld, *Submission 106*, received 29 June 2021, p. 3.

51 Elizabeth Edwards, *Submission 19*, received 2 February 2020, p. 2; Cherylyn Harris, *Submission 33*, received 28 February 2020, p. 1; Wilhelmina Marshall, *Submission 71*, received 26 June 2020, p. 2; Name Withheld, *Submission 109*, p. 1.

52 Jennifer Howe, *Submission 96*, received 5 May 2021, p. 8.

53 Elizabeth Edwards, *Submission 19*, pp. 3–4.

He could never understand why I just couldn't get over it. He was the only one who knew my secret but he said we would never talk about it and he didn't want to hear about it. It was always between us. I believe this was some of the reason our marriage developed some cracks and after 22 years broke down and ended in divorce.⁵⁴

Alternatively, mothers kept the secret of what they had been through so closely they did not tell their husbands.⁵⁵ Some mothers later found supportive partners and, while there is no way the partners could fully comprehend their pain and suffering, they were as understanding as they could be.⁵⁶

Other mothers were not so lucky, experiencing subsequent relationships with partners that were marred by violence and abuse.⁵⁷ For example, Sue Miiller-Robbie wrote in her submission that her husband knew she had a previous child who was adopted but insisted she did not tell anyone. As her marriage unravelled, Sue Miiller-Robbie saw a psychiatrist who told her:

what I was experiencing was emotional blackmail and she believed that I had already left/disconnected from the marriage. About 12 months later I put my 3 children and a few belongings in a car and drove away. The threats (suicide and homicide), intimidation and controlling behavior continued only coming to an end following a very difficult court process.⁵⁸

Sue Miiller-Robbie had a subsequent successful marriage with a husband who did not control or silence her, allowing her to finally talk about her experience.⁵⁹

Karen Linton told the Committee about her marriage after giving birth:

It was a violent marriage, and I left him. I went and fell into another marriage that was similar circumstances and it was again more secrets, because DV [domestic violence] back then was not known or talked about, so it was just secret after secret we are compressing.⁶⁰

Another inquiry participant whose submission was based on their mother's experience wrote:

Due to her repressed trauma and internalised shame, she did not believe she was lovable or deserved love. In her first marriage, she experienced further birth trauma, having suffered multiple miscarriages and even a still birth before eventually adopting two children herself. In her second marriage she was able to give birth to another baby, but the marriage was a disaster, abusive, and created further trauma for my mother, my siblings and me. My mother did not believe she deserved better.⁶¹

⁵⁴ Name Withheld, *Submission 37*, p. 4.

⁵⁵ Yvonne Stewart, *Transcript of evidence*, p. 20.

⁵⁶ Name Withheld, *Submission 51*, p. 1; Patricia Gall, *Transcript of evidence*, p. 16.

⁵⁷ Karen Linton, *Transcript of evidence*, p. 10; Name Withheld, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 16; Name Withheld, *Submission 106*, p. 2.

⁵⁸ Sue Miiller-Robbie, *Submission 100*, p. 5.

⁵⁹ Ibid.

⁶⁰ Karen Linton, *Transcript of evidence*, p. 10.

⁶¹ Name Withheld, *Submission 106*, p. 2.

The Committee was informed that some mothers were unable to form long-lasting relationships because of the ongoing trauma they had experienced. This is demonstrated by one mother, who submitted:

Due to the unbearable trauma that took over my life I unfortunately have never felt able to enjoy a loving, trusting relationship with anyone and have remained single all my life.⁶²

4.2.2 Children

The Committee learned that historical forced adoption also affected mothers' experiences of giving birth to subsequent children and forming relationships with them. Understandably, it was common for the birth of subsequent children to trigger a resurgence of traumatic memories or repressed trauma for mothers, as the following mothers told the Committee:⁶³

I later married and went on to be blessed with three more beautiful children. Each of my hospital stays were unpleasant, I guess I made them unpleasant. I was like a scared rabbit, I did everything I was told and asked for nothing. I was intimidated by the nurses in those starched white hats and was always afraid and expecting that my babies would be treated differently to the others in the nursery. I lived for the day I could take them home.⁶⁴

I gave birth to a beautiful daughter many years ago. I still feel blessed to be able to be part of her life now. As with many other birth mothers who have lost a child, the birth of subsequent children can unleash a lot of hidden memories for a Mum. This is what happened for me and I am thankful for this opportunity to reclaim parts of me that went missing because it has made me whole.⁶⁵

In her submission, Thelma Adams wrote:

I started to socialise with a family relative and went on to meet my now husband, we have 3 children and after each child I became more depressed—I had anxiety, panic attacks, I went to my doctor and he said I needed to deal with the baby that had been given away and diagnosed me with PTSD [post-traumatic stress disorder], depression, anxiety, panic attacks, social anxiety and I was then put on a lot of medication.⁶⁶

Leonie White submitted to the Committee:

I ... longed to have another baby as I thought it would ease the pain but in fact it only made it worse ... My second son was born in 1980, which instead of being a happy time was filled with fear. When I woke my son was not with me, I was extremely upset as it just brought the memories of my first sons birth and having him taken away.⁶⁷

⁶² ARMS (Victoria), *Supplementary evidence*, p. 2.

⁶³ Marilyn Murphy, *Submission 61*, p. 1.

⁶⁴ Name Withheld, *Submission 37*, p. 3.

⁶⁵ Sandra Collins, *Submission 105*, received 28 June 2021, p. 2.

⁶⁶ Thelma Adams, *Submission 40*, p. 2.

⁶⁷ Leonie White, *Submission 41*, received 3 March 2020, p. 2.

The Committee understands that for mothers the emotional abuse they were subjected to during their first pregnancies became apparent when they had subsequent children. One mother spoke to the Committee at a public hearing, stating:

I had this overwhelming feeling that I could not look after him, I did not know how to look after him—no idea ... here I have a baby that I can keep and is my baby, and I am looking to have somebody else look after it because I could not. And I realised that all that brainwashing—that nun saying and the hospital saying, ‘You can’t look after yourself, so how can you look after this child? You’re not capable of looking after a child’. So I now connect that, but I did not at that time.⁶⁸

Many mothers told the Committee that they were afraid their subsequent children would be taken from them, either after the birth or at other points in life.⁶⁹ Mothers described in their submissions:

I became very unwell and re-experienced my trauma after my youngest daughter moved to the UK for a year to work. This triggered my emotions and feelings about losing my baby and not knowing where she was or if she was ok.⁷⁰

even having another son never took that pain & loss away from our first son, when our first daughter was born I couldn’t let her out of my sight in hospital, I realise now it was the fear of losing her.⁷¹

I went on to have 3 more sons, and every delivery I had difficulty bonding with these babies as there was a fear that they would be taken away from me.⁷²

Other mothers described to the Committee that the pain and suffering they had experienced when losing their first child meant they were often over-protective of their following children. For example, Jennifer Howe wrote:

My husband and I only wanted to help our children who are drug free, trouble free, have all married, all have children all have good jobs and they only found out in 2010 what happened in the past. It was Mother’s Day 2010 when I told them. The[y] knew there was something because of my protective behaviour.⁷³

Alternatively, mothers’ struggled to bond with their children.⁷⁴ As Yvonne May experienced:

I did marry and had 2 children. One in 1973, 1975. I was a cold, angry and found bonding with my children, near impossible. Was I about to have my children “taken”????? I tried to nurture but failed. Not what I envisaged, but the negative feelings just spilled out. Luckily my children got through this as did I, but they were also so hurt and damaged.⁷⁵

⁶⁸ Name Withheld 3, 31 March 2021, *Transcript of evidence*, pp. 23–24.

⁶⁹ Lyn Kinghorn, *Submission 11*, received 30 January 2020, pp. 2–3; Karen Linton, *Transcript of evidence*, p. 10.

⁷⁰ Name Withheld, *Submission 51*, p. 3.

⁷¹ Name Withheld, *Submission 109*, p.1.

⁷² Name Withheld, *Submission 83*, p. 2.

⁷³ Jennifer Howe, *Submission 96*, p. 3.

⁷⁴ Name Withheld, *Submission 106*, p. 2.

⁷⁵ Yvonne May, *Submission 69*, p. 2.

After meeting her son who was taken from her, Yvonne May realised:

I had been grieving for 48 years, for his loss. It prevented me loving, caring, nurturing of my own kids. My elder daughter had since told me, she never felt truly loved as a little one ... WOW that was a slap in the face.⁷⁶

Sadly, some mothers were unable to have further children due to the trauma they had experienced: both emotionally and physically.⁷⁷ One mother submitted that she went on to have three miscarriages, finally finding out she had an incomplete cervix which had to be mended:

So therefore you could say that the hospital took four babies from me.⁷⁸

Similarly, Lyn Kinghorn told the Committee:

The stillbirth of my second daughter was caused through lack of history passed on from the women's hospital ... my following 3 daughters survived due to early induced labour. My only son needed no intervention.⁷⁹

The Committee also received evidence from mothers whose positive experience of motherhood was forever tainted by what happened to them in their younger years. For example, one mother told the Committee:

It just destroys you. It took so much. I know I have been a good mum. I made it my mission to be a good mum. I had my three children in a little over three years after the adoption one. But I know that there is a part of me they did not get. I know there is a part of me. They have never said, but I know, because you cannot carry a child and then have someone take it away and not be affected. You never get over it.⁸⁰

4.3 Careers and life experiences

The Committee learned how mothers' experiences affected their ability to live normal lives and to their full potential:

What greater trauma can any human being bear than the loss of a child ... Just as the birth of our child was not acknowledged the loss of our child was also not acknowledged. We were isolated for years with our suffering and this suffering undermined our psychological and physical health and diminishing our ability to achieve our career, social and intellectual potential.⁸¹

⁷⁶ Ibid.

⁷⁷ ARMS (Victoria), *Supplementary evidence*, p. 2; Judy McHutchison, *Submission 72*, p. 2; Robin Turner, *Submission 5*, p. 3; Emma Maher, *Submission 107*, p. 3.

⁷⁸ Name Withheld, *Submission 35*, pp. 4-5.

⁷⁹ Lyn Kinghorn, *Submission 11*, p. 2.

⁸⁰ Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 27.

⁸¹ Judy McHutchison, *Submission 72*, p. 1.

Thelma Adams experienced this, writing in her submission:

I couldn't go to the supermarket on my own, I couldn't go out for dinner, my children missed out on so much, I just was not well enough to go anywhere for a very long time. Of a day, I would drop the kids at school and I would sit outside the doctors in the car just in case something happened to me. I felt I needed to be close.

I had no friends, I never joined social groups, I was so anxious all the time, now looking back, I have no idea how I functioned ... The huge amount of guilt I feel because of the cost of doctors' bills, counselling, medication and being unable to hold down a job—to this day and for the rest of my life no amount of medication or counselling could fix what was broken, I just get through each day.⁸²

Another mother expressed in her submission:

I had lost my baby and my sense of safety. I tried to keep a low profile avoiding any promotion and could not let anyone get close enough to ask any questions about the missing part of my life. I still keep my distance.⁸³

The Committee understands that not being able to work particularly affected mothers' ability to afford counselling:

I have had counselling most of my adult life as I needed it to help me stay even and to help me deal with the issues surrounding the trauma. The cost of counselling has been very difficult to manage and even harder now. I wanted to function as a useful member of society and a useful member of my family.

...

My life was completely altered by losing my child, my career possibilities were completely lowered by my loss of self worth and shame and my struggle with coping with the trauma.⁸⁴

Other mothers were able to have careers and successful lives on the surface, but the pain and trauma often bubbled away underneath.⁸⁵ One mother, whose baby was forcibly removed from her and is also an adopted person, shared her experience with the Committee. She wrote:

Our family moved to [redacted] for a new start and I was now working at the [redacted] as coordinator of their young mums program, providing outreach support to young women pregnant and parenting who were homeless and at risk. It was hard sometimes, well a lot of the time, but I felt like I was making a real difference and offered social work with compassion and fairness.⁸⁶

⁸² Thelma Adams, *Submission 40*, p. 2.

⁸³ Name Withheld, *Submission 60*, received 3 June 2020, p. 1.

⁸⁴ Thelma Adams, *Submission 40*, p. 1. See also Marilyn Murphy, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 2.

⁸⁵ Sue Miiller-Robbie, *Submission 100*, pp. 7–8; Emma Maher, *Submission 107*, p. 3.

⁸⁶ Name Withheld, *Submission 89*, received 25 May 2021, p. 9.

Later in her submission, this mother wrote:

So 2020, COVID hit and no doubt it was a shocking time for us all. For me, I need to be busy, continual occupied and buzzing around. I tried to keep it together but more and more my past haunted me. It was there when I woke up, when I went to bed and would wake me during the night.⁸⁷

Further, Patricia Gall shared with the Committee at a public hearing:

I later married and had three loving well-nurtured daughters, whom I raised, but I still had serious problems raising them, because of psychological disassociation and post-traumatic stress disorder. However, while they were young I returned to school, completing year 12, gaining entry into university and obtaining a BA in Asian studies and professional writing.⁸⁸

Alternatively, the Committee understands that mothers' were able to build successful careers and find meaningful work, but only after beginning the process of dealing with the psychological pain of their experience. Sue Miiller-Robbie wrote in her submission:

Slowly, and with the support and encouragement of my husband, I was able to break my silence and began to talk about my experience and stated the long process of unraveling and understand how that experience had changed me and my life journey. This process resulted in me returning to study as a mature aged student to undertake a Bachelor of Social Work Degree at La Trobe University.⁸⁹

Similarly, Karen Linton told the Committee:

Eventually I realised that because of what happened to me as a child, having a baby and losing him, I was making really bad decisions and I needed to step back and take me time, which I did. I left my second husband and moved to Sydney with my daughter, started further study and ended up going to university and graduating.⁹⁰

⁸⁷ Ibid., p. 11.

⁸⁸ Patricia Gall, *Transcript of evidence*, p. 38.

⁸⁹ Sue Miiller-Robbie, *Submission 100*, p. 5.

⁹⁰ Karen Linton, *Transcript of evidence*, p. 10.

4.4 The compounding effects of trauma

The Committee heard from many mothers about the compounding effects of trauma. Trauma and pain has followed many mothers throughout their lives, affecting both their mental and physical health.⁹¹ This was recognised in the Senate’s Community Affairs References Committee’s Inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry):

The committee heard that the effects of forced adoption have had a severe and continuing effect on the lives of mothers. In many cases, the experience of trauma at a young age has affected the mothers over their whole life.⁹²

Further, the Australian Institute of Family Studies report, *Past adoption experiences: National research study on the service response to past adoption practices*, considered the ongoing impacts of historical forced adoption experiences on mothers. It revealed that mothers have a higher than average likelihood of ‘suffering from a mental health disorder compared to the general population’, including PTSD, and concluded:

The experiences of the mothers who participated in this study would suggest that the long-term effects of past adoption practices cannot be understated.⁹³

Based on the evidence received, the Committee notes that the traumatic experience of mothers being separated from their newborn babies could be relevant to the ‘interpersonal revictimization’ phenomenon, which recognises that ‘the most consistent predictor of future trauma exposure is a history of prior trauma exposure’.⁹⁴ One particular study, *A prospective examination of PTSD symptoms as risk factors for subsequent exposure to potentially traumatic events among women*, found that ‘any past interpersonal trauma—defined as physical assault, rape, molestation, or attempted sexual assault—was a significant predictor of future interpersonal trauma’.⁹⁵ Further, VANISH discussed the concept of complex trauma as it relates to mothers in its submission, quoted in Box 4.1.

⁹¹ Thelma Adams, *Submission 40*, p. 2; Leonie White, *Submission 41*, p. 2; ARMS (Victoria), *Submission 45*, received 5 March 2020, pp. 2–3; ARMS (Victoria), *Supplementary evidence*, p. 2; Name Withheld, *Submission 51*, pp. 3–4; Name Withheld, *Submission 60*, p. 1; Hannah Spanswick, *Submission 9*, p. 1; June Smith, *Submission 10*, received 29 January 2020, p. 22; Lyn Kinghorn, *Submission 11*, p. 4; Margie Broughton, *Transcript of evidence*, p. 45; Yvonne Hunter, *Transcript of evidence*, p. 4; Lyn Kinghorn, *Transcript of evidence*, pp. 31–32; Marilyn Murphy, *Transcript of evidence*, p. 20; Patricia Gall, *Transcript of evidence*, p. 37; Wilhelmina Marshall, *Transcript of evidence*, p. 26; Yvonne Stewart, *Transcript of evidence*, p. 20; Name Withheld 2, 31 March 2021, *Transcript of evidence*, pp. 16–17; Faye Burnham, *Submission 58*, received 28 May 2020, p. 1; Name Withheld, *Submission 59*, received 3 June 2020, p. 1; Robyn Flanagan, *Submission 65*, p. 1; Judith Hendriksen, *Submission 78*, received 9 September 2020, pp. 1–2; Marilyn Murphy, *Submission 61*, p. 1; Name Withheld, *Submission 83*, p. 2; Name Withheld, *Submission 89*, pp. 11–12; Jennifer Howe, *Submission 96*; Sandra Collins, *Submission 105*, p. 2; Name Withheld, *Submission 106*, p. 2; Name Withheld (a), hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 35; Leonie Horin, *Submission 113, Attachment 2*, received 28 July 2021, p. 5.

⁹² Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. 89.

⁹³ Pauline Kenny, et al., *Past adoption experiences: National research study on the service response to past adoption practices*, Australian Institute of Family Studies, Melbourne, 2012, p. xiii.

⁹⁴ Anna E. Jaffe, et al., ‘Risk for revictimization following interpersonal and noninterpersonal trauma: clarifying the role of posttraumatic stress symptoms and trauma-related cognitions’, *Journal of Traumatic Stress*, vol. 32, no. 1, 2019, p. 42.

⁹⁵ *Ibid.*, pp. 42–43.

BOX 4.1: Complex trauma and historical forced adoptions

The notion of complex trauma has been introduced to refer to traumatic stressors that are interpersonal. That is, they are premeditated, planned, and caused by other humans, such as violation and/or exploitation of another person. Complex PTSD may be the result of chronic interpersonal trauma and generally develops from exposure to stressors that:

- are repetitive or prolonged;
- are often interpersonal in nature, involving harm or abandonment by responsible adults;
- occur at developmentally vulnerable times in a victim's life; and
- result in symptoms including dissociation, emotional deregulation, relationship difficulties, affect regulation, identity issues and somatic distress.

Generally, complex trauma has a developmental and chronic aetiology related to childhood experiences, although it can also occur later in life and in conditions of vulnerability. Higgins et al. (2014) argue that while most frequently applied to the setting of child abuse or neglect, complex PTSD may be applied to understanding the symptoms people affected by historical forced adoption experience. This is because:

- the trauma involved was highly interpersonal in nature, involving maltreatment by institutions in a position of trust and authority;
- many mothers were rejected by their families who failed to protect and support them;
- the traumatic experience occurred for many mothers at a young age during a particularly vulnerable time;
- many mothers were continually re-traumatised by the thought that their children who were adopted grew up thinking they were not wanted; and
- repeated re-traumatisation occurred through the experiences of everyday life from having lost a child, such as birthdays, seeing other mothers and their children in the street, or revisiting hospital environments or general practitioners (i.e. the professionals who were often involved during the pregnancy, birth and subsequent separation from their son/daughter).

Source: VANISH Inc., *Submission 53*, pp. 35–36 (with sources).

The Committee heard from numerous mothers who have continued to struggle with depression, anxiety, PTSD, mental breakdowns, substance dependency or eating disorders.⁹⁶ Lynda Klingberg wrote in her submission:

The past trauma is ongoing and always will be. This burden of grief I carry with me, defining me.⁹⁷

Ann Groves stated:

The trauma of having my baby forcefully removed in 1965, has affected my life and ability to live 'normally'. I am now 72 years old and have suffered depression all my adult life. Post traumatic stress disorder is what I liken my condition to.⁹⁸

Yvonne May wrote:

I am in my seventies now, and the suffering, loss, pain, guilt, continues.⁹⁹

In a public hearing, Elizabeth Edwards told the Committee:

I struggled between breakdowns during the trauma experience with the betrayal of people who we are taught to trust most, the fabric of society and the loss of our firstborn baby that we so dearly wanted and cannot be reunited with even today. A trauma that the medical profession failed to connect to my original loss because adoption had been packaged so well.¹⁰⁰

Other mothers also submitted:

As life goes on the impact of relinquishment all those years ago becomes clearer and clearer, and more and more painful. It's now a deep, pervasive, cancerous grief. A wound that will never heal, for her nor I. A traumatic experience that should never have been. I wanted my daughter. I should never have lost my daughter. My daughter did not deserve to be raised by strangers, she deserved me.¹⁰¹

I feel sad, damaged and lonely as a result of all of this ... I never feel really happy, can't remember what that feels like ... nothing takes away the terrible loss and heartache, it just does on and on.¹⁰²

The scars are all internal, but the pain I feel in my heart is very real and it never leaves me. I have been diagnosed with PTSD, anxiety and depression. I hate the way it makes me feel, and I hate taking the drugs that help me get through every day.¹⁰³

⁹⁶ Robin Turner, *Submission 5*, p. 4; Marilyn Murphy, *Submission 61*, p. 1; Cherylyn Harris, *Submission 33, Attachment 1*, p. 1; Name Withheld, *Submission 59*, p. 1; Christine Poulton, *Submission 92*, received 12 June 2021, p. 2; Patricia Gall, *Transcript of evidence*, pp. 37–38; Yvonne Stewart, *Transcript of evidence*, p. 21; Name Withheld, *Submission 109*, p. 1.

⁹⁷ Lynda Klingberg, *Submission 36*, p. 1.

⁹⁸ Ann Groves, *Submission 73*, received 30 June 2020, p. 1.

⁹⁹ Yvonne May, *Submission 69*, p. 3.

¹⁰⁰ Elizabeth Edwards, Adoptions Origins Vic. Inc., hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 8.

¹⁰¹ Name Withheld, *Submission 112*, received 28 July 2021, p. 7.

¹⁰² Name Withheld, *Submission 35*, p. 5.

¹⁰³ Yvonne Hunter, *Transcript of evidence*, pp. 4–5.

The experience of relinquishing my child for adoption is still having a long-term harmful affect on me. There were times when I felt of lot of hatred for myself for what I did, which has turned into eating or drinking too much, then feeling worse.¹⁰⁴

I have experienced depression, anxiety and panic attacks as a result of this experience. Since 2001, I have undertaken extensive therapy from both psychiatrists and psychologists and I have spent 3 weeks in hospital, I am still on medication.¹⁰⁵

The Committee also heard that mothers have had ongoing health complications due to their experience. For example, Barbara Pendrey has experienced ongoing physical health problems, stating:

I was diagnosed with Post Traumatic Stress Disorder with chronic fatigue syndrome and fibromyaga [sic]. I have needed physiotherapy, massages, and pain medications, anti depressants. I have had chronic pain caused by emotional situation which was not spoken about until 2011 ... I still have the same health issues in 2019 54 years after their horrible treatment.¹⁰⁶

Another mother wrote:

In the years since I have had two serious mental/nervous breakdowns. I have also had a few minor meltdowns. At sixty I had a heart attack which the doctors could find no medical reason for it, they tell me I have ischaemic heart disease which my doctor describes as an emotional heart I take medication to prevent another. I have seen many counsellors and two or three phycologist [sic] over the years but only when I truly hit rock bottom as all of this cost money that we simply didn't have so at all other times I would try to pull myself together.¹⁰⁷

Lastly, the Committee acknowledges that the compounding effects of trauma were made worse by the culture and secrecy surrounding historical forced adoption, both in the past and present. As Lyn Kinghorn told the Committee:

The arrogant, hostile attitude of 'We can hurt you and get away with it' condemned mothers to a lifetime of trauma, compounded by not being believed or heard. We have for many years called for truth and justice for these contrived crimes against us. For many of those years we received indifference and silence.¹⁰⁸

4.5 Reunification with children

The Committee heard throughout the Inquiry about the reunification of mothers with their now adult children. The Committee received evidence that demonstrated a wide range of reunion experiences.

¹⁰⁴ Name Withheld, *Submission 51*, p. 4.

¹⁰⁵ *Ibid.*, p. 3.

¹⁰⁶ Barbara Pendrey, *Submission 1*, received 14 November 2019, p. 2.

¹⁰⁷ Name Withheld, *Submission 37*, p. 4.

¹⁰⁸ Lyn Kinghorn, *Transcript of evidence*, p. 1.

The time period for reunions has varied for mothers. Some mothers met their children in the late 80s and early 90s, when adoption records became more accessible,¹⁰⁹ and other mothers met their children much later.¹¹⁰ Some mothers were able to find contact information and reunite with their children through adoption agencies or hospitals. Yvonne May told the Committee she went through the Royal Women’s Hospital (RWH) to contact her son, initially about 20 years ago and again in 2014 when the records were transferred to the Department of Health and Human Services.¹¹¹

Patricia Gall’s children reached out to her after accessing their records through the Catholic Family Welfare Bureau (CFWB).¹¹² Similarly, Leonie White told the Committee that her son made contact with her through the CFWB in 1989. Of this experience, she wrote:

it was arranged for me to meet my son, at the CFWB ... We were not given any counselling [sic], just introduced to each other and left for 1 hour to talk before they closed for the day.¹¹³

The Committee also heard from mothers who found their children through ‘illegal’ means or through DNA searches. Marilyn Murphy told the Committee:

I fortunately was reunited with my firstborn 33 years ago and have had an ongoing relationship with her, but many tried to destroy it. Many tried to destroy it. I found her through illegal means—and I am proud of that—six months before her 18th birthday. And yes, I could have been incarcerated yet again for doing so for up to five years. This is how we treat women. This is the filthy, disgusting way we treat women.¹¹⁴

4.5.1 Reunion experiences

Some mothers experienced positive reunions with their children.¹¹⁵ Yvonne Hunter told the Committee:

I finally met my baby and was able to put my arms around him—55 years after he was born. As a result of that day I have been on the greatest roller-coaster ride of my life. [Redacted] is warm, kind, funny, compassionate and so much more. I could go on for hours. He rings or texts me almost every day. I have been blessed to have him back in my life.¹¹⁶

¹⁰⁹ Leonie White, *Submission 41*, p. 2; Sue Miller-Robbie, *Submission 100*, p. 5; Dawn Smallpage, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 42; Judy Stiff, *Submission 66*, p. 3; Marilyn Murphy, *Transcript of evidence*, p. 21; Name Withheld, *Submission 89*, p. 8; Name Withheld 5, 31 March 2021, *Transcript of evidence*, p. 35; Margie Broughton, *Transcript of evidence*, p. 45.

¹¹⁰ Name Withheld, *Submission 51*, p. 3; Yvonne May, *Submission 69*, p. 2.

¹¹¹ Yvonne May, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, pp. 28, 31. See also Name Withheld, *Submission 32*, received 26 February 2020, pp. 2–3.

¹¹² Patricia Gall, *Submission 29*, received 18 February 2020, p. 2.

¹¹³ Leonie White, *Submission 41*, p. 2.

¹¹⁴ Marilyn Murphy, *Transcript of evidence*, p. 20.

¹¹⁵ Patricia Gall, *Submission 29*, p. 2; Cherylyn Harris, *Submission 33*, p. 2; Marilyn Murphy, *Submission 61*, p. 1; Judy Stiff, *Submission 66*, p. 3; Wilhelmina Marshall, *Submission 71*, p. 1; Name Withheld 5, 31 March 2021, *Transcript of evidence*, p. 35; Nancy Johnson, *Transcript of evidence*, p. 25; Marilyn Murphy, *Transcript of evidence*, p. 21.

¹¹⁶ Yvonne Hunter, *Transcript of evidence*, p. 4.

Similarly, Dawn Smallpage stated in her evidence:

In early October 2017 I received an email from my son saying that I was invited to visit any anytime that I wished ... arriving at the airport was huge. Then in the crowd this good-looking guy approached me saying, 'Here I am'. Believe me, that was the start of a wonderful reunion along with a great Christmas present for both ... I can only think of just how lucky I am to have my son after 48 years.¹¹⁷

Rosemary Neil stated:

it is something you have to work at; it just does not happen. It took us quite a few years to get to know each other and to work at our differences, but now it is just really natural. She has differences, yes, but we both know our differences and we get along really well.¹¹⁸

Yvonne Stewart spoke to the Committee of her relief of finally connecting with her daughter:

Half an hour or so later I was talking to [redacted] I said to her: 'Darling, I've had every birthday with you', and she cried. I said, 'There hasn't been a day of my life that I haven't thought of you in some way'.¹¹⁹

The Committee heard that the pain and trauma of their experience made reunions difficult for mothers. VANISH outlined in its submission that '[c]ontacting a relative one has been separated from through adoption can be emotionally challenging and even traumatic'.¹²⁰ Further, Lyn Kinghorn remarked that '[s]ome mothers, so damaged and traumatised, are then unwilling or find it impossible to break out of that prison and accept reunion'.¹²¹

The Committee heard that it was shocking for mothers to meet the 'child' that was forcibly removed from them, who is now an adult. This reinforced the number of years, birthdays and milestones they had missed in their child's life and the knowledge they would never get back the baby they lost.¹²² This is demonstrated by the following quotes from mothers.

Lynda Klingberg wrote:

The very first time I saw my son on his birthday he was 39. No wonder, I'm just broken.¹²³

¹¹⁷ Dawn Smallpage, *Transcript of evidence*, p. 42.

¹¹⁸ Rosemary Neil, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 22.

¹¹⁹ Yvonne Stewart, *Transcript of evidence*, p. 20.

¹²⁰ VANISH Inc., *Submission 53*, p. 19.

¹²¹ Lyn Kinghorn, *Transcript of evidence*, p. 30.

¹²² Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 19.

¹²³ Lynda Klingberg, *Submission 36*, p. 1.

Yvonne May stated:

A baby taken, but now a man, very difficult to reconcile, and not treat him as a baby, having not done any rituals with him.¹²⁴

Rosemary Neil told the Committee:

I met [redacted] just before her 22nd birthday, and it was very strange—as an adult, with being her own self and the values and the way she had been brought up, which was different to the way that I would have brought her up.¹²⁵

Elizabeth Edwards submitted:

the loss of our first born baby that we so dearly wanted and cannot be reunited with today. [My daughter] has told me she wishes she could be the baby but she can't, she is an adult with her own history. No one can give me back what should have always been mine, my own family.¹²⁶

A mother wrote in her submission:

I had always imagined that we would run to each other and I would hold her in my arms, but that's not how it is. For her, I was a stranger, although we looked alike, we shared no history, and she had a mother.¹²⁷

Further, mothers told the Committee that feelings of doubt, guilt and grief persisted throughout the reunion process and when they formed relationships with their children:

I'm lucky that through dogged perseverance I have a relationship with my son who's just turned 50 and on the surface everyone thinks it's all 'happy families' but for the few times I get to see him I still walk on eggshells every moment in case I ruin the status quo, and I now understand that he's happy with his life and isn't interested in meeting any further of my family or relations.¹²⁸

My son found me, and by the grace of God we continue to build a step-by-step relationship ... Lack of trust in personal relationships was a constant over the decades, the grief after trauma and pain subsides—but it never really leaves completely.¹²⁹

Further, Marilyn Carr stated in her submission:

I think I felt beneath her. I don't know how to put it. She had a good education, and maybe that's what it was, I don't know but I just, just felt beneath her. Not good enough.¹³⁰

¹²⁴ Yvonne May, *Submission 69*, p. 2.

¹²⁵ Rosemary Neil, *Transcript of evidence*, p. 22.

¹²⁶ Elizabeth Edwards, *Submission 19*, pp. 3–4.

¹²⁷ Name Withheld, *Submission 89*, p. 8.

¹²⁸ ARMS (Victoria), *Supplementary evidence*, p. 2.

¹²⁹ Margie Broughton, *Transcript of evidence*, p. 45.

¹³⁰ Marilyn Carr, *Submission 50*, p. 13.

In evidence to the Committee, one mother stated:

In 2008 he found me. That has been hard, because when he found me, that part that you lock away to protect you, that part of your heart, that door opens and that stuff, what comes bubbling out, is tough to deal with, especially seeing this full brother to his brothers. I felt the guilt.¹³¹

The Committee also heard from mothers who showed a lot of love to their children after being reunited, which their sons and daughters sometimes struggled to handle:

It just all happened fairly quickly, and I just wanted to know if she was safe. But then I started coming on, as I do—I am not a half person; I go full on—and for her, for a while there, it was overwhelming. I did not mean to hurt her in that way. It was never my intention.¹³²

Yvonne May submitted:

We met and had an eggshell (be careful, don't say this or that, don't say that I might offend, don't respond, etc etc) relationship up until recently. I was over the top with my feelings and words. ... He could never accept my unconditional love. It is heartbreaking for me. I accept my part, but he is unable to let me into his heart, warts and all.¹³³

Yvonne Hunter expressed in a public hearing:

The second time, I think it was, that I met him we were walking to this restaurant and I put my arm through his. He sort of tensed up, and I said, 'Get used to it, darling'. He said, 'What?', and I said, 'I'm not going away'. He is better now, but he still struggles with it a little bit.¹³⁴

A common theme that the Committee heard frequently was mothers trying to adjust their behaviour.¹³⁵ One mother wrote:

Our son found us 21 yrs ago he is a caring & wonderful man, it has been a big roller coaster ride with many ups & downs, with no support available to us both, he has ceased contact with us a few times I guess we get so use to having to let go of our babies, we except this is how it is & we just have to be patient with them & whatever they want or give us we take it.¹³⁶

¹³¹ Name Withheld 5, 31 March 2021, *Transcript of evidence*, p. 35.

¹³² Name Withheld 1, 18 May 2021, *Transcript of evidence*, p. 15.

¹³³ Yvonne May, *Submission 69*, p. 2.

¹³⁴ Yvonne Hunter, *Transcript of evidence*, p. 7.

¹³⁵ Marilyn Carr, *Submission 50*, p. 12; Leonie White, *Submission 41*, p. 2; Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 19; Emma Maher, *Submission 107*, p. 4.

¹³⁶ Name Withheld, *Submission 109*, p. 1.

People who are adopted also spoke of similar experiences when sharing their stories with the Committee.¹³⁷ Jennifer McRae wrote in her submission:

Our relationship is trained by loss, fear and grief and not knowing how to say the things we need to. We have tried, but its impossible to fill up 20 missing years with all the shared memories which bond a mother and child.

...

When the miracle of a bipartisan reunion does occur negotiating such a delicate relationship is challenging and are rarely the happy fairy-tale celebrations, we read in works of fiction and see in film and TV series. Sadly, many reunions are stalled from maturing as both parties grapple with the fact that no amount of trying can replace the lost decades of separation.¹³⁸

Further, Kerri Young submitted:

I see my biological mother every few months but it traumatises her so much so that the mother/daughter bond and closeness will probably never happen.¹³⁹

Another person stated:

We had contact with her for about a year ... But things were strained and she moved away and didn't want to meet again. I don't think at the time I really understood how to react to her complex feelings she must have had. She was very hot and cold and I wasn't patient or mature enough. My mum and [name redacted] were always polite but it was never warm.¹⁴⁰

Further, the Committee heard from some mothers that their children often do not understand what they went through and blame them for their upbringing as an adopted person. For example, Karen Linton has established a relationship with her son, but expressed to the Committee at a public hearing:

I have got the most hostility whenever I have been brave enough—it is brave—to actually tell someone what happened, and then I get the reaction, 'Oh, how could you give your child away?'. And even as I said, with my son, that is how he sees it.¹⁴¹

Wilhelmina Marshall stated in her evidence to the Committee:

I think he was really hurting deep inside, and I know that probably he never forgave me for adopting him out, because he used to say to me, 'Do you think it was nice to be made to feel like a second-class citizen?'.¹⁴²

¹³⁷ Name Withheld, *Submission 47*, received 11 March 2020, p. 2.

¹³⁸ Jennifer McRae, *Submission 82*, received 15 May 2021, pp. 1–2, 16.

¹³⁹ Kerri Young, *Submission 27*, received 12 February 2020, p. 1.

¹⁴⁰ Name Withheld, *Submission 76*, received 21 July 2020, p. 1.

¹⁴¹ Karen Linton, *Transcript of evidence*, p. 11.

¹⁴² Wilhelmina Marshall, *Transcript of evidence*, p. 29.

Another mother stated in a public hearing:

They think, like [redacted] did with me, that they just discarded them, and they do not want to know what you went through and how it happened or anything. They just do not want to know it.¹⁴³

Sometimes, the inability for mothers and their children to reconcile leads to the eventual deterioration or breakdown of their relationship.¹⁴⁴ Mothers told the Committee:

Meeting my daughter twenty years on, was to me the worst thing ever. She blamed me for giving her away, didn't want to hear how it really was for me. But was fine with her father he could do no wrong. The fact I had no other options, was unimportant to her I had no other options given to me. Needless to say we don't keep in touch.¹⁴⁵

And of course I had a reunion with this daughter, but she blamed me for giving her up ... So that did not work out. I tried hard; it just did not work out. And in the end it was wrecking me too.¹⁴⁶

it was a lovely reunion. We just got on so well. For about 20 years everything was fine ... then things just went a bit skew-whiff ... thought she might tell me what had happened, but she hardly spoke to me and I still do not know to this day what I have done.¹⁴⁷

in the end her husband who I was good friends with told me that she was angry at me because I was trying to buy the kids affection. I was nothing to her, and certainly not the kids nanna ... she said I had no right to tell her kids that I was her biological mother, which I hadn't, and told me to stay out of their lives. She said she had parents, and the kids had grandparents, and to be honest I was nothing to any of them. It was like a shot to the heart. I was totally quiet. She hung up. That was 6 years ago.¹⁴⁸

Another mother wrote in her submission:

My mother flatly refused to ever let me discuss why she had decided what would happen with my baby and it was only in 1988 I could no longer live with not knowing what had happened to my beautiful baby that I contacted CSV [Department of Community Services Victoria] to see if there was any chance of finding out the whereabouts of my son and if he wanted any contact with me. I was contacted by Copelen Street Family Services in 1989. I met with them and learned that my child had tragically died in 1971 aged 4 years old, stung by a bee.¹⁴⁹

¹⁴³ Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 19.

¹⁴⁴ Helen Nicholson, *Submission 86*, received 30 March 2021, p. 6; Karen Linton, *Transcript of evidence*, p. 10; Name Withheld, *Submission 89*; Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 12.

¹⁴⁵ Name Withheld, *Submission 35*, p. 4.

¹⁴⁶ Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 16.

¹⁴⁷ Name Withheld 4, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 31.

¹⁴⁸ Name Withheld, *Submission 89*, p. 11.

¹⁴⁹ Name Withheld, *Submission 83*, p. 1.

Cherylyn Harris stated:

She made contact with me in 1989. She feels she was rejected by me when she was two days old. She initially wrote to me to get information re health issues, family etc. We have never met, she is happy to write to me but doesn't want to meet me.¹⁵⁰

Hannah Spanswick told the Committee in a public hearing:

My grief continues, despite the passage of time, and despite knowing that he is alive and well and with a family of his own. But for reasons of his own is unable or unwilling to have an ongoing relationship with me, or his half siblings.¹⁵¹

Similarly, Peter Austin, who is adopted, shared his experience of reuniting with his mother, stating in a submission:

Then the social worker told me that the hospital had told my mother I died at birth!! You can only imagine how she felt. Plus she never had any more children ... She does not want to meet me which I understand. I only hope she has found some level of happiness now. She has carried a guilt that she could not resolve and I had her cry and say sorry for 5 minutes on the phone. Of course I said I never want to hear her say sorry as she has nothing to be sorry for. And we did chat for about an hour. I have had no contact since but that is her wish.¹⁵²

Leonie White wrote that she contacted the CFWB in 1985 to find out about her son 'but could not go ahead with the application as [she] was scared of being rejected'.¹⁵³

Sadly, the Committee heard from mothers who were not able to reunite with their children and establish a relationship.¹⁵⁴ Robyn Flanagan discussed in her submission that she began to search for her twin daughters when they turned 18 but she was to learn that one of them had died from a childhood cancer at the age of eight years.¹⁵⁵

Further discussion regarding family reunification is considered in Chapter 10.

4.5.2 Effects on other family members

It is also important to consider that when mothers reunite with their children, they may also be introduced to a raft of other family members, including adoptive parents, grandchildren, sons or daughters-in-law and additional siblings. This added element can be tricky for mothers and people who are adopted to navigate. Lynda Klingberg wrote in her submission:

My family unit will never be complete. I am broken.

¹⁵⁰ Cherylyn Harris, *Submission 33, Attachment 5*, p. 1.

¹⁵¹ Hannah Spanswick, *Transcript of evidence*, p. 3.

¹⁵² Peter Austin, *Submission 63*, received 10 June 2020, p. 1.

¹⁵³ Leonie White, *Submission 41*, p. 2. Leonie White did later meet her son, but he made the initial contact.

¹⁵⁴ Name Withheld, *Submission 7*, received 19 January 2020, p. 1; Nancy Johnson, *Submission 8*, p. 1; Debra Thurley, *Submission 68*, p. 1; Christine Poulton, *Submission 92*, pp. 3-4; Name Withheld, *Submission 83*, p. 1.

¹⁵⁵ Robyn Flanagan, *Submission 65*, p. 1.

My eldest son lives in Hobart. For me, I would like a grant to be available so I could apply for assistance in helping pay for my travel expenses to visit him and my grandchildren. They call me Lynda, which is difficult for me to hear because I am their grandmother.¹⁵⁶

Nancy Johnson also discussed this in her evidence to the Committee:

I wish we had had more contact, but he is struggling too, apparently. His adoptive mum said she has tried; she wishes he had more contact with us ... feel maybe when his adoptive parents pass away, he might come back. He might think I'm trying to take him off his parents, which isn't true.¹⁵⁷

Thirdly, a mother told the Committee:

The only thing I asked of [the father] was that he not have [my son] meet his mother. She was a huge part of getting rid of [my son]. The last time [my son] sat down with me, he mentioned he had met [the father's mother]. I felt like I had been stabbed in the heart. I had played my part in this cruel game, and I felt betrayed. Unfortunately my relationship with [redacted] is now very strained through no fault of [my son].¹⁵⁸

Some mothers reflected in their evidence that they are not viewed as the mother of their child as this role had been filled by the adoptive mother. For example, a mother told the Committee:

I have since met my daughter who I lost to adoption and enjoy a friendship with her, and it is lovely. But someone else is her mother.¹⁵⁹

Merilyn Carr stated in her submission:

I was her best friend, I wasn't her mother, I was her best friend. She could tell me anything. That's what she said, she said 'I can tell you anything' but I wasn't her mother. I got really upset.¹⁶⁰

In her evidence to the Committee, Yvonne Stewart stated:

She rings me occasionally and I ring her occasionally. It is certainly not the same as the children I have raised because she has had her own mum and dad, and now they have both gone she is looking to me more. But I also said to her, when I met her mother, I said, 'I would never take motherhood from you'. I said, 'That's your little girl. You've looked after her for me, and I'm so thankful she went to a good home'.¹⁶¹

Further, Wilhelmina Marshall stated:

Sadly, [redacted] passed on some 10 years ago ... Once again it was if I had no rights, no voice, no acknowledgement of his real birth status or birth parents. I was totally dictated to by [redacted] adoptive sisters to the extent that even my two younger sons,

¹⁵⁶ Lynda Klingberg, *Submission 36*, p. 1.

¹⁵⁷ Nancy Johnson, *Transcript of evidence*, p. 18.

¹⁵⁸ Name Withheld 1, 31 March 2021, *Transcript of evidence*, pp. 11-12.

¹⁵⁹ Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 25.

¹⁶⁰ Merilyn Carr, *Submission 50*, p. 11.

¹⁶¹ Yvonne Stewart, *Transcript of evidence*, p. 20.

[redacted] half-brothers, who he had a good relationship with, were not allowed to attend the funeral, nor were any of his birth uncles or aunties nor his cousins ... the total disrespect for [redacted] birth family—no mention of us on his grave plaque, still no recognition for us. And, you know, we are the very reason he was there.¹⁶²

Further, some adoptive parents were not supportive of a relationship between mothers and their child. Sue Miiller-Robbie was told by a social worker at the Adoption Information Service that ‘I think that he is having to cope with his adoptive parents who are feeling very threatened by your interest’. Sue Miiller-Robbie wrote in her submission that 27 years after she first made enquiries about her son, she was able to contact him because his adoptive parents had passed away:

Seven years latter [sic] we continue to have regular contact and try to overcome the enormous impact that separation at birth and years of disconnection and hurt has had on our relationship and that of our family members.¹⁶³

However, there were times the Committee heard that reunions turned out well for mothers and their families.¹⁶⁴ Yvonne Hunter told the Committee in a public hearing:

I have since met [my son’s] partner, so I now have a new daughter-in-law and two more lovely grandsons. I have met his adoptive parents. That was a very difficult day. They provided him with a good life and excellent education that he has used well ... [my son] flew to Darwin this year to meet one of his brothers, a meeting that I was present at. We shared a wonderful few days. His other brother is still very hesitant, and we have decided to give him all the time he needs.¹⁶⁵

Similarly, Wilhelmina Marshall stated in her evidence:

Some 15 years ago, when [redacted] adoptive dad was still alive, [redacted] took me to meet his adoptive dad, [redacted]. His adoptive mother was not alive anymore, plus she would have never consented to such a meeting. [Redacted] was a dear, gentle, kind man in his mid-80s. He was very welcoming, and I warmed to him straightaway ... But it is what he said that really floored me. He turned around and he said, you know, ‘Thank you for giving us the honour of raising your son’. That was amazing. Tears began to well in my eyes, and I looked at my beautiful son. He was in tears too. And in return I also thanked [redacted], because he was certainly instrumental in [redacted] becoming that lovely young man, and he deserved that, you know, even with all the sad circumstances. This was a very pivotal moment in my life. It showed equality and mutual respect and acknowledgement, and they are the very first steps to any reconciliation. In that there lies the equity.¹⁶⁶

¹⁶² Wilhelmina Marshall, *Transcript of evidence*, p. 27.

¹⁶³ Sue Miiller-Robbie, *Submission 100*, pp. 6–7.

¹⁶⁴ Lynette Brown, *Submission 22*, received 3 February 2020, p. 2; Rosemary Neil, *Transcript of evidence*, p. 22; Dawn Smallpage, *Transcript of evidence*, p. 142; Name Withheld, *Submission 106*, p. 2; Name Withheld 5, 31 March 2021, *Transcript of evidence*, p. 35.

¹⁶⁵ Yvonne Hunter, *Transcript of evidence*, p. 4.

¹⁶⁶ Wilhelmina Marshall, *Transcript of evidence*, p. 27.

Another mother wrote in her submission:

I am very lucky to have found my daughter and we have A CLOSE relationship. I have a relationship with her son [redacted], and daughter [redacted] also. My other children also have a close relationship with them too and it continues to grow. [emphasis in original]¹⁶⁷

Lastly, the Committee heard that mothers reuniting with their adoptive children also impacted the families they had formed after their experience. Sometimes, mothers' families were supportive:

I commenced the project of trying to find my daughter. I had never told my other daughters about her, as I thought they would think the worst of me for having giving up my daughter for adoption. They would think 'How can anyone do that?'. At that stage my husband and I called for a meeting with my daughters and I told them. Whilst the memories never go away, it was traumatic to talk about this with my family as it was bringing back the memories again. When I told them they were supportive to me.¹⁶⁸

Other times, mothers' families were not supportive, as reflected in Yvonne Stewart's evidence to the Committee:

there was one son that I never, ever told about [meeting] her because he worked closely with my husband, and I did not want to tell my husband about it because he would not have coped with it. I thought about this and I thought, 'Well, I'm not deceiving him because I would never be untrue to him, but if he knew, he wouldn't cope with it and he would throw it up at me all the time'. So he went to his grave never knowing, and that son does not know either, to my knowledge.¹⁶⁹

The broader effects of historical forced adoptions on other family members is discussed further in Chapter 6.

4.6 Acknowledgement

The Committee believes that the mothers subjected to the policies and practices of historical forced adoption are incredibly strong and resilient despite undergoing immensely painful and traumatic experiences. Mothers also recognised this both in relation to themselves and each other, as reflected in the following quotes:

I guess I am strong. You do not realise how strong you are, really. You have just got to get up and do it, don't you?¹⁷⁰

I did a piece for our local paper I told my story and found it liberating to have it out there. I had found the courage. No more secrets.¹⁷¹

¹⁶⁷ Name Withheld, *Submission 51*, p. 3.

¹⁶⁸ Ibid.

¹⁶⁹ Yvonne Stewart, *Transcript of evidence*, p. 20.

¹⁷⁰ Name Withheld 5, 31 March 2021, *Transcript of evidence*, p. 35.

¹⁷¹ Name Withheld, *Submission 37*, p. 4.

Yvonne May expressed in her evidence to the Committee:

it is a terrible experience if it is not handled with compassion and, to a certain degree, love. I know the women that I come in contact with, because I go to a support group, we are all the same. Our experiences are all the same. Many of them are broken women. Thank God I had the resilience, which I look back on now. I never attributed resilience to myself, but when I look back I think, 'God, you survived that, and you got on with your life'.¹⁷²

Further, one daughter told the Committee in relation to her mother:

The system has failed these women, who like my mother, are incredibly strong, resilient and remarkable women. But my point is, they shouldn't have had to be resilient. This should never have been allowed to happen.¹⁷³

The Committee sincerely hopes that throughout this inquiry mothers feel that they have been listened to and that their pain and suffering has been acknowledged. As one mother shared with the Committee at the end of a public hearing:

I think you are doing a good job. I am really pleased that you are here because nobody has ever listened before. I went to the apology and they spoke, but no-one listened, so I think your listening is just powerful—that I am sitting here with you people and you are listening to me. That is powerful because, apart from the girls and the same, nobody ever did, even friends—'Oh, yes'. I did not tell anybody for years, but when I did they listened for a minute but they did not want to know any more about it. But you listening, I think that is powerful.¹⁷⁴

June Smith told the Committee that initially she did not want this inquiry, believing it was a means to delay the implementation of change for mothers. Later, she told the Committee:

I apologise for thinking like that. I honestly from my heart thank you all that you are there, you are listening, and I just hope with all my heart that our truth is heard.¹⁷⁵

The Committee also heard from mothers that the Senate Inquiry and subsequent apologies from governments were an important milestone in terms of acknowledgement. Faye Burnham wrote in her submission:

I went to Canberra to hear in person the findings of the Federal Inquiry into Forced Adoptions. To hear these women on the panel speak out loud about all of the things that I had endured in silence was truly [sic] life changing. To actually be acknowledged as having worth as a person took my breath away.¹⁷⁶

¹⁷² Yvonne May, *Transcript of evidence*, p. 28.

¹⁷³ Name Withheld, *Submission 106*, p. 3.

¹⁷⁴ Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 28.

¹⁷⁵ June Smith, *Transcript of evidence*, p. 11.

¹⁷⁶ Faye Burnham, *Submission 58*, p. 1.

Similarly, Wilhelmina Marshall shared with the Committee:

Last night I actually read Julia Gillard's beautiful address again, the national apology. And yes, tears flowed last night, both for sadness and joy, because there was finally some acknowledgement of the crimes carried out against us. The speech was warm, heartfelt and all in earnest, and I remember being so thankful for it. It was such a wake-up call to so many.¹⁷⁷

The Committee heard that acknowledgement, recognition and validation are important to mothers¹⁷⁸ and that '[h]ealing can only happen after there is recognition and validation of loss and the associate trauma that has taken place'.¹⁷⁹ The Committee hopes this inquiry further contributes to the validation of mothers' experiences.

An overwhelming theme from mothers' evidence, however, is that more must be done to enhance community recognition of this historical wrongdoing and what mothers have endured. The Committee heard time and time again that this is essential to 'an integral healing step forward'¹⁸⁰ for mothers. As discussed in Chapter 2, many mothers have grown disillusioned because little has changed since the Senate Inquiry and the State and National apologies.¹⁸¹ For example, Robin Turner stated in her submission:

What has been done to date to assist our community is superficial at best. Words were spoken and promises were made but not kept.¹⁸²

In her evidence to the Committee, Lyn Kinghorn stated:

inquiries so far have not aided our cause. How can we have recommendations that truly give hope and then hope is dashed because nothing is done? I sincerely hope this time we experience results. For mothers, time is running out for us to truly experience the cultural reckoning we need and deserve.¹⁸³

The Committee learnt that some mothers consider that they continue to be silenced and sidelined in current public discussions about forced adoptions and adoptions more generally. June Smith stated in a public hearing:

This government have consistently done everything in their power to silence us, to deny us, and their treatment of us has left us mothers in a place of such a magnitude of despair and isolation as to be rendered exterminated ... We mothers are still stigmatised

¹⁷⁷ Wilhelmina Marshall, *Transcript of evidence*, p. 27.

¹⁷⁸ Nancy Johnson, *Transcript of evidence*, p. 16; Yvonne May, *Transcript of evidence*, p. 31; Lyn Kinghorn, *Transcript of evidence*, p. 2; June Smith, *Transcript of evidence*, p. 10. See also Wilhelmina Marshall, *Transcript of evidence*, p. 27; Brenda Coughlan, *Transcript of evidence*, p. 4; Judy Stiff, *Submission 66*, p. 1; Name Withheld, 18 May 2021, *Transcript of evidence*, p. 18; Lyn Kinghorn, *Submission 11*, p. 5; Name Withheld 3, 18 May 2021, *Transcript of evidence*, p. 40.

¹⁷⁹ Sue Miiller-Robbie, *Submission 100*, p. 8.

¹⁸⁰ Wilhelmina Marshall, *Transcript of evidence*, p. 27.

¹⁸¹ Lyn Kinghorn, *Transcript of evidence*, p. 2; Hannah Spanswick, *Transcript of evidence*, p. 4; Barbara Pendrey, *Submission 1*, p. 1; Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 12; Faye Burnham, *Submission 58*, pp. 1-2; Robyn Flanagan, *Submission 65*, p. 1; Yvonne May, *Submission 69*, p. 2; Name Withheld, *Submission 83*, p. 2; Name Withheld, *Submission 89*, p. 10.

¹⁸² Robin Turner, *Submission 5*, p. 3.

¹⁸³ Lyn Kinghorn, *Transcript of evidence*, p. 31.

as relinquishing mothers—that we abandoned our newborn babies—when it was the whole of Victorian society who abandoned us.¹⁸⁴

In addition, Brenda Coughlan, of IRM, told the Committee:

This is persecution of women and a threat to our democracy. To conceal these unimaginable medical crimes under government funding is to attempt to disempower women. We deserve respect and the right to our dignity and our integrity.¹⁸⁵

I know I take politicians as politicians, but we cannot even get 1 ounce of media coverage. The media coverage is about the fathers—who are demeaning mothers, but anyway—and also about the adoptees. It is not about that.¹⁸⁶

Dr Nilmini Fernando, who is a Research Fellow at Griffith University and researcher with IRM, expanded on this further, stating:

What is happening here is the gradual disappearance of the mothers, and through the discourse shifting it has been replaced by the discourse of adoption and adoptees. It is a very gendered discourse. The invisibility, just erasing the women—to be honest I have seen this before. I was researching this thing in Ireland when the whole institutional abuse at the Magdalene laundries broke, when that story broke. They sometimes wait for the women to die, right? And it is a historic injustice. What has happened is the discourse has shifted and shifted and shifted.

...

So when Brenda says that they cannot even get an inch of column space, that is the disparity, gross disparity, in representation of this issue, and for the government to put it back in there will actually restore that sense of justice.¹⁸⁷

The Committee is aware that greater education and public awareness is needed about the policies and practices of historical forced adoption.¹⁸⁸ This was recommended by numerous mothers:

I think there needs to be public education. The majority of people who haven't had a lived experience of adoption really don't understand the issues.¹⁸⁹

There hasn't been any press coverage. I still talk to people who have never heard of our issue. I think there should be more publicity given to our issue and I think there should be awareness of what adoption does.¹⁹⁰

¹⁸⁴ June Smith, *Transcript of evidence*, pp. 2–3. See also June Smith, *Submission 10*, p. 13.

¹⁸⁵ Brenda Coughlan, *Transcript of evidence*, p. 3.

¹⁸⁶ *Ibid.*, p. 4.

¹⁸⁷ Dr Nilmini Fernando, Research Fellow, Griffith University and researcher with Independent Regional Mothers, Independent Regional Mothers, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 6.

¹⁸⁸ Karen Linton, *Transcript of evidence*, pp. 11–12; Name Withheld, 18 May 2021, *Transcript of evidence*, p. 17; Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 29; Lynne Williamson, *Submission 70*, received 25 June 2020, p. 1; Nancy Johnson, *Transcript of evidence*, p. 15.

¹⁸⁹ Hannah Spanswick, *Transcript of evidence*, p. 3.

¹⁹⁰ Elizabeth Edwards, *Transcript of evidence*, p. 10.

There is still no acknowledgement in larger society of the coercion and bullying and illegal tactics that were used by places such as the Royal Women's Hospital where I had my daughter ... I would like to see more acceptance and more publicity regarding what was done to me and many thousands of naive young women. I would like to see our children learn how we yearned for them and to really know they were not rejected by us.¹⁹¹

In a similar vein, VANISH submitted to the Committee:

Greater understanding amongst the general public and validation of the issues faced by those involved would help to ameliorate the shame and stigma still associated with relinquishment/removal and adoption.¹⁹²

The Committee strongly supports these suggestions. Historical forced adoption is a distressing but significant part of Victoria's history and this needs to be recognised. Improving public awareness would increase recognition for mothers, reduce the ongoing stigmatisation of what they have been through and may encourage some mothers who are yet to speak their truth to come forward. Outlined below are a number of existing and new initiatives that will contribute to greater public recognition and acknowledgment.

4.6.1 Memorials

In October 2018 the Victorian Government funded the establishment of a statue, *Taken Not Given*, which is located in St Andrews Reserve, Melbourne. The statue was constructed in consultation with the Association of Relinquishing Mothers (ARMS) and Origins Victoria.¹⁹³ VANISH described this memorial in its submission, stating:

The ripple effect of adoption is represented by the elements at the mother's feet. The words on the first element are: mother—father—our child—for the rest of our lives. The second and third elements show the ripple effect of adoption and those it touches: cousins, brothers, sisters, aunties, uncles, grandchildren, future partners, husbands, grandparents.

The plaque next to the statue reads:

'This artwork remembers the mothers and children who were separated by forced adoptions. It acknowledges the loss and pain that this created—a lifetime of grief for us, the mothers; the loss of birthright for our sons and daughters. The right to love and care for our children was taken from us and the harm inflicted is irreparable. Following a damning Commonwealth Senate Inquiry, the Victorian State Government took steps towards ameliorating this shameful legacy by offering an unreserved apology'.¹⁹⁴

¹⁹¹ Faye Burnham, *Submission 58*, p. 1.

¹⁹² VANISH Inc., *Submission 53*, p. 105.

¹⁹³ *Ibid.*, p. 71.

¹⁹⁴ *Ibid.*

Figure 4.1 *Taken Not Given* memorial



Source: VANISH Inc., *Submission 53*, p. 70.

The Committee recognises that mothers have different opinions on the memorial. The Committee heard from mothers that the statue failed to adequately represent their experience. Lyn Kinghorn, June Smith, Brenda Coughlan and Marilyn Murphy, respectively, told the Committee:

the memorial—you know, it is so offensive ... that memorial does not tell our history at all. We had our children absolutely ripped from us.¹⁹⁵

[it] looks like a happy family out there. You know, I cannot read anything in it that tells our history. You know, anybody walking down looking at it—I cannot comprehend what they would learn from it.¹⁹⁶

the Melbourne memorial is about adoption. Have you seen it? It is the older children; it is about adoption. That is not what we are about.¹⁹⁷

I went to the unveiling of the one here, wherever it is. I was shocked. What is it? This pseudo-artistic whatever it is. I mean, what an insult. That has been the theme, hasn't it? That has been the theme all along—minimise it, make light of it. Yes, well, I do think you should have another one.¹⁹⁸

¹⁹⁵ Lyn Kinghorn, *Transcript of evidence*, p. 10. See also Lyn Kinghorn, *Submission 11*, p. 4.

¹⁹⁶ June Smith, *Transcript of evidence*, p. 10.

¹⁹⁷ Brenda Coughlan, *Transcript of evidence*, p. 7.

¹⁹⁸ Marilyn Murphy, *Transcript of evidence*, p. 23.

Mothers compared the Victorian memorial to the West Australian memorial, which some believe is a more powerful and accurate reflection of the pain and trauma they suffered.¹⁹⁹

Some mothers' had positive opinions on the memorial. Yvonne May told the Committee she thought the statue was 'fantastic'.²⁰⁰ Further, ARMS submitted to the Committee that the *Taken Not Given* memorial:

has provided a focal point for our members and others in the adoption community, as well as those in the general community. It is playing a role in informing the community about our experiences. This has become a really important dimension of healing and acknowledgement for our community.²⁰¹

The Committee understands that IRM established the *Cherished Mother and Child* memorial in Sale, which:

commemorates the cruel act of illegal unlawful and forced separation from their newly born son or daughter by the medical profession at public and private maternity [sic] Hospitals.

It is now a place for acknowledging motherhood and for mothers and others to reflect and contemplate this precious and sacred relationship.²⁰²

The Committee acknowledges the varying views of support for the *Taken Not Given* memorial. However, it came to understand throughout the Inquiry that this is one of many matters regarding historical forced adoption that people do not agree on. While there were calls for the establishment of a new memorial, the Committee believes that the Victorian Government should focus its resources on other ways to commemorate the forced separation of mothers and their newborn babies, as discussed below. The Committee believes, however, that the plaque should be updated to reflect these diverse views.

¹⁹⁹ June Smith, *Transcript of evidence*, p. 10; Marilyn Murphy, *Transcript of evidence*, p. 23.

²⁰⁰ Yvonne May, *Transcript of evidence*, p. 31.

²⁰¹ ARMS (Victoria), *Submission 45*, pp. 16–17.

²⁰² Independent Regional Mothers, *Cherished Mother and Child Memorial*, n.d., <<http://independentregionalmothers.com.au/uncategorized/cherished-mother-and-child-memorial-2/>> accessed 26 July 2021.

Figure 4.2 *Cherished Mother and Child* memorial in Sale



Source: Independent Regional Mothers, *Cherished Mother and Child Memorial*, 24 March 2017, <<http://independentregionalmothers.com.au/uncategorized/cherished-mother-and-child-memorial-2/>> accessed 21 July 2021.

RECOMMENDATION 7: That the Victorian Government update the wording of the *Taken Not Given* memorial plaque to acknowledge that the memorial does not reflect the diverse views of those affected by the policies and practices of historical forced adoption in Victoria.

ARMS also told the Committee that the *Taken Not Given* memorial is to be moved to accommodate for a new family violence memorial and that they were not initially consulted about this decision. Marie Meggitt told the Committee in relation to the consultation process:

There is no reason why we would expect that we might be included, because we were not the last time, and unless something happens, we can only assume the same thing will happen again and it will once again be one of those incredibly insulting, hurtful experiences that we could well do without.²⁰³

Further, Robyn Flanagan told the Committee:

the Treasury Place exhibition, the mother and child, the memorial—I have heard that that is to be moved and replaced by a worthy domestic violence memorial. I understand that, but I and others trust that our memorial receives a fitting and appropriate new site.²⁰⁴

If the Victorian Government intends to move the memorial to a new location, the Committee proposes that the Victorian Government immediately consult with stakeholders to ensure their opinions are adequately respected.

²⁰³ Marie Meggitt, ARMS (Vic), hearing, Melbourne, 24 February 2021, *Transcript of evidence*, pp. 27–28.

²⁰⁴ Robyn Flanagan, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 15.

RECOMMENDATION 8: That the Victorian Government immediately consult with stakeholders regarding a new location for the *Taken Not Given* memorial.

The Committee also considers that institutions involved in historical forced adoptions, for example, the RWH, should consider erecting memorials to acknowledge and recognise the pain and trauma mothers suffered in their care. In her evidence to the Committee, Lisa Lynch, the Acting Chief Executive Officer of the RWH, stated:

we do believe that there is actually an opportunity to look to how can we work together with the women and their families to look at how we can, in moving forward, recognise this [that formal apologies were a long time ago and only an initial first step], whether it is an annual way or, you know, a way that would indicate our level of support.²⁰⁵

As discussed in Chapter 2, the RWH has recognised that apologies are only the beginning. Leanne Dillon, General Counsel at RWH, expressed at a public hearing:

in preparing for this hearing today what has become clear to the Women's is that while we issued a public apology and have responded to women when they approach us individually, there is still more that we can do to acknowledge the historical role the Women's has played in the practice of forced adoption.²⁰⁶

The Committee believes that memorials will be an important initiative to 'help translate the static message of an apology into an active process of reconciliation and healing'.²⁰⁷

RECOMMENDATION 9: That the Victorian Government encourage institutions involved in historical forced adoptions consult with mothers and other affected people to create and display a commemorative memorial or plaque.

4.6.2 Educating the public

In response to recommendation 20 from the Senate Inquiry, the Australian Government commissioned the National Archives of Australia (NAA) to develop the Forced Adoption History Project, 'a comprehensive and accessible online curation of documents, photographs and personal experiences' relevant to historical forced adoptions. In addition, the NAA delivered a traveling exhibition, *Without Consent*, which toured Australia 'to educate the public about forced adoption policies and practices and their impacts'.²⁰⁸ VANISH wrote in its submission:

NAA engaged sensitively with people affected by past practices in gathering their accounts, documentation and personal effects. *Without Consent* has received very

²⁰⁵ Lisa Lynch, Acting Chief Executive Officer, Royal Women's Hospital, hearing, Melbourne, 20 July 2021, *Transcript of evidence*, p. 5.

²⁰⁶ Leanne Dillon, General Counsel, Royal Women's Hospital, hearing, Melbourne, 20 July 2021, *Transcript of evidence*, p. 3.

²⁰⁷ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 197.

²⁰⁸ VANISH Inc., *Submission 53*, p. 60.

positive feedback regarding the content, presentation and its powerful representation of victims and survivors. However, it has also been the subject of disappointment in terms of reach. VANISH and other organisations, peer groups and individuals frequently lobbied the NAA about coming to Victoria but to no avail, until finally we were advised it would be shown at the Geelong Wool Museum from November 2019 to January 2020.²⁰⁹

The Committee understands that while the Forced Adoption History Project website is accessible for viewing, at the time of this inquiry it was not taking any more personal accounts.²¹⁰ In addition, *Without Consent* is no longer operating. VANISH provided the Committee with the number of visitors to the *Without Consent* exhibition, accurate as of 29 February 2020 (the exhibition was still underway in South Australia at that stage).

Table 4.1 Location, dates and number of visitors to *Without Consent*

Venue	State	Dates	Actual numbers
Western Australian Museum, Kalgoorlie	WA	26 February 2016 to 1 May 2016	14,353
Western Australian Museum, Geraldton	WA	14 May 2016 to 24 July 2016	7,868
Western Australian Museum, Albany	WA	10 September 2016 to 20 November 2016	11,785
Wanneroo Library and Cultural Centre, Wanneroo	WA	2 December 2016 to 14 January 2017	535
Museum of the Riverina, Wagga Wagga	NSW	10 March 2017 to 24 June 2017	3,281
The Whitlam Institute, Sydney	NSW	7 July 2017 to 22 September 2017	382
Grafton Regional Gallery, Grafton	NSW	14 December 2017 to 21 January 2018	1,293
Albury Library Museum, Albury	NSW	10 February 2018 to 8 April 2018	6,621
Qantas Founders Museum, Longreach	QLD	20 April 2018 to 29 July 2018	23,360
Hervey Bay Regional Gallery, Hervey Bay	QLD	7 December 2018 to 3 February 2019	2,930
National Wool Museum, Geelong	VIC	1 November 2019 to 26 January 2020	8,774
State Library of South Australia, Adelaide	SA	7 February 2020 to 26 April 2020	1,758 ^a
Total			82,940

a. The number of visitors was accurate as of 29 February 2020.

Source: Adapted from VANISH Inc., *Submission 53*, p. 61.

VANISH recommended that the Victorian Government ‘assist and encourage’ the NAA to ‘source potential venues and show *Without Consent* in more locations in Victoria’ and to ‘encourage NAA to have the Forced Adoption History Project extended to receive submissions until one year after the Inquiry report has been handed down’.²¹¹ Similarly, ARMS told the Committee they had begun consulting with the NAA about potentially using *Without Consent* as a basis for a permanent exhibition.

²⁰⁹ Ibid. (with sources).

²¹⁰ Ibid., p. 61.

²¹¹ Ibid.

ARMS recommended that ‘the Victorian Government undertake to become guardians of the Without Consent exhibition and support the transformation of it into a permanent exhibition that is housed in Victoria’.²¹² Further, Marie Meggitt suggested that the new Nurses Federation is a suitable permanent location for it, stating:

they have been very thoughtful in their responses to us and they have got a brand-new building. It could be a fantastic art gallery opportunity. All we need is someone to drive it. It would be acknowledgement. It exists already; it just needs to be turned into something permanent instead of transient.²¹³

The Committee heard from several mothers that the *Without Consent* exhibition should be continued. This included Hannah Spanswick, who told the Committee:

I also believe that the *Without Consent* exhibition, which I went to—my whole family went—should be maintained and readily available for the general public so as to ensure that issues of the past are not repeated in the future by institutions again.²¹⁴

Similarly, Robyn Flanagan stated in her evidence:

there was a really wonderful exhibition called *Without Consent*, and that went to a lot of places, but now it is in a warehouse, I believe. I think—whether it is within your jurisdiction—that would be wonderful if that found a permanent home.²¹⁵

The Committee agrees. While an exhibition that is accessible to mothers and other parties affected by historical forced adoption across Australia would be ideal, the Committee recognises that this would require greater coordination and resources. Consequently, the Committee believes Melbourne or Victoria would be a suitable home for a permanent exhibition.

RECOMMENDATION 10: That the Victorian Government make *Without Consent* a permanent exhibition in Victoria and consult with stakeholders to determine an appropriate location.

The Committee also recognises that as a result of this inquiry there may be more mothers who want their experiences to be preserved as an important historical testimony. While the NAA is a federally funded organisation, the Committee believes there is value in extending its funding to allow more mothers, as well as people who are adopted and fathers, to have their experience documented.

RECOMMENDATION 11: That the Victorian Government advocate to the Australian Government to extend the National Archives of Australia’s funding to document the testimony of people affected by historical forced adoptions until June 2022.

²¹² ARMS (Victoria), *Submission 45*, p. 17.

²¹³ Marie Meggitt, *Transcript of evidence*, p. 27.

²¹⁴ Name Withheld (a), *Transcript of evidence*, p. 36.

²¹⁵ Robyn Flanagan, *Transcript of evidence*, p. 15.

In addition, the Committee thinks there is value in establishing a Victorian-based website that builds on the National Archives of Australia's work to date that also includes information on the apologies that have been made and the redress and support services available to mothers. The Committee considers that it would be useful for the Victorian Government to provide mothers with a 'one-stop-shop' website that includes all relevant information in one place, particularly for people who are just starting to become aware of what happened to them or a family member. This website would also serve as an educational tool to raise awareness for younger generations and contribute to public awareness, as advocated for by VANISH:

Greater understanding amongst the general public and validation of the issues faced by those involved would help to ameliorate the shame and stigma still associated with relinquishment/removal and adoption. Community education can also help increased understanding between family members who have been separated—particularly in relation to the circumstances surrounding separation and adoption, and the lifelong impacts.²¹⁶

RECOMMENDATION 12: That the Victorian Government establish a website that includes all relevant information about historical forced adoption in Victoria, including the experiences of mothers and other people affected, the apologies made by government and non-government organisations, and information on how to access records, support services or to find out more information.

4.6.3 Memorial Day

Following the tabling of the Senate Inquiry, the Australian Government established the Forced Adoption Implementation Working Group (FAIWG), chaired by the Hon Nahum Mushin AM, to monitor the implementation of the Senate Inquiry's recommendations. In its final report to the Government, FAIWG made its own recommendation that:

That 21 March in each year be designated as the memorial date to raise awareness and recognise and show respect to people affected by forced adoption in like manner as shown to the recipients of other government apologies.²¹⁷

This date was not supported by the Australian Government because 21 March celebrates Harmony Day.²¹⁸ The Hon Mushin told the Committee that a commemoration day would be 'really worthwhile':

I, with the greatest of respect, found difficult to understand, was that 21 March, which was of course the day of the federal apology, the day of the federal apology, is also Harmony Day. For some reason it seemed to be inappropriate to have two

²¹⁶ VANISH Inc., *Submission 53*, p. 105.

²¹⁷ Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, Australian Government, Canberra, 2014, p. 5.

²¹⁸ The Hon Nahum Mushin AM, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 19.

commemoration days on the one date. To my mind, as I said, I find that difficult to understand, but if the principle is accepted, perhaps the committee would like to consider another day.²¹⁹

The Hon Mushin suggested that Victoria could establish their own commemoration day on the anniversary of the Victorian Parliamentary apology, and that doing so might encourage other states or the Australian Government to do the same.²²⁰

The Committee believes that a national or state-based commemoration day for historical forced adoption would be a suitable way to increase public awareness of the issue and contribute to recognition and healing for mothers. As Barbara Pendrey told the Committee at a public hearing:

I think we need a day, I looked up special days of the year, we are all aware of Red Nose Day, Anzac Day, Daffodil Day, Harmony Day et cetera. I wonder why we are still anonymous.²²¹

RECOMMENDATION 13: That the Victorian Government designate one day each year to commemorate historical forced adoptions in Victoria, in consultation with those affected by historical forced adoptions. The Committee considers that 25 October, the anniversary of the Victorian Parliamentary Apology for Past Adoption Practices would be suitable.

219 Ibid.

220 Ibid., p. 23.

221 Barbara Pendrey, hearing, Melbourne, 4 June 2021, *Transcript of evidence*, p. 12.

5 People who are adopted

To each of you who were adopted or removed, who were led to believe your mother had rejected you and who were denied the opportunity to grow up with your family and community of origin and to connect with your culture, we say sorry.¹

A key learning for the Committee throughout the Inquiry was the impact of historical forced adoptions on the lives of people who are adopted. The Committee believes that acknowledging the experiences of adopted people and the challenges they face has been essential to this inquiry and adding to the broader impacts of the policies and practices of forced adoption. While acknowledging the trauma experienced by mothers, many adopted people told the Committee that they often feel overlooked in these discussions.

The Committee emphasises that the evidence in this chapter reflects the experiences of inquiry participants and not necessarily all adopted people. The evidence received demonstrates that while there are common themes arising from adoption, no two adoption experiences are the same. Equally, the impact of adoption varies from person to person.

A reoccurring theme among inquiry participants was that they have been negatively impacted in some way by their adoption. This is explored throughout the chapter and is also reflected in the broader research. The Committee acknowledges that many of the issues arising from adoption relate to loss, as explained by the Victorian Adoption Network for Information and Self Help (VANISH) in its submission:

Adoption is created through traumatic loss; without loss there would be no adoption. Traumatic loss is the core or the 'hub' for the experiences of all involved.²

For people who are adopted, VANISH described the tangible losses that result from being separated from their mother:

For adoptees, these losses may have involved never being given the opportunity to meet their mother, not being held and breastfed by their mother or knowing the name given to them at birth, and so forth.³

1 Find & Connect, *National Apology for Forced Adoptions (21 March 2013)*, 2013, <<https://www.findandconnect.gov.au/ref/nsw/blogs/NE01258b.htm#tab5>> accessed 4 October 2019.

2 VANISH Inc., *Submission 53*, received 18 June 2020, p. 30.

3 *Ibid.*, p. 31.

The Committee is grateful to everyone who discussed the effects of their adoption on them, especially as it can be retraumatising for many. As one person stated in their submission:

I have never written about this, I don't talk much about it, it causes me earth shattering thoughts, and I find it hard to grip on to anything.⁴

With up to 250,000 adoptions occurring in Australia⁵, there is potentially a vast group of people suffering in silence. This is exacerbated by the lack of public awareness or acknowledgement of the negative effects of adoption. The Committee heard that adopted people are increasingly connecting with one another to discuss their experiences, explore the effects of adoption and to advocate for greater awareness of the challenges and their support needs resulting from adoption.

Given the personal nature of this inquiry, the names of some adopted people have been withheld and other evidence remains confidential. This does not reduce the validity of the evidence, rather it reflects the decision by adopted people to safeguard themselves and their families.

The Committee also notes that the evidence presented in this chapter can be challenging to read, particularly for those with lived experience. A list of support services is provided on page xxxix.

5.1 Research on the effects of adoption

5.1.1 Australian Institute of Family Studies

The Committee understands that the experiences and impacts of adoption is not an area that has been heavily researched in Australia. The most comprehensive study to date is the Australian Institute of Family Studies' (AIFS) *Past adoption experiences: National research study on the service response to past adoption practices* (AIFS Adoption Study).⁶ The study used quantitative surveys and qualitative interviews to collect data and gather primary evidence. It surveyed mothers and fathers separated from a child by adoption, people who are adopted, adoptive parents and extended family. It also engaged with adoption representative bodies, service providers and relevant professionals, including psychologists, counsellors and social workers.⁷

People who are adopted were the largest participant group in the study: 823 of the 1,528 total respondents or 55%. The study asked people about the quality of their relationship with their adoptive parents, in which about 50% of participants responded

⁴ Name Withheld, *Submission 79*, received 9 October 2020, p. 2.

⁵ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 6.

⁶ Pauline Kenny, et al., *Past adoption experiences: National research study on the service response to past adoption practices*, Australian Institute of Family Studies, Melbourne, 2012.

⁷ *Ibid.* p. xii.

that it was either good or very good growing up. Approximately 25% stated that they had a poor or very poor relationship with their mother and 18% stated that they had a poor or very poor relationship with their father.⁸ Overall, the report noted that adopted people had both very positive and very negative adoption experiences from ‘extremely positive and loving, to the adoptees being subjected to physical, emotional and/or sexual abuse’.⁹

In its findings, the study drew attention to the number of participants who reported suffering abuse in the adoptive family environment. This included being:

- adopted into dysfunctional families where fear and abuse were the only parenting skills
- socially, sexually, physically, psychologically and medically abused
- told they were ‘someone else’s rubbish’.¹⁰

The study concluded that just over half of the adopted people who participated had ‘a wide range of negative experiences, including being treated differently and feeling different to the adoptive parent’s biological children, never feeling wanted, and living with secrecy and lies and even abuse’.¹¹

The study also evaluated the impact of adoption on participants and the effect of their lived experiences over time. It found that compared to the general population, adopted people reported worse wellbeing and mental health outcomes:

Compared to Australian population estimates, adoptees responding to our survey had lower levels of wellbeing and higher levels of psychological distress, and almost 70% of adoptee survey respondents agreed that being adopted had resulted in some level of negative effect on their health, behaviours or wellbeing while growing up.¹²

The AIFS Adoption Study surveyed respondents using the Kessler Psychological Distress Scale (K10) to compare the mental health of adopted people with national health survey respondents. The study concluded that of ‘particular concern is that close to one in five respondents was likely to have had a severe mental disorder’.¹³

8 Ibid., p. 93.

9 Ibid.

10 Ibid., pp. 95–96.

11 Ibid., p. 94.

12 Ibid., p. xiv.

13 Ibid., p. 106.

Table 5.1 Mental health of study adoptees compared to National Health Survey respondents, by likelihood of having a mental disorder, K10

	NHS male (%)	NHS female (%)	Adopted persons (%)
Likely to be well	85.6	79.6	54.1
Likely to have a mild disorder	8.3	10.6	17.4
Likely to have a moderate mental disorder	3.1	5.5	10.3
Likely to have a severe mental disorder	2.7	4.4	17.9

Source: Adapted from Kenny, et al., *Past adoption experiences*, p. 106.

Mental health issues associated with trauma, separation and loss, were commonly raised by adopted people in the study. The negative effects included feelings of betrayal, personal and inter-group identity problems, mental health issues, lower self-worth, lower health and wellbeing outcomes, abandonment issues, relationship dysfunction and lower life satisfaction.¹⁴

A notable finding from the AIFS Adoption Study was that adopted people who had positive experiences with their adoptive family still experienced negative effects:

It should also be noted that there is a distinction between having had a positive experience of childhood and whether or not study participants experienced any negative effects as a consequence of being adopted. The two are not mutually exclusive.¹⁵

Many participants who had positive experiences growing up still reported issues with identity, a sense of belonging or fitting in and attachment.¹⁶ That is, the act of adoption impacts people regardless of the quality of the care thereafter. Further, identity issues varied according to the age a person found out they were adopted. In particular, identity was a significant issue for late stage discoveries 'as many felt that everything they had known about themselves to that point in time was untrue'.¹⁷

The study also reported that participants who are adopted had a diminished capacity to establish and maintain meaningful relationships with partners, parents and their own children'.¹⁸ The effect of separation, loss, abandonment and self-worth 'compounded into more complex issues when trying to navigate their relationships'.¹⁹

The study found there are some mitigating factors that can lessen the severity of the negative experiences and effects of adoption on adopted people. Adopted people who had 'fewer experiences that played out negatively throughout their lives' were those

¹⁴ Ibid., pp. 97–107.

¹⁵ Ibid., p. 94.

¹⁶ Ibid., p. 102.

¹⁷ Ibid., p. 99.

¹⁸ Ibid., p. 102.

¹⁹ Ibid., p. 94..

who ‘experienced adoption as an open discussion, who were encouraged to search, and were given a positive view of their birth mother’.²⁰ Similarly, adopted people who believed that adoption had not affected their wellbeing had better mental health outcomes. It also found that lower levels of distress were associated with people who had received emotional and general support, as opposed to those who received little to no support.²¹

The AIFS Adoption Study is still the most robust study of adoption in Australia, although the authors acknowledged its limitations. The authors stated that there was a ‘lack of available sources from which to extract such information’, which prevented it from producing a ‘reliable estimate of the number of parents, adoptees and adoptive parents/family currently living in Australia who are affected by past adoption practices’.²² They also explained that, despite a potential cohort of 200,000 people, there is no existing database to draw upon so participants were self-selected, therefore reducing the representativeness of the findings.²³

The AIFS Adoption Study was published in 2012 and remains Australia’s landmark research report on adoption experiences and effects. Undoubtedly, it qualified and quantified the experiences of adopted people for the first time in a major Australian Government-commissioned report. The Committee understands that it has been a crucial resource for academic research, governments and adoption-focused organisations. However, as the study is almost a decade old, it is imperative that further research be conducted. This is discussed in Section 5.4.

5.1.2 Traumatic loss and separation

In their evidence, mothers often used the term trauma to describe being forcibly separated from their babies. Trauma was also a term used by people who are adopted to describe the effects of separation forced on them through adoption. The Committee is aware that an area of research receiving greater recognition is the trauma experienced by newborn babies through attachment wounding. This occurs when babies are separated from their mothers at birth. The associated trauma can have lifelong impacts on children’s growth and development.

In *The primal wound: legacy of the adopted child*, Nancy Vernier explores the effects of separation from the mother on adopted children and hypothesises that:

the severing of that connection between the child and biological mother causes a primal or narcissistic wound, which often manifests in a sense of loss (depression), basic mistrust (anxiety), emotional and/or behavioural problems, and difficulties in relationships with significant others.²⁴

²⁰ Ibid., p. 121.

²¹ Ibid., p. 106.

²² Ibid., p. xviii.

²³ Ibid.

²⁴ Nancy Verrier, ‘The primal wound: legacy of the adopted child: the effects of separation from the birth mother on adopted children’, paper presented at American Adoption Congress International Convention Garden Grove, California April 11–14, 1991, p. 4.

Vernier further states that the breaking of the mother-child bond also ‘affects the adoptee’s sense of self, self-esteem, and self-worth’. According to Vernier, child development research does not address the distinctions between a child who comes into a family through birth as opposed to adoption. Yet, she argues, ‘all adopted children begin their lives having already felt the pain and, perhaps, terror, of separation from the first mother’. Further, an adopted child experiences the adoptive family environment as ‘hostile and their bond to the mother as transitory’, and while ‘adoptive parents may refer to the child as chosen and to themselves as the real parents’ the ‘separation can never be completely ignored’.²⁵

In her evidence to the Committee, Dr Rosemary Saxton, a General Practitioner with 30 years’ experience, discussed attachment wounding and traumatic loss for people who are adopted, and explained the bond between mother and baby:

The bond between mother and baby develops long before birth. For example, the baby responds to the mother’s voice. The baby’s in utero experience prepares it for the world into which it is coming. For example, the baby experiences the mother’s cortisol levels in her responses to stressors.²⁶

It is in this context that Dr Saxton explained that memories are likely to be stored somatically in a person who is adopted:

The emotional wounds of adoption for the baby occur long before the acquisition of language, so the memories of separation and loss are stored in the body, a phenomenon that Nancy Verrier describes. Such somatic, embodied, implicit memories are described at length by such pioneers in trauma therapy.²⁷

Dr Saxton also advised that the ‘severity of attachment wounding and experience of trauma to the baby’s nervous system’ when separated from its mother cannot be overestimated:

The long-term effects of loss and separation lead to significant issues of trust and difficulties with relationships. The diagnosis of complex PTSD [post-traumatic stress disorder] included in the latest ICD manual, which is the international classification of diseases, recognise the long-term effects of cumulative trauma, including developmental trauma.²⁸

Dr Saxton came to the same conclusion as the AIFS Adoption Study, that trauma results from the loss created by adoption, not necessarily the lived experiences of adopted people:

Adoption trauma is the result of the separation of the mother and baby unit, regardless of the quality of the care thereafter.²⁹

²⁵ Ibid.

²⁶ Dr Rosemary Saxton, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 32.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

In her submission, Michele Hutchins, an arts psychotherapist, discussed the impact of separation trauma on child development, particularly the lack of somatic experiences in the first stages of life. Michele Hutchins indicated that she found it difficult to examine the research on this topic due to her own personal experience as an adopted person:

It is difficult to consider this information as an adoptee, knowing that I spent the first critical seven weeks of my life in an overcrowded ‘baby home’, at a time when they did not cradle and interact with the babies too much as it was felt this might compromise their bond with their eventual adoptive families.³⁰

Michele Hutchins provided the Committee with references to primary research that explored how a child’s sensory experiences, such as sight, hearing, touch, taste, smell, and movement, stimulate brain activity and produce the complex nerve networks crucial for early childhood development.³¹ The longstanding hypothesis is that if a child’s senses are not sufficiently stimulated during the key milestones of brain development, subsequent atypical brain development can lead to various personally and socially challenging behaviours.³²

Through her psychotherapy work and as a volunteer working with adopted people at VANISH, Michele Hutchins concluded that ‘very few participants seemed aware of the developmental trauma they had experienced’.³³

Several inquiry participants spoke of separation trauma in their evidence to the Committee. For example, Wendy Willis reflected on what her therapist told her:

On my first visit I remember being told that although I may not believe this initially, the impact of being left after birth in the hospital for 6 weeks until I was adopted had affected my whole sense of identity and attachment.

I empathise with relinquishing mothers, fathers and families however this is my story and I was a new born baby who was not afforded the right of bonding and attachment in those crucial first weeks.³⁴

In a public hearing, Leanne Matton, who is adopted and a psychologist, stated in her professional opinion:

I know that even those who have good relationships with their adoptive family suffer emotionally because of the developmental damage done by early separation.³⁵

³⁰ Michele Hutchins, *Submission 97*, received 21 May 2021, p. 3.

³¹ J Fraser Mustard, ‘Early childhood development and the brain—the base for health, learning and behaviour throughout life’, in Mary Eming Young (ed.), *From early childhood development to human development*, The World Bank, Washington D.C., 2002.

³² For example, see J.W. Prescott, ‘Sensory deprivation vs sensory stimulation during early years development: a comment on Berkowitz’s study’, *Journal of Psychology*, vol. 77, 1971.

³³ Michele Hutchins, *Submission 97*, p. 3.

³⁴ Wendy Willis, *Submission 114*, received 29 July 2021, p. 2.

³⁵ Leanne Matton, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 12.

Similarly, Lauren Howe wrote in her submission:

Having protection, security and love that another family environment can provide does not negate the trauma of being separated from the birth family.³⁶

Isabell Collins told the Committee that being born is a traumatic experience in and of itself, and that ‘the only thing [babies] know is their mother, the smell of her and her voice—and we take it away’.³⁷ By way of comparison, she stated that even puppies stay with their mothers for the first six weeks, whereas children were whipped away immediately from their mothers.³⁸ To Isabell Collins, that separation trauma stays with the child:

that is an extremely traumatic thing for the child that they carry through for the rest of their lives. I do not know whether they do. I know I carry stuff, and I know a lot of adoptees do.³⁹

Helen Nicholson described the primal wound in her submission:

When I was 12 years of age, I was told I was adopted and I received a nonidentifying booklet about my birth parents. And so began the emotional impact of the primal wound. I was told that in my early days I would cry constantly (I was crying for my real mother) and could not be consoled. Pre-verbal expression of trauma.⁴⁰

Helen Nicholson wrote that she clung to the booklet and realised that there was more to her trauma than being a rebellious teenager. She indicated that she was forever trying to understand why she could not connect with her adoptive parents and why they did not love her.⁴¹

Lee Whelan told the Committee that the trauma of separation and the lack of nurturing has had ‘diabolical consequences’ for her and this is something that she, and all the other victims of forced adoption, always have to live with.⁴² Similarly, another person who is adopted told the Committee that over time they have come to realise that adoption is about trauma and grief and ‘seeps into all aspects of your life’.⁴³ They also stated:

trauma breeds trauma, and that breeds intergenerational trauma. Adoption is part of that trauma. It brings shame, it brings guilt and it brings separation.⁴⁴

³⁶ Lauren Howe, *Submission 6*, received 16 January 2020, p. 1.

³⁷ Isabell Collins, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 21.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Helen Nicholson, *Submission 86*, received 30 March 2021, p. 1.

⁴¹ *Ibid.*

⁴² Lee Whelan, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 16.

⁴³ Name Withheld, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 41.

⁴⁴ *Ibid.*, p. 42.

In her submission, Wendy Willis reflected on how the trauma of her adoption has affected her:

I don't fit in anywhere, I feel I am never good enough, I cling to any form of closeness and attachment to my own children, and if they are not contacting me or we may disagree on something I internally feel I have done something wrong or am not loved or wanted. As my children have children, these feelings resurface and I go to my place of remembering how much I loath my birthday, Christmas and life events.⁴⁵

As discussed later, the Committee heard that this trauma often continues throughout a person's life and is triggered by other events or losses related to their adoption. According to VANISH, loss should not be understood as a 'single traumatic event', but rather a 'continuing and evolving process' that involves a number of 'secondary losses over the life cycle'.⁴⁶ These include:

the missed opportunity to be raised in and know their biological family, subsequent siblings and their genetic identity; a loss of medical history and family history and culture; and general feeling of not belonging or knowing who they were; and so forth. For late discovery adoptees, there is the loss of trust and loss of identity about who they believed they were and where they belonged.⁴⁷

The Committee received evidence from a late discovery adoptee, Peter Capomolla Moore, who spoke of the lost opportunity to have a relationship with his mother and eight siblings. Tragically for Peter, another secondary loss was the death of his father:

I never had the opportunity to meet my father who died in 1982, I was 24 at that time, nothing can ever replace that loss.⁴⁸

The notion of compounding traumas holds true for many of the adopted people who contributed to this inquiry. In addition to separation trauma and losses, the Committee heard evidence of people enduring multiple and intersecting experiences of trauma, such as institutionalisation, abuse, feelings of rejection and neglect. These experiences are explored in the following sections.

5.1.3 Disenfranchised grief

Another key theme that arose in the Inquiry was the concept of disenfranchised grief, which VANISH explained in its submission:

Grief is 'disenfranchised' when it is connected to a loss that is not openly acknowledged, socially supported or publicly mourned. Grief in adoption is a loss for all parties; however, it is disenfranchised and un-acknowledged by suggesting that 'it was for the best', and to mourn the loss was often seen for mothers (and sometimes fathers) as selfish or for adoptees as ungrateful.⁴⁹

⁴⁵ Wendy Willis, *Submission 114*, p. 3.

⁴⁶ VANISH Inc., *Submission 53*, p. 31.

⁴⁷ *Ibid.*, p. 32.

⁴⁸ Peter Capomolla Moore, *Submission 44*, received 5 March 2020, p. 1.

⁴⁹ VANISH Inc., *Submission 53*, p. 33.

Relationships Australia Victoria (RAV) stated in its submission that disenfranchised grief is a common feeling among its clients affected by historical forced adoptions and that it is triggered by milestones, such as birthdays, festive seasons or life events.⁵⁰

The text *Disenfranchised grief* contains an excerpt from *Adoption separation— healing through understanding* presented by Evelyn Robinson at the International Conference on Child Rights in Bucharest in 2006. Robinson explained the concept of disenfranchised grief as being:

connected to a loss which is not openly acknowledged, socially supported or publicly mourned. The grief associated with adoption separation fits these criteria very well. When grief is disenfranchised, the lack of recognition and understanding of the benefits of performing productive grieving work mean that it is difficult for appropriate grieving to occur.⁵¹

Robinson also explained the link between unacknowledged loss and disenfranchised grief as it relates to adoption:

The family breakdown caused by adoption creates a situation of loss. If that loss is not recognised, however, there will be no understanding of the appropriateness of grieving that loss. People do not generally associate loss with adoption, but, in fact, adoption is firmly grounded in loss.⁵²

Ultimately, the loss is not recognised and becomes disenfranchised:

In many adoptive families, there has been no recognition of the losses experienced by the adopted children and so there has traditionally been no support for the grieving needs of adopted people.⁵³

An inquiry participant wrote in their submission that because there is little public awareness of the impacts of historical forced adoption, particularly in an era when ‘celebrity adoptions are lauded and celebrated’, adopted people feel disenfranchised grief:

My own father died six weeks before I was able to find out his name. The grief I feel over this is not acknowledged by anyone in society at large.⁵⁴

Similarly, in her evidence to the Committee, Isabell Collins spoke of experiencing this form of grief at different times when her mother and adoptive mother passed away.

when my adoptive mother died, I had gone to the funeral, I had come back to work—I was a senior nurse at Western Hospital—and I was sitting there having lunch with the director of nursing. A charge nurse came up, and her mum had died. She came up and she thanked them for the flowers.

⁵⁰ Relationships Australia Victoria, *Submission 15*, received 27 April 2020, p. 5.

⁵¹ Evelyn Robinson, ‘Adoption separation—healing through understanding: Disenfranchised grief’, paper presented at International Conference on Child Rights, Bucharest, Romania, 2006, p. 1.

⁵² Ibid.

⁵³ Ibid., p. 2.

⁵⁴ Name Withheld, *Submission 99*, p. 2.

I did not get anything. I did not say anything, but I was just looking and the director of nursing said, ‘Well, she wasn’t really your mother’. When [redacted—natural mother] died—and she was a patient in that hospital—I did not get anything. And, ‘Well, she didn’t really raise you’. One of my best friends said to me, ‘I don’t understand why you’re so upset’. I said, ‘Well, apart from the fact that she was the only close, real relative I had, you know, when Mum died, it was, ‘Well, she wasn’t really your mother’, and now [redacted] has gone, ‘Well, she didn’t really raise you’.⁵⁵

Isabell Collins said this was not an uncommon experience for adopted people, and posed the question to the Committee as to when her grief is valid: ‘Tell me when I can have normal grief like everybody else?’⁵⁶

5.2 Adopted people and the circumstances of forced adoption

This section explores the impact of forced adoption on people who are adopted drawing specifically on the evidence received in submissions and public hearings. It describes experiences as told by people who are adopted, including from their birth, growing up as an adopted person and the ongoing effects.

5.2.1 Peoples’ knowledge of their birth and forced adoption

The Committee is aware that in the adoption community there are differing views about the relevance of historical forced adoption on the life of an adopted person. For example, Adoptee Rights Australia (ARA) stated in its submission that the ‘reasons for removal are not central to the adoption experience’ and that, even then, most people would feel better knowing their parents had been ‘forced to abandon them’ rather than finding out they had been ‘willingly cast aside’.⁵⁷ Conversely, the Committee heard from some people that they found it very distressing to learn that they were forcibly separated from their mother against her will. People referred to their mothers as having no choice and being ‘forbidden’ to keep them.⁵⁸

In her evidence to the Committee, Lee Whelan indicated that her records showed that her mother was not supported or encouraged to keep her, ‘[s]he was described as being “simple” and “withered” and “not fit to be a mother”’.⁵⁹ Lee Whelan stated that her mother’s love for her was never considered, even though staff witnessed her and her mother bonding after she was born, including the fact that her mother named her.⁶⁰ Lee Whelan concluded that ‘[s]he was clearly manipulated into adopting me. Her pain

⁵⁵ Isabell Collins, *Transcript of evidence*, p. 23.

⁵⁶ Ibid.

⁵⁷ Adoptee Rights Australia Inc., *Submission 46*, received 6 March 2020, p. 7.

⁵⁸ Name Withheld, *Submission 47*, received 11 March 2020, p. 1; Name Withheld, *Submission 79*, p. 1.

⁵⁹ Lee Whelan, *Transcript of evidence*, p. 16.

⁶⁰ Ibid.

is my pain, and that is why I am speaking today'.⁶¹ Jennifer McRae similarly stated in her submission:

I write my submission to your inquiry in solidarity with our Mothers. I want to sincerely and gratefully thank our Mothers for ploughing through the public disbelief they have experienced at every turn in their fight for recognition. They have selflessly faced repeated re-traumatisation with every word spoken or written in the decades of their fight for a public formal apology. However, much more needs to be done.⁶²

Another submitter who is adopted wrote that their mother was 22 and, despite plans to marry the father, they were taken from her and forcibly adopted to another family. Their mother was told she was a 'slut' and 'unfit to be a mother'. As a result of experiencing this 'deep shame', their mother had no more children and dealt with mental health issues for the rest of her life.⁶³ Peter Austin stated in his submission that his mother had been told that he died at birth and he could 'only imagine how she felt'.⁶⁴

Benita Rainer indicated in her submission that her grandparents did not want her mother to bring her home and that she was always 'marked for adoption'.⁶⁵ Benita Rainer explained that her mother nursed her for 15 minutes before she was taken away, but her mother did not want her removed:

After she went home she was so distraught that her mother worried that they should have taken me home with them, and rang the hospital. Her mother had said 'What would the neighbours think?' But my natural mother told me she replied, 'Who cares what the neighbours think?' She wanted to keep me.⁶⁶

Benita Rainer also stated that her mother was never informed of financial support for single mothers and was falsely told that her daughter had already been adopted:

[she] hadn't been told about the supporting mother's allowance, which was the same as the widow's pension in 1952. This was within a week to a fortnight of me having been born. But they were told they were too late, she had already been taken. This was a lie, as my adoptive parents didn't take me home until 19 days after I was born.⁶⁷

Bobby McGuire submitted a news article about his forced adoption to the Committee. The article explained that his parents needed to move into a war service home due to his father's health problems, but it was on the proviso that any further children born would be adopted.⁶⁸ Bobby McGuire stated that his father 'had served his country and then had to relinquish his baby'.⁶⁹

⁶¹ Ibid.

⁶² Jennifer McRae, *Submission 82*, received 15 May 2021, p. 1.

⁶³ Name Withheld, *Submission 99*, received 29 May 2021, p. 1.

⁶⁴ Peter Austin, *Submission 63*, received 10 June 2020, p. 1.

⁶⁵ Benita Rainer, *Submission 88*, received 6 May 2021, p. 1.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Bobby Maguire, *Submission 85*, received 1 April 2021, p. 1.

⁶⁹ Ibid.

In her submission, Helen Nicholson referred to her adoption as abduction:

My birth mother 'E' stayed in a home for Unwed Mothers in the later stages of her pregnancy. After giving birth to me, she was allowed to nurse me for an hour and then was, quote, 'ripped away from her arms'.⁷⁰

Helen Nicholson stated that hearing her mum's side of the story broke her heart and that 'having children of my own now, I cannot fathom how hard it would have been to have me torn away from her'.⁷¹

The Committee received evidence about some babies being forcibly removed from their mothers only to then stay in the hospital or be moved to a children's home before being adopted weeks or months later. For example, Isabell Collins told the Committee:

Regarding myself I was born in 1948. I spent my first six months at St Joseph's Broadmeadows orphanage, and I was adopted at 12 months of age.⁷²

Another person who is adopted and a self-described 'forgotten Australian' wrote in their submission:

I had been a State Ward for 2 years, and no-one, not my birth or adoptive mother had ever told me of this, and my birth mother never knew. The government had tried to erase the first 2 years of my life, changed my name buried and my story.⁷³

The Committee also heard from a person who was removed from their mother against her wishes only to remain in hospital for two months before being 'collected' by their adoptive parents. The person later found out that the hospital had offered to replace them with another baby 'when it was found that I had congenital hip displacement'. As the medical problem was solved, the swap did not happen, although it demonstrated the 'little regard there was for the welfare of any parties involved in the adoption'.⁷⁴

Some people were born to mothers who resided in other states but came to Victoria to have their babies. Karyn Williams was born in Mildura to a mother who otherwise lived in Western Australia. She said her mother temporarily relocated, 'I'm guessing to hide the fact of her pregnancy'.⁷⁵ Karyn Williams's mother signed the adoption papers on the wrong day and then moved back to Perth, but due to this error Karyn Williams could not be adopted and remained at Mildura Base Hospital for weeks. She was then fostered for two weeks by a nurse before being placed in an orphanage for four months.⁷⁶ Karyn Williams was eventually adopted at six months old.

⁷⁰ Helen Nicholson, *Submission 86*, p. 1.

⁷¹ *Ibid.*, p. 4.

⁷² Isabell Collins, *Transcript of evidence*, p. 19.

⁷³ Name Withheld, *Submission 34*, received 28 February 2020, p. 1.

⁷⁴ Name Withheld, *Submission 32*, received 26 February 2020, p. 2.

⁷⁵ Karyn Williams, *Submission 84*, received 3 April 2021, p. 1.

⁷⁶ *Ibid.*

Another person shared a similar experience in their submission of having being born in Victoria to a mother who lived interstate. They learned that their mother was too scared and ashamed to tell her parents she was pregnant, so instead she told them she was moving interstate to study:

What she actually did was move into Salvation Army's, The Haven, in Alfred Crescent North Fitzroy, all alone in a state where she knew no one. The Haven was a maternity and children's home, where women who had sinned were able to spend their confinement working like slaves in exchange for their food and accommodation.⁷⁷

The person stated that they were eventually adopted at nine months old, although their mother believed that they had been adopted at six weeks.⁷⁸

5.2.2 Inadequacy of screening of adoptive parents and welfare checks

An issue raised by adopted people during the Inquiry was the adequacy of screening processes for adoptive parents and support provided to adoptive parents following the adoption. Beyond minimum age criteria and the prohibition of single men adopting children, the *Adoption of Children Act 1928 (Vic)* and the *Adoption of Children Act 1958 (Vic)* had no criteria for the character, psychological or medical fitness, education or material resources of potential adoptive parents.⁷⁹ The Committee believes this was highly negligent and in contrast with the view that adoption was in the best interests of the child.

Criteria on the suitability of potential adoptive parents was only introduced in the *Adoption of Children Act 1964 (Vic)*. Section 12 of that Act required proof that parents were:

- of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child⁸⁰
- suitable persons to adopt that child, having regard to all relevant matters, including the age, state of health, education (if any).⁸¹

Even with these criteria, it is unclear how well screening processes were implemented at the time. The Committee did not receive any evidence describing the application of screening processes, although this does not imply that they were never properly applied. Again, the Committee is reporting only on the evidence it received.

As the Committee considered the evidence, it became aware of the devastating irony that children were separated from their natural mother for a perceived better life only to be placed with unsuitable and sometimes unsafe married couples. Several mothers who

⁷⁷ Name Withheld, *Submission 89*, received 25 May 2021, p. 1.

⁷⁸ Ibid.

⁷⁹ *Adoption of Children Act 1928 (Vic)*; *Adoption of Children Act 1958 (Vic)*.

⁸⁰ *Adoption of Children Act 1964 (Vic)* s 12(a).

⁸¹ Ibid., s 12(b).

were separated from their babies told the Committee about the anguish and anger they felt when they reconnected with their adult children and learnt about the homes they grew up in. Karen Linton wrote in her submission:

The Forced Adoption of my son has had a profound impact on both his and my lives and in very much a negative way. I was assured my son would go to a good family who had been thoroughly screened and could offer my son a good life. However, this was not the case for my son as his adoptive father is a compulsive gambler and he only provided minimum amounts of money for food, clothing and shelter. When my son's adoptive mother passed away it became worse for my son, they constantly moved as his father did not pay the rent due to the gambling addiction. My son is currently seeking treatment for this and other issues arising from his treatment from his adoptive father.⁸²

The Committee also heard from some adopted people who questioned the suitability of the families that they were adopted into. In her submission, Kerri Young questioned why an older couple was considered more suitable than her young mother to raise her:

I do not understand how the government at the time thought an older couple could look after me better than my own (biological) mother who was considered then, too young and therefore unfit to keep me.⁸³

Another person submitted that their adoptive parents should have been disregarded based on their age, but they were approved because of a personal connection with the adoption agency:

[Redacted] and I were adopted by [redacted] and [redacted] who lived in Essendon. They were in their 40's when they adopted which technically was over the age for suitable parents. They had a relative who was a friend of the matron at The Haven, so were approved to adopt.⁸⁴

Further, as reflected in the following quotes, numerous people questioned the effectiveness of screening processes based on their experiences growing up in the care of their adoptive parents:

My adoptive parents did not undergo any psychological or suitability evaluations. They just took me home.⁸⁵

As a child I experienced parenting styles that were unavailable and mis-attuned, in a family dynamic affected by substance addiction and consistent disharmony and separation. Subsequently, neither healthy relationships nor self-love were modeled.⁸⁶

⁸² Karen Linton, *Submission 108*, received 1 July 2021, p. 2.

⁸³ Kerri Young, *Submission 27*, received 12 February 2020, p. 1.

⁸⁴ Name Withheld, *Submission 89*, p. 1.

⁸⁵ Name Withheld, 7 December 2020, *Transcript of evidence*, p. 42.

⁸⁶ Name Withheld, *Submission 47*, p. 1.

Had psychological testing of prospective adoptive parents been performed at the time of my adoption it is likely that her mental health issues would have been detected and her application denied.⁸⁷

Another person stated in their submission that their adoptive parents were considered fit to raise a child because they had a clean house and a full fridge. However, this assessment did not address the reality of the family circumstances:

What this assessment didn't reveal was that my adoptive mother has a family history of child sexual abuse and my adoptive father comes from a family filled with hostility and high expressed emotion. This meant neither of my parents were well equipped to parent a child, let alone a child who was not theirs and who had experienced such a traumatic start in life.⁸⁸

One submitter wrote that because their adoptive father was religious, everyone thought they were lucky to be adopted into a 'good religious household'. Their younger brother explained that, in fact, they were brought up in what was essentially a cult.⁸⁹

In her evidence to the Committee, Leanne Matton explained the inadequacy of the screening process for her adoptive parents:

But I had a bad experience, because I was adopted via a practice that handed a child over based on two paragraphs of assessment, which was woefully inadequate. That offered no follow-up and told adoptive parents to treat the child as their own. This left dysfunctional people managing the grief of infertility and the traumatised infant without support or education.⁹⁰

The Committee heard evidence of instances where adoptive parents did not receive any follow up support from adoption agencies once they took their child home. Karyn Williams wrote in her submission:

I was advised by my adoptive parents on their arrival to the institution in Mildura I was placed in, they were greeted at the door by an unempathetic woman, there were multiple screaming children to be heard. My parents were led into a room, I was on a bunk caged in with two other infants, my mother stated to me that the woman leant over picked me up handed myself to her and then turned to lead them out the front door. My family stated to me there was no information given regarding my care or development. In my eyes what a disgrace, was I just human garbage. My adoptive family then returned to Melbourne, completely unaware that already I was traumatized.⁹¹

⁸⁷ Jennifer McRae, *Submission 82*, p. 9.

⁸⁸ Name Withheld, *Submission 32*, p. 2.

⁸⁹ Ibid.

⁹⁰ Leanne Matton, *Transcript of evidence*, p. 11.

⁹¹ Karyn Williams, *Submission 84*, pp. 1-2.

Another adopted person said:

There were no further checks done on my welfare and no support offered to either my adoptive parents or my biological mother once I was removed and rehomed.⁹²

Jennifer McRae similarly spoke of her adoptive parents not receiving adequate support when they adopted her sister:

In late 1975, we collected my new sister from Ngala. It is one of my earliest memories. [Redacted] had stayed longer than the usual 2 weeks at Ngala as there was a concern that she had hip dysplasia. For eight weeks she was cared for by a rotating roster of mothercraft nurses and as a result I believe she failed to achieve the first psychological milestone of her infancy; attachment to a primary caregiver. Instead, she learnt to self soothe, alone in her cot, not wanting comfort in any form from others. Her unusual neonatal independence troubled, but the local child health nurse, nor Ngala offered any form of counselling, investigations or referral services. It's very likely that had been seen by a paediatric specialist, strategies could have been implemented in a timely manner with which to prevent her from progressing to living with the permanent difficulty of dismissive-avoidant attachment disorder.⁹³

Another person submitted that they were adopted by an older couple who 'did the best that they were able to, with the emotional and physical resources available to them'⁹⁴ but that they were not offered any subsequent support:

Following my adoption, there was no follow up support at any point for myself or my adoptive parents; no framework to help me or to help my parents understand or help me ... The state or their representatives—specifically CFWB [Catholic Family Welfare Bureau], never followed up on how I was progressing.⁹⁵

5.3 Living as an adopted person

Nearly all adopted people who participated in this inquiry had negative experiences as a result of being adopted. These experiences often occurred when they were children and typically continued into adulthood. The Committee also heard from some people who grew up in loving and supportive homes with their adoptive parents but experienced negative effects from their adoption. Martin Rayner submitted:

The key message that I want to pass on to the Inquiry is that the impact of adoption on my life has been significant and emotionally destructive. Whilst I was placed with the perfect family and loved, it didn't stop the yearning for and deep sense of loss for my other family. The presumption that adoption provides individuals a better life by placing them in a more stable environment, is only materialistic in reality.⁹⁶

⁹² Name Withheld, *Submission 32*, p. 2.

⁹³ Jennifer McRae, *Submission 82*, pp. 9–10.

⁹⁴ Name Withheld, *Submission 101*, received 31 May 2021, p. 1.

⁹⁵ *Ibid.*, p. 2.

⁹⁶ Martin Rayner, *Submission 110*, received 22 July 2021, pp. 2–3.

5.3.1 Identity

From the evidence, the Committee observed that common questions arise for people who are adopted regarding their identity and sense of belonging. Personally, it is not knowing who they are, who their family is or where they come from. Practically, it is not having a true and accurate birth certificate or knowledge of their family medical history.

Fundamentally, adoption is a ‘forced identity change’ for an adopted person.⁹⁷ According to Lauren Howe, it is not merely a change, it is ‘having your identity denied’ and, therefore, ‘not knowing where you belong’.⁹⁸ One submitter described the loss of identity as a complete disconnection from their family, akin to experiencing the death of their parents and themselves:

As a newborn I experienced the death of both of my parents, separation from my entire family, my roots, my place and I experienced the psychological death of myself as connected to my mother.⁹⁹

Another submitter wrote that their identity is tied to their name and yet the simple distressing fact is that they do not like their given adopted name. The name makes them feel ‘dirty’ and ‘unclean’, but they have to pay to change it to the one their mother gave them.¹⁰⁰

Bobby McGuire’s submission reflected on his experience of not knowing who he was. He described his childhood as always marked by a sense of loss and isolation, and going to family events and feeling like he did not fit in.¹⁰¹ He did not look like his family, did not socialise like them and just did things differently to them.¹⁰² He said there were ‘whispering words in the background’ about him, although it was never explained to him that they were talking about him being adopted. He was ‘left out of every internal, very close family things and that extended right through the teenage years’.¹⁰³

Kerri Young wrote in her submission how she discovered that her natural father had been living ten minutes from her. She describes him as a wonderful man who, despite his lack of rights, searched for her when she was young.¹⁰⁴ This provoked an existential question about her identity:

Would I be a different person if I was Claire O’Neill? I definitely would have been a gentler and settled person if raised by my dad.¹⁰⁵

⁹⁷ Lynne Williamson, *Submission 70*, received 25 June 2020, p. 2.

⁹⁸ Lauren Howe, *Submission 6*, p. 1.

⁹⁹ Name Withheld, *Submission 47*, p. 1.

¹⁰⁰ Name Withheld, *Submission 79*, p. 1.

¹⁰¹ Bobby Maguire, *Submission 85*, p. 2.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Kerri Young, *Submission 27*, p. 1.

¹⁰⁵ Ibid., p. 2.

For Lynne Williamson, her identity sits within a lifelong label as an adopted person:

Every aspect of my personal life is connected to adoption. From 6 weeks of age my name and birth certificate were changed, and I am known as an Adoptee, under the Adoption Act lifelong, without my consent.¹⁰⁶

To Isabell Collins, the significance of identity in society is underestimated. She told the Committee that ‘our whole society is based on genes’, that family conversations often focus on who takes after—or looks like—someone.¹⁰⁷ However, adopted people are ‘constantly surrounded by people who take their biological identity for granted’.¹⁰⁸ She explained:

We change a baby’s identity. We give them another name and another family. We give them away to complete strangers. We falsify their birth certificate and we basically deny them a biological identity and the right to know who they look like, who they take after or even get to know those people. If we consider it, society is all about who you look like, who you take after and all of those sorts of things, and we deny that to the child.¹⁰⁹

Isabell Collins concluded that identity issues go ‘much deeper’ than biology for adopted people. A lack of identity is an intangible ‘feeling of emptiness’ and a ‘strong, consistent sense that there is something very important missing in your life’.¹¹⁰ As one inquiry participant stated in their submission, a sense of identity is also history and ancestry:

The right to knowledge of one’s history, ancestry, the simple fact of seeing yourself mirrored in others—to be surrounded by people who look like you.¹¹¹

In a public hearing, the Committee heard from an adopted person whose complex experience of learning they are adopted raised key concerns regarding their identity and the subsequent impact on their and their children’s lives. They told the Committee that they always felt that they were adopted, although they only learned the truth at 40 years old, long after their adoptive parents had died.¹¹² On top of dealing with the impact of being a ‘late stage discovery adoptee’, another fundamental complexity arose as to whether they could still identify as Aboriginal:

I had been raised in a home where my father was Aboriginal. I had believed that I was Indigenous as well. I still feel I am and that is just who I am, and upon finding my birth family, I am not.¹¹³

¹⁰⁶ Lynne Williamson, *Submission 70*, p. 1.

¹⁰⁷ Isabell Collins, *Submission 62*, received 04 June 2020, p. 8.

¹⁰⁸ *Ibid.*

¹⁰⁹ Isabell Collins, *Transcript of evidence*, p. 21.

¹¹⁰ Isabell Collins, *Submission 62*, p. 8.

¹¹¹ Name Withheld, *Submission 101*, p. 2.

¹¹² Name Withheld, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 47.

¹¹³ *Ibid.*

The inquiry participant indicated that they were deeply conflicted about their heritage and what it meant for their sense of self. They indicated that they were often triggered by everyday tasks, including filling out forms:

I have no idea whether I should answer when forms come up and it says, 'Do you identify as Aboriginal or Torres Strait Islander?'. Sometimes I sit there looking at it for 10 minutes. I have no idea whether I should say yes or no.¹¹⁴

They stated that they feel they are an Indigenous Australian and that to answer 'no' is denying their heritage. This is despite now knowing that 'biologically I am not'.¹¹⁵ They stated:

I stand about my heritage, what I should be, what I should not be. I do feel that the heritage thing is a huge thing for me. I feel I am Indigenous, but then I am not.¹¹⁶

Finding out that they were adopted has also impacted their children's sense of identity, as they had been raised with a genuine belief that they were Indigenous. The inquiry participant told the Committee that they had not met anyone in the same set of circumstances. To date, they still do not know where they stand in terms of their identity and heritage:

So 12 years on, after finding my birth family, I am psychologically a stateless person.¹¹⁷

Learning of one's adoption

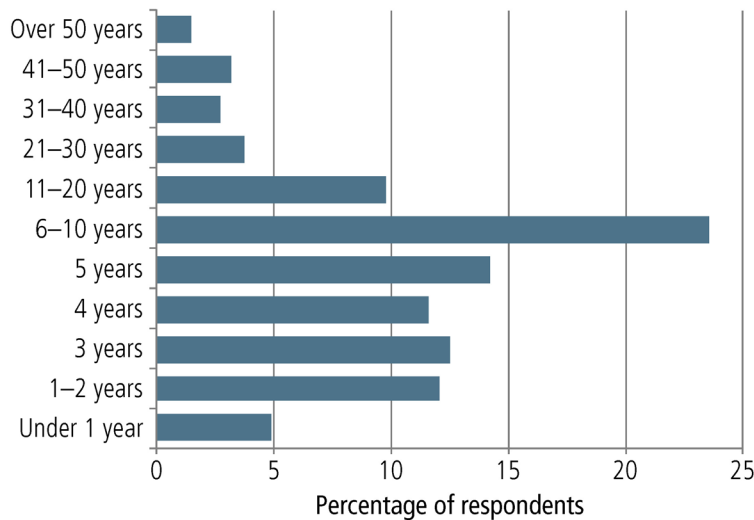
A related issue to questions of identity for people who are adopted is how and when they learn of their adoption and the support or lack thereof that accompanies this revelation. The AIFS Adoption Study collected data on the age at which participants found out they were adopted:

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid., p. 48.

¹¹⁷ Ibid., p. 47.

Figure 5.1 Age at which participants found out they were adopted

Source: Kenny, et al., *Past adoption experiences*, p. 89.

Figure 5.1 shows that more than half of all adopted people in that study knew they were adopted by the time they were five years old. Nearly 70% of study participants were told by their adoptive parents, while others could not recall how they found out but knew they were adopted, others found out by accident or were told by another family member.¹¹⁸ Less than 1% did not know they were adopted until they were contacted and told by a natural parent.¹¹⁹

The Committee heard that learning about being adopted from an early age was beneficial for some people but not everyone. Peter Austin stated in his submission that he was always told by his adoptive family that he was adopted and believes that telling him was the right thing to do.¹²⁰ Jennifer McRae, on the other hand, wrote in her submission that learning about her adoption at a young age did not advantage her:

I was told by my adoptive mother at about 3 or 4 years of age that I was adopted. While the research suggests that this can be an ideal age to be told of your adoption status, this knowledge was not a comfort to me. I would wish away my childhood waiting to be old enough (18) to find my Mother and family.¹²¹

Karyn Williams indicated in her submission that she was also told of her adoption at a young age and that it had an immediate negative impact on her:

I was advised of my adoption at a young age, this was meet with crushing news to me emotionally. Once I learnt of my adoption things then went from bad to worse, apparently I stopped all communication with my family and became very withdrawn.¹²²

¹¹⁸ Kenny, et al., *Past adoption experiences*, p. 89.

¹¹⁹ Ibid.

¹²⁰ Peter Austin, *Submission 63*, p. 1.

¹²¹ Jennifer McRae, *Submission 82*, p. 9.

¹²² Karyn Williams, *Submission 84*, p. 2.

Karyn Williams was a self-described ‘clingy child’ but upon learning of her adoption, she stated that she ‘only became more clingy in fear that I was to be abandoned all over again’.¹²³

The Committee also received evidence about ‘late stage discovery’ adopted people who find out they are adopted in late adolescence or adulthood.¹²⁴ According to the New South Wales Benevolent Society, finding out about an adoption later in life can be a tremendous and devastating shock and can result in feelings of disbelief, confusion, anger, sorry and loss or relief.¹²⁵ For some people, it confirms their suspicions that they were different, which is relieving whereas for others, it may raise a ‘feeling that you don’t know who you are any more, that you have no real identity and that nothing makes sense’.¹²⁶

The Committee heard from Peter Capomolla Moore who did a DNA test at 59 and discovered he was adopted. While Peter connected with his mother and his extended family, he told the Committee in a public hearing that he missed out on numerous relationships during his life, including with his mother and eight siblings. He also mourns the reality that he never had the opportunity to meet his father who died in the early 1980s.¹²⁷ Peter Capomolla Moore also spoke to the Committee about some of the trauma he experienced at the time of discovering his adoption:

In the proceeding months after my discovery I had some memories return, and one of those memories was being in a science class at school. We were being taught how blood types worked and how to identify what blood type we were based on our parents’ blood types, and we brought our parents’ blood types in. I was already aware what my blood type was, and I soon realised that that analysis did not add up. I remember now that I did not say anything to anyone else in the class. I waited until everyone left and confronted the science teacher, who took one look at it and said, ‘Well, that’s not your father then—you’re adopted’. To be honest, he was the only honest person I had ever had in my life, you know? I am not critical of what he said; he was being honest. But of course that made me question.

As time went on I started to recall other memories, and I recalled having an argument with my adoptive father maybe some weeks or months later and blurting out that he was not my father, I was adopted, to which I immediately felt guilty and never said that again. As time went on some more memories came back, and I remembered asking for the birth certificate. And I remember waiting for that and my adoptive mother showing me the birth certificate, and there, their names were on it and my name was on it—well, he must be wrong, you know? And I buried that. There is no way that I would have gone on this search of 13 500 people in my family tree and gone to all these family reunions celebrating the Moore name and had a headstone remade for the Irish convict ancestor

¹²³ Ibid.

¹²⁴ VANISH Inc., *Submission 53*, p. 18.

¹²⁵ The Benevolent Society, *Post adoption information sheet no. 38: Discovering you are adopted later in life*, Fact sheet, Queensland, January 2020, p. 1.

¹²⁶ Ibid.

¹²⁷ Peter Capomolla Moore, *Submission 44*, p. 6.

and created my own anniversary thing, a celebration of this ancestor, when I knew it was not my ancestor. I had no idea it was not my ancestor. Everything was based on that fake birth certificate, and I cannot emphasise how much that has affected me, knowing that my life was basically a lie and everything I knew was a lie.¹²⁸

The Committee understands that people discovering they are adopted is challenging at any age, particularly when people are not given the relevant information, time and appropriate support to appreciate the circumstances of their adoption. Discovering this at an older age is arguably more complex because an adopted person's identity, family history and relationships have formed over decades. Then, suddenly, they discover they are not who they think they are or identify as.

The Committee was not surprised to read that late stage discovery adopted people often feel betrayed, foolish or angry when they learn that they are adopted.¹²⁹ As noted by VANISH in its submission, 'there is the loss of trust and loss of identity about who they believed they were and where they belonged'.¹³⁰

There are many people who are prioritised in their search for family and access to support services. There is a particularly strong argument that late stage discoveries require urgent search and psychological support because of the sudden and profound upheaval they experience when they learn they are adopted.

5.3.2 Rejection

People who are adopted often talked about rejection in their evidence to the Committee. This took many forms: rejection by friends and family, the threat of rejection and, eventually, a fear of rejection in future relationships. One submitter was adopted by a couple who already had a child and who would go on to have another biological child after adopting them.¹³¹ They wrote that in addition to being subjected to mental and physical abuse from their adoptive family, they were made to feel like an outsider:

I was never to feel a part of them, I always knew that, and they often told me, even to the point of sending me to boarding school at the age of 10; Their children were day students!¹³²

They described the rejection they experienced, including being explicitly told they were not wanted:

I recall there were times that I was reminded that they wish they had not adopted me, which were verbalized by their children as well as the people who adopted me.¹³³

¹²⁸ Peter Capomolla Moore, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, pp. 3–4.

¹²⁹ The Benevolent Society, *Post adoption information sheet no. 38*, p. 2.

¹³⁰ VANISH Inc., *Submission 53*, p. 32.

¹³¹ Name Withheld, *Submission 79*, p. 1.

¹³² *Ibid.*

¹³³ *Ibid.*

The rejection continued after they left school:

After boarding school I was not welcomed back but was put into an apartment with an allowance to live on; That didn't last too long, as I left and went to another Australian State and created a life of my own, I was 18 yrs old!¹³⁴

Another submitter stated that rejection was a common theme in their home:

As long as I can remember we were told we weren't wanted, 'I wish we'd never got you, I wanted a son, your father wanted girls.' Insisting that we had bad blood, and would end up like our mother.¹³⁵

Their adoptive mother nearly delivered on this threat of rejection when she tried to return them to the Salvation Army:

One afternoon we arrived home from school, I was year 8 and [redacted] yr 7, to find a Salvation Army vehicle in the driveway. We could never of imagined why they were there. So the mother had decided it was all too hard and wanted to give us back. It was a shock. We would be separated, with me sent to Winlaton youth justice I believe, and [redacted] to a girls hostel.¹³⁶

To avoid going to out of home care, they were placed on 'probation' and required to undergo counselling.¹³⁷

Lee Whelan also experienced rejection and being made to feel like an outsider by her adoptive family:

My aunt opposed my adoption and always hated me right up to my mother's last breath, and still to this day. She always made me feel that I never belonged, my being, my life was worthless because I was odd, despicably odd.¹³⁸

Lee Whelan indicated that her aunt's hostility influenced her adoptive mother who always chose loyalty to her biological family. For Lee Whelan, rejection stifled what should have been a normal, everyday relationship with her mother:

My adopted mother did turn against me, always. When the extended family were around she was nasty, right up until she died. Loyalty to them was her preference, always. 'I wish you were more like them'—this statement she would say to me, meaning she wanted me to be more like my cousins.¹³⁹

¹³⁴ Ibid.

¹³⁵ Name Withheld, *Submission 89*, p. 1.

¹³⁶ Ibid, p. 2.

¹³⁷ Ibid.

¹³⁸ Lee Whelan, *Submission 74*, received 7 July 2020, pp. 3–4.

¹³⁹ Lee Whelan, *Transcript of evidence*, p. 17.

Isabell Collins also spoke of experiencing rejection within her adoptive family from an early age:

My brother, whom I love absolutely dearly, is 18 months older than me ... So while my adoptive mother had a very close relationship with my brother, mine was not the case, and she made it very clear to me on numerous occasions that she—my natural mother did not want me—she did not want me and nobody else would.¹⁴⁰

Rejection became a normalised experience for Isabell Collins. She had a childhood best friend from primary to high school whose mother rejected her once she knew she was adopted:

I showed up on the Monday morning to pick [redacted] up, and [redacted] mum greeted me with, '[redacted] already left for school. You're to have nothing further to do with [redacted]', and closed the door in my face. When I got to school I said to [redacted], 'What's going on?' and she said, 'My mother said you're bad'. So therefore [redacted] and I never conversed again after that.¹⁴¹

In her evidence to the Committee, SallyRose Carbines spoke of feeling the stigma of being adopted, which caused her deep shame:

I knew from an early age I was adopted. One day I was jumping on a neighbour's trampoline with two girls younger than me. Their voices softened and they whispered, 'Do you know, someone on this street is adopted. They were given away by their family, and do you know who they are?'. I froze, shook my head and ran home in tears, hurt, ashamed, feeling unwanted and not good enough. And it is this story that has shaped my life—not very empowering, is it.¹⁴²

Martin Rayner similarly reflected in his submission on being treated poorly by a teacher due to being adopted:

Unbelievably my first negative experience with my adoption came at the hands of my Grade 2 teacher and continued weekly in Grade 3 and 4 as she became the school librarian. She frequently referred to me as the '*bastard child*' and made me sit outside during library class and I wasn't allowed to borrow books.¹⁴³

Martin Rayner also discussed experiencing 'a tremendous feeling of loss, fear, guilt and anguish believing that [he] was unwanted, or as [he] had been told, a "*Second-hand child*". This was despite Martin growing up in a loving home with his adoptive parents.¹⁴⁴

¹⁴⁰ Isabell Collins, *Transcript of evidence*, p. 19.

¹⁴¹ *Ibid.*, p. 20.

¹⁴² SallyRose Carbines, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 25.

¹⁴³ Martin Rayner, *Submission 110*, p. 1.

¹⁴⁴ *Ibid.*

Isabell Collins stressed to the Committee not to underestimate how present and damaging the fear of rejection is in adopted people's lives:

I guess the other thing is the fear of rejection. I do not want to underestimate the fear of rejection that adoptees walk around with all the time. It is not only about fear of rejection in families; it is fear of rejection everywhere. So they often hold back on relationships, or if there is a bit of a blue, they talk about how they go through much more pain because it is that reaffirming stuff that goes on, that if your mother can give you away to strangers, then no matter what the circumstances—I understand those circumstances, but the feeling inside of adoptees does not always match.¹⁴⁵

As part of her submission, Isabell Collins included her essay *'The silencing of adoptees'*, a collection of views and thoughts of adopted people that she documented over many years. Box 5.1 contains examples of adopted people's experiences of feeling rejected that Isabell Collins documented in her essay.

¹⁴⁵ Isabell Collins, *Transcript of evidence*, p. 22.

BOX 5.1: Experiences that accentuate the adopted person's fears and hurt

Natural mothers or fathers not including the child given up for adoption in family speeches when talking about their children.

Not inviting or allowing their natural/adopted child to attend family functions such as Christmas, weddings or birthdays. This is a particular occurrence after the natural or adoptive parent(s) have died.

Leaving the adopted person off the family tree, sending a powerful message that the adopted person is not accepted as a member of the family.

Leaving the adopted person off the death certificate of the adoptive parents (all children are listed on death certificates), sending the message that they were not really accepted as a child of the deceased parent or a legitimate member of the broader family.

Excluding the adopted person from the Will of the adopted parents (reasons as above).

Introducing the adopted person to others as your adopted child, or letting other members of the family do so, which serves as a continual reminder to the adopted person that they are not accepted as your own.

If the adopted person makes a mistake, suggesting it's the 'bad blood' coming out.

Referring to the adopted person as a bastard or allowing other family members to do so. The dictionary definition of a bastard is very clear, but society tends to use the term loosely to describe the 'rogues' of society and a child can take the use of the word to believe they are being told they are bad or have bad blood.

Telling the adoptive child they were chosen, because when they find out they weren't they will be devastated and feel like 'any child would have done.' It is better (if true) to say to the child, 'While you were not chosen, as you have grown, so has my love for you and it is as strong as it can possibly be,' or 'The first moment I laid eyes on you I wanted you,' etc.

Having the adopted child become a victim of the adoptive parents' own unresolved grief about not being able to have a biological child.

Telling lies about anything to do with the adoption. Adopted children are completely reliant on others for information and giving misinformation will erode trust and confidence.

Telling the child that if they seek a reunion with their natural family the adoptive parents will end the relationship, write the child out of the will, etcetera.

Sending the child to bed with an unresolved issue with the adoptive parents. Much thinking can go on in bed and a child's fears of rejection can overtake.

Undervaluing the grief an adopted person feels when an adoptive or natural parent dies with such comments as, 'she or he was not really your mother or father,' or 'they did not raise you, so why are you so upset?'

Source: Isabell Collins, *Submission 62*, pp. 5-6.

5.3.3 Abuse and neglect

Sadly, experiences of emotional, physical or sexual abuse and/or neglect were shared with the Committee from many adopted people who participated in the Inquiry. According to ARA, it is not an uncommon phenomenon:

as more and more adoptees reach out to adoptee organisations such as Adoptee Rights Australia (ARA) Inc, it becomes more and more apparent that the adoptee demographic is traumatised and, in many cases, the victims of child abuse, physical, emotional and/or sexual abuse at the hands of the adoptive parents and/or extended family. The extreme abuse of the adoptees who were taken into the Victorian cult known as The Family was not necessarily an isolated phenomena. We need to find out and aid the adoptees who were taken by this cult and adoptees abused in other adoptive homes.¹⁴⁶

In her submission, Kerina Martin indicated that she was forced to do heavy manual labour for her father but was not provided with basic necessities:

I remember when I had to go to high school I had no uniform or shoes. A neighbour in our street took me to buy shoes and socks and a school uniform so I could go to high school.¹⁴⁷

Kerina Martin described how her adoptive family made her work rather than attend school:

I didn't go to school a lot because I had to help my father. When I was 14, on the holidays I got a job in a biscuit factory. When it was time to go back to school my mother said I've got you an exemption so you can keep working.¹⁴⁸

Kerina Martin regretted not receiving a 'proper education' but explained that her adoptive family never really gave her the chance. She questioned why the couple adopted her in the first place and why there were no welfare checks on her.¹⁴⁹ When Kerina Martin was 15, she decided to leave and 'I have never seen those people since'.¹⁵⁰

Many adopted people told the Committee that they experienced physical abuse at the hands of their adoptive families, as reflected below:

[I] grew up in a house with a family that I was scared of physically, emotionally and mentally ... I have survived a lifetime of mental, emotional and physical abuse.¹⁵¹

She would beat me with whatever was nearby, fly swat, milk bottle, electric cord, coat hangers and even throw hot water. She would constantly hit me across the ears and face, which left me with ear problems.¹⁵²

¹⁴⁶ Adoptee Rights Australia Inc., *Submission 46*, pp. 4–5.

¹⁴⁷ Kerina Martin, *Submission 95*, p. 1.

¹⁴⁸ Kerina Martin, *Submission 95*, p. 1.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*, p. 2.

¹⁵¹ Name Withheld, *Submission 87*, received 4 May 2021, p. 1.

¹⁵² Name Withheld, *Submission 89*, p. 1.

I grew up being subjected to physical and verbal abuse and emotional neglect ... My adoptive mother created a dynamic where I was made the family scapegoat, insidiously turning her entire side of the family, along with others, against me.¹⁵³

Bobby McGuire's submission recalled the physical abuse during his childhood and that one of his first memories is being thrown down a flight of stairs, leaving him with a lifelong fear of heights.¹⁵⁴ He was also subjected to other abuse:

Dad was a vicar, but a vicar that had a hard heart. He was very harsh, very strict. You did anything wrong, you were belted—I remember being choked, being thrown through a Sunday school window as punishment in a fit of rage, I remember him grabbing me and I think that was when I first realised I was different.¹⁵⁵

Another inquiry participant wrote in their submission that their adoptive mother was physically abusive and that they learned to hide their injuries.¹⁵⁶ When they had hip surgery as an adult, the surgeon advised that there was evidence that they had twice broken their hip as a child:

When I had my first hip done, in 1990, the orthopaedic surgeon said that he could see that it had been broken twice. He said when I had the first one, I was possibly quite young, but the second one he said I would have been nine or 10 and he could see how the second break had mended compensating for the first one.¹⁵⁷

When they asked their family, they denied it but also remembered at least one incident where they were thrown down the stairs:

Each one of them said it was a whole lot of rubbish. It couldn't have happened, even if it happened at the time when she threw me down the stairs. Apparently I couldn't walk for about three weeks, that they remember, they used to have to get me to school and get me home ... I have got no memory and I just found it interesting that the three of them all said it couldn't have happened but all remember that event.¹⁵⁸

The Committee also received evidence of people being sexually abused as children. Lee Whelan explained in her submission that her adoptive mother's brother, her uncle, would touch her, and that her adoptive family knew about it and 'just pushed it under the carpet'.¹⁵⁹ Lee Whelan wrote that her family's disregard of the abuse appeared to condone it, which made her feel uncared for:

My aunts had trained my mother not to speak out therefore I was trained to believe that it was alright for what my uncle had done to me. For I was the odd one that my own birth mother didn't want, therefore it didn't matter what anybody said or did to me.

¹⁵³ Name Withheld, *Submission 32*, p. 2.

¹⁵⁴ Bobby Maguire, *Submission 85*, p. 1.

¹⁵⁵ Ibid.

¹⁵⁶ Name Withheld, *Submission 94*, p. 9.

¹⁵⁷ Ibid., p. 9.

¹⁵⁸ Ibid., pp. 9–10.

¹⁵⁹ Lee Whelan, *Submission 74*, pp. 5–6.

It was this neglect of emotional care that has had a very horrible and hurtful impact on my life!¹⁶⁰

At a public hearing, Lee Whelan told the Committee:

In my hospital records it mentions that my birth mother and her brother had a very close relationship, and I just imagine if she had had the opportunity to take me home with her and for me to have had a loving uncle instead of one who sexually abused me.¹⁶¹

Similarly, another inquiry participant identified in their submission that they were sexually abused by their adoptive uncle. It was also ignored by their adoptive parents because of the nature of the family relationship. They were told by their adoptive mother 'it was my sister's husband. What could I do?'.¹⁶²

5.3.4 Mental health issues

The Committee is strongly of the view that the negative mental health impacts of forced adoption cannot be overstated. Indeed, the Forced Adoption Implementation Working Group concluded in its 2014 *Final Report to the Honourable Scott Morrison MP Minister for Social Services* that 'the issue of the mental health of those affected by forced adoption overlays every other consideration'.¹⁶³ This is unsurprising when considering the evidence presented in this chapter, including the effect of separation trauma on newborn babies and the findings of the AIFS Adoption Study.

Relationships Australia Victoria identified in its submission that its clients experience traumas a result of forced adoption:

Some of the traumatic symptoms that our clients have told us that they have experienced and/or continue to experience fit the diagnosis of chronic and complex Post-Traumatic Stress Disorder and include depression, anxiety, suicidal ideation, triggers, flashbacks, social anxiety, dissociation, sleeping disorders and hyper-arousal. We understand that these symptoms are indicators of having survived traumatic experiences, and are normal reactions to abnormal events.¹⁶⁴

In her submission, Jennifer McRae stated that mothers and people who are adopted live with the permanent psychological disabilities emanating from 'living a lifetime with unresolved loss, grief and trauma'.¹⁶⁵ She explained the symptoms and outcomes of these mental health issues:

Symptoms range Depression, anxiety disorders and PTSD effectively reduce the life expectancy of FAE [forced adoption era] survivors. Furthermore, significant evidence

¹⁶⁰ Ibid.

¹⁶¹ Lee Whelan, *Transcript of evidence*, p. 17.

¹⁶² Name Withheld, *Submission 87*, p. 1.

¹⁶³ Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, Australian Government, Canberra, 2014, p. 10.

¹⁶⁴ Relationships Australia Victoria, *Submission 15*, p. 4.

¹⁶⁵ Jennifer McRae, *Submission 82*, p. 15.

suggests that both Mothers and adoptees from the FAE are of more likely to engage in self-harm behaviours, suicidal ideation, attempted suicide (requiring admission to hospital) and many have taken their own lives.¹⁶⁶

She concluded that 'Australia has failed to investigate the psycho-social and physical consequences of those directly affected' by forced adoption.¹⁶⁷

Many adopted people told the Committee that they had mental health issues resulting from their adoption and subsequent life experiences. The Committee heard that people who are adopted often appear composed but are in fact traumatised. One submitter wrote that 'on the face of it I am a highly functioning and well-adjusted person' and, yet, they 'carry a largely invisible burden and costs'.¹⁶⁸ Similarly, Suzanne Scholz told the Committee at a public hearing

I know that I can speak for many people that cannot—and so many people are profoundly traumatised. I have lost friends from alcohol and drug addiction. They do not come up as a suicide statistic from adoption, but they are a statistic of adoption, and I have to speak for my friends that are not here.¹⁶⁹

One submitter wrote that their life may sound wonderful and blessed but that in reality they have been in therapy for more than 20 years to try and develop the ability to live a normal life. They indicated that the link between their adoption and mental health was explicit:

A psychiatrist report stated that these adverse childhood experiences of adoption and the subsequent childhood family dynamic, have led to my 'long history of psychological & relational distress' and diagnosed aspects of generalized anxiety disorder, obsessive compulsive disorder & borderline personality disorder.¹⁷⁰

Another inquiry participant described how the 'continual changes and losses' have led them to experience 'separation anxiety, obsessive-compulsive symptoms, social anxiety and feelings of abandonment'.¹⁷¹ They explained how they continue to suffer:

My physical and mental health has suffered, leaving me with chronic fatigue and complex posttraumatic stress disorder ... The resulting cost to me emotionally, physically and financially has been enormous and until recently I have had to bear it alone.¹⁷²

Several inquiry participants advised the Committee that many of their mental health issues started when they were children. One submitter wrote that it was evident as a child that they experienced significant anxiety, and that along with depression, has

¹⁶⁶ Ibid., pp. 15–16.

¹⁶⁷ Ibid., p. 16.

¹⁶⁸ Name Withheld, *Submission 101*, p. 1.

¹⁶⁹ Suzanne Scholz, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 32.

¹⁷⁰ Name Withheld, *Submission 47*, p. 2.

¹⁷¹ Name Withheld, *Submission 32*, p. 2.

¹⁷² Ibid., p. 3.

been 'a companion in my life'. From their mid-teens, they suffered from 'chronic and persistent bulimia'.¹⁷³

Similarly, Karyn Williams stated in her submission that despite a normal childhood, 'a storm was brewing'. Her mental health issues arose from her adoption and she primarily suffers from anxiety. Ten years ago she was also diagnosed with borderline personality disorder.¹⁷⁴

For some inquiry participants, their adoption and subsequent experiences have been so intense that they have had suicidal ideation or attempted suicide. Isabell Collins referred in her evidence to international research regarding adopted people experiencing higher rates of suicide:

For example, overseas research indicates that the rate of adopted people attempting suicide and/or suiciding is four times higher than the non-adopted population rate.¹⁷⁵

In her submission, Helen Nicholson spoke about her trauma and attempts to end her life:

I tried to slash my wrists but couldn't so I drank a bottle of 'Brasso' (a silver cleaner/polisher) and was admitted to a psych ward for three months. Every night I spat out my Normison (sleeping tablet) until I saved up enough and attempted suicide again by overdosing on all my saved Normison. Apparently, I was within two minutes of death and resuscitated and spent 3 days in ICU only to be returned to the psych ward.¹⁷⁶

Helen Nicholson also felt depressed and suicidal after the birth of her second child, and her counsellor told her that 'subconsciously I was reliving the experience of what my birth mother went through'.¹⁷⁷ For Helen Nicholson, suicide attempts and ideation have become a common response to an overwhelming life:

[I have] Continual suicidal ideation. Multiple suicide attempts, ambulances, police, being scheduled, self-harming. All the time going through the revolving door of A & E Hospital and the Mental Health system and not considered a high priority.¹⁷⁸

Another submitter also spoke of their suicide attempts as a result of their negative experiences as an adopted person, including after being physically abused by their adoptive brother:

I have attempted suicide on about 4 occasions and I still have a scar on my left wrist which I attempted to cut on my 17th new year after being physically abused by my adoptive brother because I did not wish to go home.¹⁷⁹

¹⁷³ Name Withheld, *Submission 101*, p. 2.

¹⁷⁴ Karyn Williams, *Submission 84*, p. 2.

¹⁷⁵ Isabell Collins, *Submission 62*, p. 1.

¹⁷⁶ Helen Nicholson, *Submission 86*, p. 3.

¹⁷⁷ *Ibid.*, p. 4.

¹⁷⁸ *Ibid.*, p. 3.

¹⁷⁹ Name Withheld, *Submission 87*, p. 1.

Their mother dismissed these suicide attempts and they received no family support. Years later, they realised that ‘it is to my credit that I am still here’.¹⁸⁰

A third submitter wrote of feeling the pressure of her own adoption and her experience as a mother who was forcibly separated from her baby daughter. She wrote about how this has affected her mental health:

I still suffered PTSD and my depression and anxiety remained a constant, just bubbling under the surface waiting to consume me. I’d become a pro at putting on a happy face. I still thought about [redacted], but more about ‘the baby’ I had lost and the trauma I had suffered. I tend to skip around this subject like its nothing, but I have had several serious breakdowns.¹⁸¹

She also discussed that the COVID-19 pandemic gave her ‘far too much time to go over’ unresolved issues and left her feeling suicidal:

I have a very close relationship with my GP [general practitioner], who has saved me several times. I knew it was time I went to see him. I explained that my depression and anxiety had gotten on top of me and I felt suicidal.¹⁸²

Chapter 11 examines the effectiveness of the services and supports for people negatively affected by forced adoption. It discusses the significant gaps in the provision of appropriate support services to people who are adopted.

5.3.5 Relationship dysfunction

A number of people who are adopted described to the Committee how their adoption has affected their ability to have healthy relationships. People spoke of the dysfunction within past and present relationships, how they find it hard to trust people and often have a desire to be alone. It was also common for people who are adopted to speak of an underlying fear of abandonment and rejection.

RAV indicated in its submission that people affected by forced adoption struggle with relationships and can become isolated:

For many clients, social isolation and relationship difficulties emerge, often stemming from a history of disrupted attachment and interpersonal trauma that is related to forced adoption. It is an all too common story that our clients spend their days in isolation, struggling with a myriad of complex physical and mental health issues.¹⁸³

One inquiry participant wrote in their submission about how even in a relationship, they often feel alone:

Even though I have a partner, I feel alone in this world, which is the same feeling I had as a little boy of around 3 years old hiding from them so I would not be caned on the back

¹⁸⁰ Ibid.

¹⁸¹ Name Withheld, *Submission 89*, p. 10.

¹⁸² Ibid., p. 12.

¹⁸³ Relationships Australia Victoria, *Submission 15*, p. 4.

of my legs or across my knuckles leaving blue welt marks. I don't have many friends, I find it hard to trust.¹⁸⁴

They also indicated that feelings of isolation and potential abandonment reappear when there is relationship conflict:

When my Partner and I have a fight, he threatens to kick me out, the emptiness I feel, the sense of not belonging, my isolation, my vulnerability, that feeling of being snatched away has me feel exposed or lost.¹⁸⁵

For another inquiry participant, establishing and maintaining meaningful relationships is a fundamental challenge stemming from their adoption:

My intimate relationships have suffered the ill-effects of this with an insecure attachment style and co-dependency dynamics, including feelings of profound loss, rejection, fear and distrust, resulting in consistent emotional triggering, disharmony and relationship breakdown. The duration of my longest relationship has been five years and the challenges to support myself and my family in this regard continue day to day.¹⁸⁶

Similarly, Wendy Willis discussed in her submission how her adoption has shaped her relationships and that she 'stayed in a marriage full of domestic and emotional violence because [she] thought families had to stay together as [she] wasn't given that right'.¹⁸⁷

In her evidence to the Committee, Lee Whelan stated that feelings of rejection resulting from her adoption have contributed to her inability to maintain relationships.¹⁸⁸ She explained that she was never taught about how to have an intimate relationship because she was deemed to be 'spoiled' by her sexual abuse:

My adopted mother never explained to me about boys, men, relationships in general, I had been spoiled already by her brother and maybe she thought it was too late to talk to me about intimate relationships, that I would never be worthy of the courting, dating experience. This is only one outcome of Forced Adoption.¹⁸⁹

Lee Whelan described the damage as unrepairable and now 'has never had a healthy relationship with any man or any family member apart from my two sons'.¹⁹⁰ She shared with the Committee that she would rather be alone because she struggles to be with people, but she does 'long for the intimate love and protection that seems to come to many'.¹⁹¹

¹⁸⁴ Name Withheld, *Submission 79*, p. 1.

¹⁸⁵ Ibid.

¹⁸⁶ Name Withheld, *Submission 47*, p. 2.

¹⁸⁷ Wendy Willis, *Submission 114*, p. 3.

¹⁸⁸ Lee Whelan, *Submission 74*, p. 7.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

Isabell Collins also explained to the Committee the lonely experience of being an adopted person:

Put simply, being adopted is like being separated from everyone else by a picket fence. You can see people, talk, laugh and cry with them, but no matter how much you want to be on the same side of the picket fence with them, something stops that from happening. Adopted people are relegated to walk on the other side of the picket fence on your own. As one adoptee once said ‘being adopted can be one of the loneliest experiences on earth’.¹⁹²

However, she also identified that adopted people feel safe forming deep and meaningful relationships with each other:

The thing—and I put that in the submission—that amazed me when I started to do my journey in attending VANISH is adoptees can sit in the same room and finish off each other’s sentences. That is how common our feelings are, and it is really quite a strange relationship, so usually you develop friendships slowly. People find out the superficial about you and then after trust has developed you end up finding out about the secrets. With adoptees it is quite the opposite. We know nothing superficial about each other and we know the deepest things. Probably the only time I have ever felt safe is when I am in a room with other adoptees where you know that your views are not going to be rejected; they are going to be respected, and it is safe to express them.¹⁹³

The Committee understands that for many people who are adopted, their friendships with other adopted people, including those from peer support groups, are often their most meaningful relationships and their greatest support. As an inquiry participant told the Committee, ‘nothing is as supportive as your peers who has been through the same experiences as you.’¹⁹⁴ The value of peer support groups is discussed further in Chapter 11.

5.4 Further research into the impact of adoption

As reflected throughout this chapter, the adopted people who contributed to this inquiry still live with the negative effects of their adoption. The Committee heard that the effects can be profound and ongoing. As Peter Austin stated, ‘decisions made then do have consequences in the future and can affect people for the rest of their lives’.¹⁹⁵ However, there is a lack of research into the experiences of adopted people and the effects of adoption—forced or otherwise.

In 2010, in the lead up to the 2012 Senate’s Community Affairs References Committee Inquiry into *Commonwealth contribution to former forced adoption policies and practices*, Dr Daryl Higgins, co-author of the AIFS Adoption Study, completed a review of current research titled the *Impact of past adoption practices: Summary of key*

¹⁹² Isabell Collins, *Submission 62*, p. 2.

¹⁹³ Isabell Collins, *Transcript of evidence*, p. 21.

¹⁹⁴ Name Withheld, *Submission 34*, p. 2.

¹⁹⁵ Peter Austin, *Submission 63*, p. 1.

issues from Australian research. The report found ‘there is limited research available in Australia on the issue of past adoption practices, and particularly little reliable empirical research.’¹⁹⁶ The report concluded that ‘research is needed that is representative, and systematically analyses and draws out common themes’ in order to ‘have an evidence base on which to build a policy response’.¹⁹⁷ This led to the Australian Government funding the AIFS Adoption Study.

Various inquiry participants called for further research and inquiries into the impact of both forced adoption and adoption on adopted people.¹⁹⁸ In light of the limited evidence base, ARA specifically recommended:

- funding for research into the immediate and long-term impacts of neonatal separation
- funding for research into the immediate and long-term impacts of adoption, including a data linkage project that can access data on adoptees from the Victorian Births, Deaths and Marriages and other states
- establishing a state database of adopted people that is searchable by researchers and coroner’s courts.¹⁹⁹

Further, a key recommendation of VANISH was that the Victorian Government fund research on past adoption practices:

That the Victorian Government fund research into various aspects of past adoption practices, particularly impacts across the lifespan, and contact and reunion outcomes.²⁰⁰

The Committee is aware of primary research being conducted from the perspective of adopted people in the conceptual framework of autoethnography. Autoethnography is a study in which a researcher reflects on and writes about their personal experiences in order to understand a cultural or societal experience.²⁰¹

Dr Penny Mackieson, who provided evidence at a public hearing, wrote the book *Adoption deception: a personal and professional journey*. Her book is also autoethnographic, combining her personal experience as an adopted person and her professional experience as a social worker, to advocate for permanent care arrangements rather than adoption for vulnerable children who are unable to be raised by their families.²⁰²

¹⁹⁶ Daryl Higgins, *Impact of past adoption practices: summary of key issues from Australian research*, report prepared by Dr Daryl Higgins, report for Australian Government Department of Families, Housing, Community Services and Indigenous Affairs Australian Institute of Family Studies, 2010, p. 3.

¹⁹⁷ Ibid.

¹⁹⁸ Peter Capomolla Moore, *Submission 44*; Adoptee Rights Australia Inc., *Submission 46*, p. 3; Name Withheld, *Submission 47*, p. 3.

¹⁹⁹ Adoptee Rights Australia Inc., *Submission 46*, p. 4; Peter Capomolla Moore, President, Adoptee Rights Australia, hearing, *Transcript of evidence*, p. 2.

²⁰⁰ VANISH Inc., *Submission 53*, p. 9.

²⁰¹ See Carolyn Ellis, Tony E. Adams and Arthur P. Bochner, ‘Autoethnography: an overview’, *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research*, vol. 12, no. 1, 2011.

²⁰² Dr Penny Mackieson, *Adoption deception: a personal and professional journey*, Spinifex Press, Geelong, 2016, p. 29.

Another example is the PhD dissertation research of Dr Susan Bond, an adopted person, entitled: *'A shark in the garden': adoptee memoir as testimonial literature—a creative and exegetical reflection*. She explained that the research project is 'a practice-led/ research-enabled project with input from autoethnography'.²⁰³

The insights gained through autoethnographic research makes important contributions to the development of adoption laws and policies. However, this type of research must be complemented by empirical research like the AIFS Adoption Study. Empirical research is an effective way to gather standardised data to inform government policy. The Committee believes it is essential that national and state governments invest in such research in this area given the size of the adoption cohort in Australia and the growing recognition of the impact of adoption on adopted people. As the AIFS Adoption Study is already a decade old, conducting further research should be prioritised by governments.

RECOMMENDATION 14: That the Victorian Government advocate to the Australian Government to fund the Australian Institute for Family Studies to conduct a follow up study to *Past adoption experiences: National research study on the service response to past adoption practices*. The Committee proposes that the study should:

- have a public awareness campaign to reach as many participants as possible
- seek perspectives from people affected by historical forced adoptions, including adopted people, mothers, fathers, children of adopted people, extended family and adoptive parents
- be an ongoing research project for the Australian Institute for Family Studies
- explore issues relating to separation trauma and abandonment, loss and disenfranchised grief, identify, relationship dysfunction and intergenerational effects.

5.5 Acknowledging the challenges facing adopted people

The Committee heard there is limited understanding among the general population of the profound and lasting effects of adoption on people who are adopted.²⁰⁴ According to research by Van Keppel, Midford and Cicchini, most people have a fairy tale-like perception of adoption:

For the general population, an adopted person is largely an unknown quantity. People think of adoption mostly as the infant being placed with a caring and generous couple who will love the baby 'as if born to them'. The assumption is that they will 'live happily ever after'. Loss and grief have no place in this fairy tale.²⁰⁵

²⁰³ Susan Bond, "A shark in the garden": adoptee memoir as testimonial literature a creative and exegetical reflection', Doctoral thesis, Creative Writing, Central Queensland University, Queensland, 2019, p. iii.

²⁰⁴ Isabell Collins, *Submission 62*, p. 3.

²⁰⁵ Margaret van Keppel, Suzanne Midford and Mercurio Cicchini, 'The experience of loss in adoption', paper presented at National Association for Loss and Grief, Fifth Biennial National Conference, Fremantle, Western Australia, 10–13 September 1987, p. 11.

Van Keppel et al. argue that adoption is portrayed as a legal transaction, devoid of human emotion in which the profound psychological experience of adoption is brushed aside and left unrecognised.²⁰⁶

VANISH stated in its submission that limited community awareness about the experiences and effects of adoption adds to the fairy tale myth of adoption, making it difficult for adopted people to share their experiences and feelings:

Adoption tends to be depicted in fairy tales and media stories as something wonderful, even magical. The myths and assumptions around adoption make it very difficult for people affected to share their true feelings and perspectives with their friends and family for fear of being rejected, not believed, shamed, judged or berated.²⁰⁷

The Committee also heard this from inquiry participants. Leanne Matton told the Committee that when people learn she is adopted, the response is: ‘oh, how wonderful’ and people view it as a ‘celebration’ and something seen ‘in the movies’. In reality, she wants people to understand that it is ‘not all rainbows and unicorns’.²⁰⁸

In a public hearing, SallyRose Carbines reflected that people view her adoption like a television show and ask her why she does not just knock on her father’s door, to which she responded:

‘Yes, I could. But this is my life’. This is our life. This is not a television production. This is not a movie. These are people’s lives, and I think we really need to protect and support them.²⁰⁹

Several people referred to issues arising from celebrity endorsements of adoption and how this perpetuates the fairy tale myth. This further silences adopted people and ignores the negative effects of adoption in the public discourse. As reported in the AIFS Adoption Study:

It is clear from the accounts of adopted individuals that they have rarely felt that their experiences have been validated or viewed as being of any real importance—that the effect that their adoption has had on their lives (both positive and negative) has not been included in the nation’s broader discourse around adoption. Many stated that they never felt that they could talk about their experience because no one ever recognised or acknowledged their loss.²¹⁰

Leanne Matton indicated in her evidence that the voices of adopted people are particularly excluded when they express a negative view of adoption, and often a ‘bad experience’ is discounted as the exception, not the rule.²¹¹

²⁰⁶ Ibid., p. 15.

²⁰⁷ VANISH Inc., *Submission 53*, p. 15.

²⁰⁸ Leanne Matton, *Transcript of evidence*, p. 15.

²⁰⁹ SallyRose Carbines, *Transcript of evidence*, p. 27.

²¹⁰ Kenny, et al., *Past adoption experiences*, p. 121.

²¹¹ Leanne Matton, *Transcript of evidence*, p. 11.

In the context of historical forced adoption, the Committee heard that people who are adopted often feel overlooked and unrepresented in these discussions, even though they are the living representation of the policies and practices. One person told the Committee that the narrative focuses more on parents than adopted people:

I find the narrative of adoption overwhelmingly talks about parents who had their children taken. They do not talk about us, adoptees. We are like a bystander in the whole situation from my perspective.²¹²

Isabell Collins explained in her submission that while some adopted people can effectively articulate their experiences as an adopted person, most people have well-founded fears about speaking up. She stated the fear of rejection, at a conscious and unconscious level, contributes to the silencing of adopted people.²¹³ Isabell Collins also stated that adopted people are often interrupted, told ‘there was no choice’, ‘we were told you would be better off’ and ‘you are clearly loved by your adoptive family’, which adopted people interpret as a relegation of their feelings and that they are not a priority.²¹⁴ There is also a fear of angering or hurting people and a ‘risk of minimising the pain of natural mothers and adoptive parents and hurting the people you simply do not want to hurt’.²¹⁵ Further, she referred to a common assumption that adopted people ‘are taking out on natural mothers generally what we can’t take out on our own mothers’. Isabell Collins stated that this is ‘false and very hurtful’ and further silences adopted people.²¹⁶

For ARA, the issue not being addressed is that adopted people have been ‘subsumed under Forced Adoption, and this has led to inadequate recognition of our needs’.²¹⁷ ARA proposed separating out adopted people from those who lost their children to adoption to recognise the ‘two, distinct and different individual populations’.²¹⁸ It acknowledged that the focus for mothers is rightfully on the circumstances surrounding their forced separation from their children. Whereas for adopted people, the concept of adoption and its aftermath is the issue, not whether the adoption was forced.²¹⁹

The final chapter of this report addresses the way forward on adoption laws. However, in the context of the evidence presented in this chapter, the Committee strongly believes there is merit in investigating the impact of adoption laws, policies and practices on adopted people as a standalone inquiry.

The Committee only received evidence from a handful of individuals from the entire cohort of adopted people. It understands that many people who are adopted would not have participated in this inquiry because their adoption may not be classified as

²¹² Name Withheld, 7 December 2020, *Transcript of evidence*, p. 42.

²¹³ Isabell Collins, *Submission 62*, p. 3.

²¹⁴ *Ibid.*, pp. 4–5.

²¹⁵ *Ibid.*, p. 3.

²¹⁶ *Ibid.*, p. 5.

²¹⁷ Adoptee Rights Australia Inc., *Submission 46*, p. 7.

²¹⁸ *Ibid.*, p. 8.

²¹⁹ *Ibid.*, p. 7.

'forced'. For example, an inquiry participant questioned whether they should make a submission:

Being adopted, I felt that I was not worthy of making a submission because I was not the child of someone who had their baby ripped from their arms. Like so many things in my life, I don't feel 'worthy' because I am adopted. Of course, I am an adoptee and what does it matter how I came to be one?²²⁰

A specific inquiry into adoption will encourage more people to speak up about their adoption experiences, including positive ones. This is essential to broaden the understanding of the perspectives of adopted people, their experiences and the effects of adoption. It will also help to raise public awareness of the challenges facing adopted people.

RECOMMENDATION 15: That the Victorian Government undertake an inquiry into the experiences and the effects of adoption on adopted people for the purposes of:

- understanding the lived experiences of adopted people
- examining the effects of adoption on adopted people
- informing adoption legislation, policy and practices
- exploring options to specifically recognise the separation, loss and grief of adopted people
- raising awareness of the challenges facing adopted people.

5.6 Discharging an adoption

Under Victoria's adoption laws, the effect of an adoption order is to treat the adopted child as if they were born to the adoptive parent or parents.²²¹ The natural parents no longer have any legal parental rights once an adoption order is in effect.²²² However, some adopted people decide, usually in adulthood, that they no longer want to be adopted. As adoption orders are legal contracts, a person is required to apply to the Supreme Court or Country Court of Victoria to have the order discharged by a judge under s 19 of the *Adoption Act 1984* (Vic) (1984 Adoptin Act). If approved, the discharge order cancels the legal effects of the adoption order.

Certain people can apply to discharge an adoption, including the adopted person, natural parent, adoptive parent and the Secretary of the relevant government department or the principal officer of the approved agency by which the adoption

²²⁰ Name Withheld, *Submission 104*, received 4 June 2021, p. 2.

²²¹ *Adoption Act 1984* (Vic) s 53 (1)(a).

²²² *Ibid.*, s 53 (1)(b).

was arranged.²²³ Applications for discharges are made by summons and a supporting affidavit is served on every person who has any right, privilege, duty or liability under the adoption order.²²⁴ A model summons is provided in the *Supreme Court (Adoption) Rules 2015* for an application to discharge adoption order under s 19 (1) of the 1984 Adoption Act:

Figure 5.2 Model summons for an application to discharge adoption order

Supreme Court (Adoption) Rules 2015
S.R. No. 102/2015
Form 11—Application to discharge Adoption Order under section 19(1) of
the Adoption Act 1984

**Form 11—Application to discharge Adoption
Order under section 19(1) of the Adoption
Act 1984**

Rule 31(1)

[heading as in Form 1]

**APPLICATION TO DISCHARGE ADOPTION ORDER UNDER
SECTION 19(1) OF THE ADOPTION ACT 1984**

To: *[identify each party or other person to whom summons is addressed and state address of each person not a party].*

You are summoned to attend before the Court on the hearing of an application for an order discharging an order made *[date of order]* for the adoption of *[name of adopted child]*.

The application will be heard before the Judge in Court No. , *Supreme Court/*County Court *[insert address]*, at *[insert time]* on the *[insert date]*.

FILED *[date]*.

This summons was filed by of , solicitor for the *[identify party]*.

*Prothonotary/*Registrar of the County Court

*delete if inapplicable

Source: *Supreme Court (Adoption) Rules 2015*, Rule 31.

Discharging an adoption is not a straight forward, no-cost or a ‘no-fault’ exercise’. If deemed necessary, a case worker is assigned to investigate and prepare a report for the Court on the circumstances of the discharge.²²⁵ Although the consent of a parent or adoptive parent is not required to discharge an adoption, they may oppose the discharge application and it could proceed to a contested hearing in the court.²²⁶

²²³ Ibid., s 6.

²²⁴ *Supreme Court (Adoption) Rules 2015* (Vic) Rule 31.

²²⁵ *Adoption Act 1984* (Vic) s 19(3).

²²⁶ Department of Justice and Community Safety, *Discharge of adoption*, 2020, <<https://www.justice.vic.gov.au/your-rights/adoption/discharge-of-adoption>> accessed 23 October 2020.

There are two grounds to discharge an adoption, either of which must be satisfied for an application to be successful. These include:

- that the order or consent for the order was obtained by fraud, duress or other improper means²²⁷
- special circumstances exist.²²⁸

A discharge order can only be made where the court is satisfied that ‘the welfare and interests of the child would be promoted by the discharge of the adoption order.’²²⁹

In its *Review of the Adoption Act 1984*, the Victorian Law Reform Commission (VLRC) found that between 2010 and 2016, no applications were made on the basis that the adoption order had been obtained by fraud, duress or improper means.²³⁰ All applications were made due to special circumstances, which according to the Department of Justice and Community Safety (DJCS) relates to the irreparable breakdown of the relationship between the adoptive parents and the adopted person.²³¹

Discharging an adoption does not prejudice anything lawfully done while the order was in force,²³² however, some practical legal changes immediately arise following the discharge:

- a new birth certificate must be issued
- the court may make orders in relation to the entry of a person on the Register of Births
- the court may make further related orders in relation to the name of the applicant, the ownership of property, custody or guardianship of a child or the home of a person.²³³

5.6.1 Examples of adoption discharges

The Committee only received a small amount of evidence about discharging an adoption. This is unsurprising given how few applications are made each year. In its review, the VLRC collected data from the County Court of Victoria on 244 adoption matters between 2010 and 2016. It discovered that during this time, the Court made 17 orders to discharge an adoption order and that all applications were made by adults.²³⁴ That is approximately three applications to discharge an adoption per year in Victoria.

²²⁷ *Adoption Act 1984 (Vic)* s 19 (1)(a).

²²⁸ *Ibid.*, s 19 (1)(b).

²²⁹ *Ibid.*, s 5A.

²³⁰ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, Melbourne, 2017, p. 8.

²³¹ Department of Justice and Community Safety, *Discharge of adoption*.

²³² *Adoption Act 1984 (Vic)* s 8.

²³³ *Ibid.*

²³⁴ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 8.

It is unclear how many adopted people are aware that discharging an adoption is an option, or what the process involves. From the Committee's own research, it is not well publicised by DJCS or the Victorian Courts on their respective websites. However, based on this evidence received during this inquiry, this could be a growing area of interest for some adopted people.

Outlined below are three examples of people who successfully discharged their adoption.

Katrina Grace Kelly

Katrina Grace Kelly is an Australian journalist who was granted a discharge from her adoption order in 2018 and is now a self-described 'ex-adoptee'.²³⁵ She announced the 'complicated and awkward topic' of her adoption discharge in her column for *The Australian*, stating that 'you are reading the last column Grace Collier will ever write'.²³⁶

Katrina Grace Kelly stated that adoption is viewed as a noble cause that provides forever homes for children in foster care.²³⁷ While acknowledging that the goal may be noble, she says the act of adoption is not:

It is not noble, though, for the system to strip a child of their true legal identity and the natural rights that all children have in exchange for it.²³⁸

She described the negative act of adoption separation and the cutting of familial bonds:

Adoption legally takes a child out of one family tree, puts them in another, and issues them a new identity to make this administrative rearrangement appear a biological fact.²³⁹

She referred to the adoption system as treating children 'like chattels' whose identities can be erased 'with the stroke of a pen'.²⁴⁰ Adopted people subsequently lose all their natural rights 'that people who are not adopted take for granted'.²⁴¹

Katrina Grace Kelly acknowledged that 'the reality of adoption is complicated, sometimes wonderful, and sometimes tragic'. She stated that while she cannot speak for other adopted people, in her case 'all I can tell you is that being adopted caused me so much loss, grief and pain'.²⁴²

²³⁵ Crib Mates, *Submission 25*, received 3 February 2020, p. 1.

²³⁶ Grace Collier, 'Hello, nice to finally meet you, this is my true identity', *The Australian*, 16 November 2018, <<https://www.theaustralian.com.au/nation/inquirer/hello-nice-to-finally-meet-you-this-is-my-true-identity/news-story/30dff75640583185a62833492bebbf3b>> accessed 26 July 2021.

²³⁷ Katrina Grace Kelly, 'Children entitled to their history', *The Australian*, 29 November 2019, <<https://www.theaustralian.com.au/inquirer/children-entitled-to-their-history/news-story/481ff9c01627e7cec9610c452bf3f705>> accessed 26 July 2021.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Grace Collier, 'Hello, nice to finally meet you, this is my true identity'.

²⁴² Ibid.

Katrina Grace Kelly stated that applying for a discharge was ‘disconcerting for all involved’, but she pursued it to get back her ‘real identity’ and ‘sense of self’. In October 2018, Katrina Grace Kelly’s adoption order was discharged and her ‘original identity and all of the connections to my family of origin were restored’ and she ‘was put back by the court into my biological family tree’.²⁴³ She described her elation at being granted the discharge:

To live an authentic life, in one’s true identity, is so important—adopted people are denied this basic right and no one gives it a second thought.²⁴⁴

Knowing how difficult and costly the process was, Katrina Grace Kelly established a not-for-profit service, Crib Mates, that helps people discharge their adoption:

To reverse an adoption costs about \$15,000 through a solicitor and success is not guaranteed.

The legal profession lacks expertise and sensitivity in this niche area so, after my own self-represented adoption was reversed, I decided to assist others with forms, applications and court processes.²⁴⁵

In the first year of its operation, Crib Mates assisted William Hammersley, whose story is discussed below, to achieve his dying wish to discharge his adoption.

Katrina Grace Kelly now advocates for adoption law reform and promotes the model of ‘simple adoption’ used overseas that does not create any legal or familial fictions; original birth certificates and rights be retained, and only additional rights added.²⁴⁶

William Hammersley

During the Inquiry, the Committee was made aware of Victorian man William Hammersley’s attempt to discharge his adoption. When William Hammersley discovered he had terminal cancer, one of his dying wishes was to discharge his adoption. He stated:

I don’t want to live as an adopted person, and I certainly don’t want to die an adopted person. When I do die, I want my correct identity on my birth certificate.²⁴⁷

William Hammersley’s adoption is similar to some of the stories shared with the Committee for this inquiry. He discovered he was a ‘£50 baby’ and had a receipt proving that his adoptive parents paid his mother’s hospital bill. Originally, William Hammersley blamed his mother for placing

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Katrina Grace Kelly, ‘Children entitled to their history’.

²⁴⁶ Julie Power, ‘Last wish: give me back my true identity, says adopted man’, *The Sydney Morning Herald*, 31 March 2019, <<https://www.smh.com.au/national/last-wish-give-me-back-my-true-identity-says-adopted-man-20190330-p5195i.html>> accessed 26 July 2021.

²⁴⁷ Julie Power, ‘Last wish: give me back my true identity, says adopted man’.

him for adoption, but he learned in his search for his parents that he had been a child of forced adoption.²⁴⁸ Unfortunately, William Hammersley was physically abused by his adoptive family and also sexually abused at the local church.²⁴⁹

In 2019, William Hammersley successfully applied to the County Court to have his adoption discharged. As part of his application, he drew the Judge's attention to Victorian and international human rights law:

he reminded the judge of his past history, of his rights under the Victorian Charter of Human Rights and Responsibilities, under various articles of the United Nations Convention on the Rights of the Child, ratified by Australia in 1989.²⁵⁰

He argued that adopted people are subject to contracts that they did not agree to and are subsequently legally discriminated against:

We (adoptees) are subject to a contract for life and beyond death to which we did not agree ... As an adoptee, I am no equal before the law and am discriminated against because I cannot use my original birth certificates like everyone else. As an adoptee, I am legally prevented from identifying as the person I was when I was born, as is the right of every non-adopted person.²⁵¹

On 1 August 2019, William Hammersley's adoption was discharged.²⁵² He passed away on 3 September 2019.

²⁴⁸ Thomas Graham, *Identity returned, dignity restored: being granted an adoption discharge order*, n.d., <<https://www.ipsify.com/identity-returned-dignity-restored>> accessed 26 July 2021.

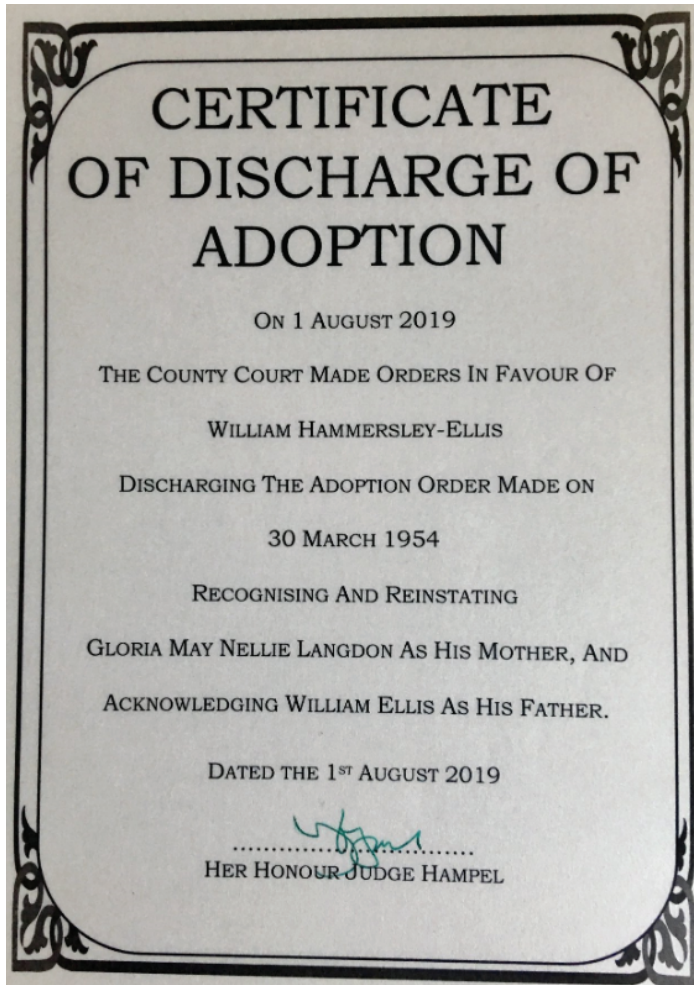
²⁴⁹ William Hammersley—Ellis, *Williams story—adoption it's about truth, understanding and the right of choice*, 26 August 2018, <<https://httpadoptionwilliam.wordpress.com/2018/08/26/adoption-its-about-truth-understanding-and-the-right-of-choice-to-find-your-inner-peace>> accessed 26 July 2021.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

Figure 5.3 William Hammersley's Certificate of discharge of adoption



Source: Peter Capomolla Moore, correspondence, 12 May 2021.

Michael Costello

Adopt Perspective, Jigsaw Queensland's podcast on adoption, dedicated two episodes to the issue of discharging an adoption in Queensland. Michael Costello reflected on his experience of discharging his adoption.

Michael Costello told *Adopt Perspective* that he was emotionally, physically and sexually abused. One of Michael Costello's reasons to discharge his adoption was to reframe his identity, to 'hit the reset button' on all the things that happened to him and find the 'original recipe me'.²⁵³

Like Victorian adoption laws, the *Adoption Act 2009* (Qld) lists grounds that must be fulfilled for a person to have their adoption discharged. Michael Costello did not understand why he was forced to build a case and go to court for the discharge,

253 *Adopt Perspective*, 'Season 2: Episode 3', podcast, Jigsaw Queensland, 24 February 2021, <<https://www.jigsawqueensland.com/episode-notes>> accessed 26 July 2021.

especially as his adoptive parents were both dead by that time. He said that for adopted people, everyone else always makes decisions about their life, and he asked: ‘when do I get to make a choice about me?’.²⁵⁴

Michael Costello hired a lawyer, who engaged a counsellor, and together they wrote what he described as a victim impact statement. He told *Adopt Perspective* how he kept justifying his experiences to his lawyer and counsellor, who would say to him: ‘No, Michael, you were a kid, that should not have happened’.²⁵⁵ Michael Costello explained the significance of hearing this perspective:

I do not think they realised what an important moment and what important words they said, when they said ‘No, you were a child, this should not have happened to you’—very important for you to hear.²⁵⁶

Discharging the adoption was a long process involving ongoing requests for information and a hearing at the Queensland Supreme Court; it took approximately 18 months. Although Michael Costello praised the overall collaborative approach, he questioned why he had to go through the painful process and dredge up the past just for a judge to say ‘okay, we will let you discharge this’. He reflected on how relatively easy it was to adopt someone at the time, but now adopted people have to endure a protracted discharge process.²⁵⁷

Michael Costello said he did this as much for himself as for other people, because he knew his experience could provide a ‘roadmap’ for those wanting to pursue an adoption discharge.²⁵⁸

5.6.2 Simplifying the discharge process

People who are adopted may want to seek an adoption discharge due to their negative experiences as an adopted person. However, the Committee questions why they should be burdened to prove special circumstances to have their adoption discharged. For many people, discussing trauma, abuse and/or relationship dysfunction can be significantly retraumatising.

Throughout the Inquiry, the inability of a child to consent to their adoption was highlighted by various inquiry participants. The issue of consent raises questions regarding adoption discharges, including:

- Why should adopted people be required to prove special circumstance to discharge an adoption that they did not consent to?

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

- Should adopted people be given the opportunity to exercise their consent once they reach adulthood?

Isabell Collins discussed in her submission how a contract was entered into for the adopted person—and often without the informed consent of the mother—‘despite the fact that this contract is going to impact more on the one person who had no input into the contract’.²⁵⁹ She stated that this contract, supposedly entered into in the best interests of the child, signs away a child’s right to know who they are and their ‘biological mother, father, brothers, sisters, grandparents, aunts, uncles, cousins’.²⁶⁰

In her submission, Lynne Williamson described the act of adoption as denying adopted people—and, in fact, mothers and fathers too—the ‘fundamental human right to be autonomous decision-makers’:

Adoptees cannot self-determine whether they want to keep their status as adopted people under the Adoption Act, or regain the substantive family identity that every other Australian Citizen was given at birth.²⁶¹

Similarly, Peter Capomolla Moore questioned in his submission why, at 62 years old, he is still being treated as a child under different pieces of legislation without his consent:

My life is controlled by an Adoption Act & Births Deaths & Marriages Act—I am not a signatory to the adoption, but I am bound by its laws and secrets.²⁶²

In her submission, Judy McHutchinson, a mother who was forcibly separated from her baby and also an adoption reform activist, advocated for a simple adoption discharge for people who are adopted on the basis that ‘[a]dopted people are human beings yet as babies they were treated as a transferable chattels’.²⁶³

Charlotte Smith, the Manager of VANISH, discussed in her evidence to the Committee that the legal relationship within an adoption is wrongly conceptualised as a marriage and a divorce situation:

So I think basically what we are saying is that the application involves special circumstances and our view is that with an adopted person—often people talk about discharge as a bit like marriage and a divorce, but it’s not, it’s completely different because the adopted person did not consent.²⁶⁴

She further stated that adopted people should not have to prove special circumstances to discharge an adoption:

They did not enter into that adoption arrangement as an adult. So if they want to undo their adoption, they should be able to without having to assign any kind of special

²⁵⁹ Isabell Collins, *Submission 62*, p. 1.

²⁶⁰ *Ibid.*

²⁶¹ Lynne Williamson, *Submission 70*, p. 1.

²⁶² Peter Capomolla Moore, *Submission 44*, p. 2.

²⁶³ Judy McHutchison, *Submission 72*, received 26 June 2020, p. 1.

²⁶⁴ Charlotte Smith, Manager, VANISH, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 34.

circumstances. They don't need to describe that they were abused. The point is they didn't consent to it in the first place and so they should be able to go through a process, something that's not too traumatic for them to be able to undo that.²⁶⁵

The Committee is aware that discharging adoptions raises some concerns regarding inheritance rights. In its review, the VLRC acknowledged that discharging an adoption has legal ramifications, including regarding inheritance rights, but concluded that it is up to 'the court to make any orders relating to the ownership of property'.²⁶⁶ The VLRC recommended that the Court should make parties to the discharge application aware of the consequences of the adoption discharge when they are notified of proceedings.

Charlotte Smith from VANISH also acknowledged the controversy of inheritance rights in her evidence. However, she advised that this is not the most important reason for adopted people seeking a discharge, that it was about 'much more' than inheritance.²⁶⁷ The Committee understands that for many it is about affirming their identity. Discharging an adoption order reinstates a person's natural parents as their legal parents.²⁶⁸ Peter Capomolla Moore explained that without discharging an adoption, '[a]doptees are not legally related to their biological parents, grandparents, siblings, aunts, uncles and cousins, their family histories and cultures.'²⁶⁹

The Committee acknowledges that for many adoptive parents, an adult child wanting to discharge their adoption is an incredibly painful and isolating experience. However, its principled view is that the discharge process should be simplified because adopted people had no choice in their adoption. The Committee believes that the desire to discharge an adoption is sufficient reason alone for any adult who wants to exercise their legal autonomy. This view is consistent with that of the VLRC:

In any case, the Commission considers that these tests do not reflect an adopted adult's autonomy to choose who they are. A person adopted as an infant had no say in their parentage or in the change of their identity. Adopted adults may wish to discharge their adoption order for a wide range of reasons. They should have greater access to the court for this purpose.²⁷⁰

The VLRC recommended reducing the legal threshold for an adoption discharge:

The Adoption Act should provide that an application to discharge an adoption order filed by an adopted person over the age of 18 should only require the court to be satisfied that the discharge of the order is appropriate and desirable in all the circumstances.²⁷¹

²⁶⁵ Ibid.

²⁶⁶ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 277.

²⁶⁷ Charlotte Smith, *Transcript of evidence*, p. 34.

²⁶⁸ *Adoption Act 1984 (Vic)* s 6.

²⁶⁹ Peter Capomolla Moore, *Submission 44*, p. 2.

²⁷⁰ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 277.

²⁷¹ Ibid., p. 278.

In their evidence to this inquiry, both ARA and VANISH proposed that adoption charges be a simple, no-fault procedure.²⁷² Further, Peter Capomolla Moore stated:

We need a no-fault, no-fee adoption discharge similar to no-fault divorce legislation. We determined no-fault divorce in 1975, yet here we are grappling with adults' rights to identify legally with their biological families some 46 years later.²⁷³

The Committee agrees with these proposals and the VLRC recommendation.

RECOMMENDATION 16: That the Victorian Government implement Recommendation 70 of the Victorian Law Reform Commission in its *Review of the Adoption Act 1984* to introduce a no-fee, no-fault procedure for applications to discharge an adoption order.

The Committee also proposes that these changes and the broader process for applying to discharge an adoption be clearly communicated in a step-by-step guide and that this be published on relevant websites, including DJCS' website and the Supreme and County Courts' websites.

RECOMMENDATION 17: That the Victorian Government publish a step-by-step guide for discharging an adoption on the websites of the Department of Justice and Community Safety, the Supreme Court of Victoria and the County Court of Victoria.

²⁷² VANISH Inc., *Submission 53*, p. 7.; Peter Capomolla Moore, President, Adoptee Rights Australia, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 2.

²⁷³ Peter Capomolla Moore, *Transcript of evidence*, p. 2.

6 Effects of historical forced adoption on other people

To you, the fathers, who were excluded from the lives of your children and deprived of the dignity of recognition on your children's birth records, we say sorry. We acknowledge your loss and grief.

We recognise that the consequences of forced adoption practices continue to resonate through many, many lives. To you, the siblings, grandparents, partners and other family members who have shared in the pain and suffering of your loved ones or who were unable to share their lives, we say sorry.

Many are still grieving. Some families will be lost to one another forever. To those of you who face the difficulties of reconnecting with family and establishing ongoing relationships, we say sorry.¹

The Committee learnt throughout the Inquiry that the impact of historical forced adoption reaches beyond mothers who were forcibly separated from their newborn babies and those children who were adopted and are now adults. In its submission, the Victorian Branch of the Royal Australian and New Zealand College of Psychiatrists outlined:

Forced adoption practices have widespread impacts on a range of individuals, including the adopted child, siblings, biological parents, adopted parents, extended family members and the broader community.²

The Committee did not receive extensive evidence from these groups of people but considers their experiences warrant discussion as it highlights the wide-ranging consequences of the policies and practices of historical forced adoption in Victoria. One mother also reflected on this in her submission:

My reflection on what happened to me causes me significant distress. My daughter is harmed. My family is decimated. My other children lost their sister—alive, but missing. My parents lost their first born grandchild. Our family is broken. We will never heal. This pain and trauma was totally unnecessary and is a direct result of the institute of adoption and the coercive control the systems and processes around us had.³

1 Find & Connect, *National Apology for Forced Adoptions (21 March 2013)*, 2013, <<https://www.findandconnect.gov.au/ref/nsw/blogs/NE01258b.htm#tab5>> accessed 4 October 2019.

2 Royal Australian and New Zealand college of Psychiatrists, *Submission 12*, received 30 January 2020, p. 1.

3 Name Withheld, *Submission 112*, received 28 July 2021, p. 6.

The Committee received some evidence from the now adult children of mothers and people who are adopted. This drew the Committee's attention to the ongoing intergenerational effects of historical forced adoptions, including supporting mothers who carry so much trauma, grief and guilt. One person told the Committee:

My decision to make the submission to this inquiry was motivated by the 15 years accompanying my mother as she found the courage to find her voice. I sat with her as she wrote to Anglicare to finally begin the search for her daughter. I held her anxiety and suicidality as grief and pain overwhelmed her. I counselled her as she trawled through numerous doctors, naturopaths, acupuncturists, psychologists and psychiatrists as she searched for hope and healing. I held her hand across the road at Parliament House. I stood by as you apologised for past, flawed and harmful government policies, and I travelled with her to Canberra as Julia Gillard spoke of systemic betrayal and remorse.⁴

This chapter considers the experience of fathers, adoptive parents and other family members and the serious implications of intergenerational trauma. It concludes by considering the importance of acknowledgement and recognition for everyone affected by historical forced adoptions in Victoria.

6.1 Fathers

The Committee heard indirectly that many fathers were negatively affected by historical forced adoptions. While Chapter 3 highlighted that some fathers did not take responsibility for their actions and provide support to mothers or their children, the Committee understands that some fathers were supportive, or as supportive as they could be given the circumstances. Often, fathers felt powerless to act and were also pressured by their families or communities. For example, Elizabeth Edwards wrote in her submission that after she gave birth to her child, her parents, particularly her mother, bullied and threatened the personal safety of her husband and father of her child, Bill, if he impregnated her again.⁵ At a public hearing, Elizabeth Edwards expanded on this and acknowledged that Bill had also experienced ongoing pain and grief at losing a child through adoption:

Bill dealt with the issue in a different way. He gambled and he drank. So, you know, that was how he anaesthetised his pain. But we both acknowledged each other's pain but it was too difficult for us to live together the way we were.⁶

Despite this, Elizabeth Edwards told the Committee 'Bill has publicly come out and acknowledged and supported me in all that I was doing with this'.⁷

⁴ Name Withheld, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 2.

⁵ Elizabeth Edwards, *Submission 19*, received 2 February 2020, p. 1.

⁶ Elizabeth Edwards, Adoptions Origins Vic. Inc., hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 12.

⁷ Ibid.

Similarly, Kerri Young, a person who is adopted, stated in her submission:

I found my biological father a few years ago. He lived ten minutes away from me. He is a wonderful loving man who attempted to search for me back then, but he had no rights.⁸

The Committee understands that fathers were deliberately excluded from the birth and adoption process, even when they or the mothers wanted them to be involved. This includes the experience of Elizabeth Edwards, who also wrote in her submission that Bill was not informed of the birth despite Elizabeth living with him during the pregnancy.⁹

In its submission, the Victorian Adoption Network for Information and Self-Help (VANISH) outlined that some fathers felt as though they had lost the opportunity to parent a child. It quoted several fathers who were ‘frequently stigmatised as irresponsible and removed from the adoption process altogether’:

‘I was never consulted about my thoughts. Because we weren’t getting married, it was up to her and her parents. If you weren’t married the only option was an adoption.’

‘For that reason, I wasn’t involved in any signing of the papers for the adoption, my name wasn’t even on the birth certificate.’

‘I was going to visit her but was again warned never to go near her again by her father ... who threatened assault.’¹⁰

VANISH provided a summary table of the impacts of forced adoption on fathers, which has been recreated below in Table 6.1.

Table 6.1 Impact of historical forced adoptions on fathers

Psychological impact	Social impact	Biological impact
<ul style="list-style-type: none"> • Grief and loss • Shame • Guilt • Regret • Identity as a father • Low self-worth • Mistrust of others • Mental health disorders 	<ul style="list-style-type: none"> • Relationship difficulties with spouse/partner, subsequent children, child lost to adoption • Discovery of paternity • Process of sharing information with family • Support of family • Decision to have further children • Issues with search and contact 	<ul style="list-style-type: none"> • Substance abuse • Medical or physical complaints (e.g. headaches, digestive complaints)

Source: Adapted from VANISH Inc., *Submission 53*, p. 38.

⁸ Kerri Young, *Submission 27*, received 12 February 2020, p. 1.

⁹ Elizabeth Edwards, *Submission 19*, p. 1; Name Withheld, *Submission 112*, p. 6.

¹⁰ VANISH Inc., *Submission 53*, received 18 June 2020, pp. 25–26.

The Committee also heard it was common practice not to name the father on birth certificates. VANISH highlighted that excluding fathers from the adoption process and not naming them on the birth certificate was primarily done so their consent to an adoption did not need to be obtained.¹¹ Elizabeth Edwards also spoke about this at a public hearing, telling the Committee:

Under duress, I had given a consent. The 1958 Adoption Act stated all parents must give consent. Bill did not give his consent. He was not asked, and he did not give his consent. He was her legal parent.¹²

The Senate's Community Affairs References Committee's *Commonwealth contribution to former forced adoption policies and practices* 2012 report (Senate Inquiry) recommended that all states establish a 'process for allowing the name of fathers to be added to original birth certificates of children who were subsequently adopted' and that this process be administrative rather than involving a court order.¹³ Gary Coles is a father who made a submission to this inquiry, outlining that in Victoria, the 'father's name can now be added retrospectively to the original birth certificate, BUT, in the absence of a DNA test, via a court order'. [emphasis in original]¹⁴ Chapter 9 considers this issue in more depth.

The Committee also heard that due to the young age of many mothers, police wanted to charge fathers with carnal knowledge.¹⁵ If the police did not know the identity of the father, they sometimes approached the mothers in order to do this.¹⁶

The Committee received one submission from a mother, Jennifer Howe, whose then-boyfriend and father of her child was charged by the police. She was heavily pressured into giving her child up for adoption but she was able to resist. Now her husband, Jennifer Howe's boyfriend helped her escape from a maternity home. Jennifer Howe wrote in her submission:

The final straw for us was to discover my husband who has worked for 40 years teaching children and adults Martial Arts (he has never had a complaint against him) yet he has been labelled a Category 1 sex offender and basically a pedophile [sic] because I got pregnant. To begin with it was consensual and we were very much in love and I was a virgin in the relationship for 4 years. All those years we had no idea that he had been found guilty of any crime without a court appearance. This absence of self defence makes the court order illegal. He was not told by anyone there were charges against him and he has the right to know when and where these charges would be heard so that he could defend himself.¹⁷

11 Ibid. See also Barbara Pendrey, *Submission 1, Attachment 1*, received 14 November 2019, p. 3; Christine Poulton, *Submission 92*, received 12 June 2021, p. 2.

12 Elizabeth Edwards, *Transcript of evidence*, p. 7.

13 Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. xi.

14 Gary Coles, *Submission 3*, received 7 January 2020, p. 2.

15 Leonie White, *Submission 41*, received 3 March 2020, p. 1; Yvonne Hunter, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 3; Yvonne Stewart, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 20.

16 Judy Stiff, *Submission 66*, received 17 June 2020, pp. 3-4.

17 Jennifer Howe, *Submission 96*, received 5 May 2021, p. 8.

Jennifer Howe outlined that she has been told the charge against her husband would not have been made if she had given her child up for adoption. The negative impacts this has had on him were highlighted in Jennifer Howe's submission:

My decent husband has not gone looking elsewhere he is devoted to me. He has done nothing but support me while battling his own demons. After 3 heart attacks, prostrate [sic] cancer, anarism [sic] and worst of all depression on learning with great shock his sex offender listing coupled with the fact that he can no longer work.

The Australian Institute of Family Studies (AIFS) *Past adoption experiences: National research study on the service response to past adoption practices* (AIFS Adoption Study) also considered the effects of adoption on fathers. While they only received a small sample size so the findings cannot be generalised, the AIFS Adoption Study outlined that the fathers who did participate in the research told them:

they were never asked or had no rights or say in the decision for their son/daughter to be adopted. However, they said that they had wanted to have a say in what happened with regard to adoption, and many wanted to keep the baby. Very few of them had support at the time of the pregnancy and birth, and very few have had support since.¹⁸

The effects of this on fathers is evident, with the AIFS Adoption Study outlining:

one-third were likely to have a mental health issue, and almost all of them showed some symptoms of post-traumatic stress. This is an area that requires further investigation to establish the ongoing mental health needs of fathers separated from a child by adoption.¹⁹

The Senate Inquiry received a small number of submissions from fathers which also provided examples of them being threatened with police action, their views on parenthood or intentions regarding the unborn baby being discarded, the grief they have experienced for the loss of a child, and being treated with hostility and not being able to visit mothers in maternity homes or hospitals.²⁰

6.2 Adoptive parents

The Committee did not receive any evidence directly from adoptive parents. The AIFS Adoption Study considered the impact of historical forced adoptions on adoptive parents, summarising that:

Many [adoptive parents] stated that they were giving a loving home to a child who would have otherwise been left to institutional care, that the adoption of their son or daughter addressed their need and the need of the mother to have someone take her

¹⁸ Pauline Kenny, et al., *Past adoption experiences: National research study on the service response to past adoption practices*, Australian Institute of Family Studies, Melbourne, 2012, p. xvi.

¹⁹ Ibid.

²⁰ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, pp. 77-79.

child. In contrast to the mother's experience of the adoption, most adoptive parents were completely satisfied with the adoption process at the time.²¹

In relation to reunions, the AIFS Adoption Study concluded:

Adoptive parents had mixed views about their sons/daughters attempting to make contact with birth parents. The issue of divided loyalties, as it relates to the adoptees' search and contact process, in many ways contrasted with the views held by the adoptive parents. Some adoptive parents felt that their son/daughter's contact with birth family members had contributed to the demise of their relationship with their child, whereas others felt that it had enriched their lives through the expansion of their family unit.²²

As discussed in Chapter 4, the Committee also received evidence of how reunions affected other family members, such as adoptive parents. Jennifer McRae, a person who is adopted also demonstrated this in her submission:

My first steps, first words, first Christmas, Easter, tooth fairy visit, first day at school, learning to ride my bike and the list goes on and on. These moments would be the privilege of my adoptive parents, who lived in fear that I would leave them the moment I found my Mother.²³

A mother wrote in her submission:

[The adoptive mother] said she felt like she'd given birth to [my daughter] and now she was terrified I would take her away. I tried to explain that was ridiculous but I could feel how insecure she felt. I spoke to [my daughter] later and she said her mother didn't want us to see each other anymore as she found it upsetting.²⁴

Dr Robyn Miller, Chief Executive Officer at MacKillop Family Services, told the Committee in relation to reunions that adoptive parents exhibit

a whole range of reactions. Some adoptive parents actually are cheering and behind them and celebrate when they get each little bit of information. For others it is cold war and the person just knows they cannot talk about it.²⁵

Further, Dr Miller told the Committee that some adoptive parents suffer during the reunion process:

I have personally worked with some parents who were marvellous but who had really struggled with their own grief and shock when their child found out when they were an adolescent or when they were an adult and came back to them with huge anger. And they understood it at one level but could not cope with it, so there was incredible

21 Kenny, et al., *Past adoption experiences*, p. xvi.

22 Ibid., p. xvii.

23 Jennifer McRae, *Submission 82*, received 15 May 2021, p. 2.

24 Name Withheld, *Submission 89*, received 25 May 2021, p. 8.

25 Dr Robyn Miller, Chief Executive Officer, MacKillop Family Services, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 23.

suffering within the family and often family breakdown. If the adult adoptee had sort of anaesthetised the pain and the trauma with drugs and alcohol, and certainly that is true for some, they were beside themselves with how to help them.²⁶

The Committee notes that the results from the AIFS Adoption Study do not seem to correlate with the evidence received in the Senate Inquiry and this inquiry. The AIFS Adoption Study acknowledged that one of the deficiencies of their study is that the data was ‘collected from a self-selected sample ... therefore we cannot say with confidence that our findings are representative’.²⁷ The Committee considers the positive adoption experiences of adoptive parents described in the Adoption Study may be because adoptive parents with good intentions and experiences would be more likely to participate. In contrast, the Senate Inquiry and this inquiry mostly received evidence from people who are adopted. Consequently, given the lack of data, the Committee acknowledges the diverse range of adoptive parent experiences and does not wish to make generalisations about the effects of historical forced adoptions on them.

The Senate Inquiry received evidence from people who are adopted about their adoptive parents, some of which indicated successful and caring relationships, and others which indicated damaging or painful experiences in their upbringings. Most adopted people who participated in the Senate Inquiry did not have a positive experience with their adoptive parents. The poor screening process of adoptive parents during historical forced adoptions may have contributed to this.²⁸ As discussed in Chapter 5, the Committee also received evidence from people who are adopted of growing up with parents who should not have been approved to adopt a child.

Similarly, the Committee received evidence in this inquiry from people who are adopted about their adoptive parents. Jennifer McRae wrote in her submission that her adoptive mother tried to ‘normalise’ her adoption and reassure her that she was “‘special”, a chosen child, a gift’.²⁹ But, her submission also highlights the lack of knowledge adoptive parents had about the effects of adoption on their children:

I would wish away my childhood waiting to be old enough (18) to find my Mother and family. I believe in hindsight that it was the cause of my severe separation anxiety until I was in mid primary school. My adoptive mother had little tolerance for my fears, and I was routinely scolded for being naughty and selfish for not thinking of anyone but myself for the trouble I had caused everyone. Emotionality was discouraged in this family.³⁰

Another person who is adopted told the Committee that their adoptive parents ‘did the best that they were able to, with the emotional and physical resources available to them’.³¹

²⁶ Ibid., p. 24.

²⁷ Kenny, et al., *Past adoption experiences*, p. xviii.

²⁸ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, Melbourne, 2017, p. 71.

²⁹ Jennifer McRae, *Submission 82*, p. 10.

³⁰ Ibid., p. 9.

³¹ Name Withheld, *Submission 101*, received 31 May 2021, p. 1.

In its submission, VANISH discussed the limited awareness that some adoptive parents had on the effects of adoption and the inadequate support they received:

Some adoptive parents, having learned about forced adoption practices, have lobbied for justice and reform alongside mothers, fathers and adoptees. Some adoptive parents say they were not provided with education and resources regarding the impact of separation of a child from its mother and family, and the impact of that traumatic event and the subsequent adoption. They were not informed that adoptive parenting is significantly more complex than biological parenting. Instead, they were told by agencies arranging adoptions to 'just love them and they will be fine'. Adoptive parents were often lied to by the agencies regarding the willing relinquishment of the child, the child's background, and/or the child's orphan status.³²

Further, Dr Miller told the Committee:

there is a need to have flexible services that can help adoptive parents cope, particularly where they have been poorly assessed sometimes or misguided in the way they were trained.³³

The Committee recognises the need for more information on how historical forced adoption policies and practices affected adoptive parents. The Committee considers that Recommendation 15 in Chapter 5, advocating for an inquiry into the experiences and effects of adoption on people who are adopted, should seek input from adoptive parents.

6.3 Other family members

The Committee received some evidence from subsequent children of mothers subjected to the policies and practices of historical forced adoption, who would be full or half-siblings (depending on who the mother married) of people who are adopted. The Senate Inquiry also received evidence that forced adoptions impacted the family members of both the natural parents and adopted person. This included evidence from subsequent children who discovered they had siblings or half-siblings and struggled to understand what had occurred and reconcile this with their own identity.³⁴

In this inquiry, some mothers described to the Committee that their child who was forcibly removed and subsequent children were able to form positive relationships. One mother told the Committee:

my children did not even know they had a half-sister until I actually decided to find her ... In their relationship, they are good now; my son was always happy, but the daughter, there was no bonding. But there is now, thankfully.

...

³² VANISH Inc., *Submission 53*, p. 28.

³³ Dr Robyn Miller, *Transcript of evidence*, p. 24.

³⁴ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 92.

My son was really happy that he had a sister.³⁵

Similarly, one person who is adopted wrote: 'I found out I had a sister, who contacted me soon after, and we got along from that first call she made to me'.³⁶ Other times, the relationship between siblings was not successful. Yvonne May told the Committee:

[my daughter] she always said when I told her, you know, early on, 'It would be nice to have a big brother', and when it actually happened, she rejected him. She kind of had the view that he was using me ... it was sort of from day one she rejected him. She never met him.³⁷

Lynette Brown wrote in her submission:

I meet [sic] my birth mother it has been very hard for both of us in the beginning of our relationship because she did not tell my brothers and sisters about me ... I asked if I could meet them it was hard for them also and it took a long time for this to happen ... My family have met me but I do not have much of a relationship with them only one of my sisters. I hope this will change in time. I have also met my birth mother brother & sister which I get along very well ... I get along with my nephew and niece from one of my sisters.³⁸

Lynette Brown's submission also draws attention to the broad range of family members who meet during a reunion, relationships that the Committee heard can be difficult to navigate. Another person who is adopted also discussed this in their submission, writing:

I located and contacted half-siblings, with some moderate success. The primary challenge for them was how to understand and manage that she had lied to them their whole lives. While I have formed a relationship with some members of the extended family, which I can see continuing, I am not aware of any support available to assist me or my half-siblings to connect.³⁹

Similarly, Leonie White submitted:

In October 1989 it had been a week since I had heard from [my son] as he wasn't very happy that his stepbrothers did not know about him, his stepbrother were only 9 & 7 years old. Eventually the boys met, which went well but thing were always strained between he and I ... Every now and again during the last 17 years [my son] would ring my Husband to see how everyone was, but never asked to talk to me ... In January this year he told my husband [redacted] that his children would like to meet me and asked would I have a problem with that. Of course I wouldn't they are my grandchildren. We met for lunch ... which went well. But again I felt on edge that I would say something to upset him.⁴⁰

³⁵ Name Withheld 1, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 15.

³⁶ Name Withheld, *Submission 79*, received 9 October 2020, p. 1.

³⁷ Yvonne May, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 30.

³⁸ Lynette Brown, *Submission 22*, received 3 February 2020, pp. 1-2.

³⁹ Name Withheld, *Submission 101*, p. 3.

⁴⁰ Leonie White, *Submission 41*, p. 3.

The AIFS Adoption Study found that '[i]n general, other family members had been adversely affected by the adoption experience (although a few did express positive experiences)'.⁴¹ Specifically, the AIFS Adoption Study revealed that about two-thirds of other family members had sought information about their natural relatives, with the experience of reunions being a mix of positive and negative.⁴² The AIFS Adoption Study identified that further support could be provided to family members to 'deal with issues arising from past adoption experiences, including information, making contact, peer support, community awareness, understanding, and contrition'.⁴³

6.3.1 Intergenerational trauma

The Committee heard about the intergenerational effects of trauma arising from historical forced adoptions throughout the Inquiry, including the notion of intergenerational trauma. This type of trauma occurs '[w]hen people who have experienced or witnessed trauma have not had an opportunity to heal from that trauma, it can be transferred to the next generation'.⁴⁴ Ian Hamm, Chair of the First Nations Foundation and Stolen Generations Reparations Steering Committee, also a person who is adopted, informed the Committee:

One of the big issues that flows on from that [the Stolen Generation] is not only those who were taken but their children and their children's children and their great-grandchildren—the intergenerational effect. I think you will find with any of these forced separations of anybody, or adoptions of any nature to be honest, there is the intergenerational effect, and particularly if people when they were young had no great role models of parenting or did not experience it in childhood, their capacity to be a good parent and to give their children the childhood they never had is greatly diminished. That is just an evidentiary fact built up through whole bunches of data and, again, repetition of this.⁴⁵

The Committee received some evidence of intergenerational trauma. Wendy Willis wrote in her submission:

This is how adoption shaped me and due to this I now struggle with that impact and how it has shaped my children's sense of identity and impacted my parenting.⁴⁶

One person who is adopted wrote in her submission:

I am the mother of two adolescent/young adult children. They both suffer from periodic anxiety, including separation anxiety. This is not a coincidence. This is intergenerational trauma. And the cost continues to be borne by those of us who are in this situation

⁴¹ Kenny, et al., *Past adoption experiences*, p. 147.

⁴² *Ibid.*, p. 140.

⁴³ *Ibid.*, p. 147.

⁴⁴ Blue Knot Foundation, *Fact sheet: intergenerational trauma*, (n.d.), <<https://www.blueknot.org.au/Portals/2/Fact%20Sheets%20Info/Intergenerational%20TraumaV2.pdf>> accessed 23 July 2021.

⁴⁵ Ian Hamm, Chair, Stolen Generations Reparations Steering Committee, hearing, Melbourne, 4 June 2021, *Transcript of evidence*, p. 4.

⁴⁶ Wendy Willis, *Submission 114*, received 29 July 2021, p. 3.

because of decisions made by the state and a social policy which caused a primal wound.⁴⁷

An inquiry participant whose mother had a baby taken from her who told the Committee:

My submission offered insights into how the forced removal of my mother's child, my sister, and the following years of shame and secrecy flowed on to her other children. The lack of attunement in my early life, the reduced capacity of my mother to see, hold and meet my emotional needs and the reliance of my mother on me to meet her needs meant that I learned to disconnect. Her fears and anxieties throughout my childhood were palpable, and there was no room for my own, so I pushed them down. I dealt with them in isolation, and I got really good at detaching and ignoring my own needs—until now, really. Over time I have developed more compassion and understanding of these adaptive strategies that helped me survive this time. However, they have had lasting impacts on my work and my relationships with both myself and others. I have also seen this impact on my sisters, and I have seen it passed down into the next generation with my nieces and nephews.

Inter- or trans-generational trauma and epigenetics are relatively new concepts that describe that cycle of trauma where the impact is passed through one generation to the next, sometimes altering gene expression, direct experiences or through.⁴⁸

Another inquiry participant made a submission based on their mother's experience and reflected on how the forced separation of their mother and her newborn baby impacted the entire family:

This trauma has rippled through our family for three generations now; the effects have been widely felt and run deep, as I'm sure is the case for many other families too. My mum showed signs of trauma related mental health issues though I don't know if she ever received a diagnosis or therapy. My siblings and I have each had our own struggles, like being unable to form significant attachments, issues with addiction and PTSD [post-traumatic stress disorder].⁴⁹

In their evidence to the Committee, a person who is adopted discussed the intergenerational trauma that exists in their family:

adoption causes complex PTSD ... I have a child who has a complex medical condition that requires psychiatrists, psychologists and psychiatric hospitalisation that can be linked back not just to adoption but to the situation we found ourselves in ... Trauma breeds trauma, and that breeds intergenerational trauma. Adoption is part of that trauma. It brings shame, it brings guilt and it brings separation. For example, my birth mother's birth mother did not tell anybody she gave birth to a child during World War II. She came to Melbourne from Perth, had the baby and she went home. And she never

⁴⁷ Name Withheld, *Submission 101*, p. 2.

⁴⁸ Name Withheld, 24 February 2021, *Transcript of evidence*, pp. 2–3.

⁴⁹ Name Withheld, *Submission 106*, received 29 June 2021, p. 2.

told a soul. They found out about her on the day of her funeral ... My birth mother spent 14 months in a baby's home before she was adopted by her family, and that is just an example.⁵⁰

When you are subjected to trauma you get attracted sometimes to abusive partners because you are used to a cycle of love and devaluing, and that is what you are conditioned to. That is what you believe is normal. So when you have two people that have been through that same cycle you can form what is called a trauma bond. It feels like love, but it is not. It does not last. We were forced to leave our home in 2019 to escape threats, silent treatment and all sorts of different versions of abuse. And for me this is the impact of adoption. I have felt neglected. I have felt traumatised. I was mismatched with my family, and I fell into this situation which ended in family violence, which caused my children to suffer.⁵¹

Another inquiry participant whose father was adopted described to the Committee that their father was a 'very, very, very violent man', and:

I have done my own research and looked into the forced adoptions, and it gave me some understanding as to why my father was such an angry man and why we cannot have those attachments due to his brain development. Life has been very hard not having a dad. My little brother still has issues. He spent some time in prison. He had drug issues. My older sister has gone into an abusive relationship herself. Me and my older brother have pretty much broken the cycle and we have come out on the other side, but there is still so much ...⁵²

The effects of intergenerational trauma is also highlighted in the evidence received from the Committee by 'double adoptees'. For example, one mother and person who is adopted shared her story with the Committee. She was born at the Royal Women's Hospital to a single mother, along with her twin sister, and was emotionally and physically abused throughout her childhood by her adoptive mother.⁵³ As she wrote in her submission:

High School was a nightmare, I was angry, sick of my life, acting out and doing whatever it took to get kicked out of class. I was anxious and had trouble retaining information so wagging and being booted out from class was my way of coping with everything. I spent most nights in detention and many days sitting outside the principals office. Things at home were getting worse and this just fed into my school experience.⁵⁴

At 16, she became pregnant to her then-boyfriend and her daughter was traumatically forcibly removed from her and placed for adoption. This mother later reunited with her daughter, who, based on the mothers' evidence, has struggled with her mental health throughout her life. They are no longer in contact.

50 Name Withheld, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, pp. 42–43.

51 Ibid., p. 43.

52 Name Withheld, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 9.

53 Name Withheld, *Submission 89*, p. 1.

54 Ibid., p. 2.

6.4 Acknowledgement

The Committee considers that it is important to acknowledge how other groups have been impacted by historical forced adoptions in order to facilitate healing and reconciliation. As the Hon Nahum Mushin AM stated in his evidence:

I am putting on my family law hat here, and my family law hat tells me that in order to overcome dispute and resentment and all of those sorts of things, you have got to bring people together around a table and have everybody talk to each other. This is heresy, what I am about to say, in a significant part of the forced adoption sector, but until adoptive parents are brought into the tent and are part of this discussion, in my view, you will not resolve all of the generational issues that there are with regard to adoption. I know that a lot of mothers whose children were taken in awful, terrible circumstances have real resentment, but I think it is equally clear that the adoptive parents did not know what was going on. They were not party to this. They were innocent, and I think the evidence for that is overwhelming.⁵⁵

Further, Jennifer McRae wrote in her submission:

Whichever your story, writing about one's trauma is incredibly challenging and exhausting, but it is important work; documenting a significant history for society and the therapeutic nature writing can be to be a catalyst for deep healing. It is essential that our stories of the FAE [forced adoption era] are shared with the Australian public before time catches up with us all, we the survivors are the ones who can recalibrate the malignant myths of adoption which society is so tightly bound to, by sharing the permanent harms we have experienced.⁵⁶

The AIFS Adoption Study also considered the issue of acknowledgement, noting the small number of fathers that came forward to participate in their study was an indicator that outreach strategies are needed to better understand fathers' needs, 'particularly given that the research conducted to date indicates that this group already feels as though they are rarely considered in the broader discourse associated with past adoption practices'.⁵⁷

Further, the AIFS Adoption Study recognised in relation to other family members that:

Although the survey did not specifically ask respondents whether they thought there should be a public apology, a number of family members spontaneously identified the need for an apology, an increased community awareness and understanding of the issues relating to past adoption practices, and the current experiences of those affected.⁵⁸

⁵⁵ The Hon Nahum Mushin AM, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 22.

⁵⁶ Jennifer McRae, *Submission 82*, p. 19.

⁵⁷ Kenny, et al., *Past adoption experiences*, p. xvi.

⁵⁸ *Ibid.*, p. 144.

The Committee considers that encouraging fathers, adoptive parents and other family members to share their experiences would be an important means of ensuring they receive adequate support and to assist with their healing. Consequently, the Committee believes that it is vital that the recommendations in Chapter 4 on public awareness and the recommendation in Chapter 5 on the need for a follow-up AIFS Adoption Study should also consider the experiences and needs of fathers, adoptive parents and other family members.

7

Redress

We offer this apology in the hope that it will assist your healing and in order to shine a light on a dark period of our nation's history.

To those who have fought for the truth to be heard, we hear you now. We acknowledge that many of you have suffered in silence for far too long.¹

The Committee heard from many inquiry participants that redress is an important step towards recognition and healing. Redress schemes are about acknowledging wrongs that occurred in the past and often provide affected individuals with financial compensation, public recognition, acknowledgement, counselling and support. Redress schemes can aid in the healing process and are a way for institutions and governments to act on their apologies and attempt to compensate for what has happened.

The purpose of this chapter is to explore the establishment of a Victorian redress scheme for historical forced adoptions while also referring to the design and operations of the National Redress Scheme (NRS) for survivors of institutional child sexual abuse and the pending Victorian Stolen Generations Redress Scheme.

In 2012, the Parliament of Victoria acknowledged the profound and lifelong trauma and pain of mothers through an apology.² It is time that the apology finally be accompanied with concrete measures to 'help translate the static message of an apology into an active process of reconciliation and healing'.³

7.1 Government redress and compensation schemes

Commonwealth, state and territory governments have established a range of redress schemes in recent times to address typically historical wrongs. These schemes generally run for a limited time, such as ten years, and feature monetary compensation and counselling. Some schemes also allow for a direct personal response, such as an apology and recognition from the institutions that perpetrated the abuse.

Table 7.1 provides a broad summary of some government redress schemes that have been established in response to various types of historical wrongs. No jurisdiction in Australia has a scheme specifically focused on forced adoption.

1 Find & Connect, *National Apology for Forced Adoptions (21 March 2013)*, 2013, <<https://www.findandconnect.gov.au/ref/nsw/biogs/NE01258b.htm#tab5>> accessed 4 October 2019.

2 Ibid.

3 Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. 197, originally quoting the Law Commission of Canada.

Table 7.1 Australian national/state/territory redress schemes for historical wrongs

Jurisdiction	Subject matter of scheme (date commenced)
Commonwealth	Institutional child sexual abuse (2018)
	Defence Reparation Scheme for survivors of Defence abuse (2018)
Victoria	Victoria Police workplace sexual abuse (2020)
	Stolen Generation redress scheme (consultations held in 2020, expected in late 2021)
New South Wales	Child migrants (2015) ^a
	Stolen Generations Reparations Scheme (2017)
South Australia	Sexual abuse in state care (2010)
	Stolen Generations (2015)
Queensland	Child abuse and neglect in state care (2007)
	Stolen Wages Reparations Scheme (2015)
Western Australia	Child abuse and neglect in state care (2008)
Tasmania	Child abuse in state care (2003)
	Stolen Generations (2007)
Australian Capital Territory	None
Northern Territory	None

a. This is not a redress scheme but in 2015 a class action in the New South Wales Supreme Court resulted in the establishment of a compensation fund for child migrants who were abused at the Fairbridge Farm School. This is now covered in the National Redress Scheme for Institutional Child Sexual Abuse. See <https://www.abc.net.au/news/2015-06-29/fairbridge-farm-school-child-migrants-paid-24-million/6580104>.

Source: compiled by the Legal and Social Issues Committee.

In Victoria, the Restorative Engagement and Redress Scheme was recently established to support Victoria Police employees, former and current, who experienced workplace sex discrimination or sexual harassment.⁴ The standard of proof for this scheme is ‘plausibility’, which is lower than the criminal and civil standard. This means that an account of an experience ‘is plausible if there is enough information, supported by a properly witnessed statutory declaration, to reasonably satisfy a person undertaking an assessment that the behaviour occurred’.⁵ Assistance available includes counselling, financial redress (one-off payments ranging from \$10,000 to \$45,000 depending on the severity of behaviour) and restorative engagement.⁶

Other compensation schemes exist for:

- victims of crime, administered by the Victims of Crime Administrative Tribunal
- people injured in workplaces, administered by WorkCover
- people in transport accidents, administered by the Transport Accident Commission.

4 Victorian Government, *Restorative Engagement and Redress Scheme*, 18 December 2020, <<https://www.vic.gov.au/redress-police-employees#about-the-scheme>> accessed 1 July 2021.

5 Ibid.

6 Ibid.

Victoria also joined the NRS for people who experienced institutional child sexual abuse, which is managed by the Australian Government.

7.2 Royal Commission into institutional responses to child sexual abuse

In its *Redress and civil litigation* report, published in 2015, the Royal Commission into institutional responses to child sexual abuse (Royal Commission) recommended the establishment of a national redress scheme to comprise a redress payment, counselling and psychological care and a direct personal response from the institutions determined to be responsible for the abuse.⁷ It recommended that redress be survivor-focused, with a ‘no wrong door’ approach for survivors in gaining access to redress. Further, it recommended that the scheme be trauma-informed and have regard to what is known about the nature and impact of child sexual abuse, as well as the cultural needs of survivors and the needs of particularly vulnerable survivors.⁸

With regard to support for survivors, the Royal Commission recommended that counselling and psychological care be available throughout a survivor’s life and on an episodic basis.⁹ It also recommended that survivors have flexibility and choice in relation to counselling, that family members be provided counselling and psychological care if necessary and that there be no fixed limits on the care provided to a survivor.¹⁰

Regarding compensation, the Royal Commission recommended a minimum redress payment of \$10,000, a maximum payment of \$200,000 for the most severe cases and an average payment of \$65,000.¹¹ It also recommended that monetary payments be assessed and determined by using the matrix in Table 7.2.

Table 7.2 Assessment framework for monetary payments recommended by the Royal Commission

Factor	Value
Severity of abuse	1–40
Impact of abuse	1–40
Additional elements	1–20

Source: Royal Commission into institutional responses to child sexual abuse, *Final report*, p. 77.

⁷ Royal Commission into institutional responses to child sexual abuse, *Final report: recommendations*, Commonwealth of Australia, 2017, p. 73.

⁸ Ibid.

⁹ Ibid., p. 75.

¹⁰ Ibid.

¹¹ Ibid., p. 78.

The Royal Commission also recommended that the standard of proof be ‘reasonable likelihood’ and that the scheme have no fixed closing date. Regarding eligibility for redress, the Royal Commission proposed that a person be eligible ‘if he or she was sexually abused as a child in an institutional context and the sexual abuse occurred, or the first incidence of the sexual abuse occurred, before the cut-off date’.¹²

Additional factors to be considered include whether the applicant was in state care, experienced other forms of abuse, such as physical, emotional, cultural abuse or neglect, had the support of family or friends, or was particularly vulnerable because of a disability.¹³

It also recommended that survivors who have received monetary payments in the past, such as under other redress schemes, statutory victim of crime schemes and civil litigation, be eligible to be assessed for a monetary payment under the scheme. Furthermore, redress payments should not be income for the purposes of social security, veterans’ pensions or any other Commonwealth payments.¹⁴

Regarding funding, the Royal Commission recommended that the scheme be funded as much as possible by the institution or institutions in which the abuse is alleged or accepted to have occurred. Further, the Australian Government and state and territory governments be required to provide ‘funder of last resort’ funding to meet any shortfall in resourcing of the scheme.¹⁵

7.2.1 National Redress Scheme

In response to the Royal Commission’s recommendations, the Australian Government established the NRS in 2018 under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) (NRS Act). The NRS has three components: a redress payment, a counselling and psychological component and a direct personal response from responsible institutions. A person entitled to redress under the NRS may choose to accept all or as many components of the redress as they like, that is, they may accept the payment but not want the direct personal response or counselling. The NRS commenced on 1 July 2018 and will operate for ten years. Participants have until 30 June 2027 to lodge an application.¹⁶

The Committee was interested to learn that there are many departures from what was recommended by the Royal Commission to what was implemented in the NRS. For example, the monetary redress amount was lowered to a cap of \$150,000 in the implementation of the NRS, with redress payments ranging from less than \$10,000

¹² The report states that the cut-off date should be the date on which the Royal Commission’s recommended reforms to civil litigation in relation to limitations periods and the duty of institutions commence. *Ibid.*, p. 82.

¹³ *Ibid.*, p. 77.

¹⁴ *Ibid.*, p. 78.

¹⁵ *Ibid.*, p. 80.

¹⁶ National Redress Scheme, *National Redress Scheme*, n.d. <<https://www.nationalredress.gov.au>> accessed 5 August 2021.

to \$150,000.¹⁷ Regardless of the number of responsible institutions, the maximum payment must be no more than \$150,000.¹⁸

The assessment framework recommended by the Royal Commission is not used in the NRS but rather a framework that categorises abuse in terms of whether it was penetrative, contact or exposure. This is demonstrated in Table 7.3 and 7.4. The Committee understands that this is a key criticism of the NRS, as discussed below.

Table 7.3 Matrix to calculate redress payments for a person in the National Redress Scheme

Kind of sexual abuse of the person	Recognition of sexual abuse (\$ thousand)	Recognition of impact of sexual abuse (\$ thousand)	Recognition of related non-sexual abuse (\$ thousand)	Recognition person was institutionally vulnerable (\$ thousand)	Recognition of extreme circumstances of sexual abuse (\$ thousand)
Penetrative abuse	70	20	5	5	50
Contact abuse	30	10	5	5	Nil
Exposure abuse	5	5	5	5	Nil

Source: *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Cth), s 5 (1).

Table 7.4 Matrix to calculate the amount of counselling for a person in the National Redress Scheme

Kind of sexual abuse of the person	Amount of the component (\$ thousand)
Penetrative abuse	5.0
Contact abuse	2.5
Exposure abuse	1.25

Source: *National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018* (Cth), s 5 (2).

Free, confidential and independent legal support is provided by knowmore legal service to help survivors explore their options regarding redress or civil litigation. Survivors also have access to a range of redress support services, including emotional support and counselling, practical support, advocacy and financial counselling.¹⁹

At the end of each financial year, the NRS Operator must provide an annual report on the NRS's operations to the relevant Minister.²⁰ In the most recent annual report and second year of operation (1 July 2019 to 30 June 2020), 3,127 people applied for

¹⁷ Department of Social Services, *National Redress Scheme: Annual report on operation of the Scheme 2018-19: Part 3*, 2019, p. 100.

¹⁸ *National Redress Scheme for Institutional Child Sexual Abuse Act (2018)* (Cth) s 16.

¹⁹ knowmore, *Services*, n.d., <<https://knowmore.org.au/services>> accessed 1 July 2021.

²⁰ *National Redress Scheme for Institutional Child Sexual Abuse Act (2018)* (Cth) s 187.

redress and 3,195 determinations were made. Of those determinations, 3,059 people were assessed as eligible for redress and 136 applications were deemed ineligible.²¹ In the previous financial year, 346 were assessed as eligible and no one was assessed as ineligible.²² Of those offered redress from 1 July 2019 to 30 June 2020, 2,568 people accepted an offer and ten people declined. The average payment was \$81,876 with the total value of redress payments being over \$205 million. Further, 1,736 people requested counselling as part of their redress outcomes and 1,345 people requested a direct personal response from an institution.²³

7.2.2 Learnings from the National Redress Scheme

While the NRS has undoubtedly helped and benefited many people, it has received broad criticism from survivors, advocacy organisations and parliamentary reviews. This criticism has mostly been in response to the assessment matrix, the Scheme's interaction with survivors, delays in receiving compensation, the lengthy application forms and eligibility.²⁴ Regarding the assessment matrix and the categorisation of injury, Cameron Tout, Senior Associate and Legal Practice Manager at Shine Lawyers, told the Committee in a public hearing:

I think one of the big criticisms I hear out of it—there's a couple of criticisms I hear, but I mean one of them is that everyone is categorised by the nature of the offence that was committed to them. And it's things like, is it penetration and was it coupled with abuse outside of that, for example. And the conversation that flows with it is very much related to what that offence is and not what the outcome is for the victim.

I mean, it certainly has its positive parts, and for some people it is the way to go. They don't want to see a lawyer. They don't want to go to court. They don't want to see the person they've accused of performing these acts on them. And for some people, that is the way to feel some sort of redress or some sort of justice out of it.²⁵

...

21 Department of Social Services, *National Redress Scheme: annual report on operation of the Scheme 2019–20: Part 3*, 2020, p. 110.

22 Department of Social Services, *National Redress Scheme: Annual report on operation of the Scheme 2018–19*, p. 100.

23 Department of Social Services, *National Redress Scheme: annual report on operation of the Scheme 2019–20*, p. 110.

24 For example, see Tracey Bowden, 'Sexual abuse survivors reveal 'traumatic' pain of applying for National Redress Scheme', *ABC News*, 7 March 2019, <<https://www.abc.net.au/news/2019-03-07/sexual-abuse-survivors-reveal-pain-of-applying-for-redress/10878798>> accessed 1 July 2021; Charlotte King, 'Five per cent of applicants processed through National Redress Scheme amid 'wave of reforms'', *ABC News*, 1 July 2019, <<https://www.abc.net.au/news/2019-07-01/five-per-cent-of-victims-paid-out-through-redress-scheme/11265456>> accessed 1 July 2021; Iskhandar Razak, 'No redress compensation for victims of horrific physical abuse, campaigner says', *ABC News*, 15 June 2018, <<https://www.abc.net.au/news/2018-06-15/redress-scheme-doesnt-help-all-abuse-victims-campaigner-says/9874576>> accessed 1 July 2019; 'Child sex abuse redress scheme to cap payments at \$150,000 and exclude some criminals', *ABC News*, 26 October 2017, <<https://www.abc.net.au/news/2017-10-26/sex-offenders-to-be-excluded-from-child-abuse-redress-scheme/9087256>> accessed 1 July 2021; Annah Fromberg, 'Sexual abuse victims dying before national redress scheme set up, survivor warns', *ABC News*, 5 June 2017, <<https://www.abc.net.au/news/2017-06-05/call-for-sexual-abuse-redress-money-in-tasmania/8588034>> accessed 1 July 2021.

25 Cameron Tout, Senior Associate and Legal Practice Manager, Shine Lawyers, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 50.

The concerns with the scheme—one is the categorisation as being almost the sole manner of assessing injury or assessing compensation, and we can miss the different effects on different people.²⁶

In her evidence to the Committee, Emeritus Professor Shurlee Swain drew attention to the difficulty with financial redress schemes, noting that lessons can be learnt from the NRS. Emeritus Professor Swain noted that financial redress is ‘always contested’ and it is important that schemes are not complex and destructive:

Now, we are just working through it with the sexual abuse one, and it is not easy—not working well. But it is worth learning lessons from that to see what they did and what worked and what did not work. One of the big things they are having is people are not even going to it, because the process is so complex and destructive. So a way of accessing that does not involve that would be a good idea, but I do not have the answers for that. I can really just point out the problems—that the minute you get there it is that tendency to slip over to legalities, the legal basis of truth, that creates the problems and creates the barriers. So a place like Sweden, which in relation to its out-of-home-care inquiry was very generous and open, when it went to legalities less than half of the cases that are going through are being recognised. And that is of course another life destruction vehicle.²⁷

A number of concerns regarding the operation of the NRS have been addressed in several Parliament of Australia reports tasked with examining its oversight and implementation. A common theme has been that the NRS has received significantly lower application numbers than was anticipated by the Royal Commission.²⁸

In April 2019, the report, *Getting the National Redress Scheme right: an overdue step towards justice*, was tabled by the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Joint Committee). The report stated that the NRS was ‘too important to not get right’, nonetheless, it found that ‘as it currently operates, the redress scheme is at serious risk of not delivering on its objective of providing justice to survivors’.²⁹ The Joint Committee measured the NRS against three core principles:

- survivor-focused and trauma-informed
- the process must ‘do no further harm’ to the survivor
- amendments to the Scheme be subject to proper consultation with key survivor groups.³⁰

²⁶ Ibid., p. 51.

²⁷ Emeritus Professor Shurlee Swain, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 7.

²⁸ For example, see Parliament of Australia, Joint Select Committee on Implementation of the National Redress Scheme, *First interim report of the Joint Select Committee on Implementation of the National Redress Scheme*, May 2020, p. 33.

²⁹ Parliament of Australia, Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, *Getting the National Redress Scheme right*, April 2019, p. xvii.

³⁰ Ibid.

The Joint Committee also found that the NRS falls short of many of the key recommendations of the Royal Commission, including in relation to redress payments, its assessment frameworks, insufficient counselling and psychological care provided for in the assessment framework and concerns relating to the lack of oversight with direct personal responses.³¹

It also found that redress services must be adequately funded to ensure they meet the needs of survivors:

Survivors will have difficult decisions to make about the viability of applying for redress. The process of applying for redress will, for many, be a traumatic experience. It will require survivors to recount stories of the abuse they experienced and detail the impact of that abuse on their life. Equally, those who decide to receive a direct personal response from the responsible institution will also need adequate support. It is essential that survivors are supported throughout the entire process.³²

The Joint Committee made 29 recommendations, including that any amendments proceed on the principle of ‘do no further harm’ to the survivor; expand eligibility to non-citizens, non-permanent residents and those currently in prison; and implement a new assessment framework which acknowledges that the type or severity of abuse does not determine the impact for the individual.³³ The Joint Committee also recommended increasing the maximum compensation amount, implementing a minimum compensation payment of \$10,000, enhancing supports for survivors and increasing transparency in the determinations.³⁴ In February 2020, the Australian Government responded, stating that it would work with states and territories and non-government institutions to address the issues identified by witnesses to the inquiry. Furthermore, the Government committed to consider any recommendations arising from the legislated second anniversary review of the NRS, discussed below.³⁵

In 2019, the Joint Select Committee on the Implementation of the National Redress Scheme was established. In May 2020, its *First interim report* was released and noted that while progress had been made since the 2019 *Getting the National Redress Scheme right* report, there was still work to do.³⁶ The report found that preparing an application was often stressful and traumatic for survivors, there were varied experiences with Department of Social Services caseworkers, survivors struggled with long timeframes for application processing and overall, the process can retraumatise survivors.³⁷ On the redress matrix, the Committee stated:

³¹ Ibid.

³² Ibid.

³³ Ibid., pp. ix–xiii.

³⁴ Ibid., p. xi.

³⁵ Government of Australian Government, *Response to the Parliament of Australian Government, Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, Getting the National Redress Scheme right*, February 2020, pp. 3–4.

³⁶ Parliament of Australia, Joint Select Committee on Implementation of the National Redress Scheme, *First interim report of the Joint Select Committee on Implementation of the National Redress Scheme*, p. iii.

³⁷ Ibid., pp. 25, 27, 31, 32.

The matrix for assessing the amount of redress awarded to a survivor was widely criticised. Survivors, advocacy organisations, service providers and lawyers are in agreement that linking the amount of redress awarded to the physical type of abuse perpetrated fails to recognise the lifelong harm that any sexual abuse has on a survivor.³⁸

The Joint Select Committee on the Implementation of the National Redress Scheme is currently accepting submissions to inform the second interim report and has identified five priority focus areas, which are survivor experiences, operation of the NRS, legal advice and private law firms, participation in the scheme and first interim report review.³⁹

Under the NRS Act, the NRS must be reviewed after two years of operation and again after eight years.⁴⁰ The second anniversary review is required to consider various matters, including the extent to which eligible survivors have applied for redress, the extent to which redress has been provided, user experiences of the process, redress payments, access to counselling and uptake of direct, personal responses under the NRS.⁴¹ The legislated, independent two-year review of the NRS was delivered to the Hon Anne Ruston MP, Minister for Families and Social Services, in March 2021 by Robyn Kruk AO, the independent reviewer of the NRS.⁴²

7.3 Stolen Generations redress scheme

On 18 March 2020, the Victorian Government announced the establishment of a \$10 million Stolen Generations redress scheme with consultations to be held in 2020.⁴³ It is expected that the scheme will begin later in 2021 and will fund redress payments, counselling support and a funeral or memorial fund. While details of the scheme are yet to be announced, a \$300,000 interim program was established in April 2021 to cover

³⁸ Ibid., p. 35. For example see Bianca Anstis, Solicitor, Saines Lucas Solicitors, Joint Select Committee on Implementation of the National Redress Scheme, hearing, Canberra, 20 March 2020, *Transcript of evidence*, p. 1; Dr Andrew Morrison, RFD SC, Spokesperson, Australian Lawyers Alliance, Joint Select Committee on Implementation of the National Redress Scheme, hearing, Canberra, 30 March 2020, *Transcript of evidence*, p. 16; Mr Francis Golding, Vice President, Care Leavers Australasia Network, Joint Select Committee on Implementation of the National Redress Scheme, hearing, Canberra, 19 March 2020, *Transcript of evidence*, p. 24.

³⁹ Joint Select Committee on Implementation of the National Redress Scheme, *Implementation of the National Redress Scheme: Participating in the Inquiry*, n.d., <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Redress_Scheme/NationalRedressScheme> accessed 1 July 2021.

⁴⁰ *National Redress Scheme for Institutional Child Sexual Abuse Act (2018)* (Cth) s 192.

⁴¹ Ibid., s 192(2).

⁴² National Redress Scheme, *Second anniversary review*, n.d., <<https://www.nationalredress.gov.au/about/second-anniversary-review>> accessed 5 August 2021.

⁴³ Justine Longmore, 'Stolen Generations redress scheme announced in Victoria', *ABC News*, 18 March 2020, <<https://www.abc.net.au/news/2020-03-18/stolen-generations-redress-scheme-announced-in-victoria/12067572>> accessed 1 July 2021; Sumeyya Ilanbey, 'We did nothing wrong': Victoria's stolen generations to finally get redress scheme', *The Age*, 18 March 2020, <<https://www.theage.com.au/politics/victoria/we-did-nothing-wrong-victoria-s-stolen-generations-to-finally-get-redress-scheme-20200318-p54bga.html>> accessed 1 July 2021; Hannah Cross, 'Victorian Government announces Stolen Generations redress scheme', *National Indigenous Times*, 27 March 2020, <<https://nit.com.au/victorian-government-announces-stolen-generations-redress-scheme>> accessed 1 July 2021.

funeral expenses for members of the Stolen Generations.⁴⁴ The Interim Funeral Fund will operate until the commencement of the full scheme later in 2021.⁴⁵

The Committee heard from Ian Hamm, Chair of the Stolen Generations Reparations Steering Committee (Steering Committee), who outlined some of its key considerations in designing the redress scheme. This included basing compensation on the act of removal rather than the consequence of that removal because ‘we should not be pitting people’s stories against each other and making a subjective value judgement against it’.⁴⁶ He noted that redress packages in other jurisdictions, such as New South Wales (NSW), South Australia and Tasmania, focused on the result of a person’s removal and the overall impact:

they calculated compensation based on the result of removal. They have since reviewed that and thought about, ‘Well, really we shouldn’t be trying to judge the impact of that, virtually say to somebody, “Your pain is not as bad as somebody else’s. Your trauma on a scale of trauma comes in here as opposed to somebody who’s here or here”’. To the person this happened to, the removal has resulted in loss of connection to family, community and culture, and the effects of that play out in different ways, but it was the act of removal which is the one consistency across all of this.⁴⁷

Ian Hamm spoke of the importance of the Stolen Generations redress scheme to acknowledge the removal of a child as a traumatic and life-altering event. Importantly, he advised that compensation should be enough to make a significant impact on the remainder of the person’s life.⁴⁸ In particular, Ian Hamm referred to compensation as achieving two key things:

One, it is acknowledgement that what happened to Aboriginal people and to stolen children in particular was such a traumatic and life-altering or life-coursing event that our community and our society have to make a significant financial acknowledgement of that.

The other part of it is the financial compensation, should a person be eligible, should be enough to make a significant impact on the remainder of their life. It should be enough so that they can actually afford some of the comforts that with a lot of stolen generation people—their salt of life that they quite frankly have not had up to date, being from the point of removal, all through their childhood and their adulthood, which a lot of people have struggled with.⁴⁹

Ian Hamm also advised that the Stolen Generations redress scheme should have broad enough eligibility criteria to include those who may have been removed from another jurisdiction but have resided in Victoria ever since or who were removed in Victoria but

⁴⁴ The Hon Gabrielle Williams MP, *Funeral fund to support the Stolen Generations*, media release, Victorian Government, Melbourne, 23 April 2021.

⁴⁵ Ibid.

⁴⁶ Ian Hamm, Chair, Stolen Generations Reparations Steering Committee, hearing, Melbourne, 4 June 2021, *Transcript of evidence*, p. 3.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

live interstate.⁵⁰ He also indicated that the scheme will include those removed through forced adoptions as ‘adoption was one of the options that happened to people’.⁵¹

Other key considerations of the Steering Committee have been ‘looking at a fairly low bar of evidence because we do not want to traumatise people’.⁵² The administration of the Stolen Generations redress scheme should be tasked with locating relevant documents and records rather than applicants themselves, as occurs in NSW, to ease the burden on people in trying to navigate the system.⁵³ Further, the redress scheme should comprise wraparound services to help people throughout the process, with a base to build from existing services, such as Connecting Home, Link-Up, the Koorie Heritage Trust and Bringing Them Home counsellors.⁵⁴

The intergenerational effect of the Stolen Generations was also a consideration for the Steering Committee in designing the service response to address ‘issues of succeeding generations whose life course has been directly influenced by the removal of that ancestor’.⁵⁵ In discussing the intergenerational effect, Ian Hamm discussed the ‘tsunami effect’ across the Aboriginal community from those who were taken:

So where you have a child who was forcibly removed or separated from their family and community and culture and the circumstances they grew up in, you will find that their capacity for being the parent they want to be is diminished, and so their children grow up having a diminished capacity and their children experience that.⁵⁶

Regarding the NRS, Ian Hamm identified some issues that the Steering Committee was keen to avoid in the Stolen Generation redress scheme, such as the assessment frameworks.⁵⁷ He also noted that implementing a state-based approach without the participation of subsidiary organisations was preferred. This approach avoids some of the complexities that the NRS has faced in trying to roll out a national scheme that has required institutional cooperation to join and financially contribute to the Stolen Generations redress scheme. Ian Hamm also referred to redress as the responsibility of state governments:

we just thought, ‘You know what? If it happened in the state of Victoria, it should be within the jurisdiction of responsibility of the state government of Victoria because that is what governments do, and if at a later point the state wants to pursue the organisation who actually did the removal, that is entirely up to the state’. In fact personally I think that is the thing that the state should do.⁵⁸

⁵⁰ Ibid., pp. 3–4, 8.

⁵¹ Ibid., p. 2.

⁵² Ibid., pp. 3–4.

⁵³ Ibid., p. 4.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid., p. 8.

⁵⁸ Ibid.

7.4 A redress scheme for historical forced adoption

Throughout the Inquiry, a significant number of participants emphasised the importance of redress and compensation for mothers, in addition to people who are adopted.⁵⁹ In her submission, Judy McHutchison, a mother whose baby was forcibly removed from her and also an adoption reform activist in 1976–1990, wrote:

The government's response to date had been inadequate particularly in regard to reparations. These are egregious wrongs, including breaches of duty of care, breaches of sections of the Adoption Act relating to duress and undue influence, possible breaches of the Crimes Act in removing the children at birth. Multiple breaches of human rights. The loss of their child in such a brutal manner has resulted in life long psychological impairment for many of the victims. As the Vanish team in their submission states there needs to be a sensitive redress scheme. This action would include the removal of the statute of limitations.⁶⁰

The Committee heard that some people who have been impacted by historical forced adoptions were able to seek compensation under the NRS because they experienced institutional child sexual abuse, for example, if they were an underage mother subjected to sexual abuse in hospital or an adopted person who experienced sexual abuse in institutional care.⁶¹ However, mothers who were over 18 at the time of the abuse cannot access the NRS due to the age limitation. Judy McHutchison drew attention to the need for reparations for mothers who were sexually abused and subjected to unnecessary medical procedures by medical staff while in hospital, noting that it is 'totally unacceptable' that mothers over 18 cannot access the NRS:

Such women suffer just as other sexual abuse victims suffer. At the time we were under 21 years of age, legally children and the hospitals clearly believed that they were entitled to be in 'loco parentis'.⁶²

In a public hearing, Marilyn Murphy told the Committee:

At this late stage it is decent and ethical to look at some form of compensation, either in the form of a gold card, such as war veterans and their partners receive, or a compensation payment by the AMA [Australian Medical Association] and the government free of a statute of limitations and long-drawn-out procedures, as has been the case with the child sexual abuse, predominantly by the Catholic Church, hoping most of the victims will die before that can be consolidated.⁶³

59 Barbara Pendrey, *Submission 1*, received 14 November 2019, p. 1; Gary Coles, *Submission 3*, received 7 January 2020, p. 1; June Smith, *Submission 10*, received 29 January 2020, pp. 7–8; Lyn Kinghorn, *Submission 11*, received 30 January 2020, p. 8; Jigsaw Queensland Inc., *Submission 14*, received 31 January 2020, p. 3; Relationships Australia Victoria, *Submission 15*, received 27 April 2020, p. 10; Council of Single Mothers and their Children, *Submission 23*, received 3 February 2020; Crib Mates, *Submission 25*, received 3 February 2020; Origins Supporting People Separated by Adoption Inc., *Submission 39*, received 2 March 2020; Adoptions Origins Victoria Inc., *Submission 43*, received 4 March 2020; Julian Pocock, *Submission 57*, received 25 May 2020; Emeritus Professor Shurlee Swain, *Submission 67*, received 18 June 2020; Judy McHutchison, *Submission 72*, received 26 June 2020.

60 Judy McHutchison, *Submission 72*, p. 1.

61 Ibid.

62 Ibid.

63 Marilyn Murphy, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 20.

For many mothers, compensation has symbolic value, and also acts as a deterrent to prevent it from happening again. In her evidence, June Smith stated:

There is no doubt about it; it has just got to be. You cannot do this to people. You cannot take a mother's brand new baby and just say, 'You can't have it because you don't deserve it'. You have got no idea what it was like to have your child ripped from your arms because you would not hand him over. It was brutal, and they did not care. This has got to be acknowledged. People have to know what happened to us, because they will do it again—in fact I know that they are doing it in parts.⁶⁴

Similarly, Karen Linton wrote in her submission:

I believe monetary compensation is warranted to ensure societal change in attitudes and perceptions would shift to towards women who endured this process. The reason I have stated this belief is when apologies towards people have included monetary compensation then there has been a significant shift in attitudes for example: on completion of the Royal Commission into Child Sexual Assault in Institutions there was an apology from the Prime Minister Scott Morrison and compensation to be paid to the victims. The ensuring pressure on the institutions from the public have created change in policies regarding notification of complaints and the processes around the complaints. This also mobilises the Catholic Church and Pope to openly admit to the failures of the Church towards their young people in the past. This was further highlighted with Cardinal George Pell being charged (and acquitted) on Historical Sexual Assault charges. All of this I believe to be due to the compensation legitimizing the victims' brave statements and highlighting the failings of Institutions to protect the children in their care.⁶⁵

Barbara Pendrey told the Committee: 'I agree with redress, our babies do not have a monetary value, redress would acknowledge the wrongdoing'.⁶⁶ In her submission, Barbara Pendrey wrote that she would like compensation for the treatment she received from the hospital she attended and that she had made contact about an ex-gratia payment:

I have contacted the Presbyterian Church in Victoria in the past their answer was since the churches merged we don't take any responsibility. We need acknowledgement an ex gratia payment.⁶⁷

The Committee also heard from some people that the concept of redress was complicated because nothing could compensate parents and their children for the loss they suffered. One person at a public hearing told the Committee:

Well, when the word came up, 'redress', I have to confess I did not know the word—I did not know that word. And then somebody explained it was money, and I was horrified. I thought, no, we cannot take money—it is like we have sold our babies. We just cannot

⁶⁴ June Smith, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 8.

⁶⁵ Karen Linton, *Submission 108*, received 1 July 2021, p. 1.

⁶⁶ Barbara Pendrey, hearing, Melbourne, 4 June 2021, *Transcript of evidence*, p. 12.

⁶⁷ Barbara Pendrey, *Submission 1*, p. 1.

have money. But I have spent a lot of money in later years—not in those early years. I have been out of pocket for that.⁶⁸

Sheryl, who made a submission with the Association of Relinquishing Mothers (ARMS), wrote:

Yes I do believe I should be compensated but no amount shall suffice for damage done. Perhaps give me a break and see my family. Counselling should be free for us or we can't afford to keep it up.⁶⁹

Marie Meggitt from ARMS made the following observation in her evidence to the Committee:

It is fraught, it is fraught. It is horrible because there is a division of views about this. Some mothers go, 'What can compensate me for the loss of my child, for the loss of the opportunity?'. But we are also really conscious that we have a lot of women who have mental health issues that are really significant and that they cannot get the kind of help they need because they cannot afford it. So it is like straddling a barbed wire fence. We think that the opportunity should be there and that if people want to make an approach to get that money, then they should be entitled to without someone going, 'You're being paid to give me away?'. I mean, this is always going to be fraught. This is always going to be trouble, and it is going to cause difficulties, I imagine, in some relationships. But at the end of it what we know is a great wrong was done, and if this is one way that we can help sort some of that, then it is best done rather than not done.⁷⁰

The Committee heard that people who were adopted would also like access to a redress scheme. Suzanne Scholz told the Committee in a public hearing:

I am an individual who was stolen from my mother, father and 8 siblings, and it was sanctioned by the state of Victoria. I will always carry a lifelong trauma. Why do we have no right to compensation and redress like those who were traumatised by institutions? Adoptive homes were often just an extension of state institutions. There is a pervasive rhetoric that still exists that adoptees were somehow lucky and chosen, but we are broken and traumatised and we are waiting for the government to remedy what they broke.⁷¹

Leanne Matton, a person who is adopted, also told the Committee about the need for acknowledgement and compensation:

for me, the main cost financially has been the cost of counselling and therapy, but there are so many costs that cannot be quantified. There is loss of quality of life, there is loss of opportunity, there is impact on relationships—I do not know whether there needs to be a lump sum payout or whether there need to be specific costs assigned to therapy and the cost of searching, and a lot of people incur a lot of costs doing that. Just anything would be welcome. I do not know what that looks like. I mean, you

⁶⁸ Name Withheld 3, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 26.

⁶⁹ ARMS (Victoria), *Supplementary evidence*, supplementary evidence received 25 June 2020, p. 2.

⁷⁰ Marie Meggitt, ARMS (Vic), hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 30.

⁷¹ Suzanne Scholz, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 32.

probably have to do some sort of needs analysis, which I guess is what this is. Yes, anything would be better than what we have at the moment. And it is not just because of the cost to us; it is the acknowledgement—you know, it is easy to say sorry—and to actually provide support and education and also to possibly change the whole practice of adoption. I know it has changed since the era of forced adoption, but I think it should be a very last resort because I do not think it is done in the interests of the child. So yes, definitely some sort of compensation, whatever that looks like, and maybe it needs to be individual to each person.⁷²

Advocacy organisations also raised the importance of establishing redress schemes. In its submission, the Victorian Adoption Network for Information and Self-Help (VANISH) described the role of redress:

Redress legitimises a person’s experience, and allows the institutions involved to take responsibility, express regret and provide support, including financial compensation. The National Redress Scheme (NRS) established in response to the Royal Commission into Institutional Responses to Child Sexual Abuse defines redress as ‘to acknowledge harm done’. VANISH believes that a redress scheme for victims of forced adoption practices would be an important part of an ongoing healing process.⁷³

VANISH recommended that there be a sensitive redress scheme ‘which includes the removal of the statute of limitations so that the responsible institutions can be taken to court. Institutions involved in arranging adoptions should contribute to redress and services as per Senate Inquiry recommendations’ (Recommendation 1.2).⁷⁴ VANISH also cited the Hon Nahum Mushin AM as saying:

Verbal apologies must be accommodated by concrete measures such as financial compensation, counselling and other measures. These measures help translate the static message of an apology into an active process of reconciliation and healing. Official apologies in particular need to be accompanied by direct and immediate actions.⁷⁵

VANISH’s submission set out principles for a redress scheme, drawing on lessons from the NRS and other schemes. The first principle is that a redress scheme should not set up one cohort as more deserving of redress in comparison to another.⁷⁶

In its submission, Jigsaw Queensland stated:

Redress remains a largely unaddressed recommendation, particularly by governments. It is an emotional and practically complex issue. Considerable advances have been made in our understanding of the issues involved in redress and civil compensation since the Royal Commission into Institutional Responses to Child Sexual Abuse. The implications are still being played out in the community, but we do know that these processes can place a considerable burden on those affected by past wrongs. Some form of restitution

⁷² Leanne Matton, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 14.

⁷³ VANISH Inc., *Submission 53*, received 18 June 2020, p. 86 (with sources).

⁷⁴ *Ibid.*, p. 7.

⁷⁵ *Ibid.*, p. 72. While VANISH attributes this quote to the Hon Nahum Mushin, he is quoting the Senate *Inquiry into Commonwealth contribution to former forced adoption policies and practices*, which quotes the Law Commission of Canada.

⁷⁶ *Ibid.*, p. 86.

is important when addressing past wrongs. There is considerable complexity involved in creating processes that do not re-traumatise victims of past practices, as well as the need for commitment and involvement of a range of government and non-government institutions. We believe that this cannot be put on the back-burner for ever.⁷⁷

Relationships Australia Victoria (RAV), whose specialised trauma and family mental health services include redress support services for survivors of institutional child sexual abuse, advocated to this inquiry for the implementation of a scheme comparable to the NRS.⁷⁸ In its submission, RAV recommended that the Victorian Government take 'concrete steps to implement processes to recognise the impacts of forced adoption':

The policies and practices that allowed forced adoption were unconscionable and inhumane. The intergenerational trauma and ongoing distress experienced by many Australians impacted by forced adoption is profound and debilitating. The level of distress and ongoing trauma that is experienced by people impacted by forced adoption is perpetuated by the combination of historical callous indifference, and current limited or inadequate responses. Currently, those affected by forced adoption cannot receive the level of recognition, compensation and support that is being provided to other people who have been traumatised by institutions in our community, such as those affected by institutional child sexual abuse.⁷⁹

Similarly, the Council of Single Mothers and their Children (CSMC) stated in its submission that reparation and redress 'are important in addressing the lifelong damage done to mothers and children separated by forced adoption practices'.⁸⁰ It recommended that grievance mechanisms be established with redress that involves, and is funded by, the Victorian Government, agencies and institutions that were involved in forced adoption:

Morally there is a strong claim for compensation for people affected by forced adoption in Australia, comparable with reparation and redress schemes that have been implemented for the Stolen Generation, Forgotten Australians and victims of institutional child sexual abuse

...

CSMC believes that both reparation and redress are important in addressing the lifelong damage done to mothers and children separated by forced adoption practices.⁸¹

In its submission, Origins Supporting People Separated by Adoption stated:

Restitution, Financial Redress and Accountability, may go some way to an acceptable outcome to the misery of those affected, and a reminder to States and organisations that the separation and destruction of the family unit comes with life-long consequences.⁸²

⁷⁷ Jigsaw Queensland Inc., *Submission 14*, p. 7.

⁷⁸ Relationships Australia Victoria, *Submission 15*, p. 10.

⁷⁹ *Ibid.*, p. 9.

⁸⁰ Council of Single Mothers and their Children, *Submission 23*, p. 8.

⁸¹ *Ibid.*, pp. 8, 9.

⁸² Origins Supporting People Separated by Adoption Inc., *Submission 39*, p. 2.

The importance of a low evidentiary threshold for a redress scheme was identified by Cameron Tout from Shine Lawyers, who told the Committee that a redress scheme would be helpful for people who might struggle with the evidentiary requirements needed to bring a civil claim before the courts. He advised that this was particularly important for people who are adopted where there may be propensity evidence, which tends not to be admissible.

I mean I can see all the common factors, I can see the same hospitals, I can see the same unwed mothers homes that the mum went to, can see the same agency, I can even see the same worker who witnessed the signature on the adoption form, but the mother's passed away. And so the evidence around what they went through at the time and whether it was forced or not is lost. And that might be despite a letter that was written that says, 'This is what I was subjected to and this is what happened, and this is why you're adopted.' Or a relative who says, 'Your birth mother told me this is what she went through.' All that evidence is really lost and it can't be used in court proceedings. So there is a category of people where, that is a category of people where I believe something like a redress scheme would enable some access to justice despite the problems with evidence law and being able to bring the claim through the courts.⁸³

Cameron Tout also noted that mothers would benefit from having the option of a redress scheme who 'still believe what they were told back then' and for whom 'the idea of going through court is just as traumatic as not doing anything at all'.⁸⁴

The Committee strongly believes that mothers who were forcibly separated from their babies should be entitled to access a redress scheme and/or make a civil claim if they wish.

7.4.1 Senate Inquiry

During the Senate's Community Affairs References Committee Inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry), it acknowledged that 'redress is required as an important step towards official recognition of the injustices suffered, and towards individual and community healing'.⁸⁵ Recommendation 6 of the Senate Inquiry stated that formal apologies should 'always be accompanied by undertakings to take concrete actions that offer appropriate redress for past mistakes'.⁸⁶ In relation to the implementation of a redress scheme, the Senate Inquiry made two recommendations:

- the Commonwealth should lead discussions with states and territories to consider the issues surround the establishment and funding of financial reparation schemes (Recommendation 11)

⁸³ Cameron Tout, *Transcript of evidence*, p. 47.

⁸⁴ Ibid.

⁸⁵ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 235.

⁸⁶ Ibid., p. viiii.

- Institutions and governments that had responsibility for adoption activities in the period from the 1950s to the 1970s establish grievance mechanisms that will allow the hearing of complaints, and, where evidence is established of wrongdoing, ensure redress is available. Accessing grievance mechanism should not be conditional on waiving any right to legal action (Recommendation 12). [emphasis in original]⁸⁷

The Senate Inquiry was ‘strongly of the view that a national framework to address the consequences of former forced adoption must be implemented in a consistent manner across the states’.⁸⁸ Recommendation 1 called for the establishment of a national framework to be developed by the Commonwealth, state and territories through the Community and Disability Services Ministers Conference.⁸⁹ It did not recommend the establishment of a monetary compensation scheme to be funded by the Commonwealth as the Commonwealth was not directly responsible for past adoption policies and practices. The Committee agrees that the primary responsibility for financial reparation should be at the state and territory level, with the Commonwealth having a coordinating role to ensure national consistency in the establishment of reparation schemes.⁹⁰

On the importance of national consistency, the Senate Inquiry stated that it advocated for a similar national approach to addressing significant past injustices in previous inquiries: the *Lost Innocents: righting the record* (2001), the *Forgotten Australians: a report on Australians who experienced institutional or out-of-home-care* (2004) and the *Lost Innocents and Forgotten Australians revisited* (2009).⁹¹ The Senate Inquiry stated that ‘the parallel nature of the experiences and consequences of forced adoption across the states provides similar justification’⁹² and that ‘inconsistency in state action can cause inequity and distress to the very people restorative schemes are seeking to assist’.⁹³ Nonetheless, the Senate Inquiry stated that the Australian Government had not accepted recommendations regarding a nationally-coordinated approach in these inquiries. Instead, separate redress schemes for those who had suffered in institutional care were established in Tasmania, Queensland, Western Australia and South Australia. No redress schemes were established in the territories, and NSW and Victoria made payments on a case-by-case basis.⁹⁴

The Senate Inquiry also referred to the Senate Legal and Constitutional Affairs References Committee that examined the disparity between states’ redress schemes in its 2010 report, *Review of government compensation payments*. It received evidence

⁸⁷ Ibid., p. x.

⁸⁸ Ibid., p. 190.

⁸⁹ Ibid., p. 191.

⁹⁰ Ibid., p. 243.

⁹¹ Ibid., p. 190; Parliament of Australia, Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, August 2004, pp. 226–228; Parliament of Australia, Community Affairs References Committee, *Lost Innocents and Forgotten Australians revisited* June 2009, pp. 33–34.

⁹² Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 189.

⁹³ Ibid., p. 190.

⁹⁴ Ibid.

about the distress experienced by affected parties when they found out that their own state did not have a redress scheme.⁹⁵ Submitters to the *Review of government compensation payments* inquiry expressed the view that redress should be ‘dealt with as a national issue’ and ‘not depend on which state they grew up in’.⁹⁶

Australian Government response

In May 2013, the Australian Government established a Forced Adoptions Implementation Working Group (FAIWG) to provide advice on the recommendations and responses. In its final report in December 2014, FAIWG reiterated the need for recommendations 11 and 12:

The Working Group strongly supports the establishment of grievance mechanisms to hear complaints which should, in appropriate circumstances, result in redress. There are many people affected by forced adoption for whom this process would bring about closure, thereby assisting in alleviating their suffering which has endured for many decades.⁹⁷

However, neither of the recommendations have been progressed or implemented.

The Australian Government’s response to the Senate Inquiry stated that reparation and redress schemes are matters for each state and territory government and relevant non-government organisations. It also noted that the Australian Government led discussions about these recommendations at the Standing Council on Law and Justice meeting on 5 October 2012 and that these recommendations were referred to the Standing Council on Community and Disability Services for further consideration.⁹⁸

To date, no Australian state or territory has implemented a redress scheme for those affected by historical forced adoption.

7.4.2 Involvement of institutions in redress schemes

The Committee acknowledges that some institutions and agencies have their own internal redress schemes and procedures or are in the process of developing these schemes. The Committee is aware, however, that these schemes are not well known to those affected by forced adoption and there is limited transparency. In its submission, VANISH stated:

Some agencies do have grievance/redress procedures, but this information is not in the public domain and it is very difficult to find out which do and which don’t. It is also impossible to know how effective they are because a) people who don’t receive an

⁹⁵ Parliament of Australia, Senate Legal and Constitutional Affairs References Committee *Review of government compensation payments*, December 2010, p. 7.

⁹⁶ *Ibid.*, pp. 27–28.

⁹⁷ Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, Australian Government, Canberra, 2014, p. 18.

⁹⁸ Government of Australia, *Response to the Parliament of Australia, Senate Community Affairs References Committee, Commonwealth contribution to former forced adoption policies and practices*, 21 March 2013.

acknowledgement, apology or payment rarely come back to VANISH to tell us, and b) people who do receive any compensation are asked not to disclose this. We also do not know the impact on individuals who go through the process.⁹⁹

Annette Jackson, the Executive Director of Statewide Services at Berry Street, told the Committee that Berry Street developed its own redress scheme for past clients who experienced any form of child maltreatment:

In terms of what we can do and should be doing from a redress perspective, Berry Street has an independent redress scheme, which we developed following the Royal Commission into Institutional Responses to Child Sexual Abuse, and our board did make a decision last year to make that available to women who are impacted through forced adoption. We are still working through the policy parameters around that to make that easier to access, but it is currently part of our system. I think we would be very open to collaborating with our colleagues across the sector on how we can collectively do better.¹⁰⁰

Paul McDonald, Chief Executive Officer (CEO) of Anglicare Victoria, told the Committee that Anglicare has its own redress scheme, which is broader than the NRS in covering physical abuse, trauma and other issues related to a person's care by Anglicare (which may not be picked up by the NRS). He advised that, on average, Anglicare participated 'in 12 informal settlement conferences each year over the past five years' and a similar number of redress inquiries for abuse in its care that may fall outside the NRS. However, in relation to historical forced adoption, Paul McDonald stated there had been three to four inquiries where families have been engaged, particularly the mother, 'but nothing has eventuated in relation to pursuit of a redress'.¹⁰¹ He noted: '[w]e would certainly be, in our view and our policy, open to those matters being approached to the organisation'.¹⁰² Regarding support Anglicare Victoria provides to mothers, Paul McDonald stated:

Our services that we offer are from file search to providing files to actually assisting with them creating and negotiating settlements and redress settlements both within the agency but also assisting in engaging in the national redress.¹⁰³

The Committee spoke with other agencies and institutions who were supportive of establishing redress schemes. Dr Robyn Miller, CEO of MacKillop Family Services, told the Committee:

Our core value is justice. I think there is a need to acknowledge, and a redress scheme I think is appropriate. I was at the public apology years ago and meant to be giving out the tissues supporting people, and I think I had more. You know, wrongs were done. They are the facts. We have got a redress scheme. MacKillop absolutely embraced the redress scheme for institutional responses to child sexual abuse. I worked as a

⁹⁹ VANISH Inc., *Submission 53*, p. 57.

¹⁰⁰ Annette Jackson, Executive Director, Berry Street, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 29.

¹⁰¹ Paul McDonald, Chief Executive Officer, Anglicare, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 15.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

consultant to the commissioners for 18 months. I was immersed in the development of that on the sidelines. So I am very aware of the complexity of setting it up, but I think it is actions, not just words and apologies, isn't it, that make a difference for people who have been harmed.¹⁰⁴

Netty Horton, the Executive Director of CatholicCare, told the Committee that there had been 'about six or seven cases of forced adoption that came directly to us' and that she personally thought it would be of interest to consider a redress scheme.¹⁰⁵

The Royal Women's Hospital also recognised the importance of redress. Lisa Lynch, Acting CEO, stated at a public hearing:

we would welcome a redress scheme, recognising that redress needs to cover off trauma informed counselling services. This is a really specific area, and I think it is really important that the people that are providing those counselling services have a deep understanding of the issues that people have, both the children and their mothers. I think it is really important that the services are specialised.¹⁰⁶

Further, Leanne Dillon, General Counsel at the Hospital, stated:

I think it is absolutely every person's right to seek financial redress if they have suffered harm ... we are a public hospital and that I really do not think that we are in a position to make a public comment about what financial redress should look like other than to say we would support it absolutely.¹⁰⁷

Regarding institutional responsibility, the Hon Mushin told the Committee of the importance of institutions participating and apologising as part of the redress:

I mean, one of the difficult things is that the actual forced adoptions were not—and I use the word 'perpetrated' deliberately—perpetrated by government. It was government who had the legislation, but it was the way in which babies homes and various other players outside of government applied it. That is what caused the 'forced', because they were the ones who acted illegally, and I think the word 'illegal' is absolutely fundamental. This is, I have to say, outside my field of expertise, but a question of contributions by people—I mean, some of the churches regrettably have things to answer for. I should also note here that one of the outstanding issues, and it is in the Senate report and I think it might be one of their recommendations, is for other organisations—NGOs, doctors, nurses, babies homes, people involved directly in forced adoption—to also apologise. Now a redress scheme, I would suggest, might be able to be done coincident with that.¹⁰⁸

¹⁰⁴ Dr Robyn Miller, Chief Executive Officer, MacKillop Family Services, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 25.

¹⁰⁵ Netty Horton, Executive Director, CatholicCare, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 41.

¹⁰⁶ Lisa Lynch, Acting Chief Executive Officer, Royal Women's Hospital, hearing, Melbourne, 20 July 2021, *Transcript of evidence*, p. 5.

¹⁰⁷ Leanne Dillon, General Counsel, Royal Women's Hospital, hearing, Melbourne, 20 July 2021, *Transcript of evidence*, p. 5.

¹⁰⁸ The Hon Nahum Mushin AM, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 23.

The systemic removal of newborn babies from their mothers was facilitated by hospitals, religious organisations and private medical professionals. However, the Victorian Government had a responsibility to monitor and enforce the State's adoption legislation. Its failure to effectively perform this duty enabled the implementation of unethical and illegal policies and practices that resulted in the removal of newborn babies from their mothers. The Committee is therefore of the view that the Victorian Government is responsible for the establishment of a redress scheme. As part of this, the Government should work with responsible institutions to ensure their involvement in the scheme, however, it is not essential for the scheme's creation. The Committee believes this would inevitably delay the rollout. Mothers have waited too long for redress and many are of an advanced age. They deserve to receive acknowledgement and compensation as soon as possible. The Committee does not support a scheme that requires a responsible organisation or institution to 'commit' to the scheme in order for a mother to receive compensation.

Nonetheless, the Committee believes that the Victorian Government should still seek financial contribution from responsible institutions to acknowledge the harms they caused and to hold them to account. These contributions could reimburse the Government for redress payments and/or lifelong support for redress recipients.

Under the NRS Act, it was voluntary for institutions to join the NRS. However, in April 2020 the Victorian Government issued a warning to Victorian organisations that do not sign up to the NRS that they could 'risk losing government funding under tough new sanctions'.¹⁰⁹ The Committee believes that the Victorian Government should employ a similar approach to this redress scheme.

7.5 Establishing a redress scheme for historical forced adoption

The Committee believes that mothers should have access to a redress scheme and this must be established in consultation with those subjected to the policies and practices of historical forced adoption. The scheme should comprise financial compensation, counselling support and a direct personal response from relevant organisations, such as mother and baby homes, hospitals and adoption agencies, where possible. However, as discussed above, the Victorian Government should not wait for institutions to agree to participate in the scheme. Nor should the Government wait for the Australian Government or other jurisdictions to establish a redress scheme. It should be developed without further delay.

The eligibility criteria should be broad to account for the reality that many adoptions have a cross-jurisdictional component. For example, some mothers told the Committee that they were moved interstate towards the end of their pregnancy and for the birth of their child.

¹⁰⁹ The Hon Jill Hennessy MP, *Organisations on notice to join National Redress Scheme*, media release, State of Victoria, Melbourne, 19 April 2020.

Compensation should not be determined by an assessment formula or matrix. Rather, compensation should be a fixed payment based on the act of the forced separation of the mother and baby and not the resulting impact. This is to prevent further harm and re-traumatising of applicants by making subjective judgments about the impact of their loss, and classifying claims according to severity. It is also to minimise tension among redress recipients. The Committee acknowledges that the loss of a child is devastating and traumatic and there should not be degrees of severity within that loss that applicants are required to prove.

The redress scheme should comprise a low evidentiary threshold to account for the reality that many records were lost or destroyed and signatures of mothers were sometimes forged. Applicants must also have access to legal support, discussed below, and be supported by counselling throughout the process. Furthermore, the application process need not be lengthy and overly complicated.

Regarding compensation, payments should be significant to make a meaningful gesture of remorse on behalf of the Government and responsible institutions and organisations. As discussed in Chapters 3 and 4, many mothers have incurred substantial financial and uncalculatable personal costs, many have struggled in relationships, they have been unable to work and their lives have been significantly impacted by loss, shame and stigma.

The Committee heard from numerous mothers of the need for ongoing counselling and psychological support, as discussed in Chapter 11. Some mothers have been in and out of counselling for decades and others have just come to terms with what happened and are seeking help now. All of the mothers that the Committee heard from have been undeniably shaped by what happened to them. Mothers spoke of being unable to afford the counselling they needed and the shame they felt in using the 'family's money' to pay for this counselling. The Committee is of the view that ongoing counselling be provided to mothers by trauma-informed counsellors and psychologists, trained in family separations and forced adoptions, in a culturally appropriate setting. This must be funded as part of the redress scheme and should be available to mothers on an ongoing and an episodic basis. Mothers should be able to choose the counselling they need and be able to access it when required.

As discussed in Chapter 6 and heard in Ian Hamm's evidence, the intergenerational trauma arising from mothers' experiences has had long-lasting impacts on their subsequent children. The Committee believes this deserves recognition in the redress scheme and that counselling and other support be available to mothers' families.

Lastly, a direct personal response is crucial for many of these mothers as they have carried the overwhelming burden of shame and stigma for decades. Table 2.2 in Chapter 2 lists the many organisations yet to apologise. These women experienced the loss of their child, and typically harsh and condescending treatment in maternity homes, emotionally abusive comments designed to make them feel worthless, and medical neglect and abuse when giving birth. It is important that these organisations and institutions recognise the lifelong harms they have caused to these mothers and

make direct, personal apologies as part of the redress package to those mothers who want that.

Further, based on the evidence received in this inquiry and drawing on the NRS and the Stolen Generation Redress Scheme, the Committee proposes that a redress scheme be founded upon a number of guiding principles. These principles prioritise the wellbeing of applicants and ensure they receive proper acknowledgement and compensation for the lifelong loss they have suffered.

RECOMMENDATION 18: That the Victorian Government establish a redress scheme for mothers whose babies were forcibly removed from them without delay. The redress scheme should comprise the following: a monetary payment, counselling and psychological support and a direct personal response from relevant institutions and organisations. The redress scheme should be guided by the following principles:

- The redress scheme should operate on the principle of do no further harm.
- The evidentiary threshold should be ‘reasonable likelihood’ that the mother and baby were forcibly separated, given the passage of time, the loss of records and to prevent re-traumatising applicants.
- The eligibility criteria should be broad and include mothers who gave birth in Victoria and mothers who gave birth interstate but now reside in Victoria, to account for the fact that many mothers were sent interstate for their pregnancy and birth or moved interstate due to the trauma.
- The process should be straightforward, and applicants should be supported with legal and counselling support.
- Applicants may choose to accept one, two or all of the components of the redress scheme.
- There should be a fixed payment to acknowledge the forced removal of mothers’ babies, rather than an assessment matrix.
- Counselling should be lifelong and available on an episodic basis.
- Counselling should also be offered to other family members in recognition of the intergenerational effect of historical forced adoption.
- Mothers should not be precluded from accessing the redress scheme if they have made a civil claim.

RECOMMENDATION 19: That the Victorian Government work with responsible institutions and organisations to guarantee their involvement in the redress scheme, including reimbursement for redress payments and/or lifelong therapeutic support for redress recipients. Sanctions should be considered for institutions and organisations that do not commit to the scheme within a set timeframe of its establishment by the Victorian Government.

In establishing such a redress scheme, Victoria would be the first jurisdiction in Australia to do so. Over the course of the Inquiry, the Committee heard from many interstate inquiry participants, in addition to hearing about many adoptions that occurred interstate. The Committee is aware that establishing a redress scheme in Victoria, even with broad eligibility to encompass those who gave birth in Victoria or currently reside in Victoria, will be distressing for those without connection to Victoria who are excluded from any meaningful compensation and redress. The Committee has heard how difficult it is when groups are treated differently in terms of compensation and access to resources. For this reason, it is important that other states and territories provide support and compensation to people affected by historical forced adoptions.

As discussed previously, the Senate Inquiry recommended a national redress scheme, however, this is unlikely to be implemented by the Australian Government. The Committee strongly believes that the Victorian Government should lead discussions with other jurisdictions to encourage them to offer redress to mothers who were separated from their babies in other parts of Australia.

RECOMMENDATION 20: That the Victorian Government use its position on the National Federation Reform Council (formerly the Council of Australian Governments) to advocate for historical forced adoption redress schemes in other states and territories.

7

7.5.1 Legal support for applicants

The Committee heard about the importance and value of having legal advice provided to applicants of redress schemes so that they can make decisions with the best information available and achieve the best outcomes. In the NRS, an applicant must confirm that they have received legal advice prior to signing an offer. The importance of legal advice was noted by Cameron Tout from Shine Lawyers who told the Committee:

The other problem that has been raised is where, in terms of the advice given, or something signed off by the applicant to say I will go and get legal advice before I sign this. It's a tick and flick. And for some people, particularly in that scheme, if they get under a redress scheme an offer for \$50,000 or \$70,000 and they see that, their eyes light up and they sign off and say, yes, I've sought advice, and then shut themselves off to being able to get advice or to understand whether or not they have a common law claim. They're bound by that. So, that's another sort of criticism.¹¹⁰

As discussed previously, knowmore is a service that provides free legal advice, assistance, referrals and information for survivors of institutional child sexual abuse who make applications to the NRS.¹¹¹ The service is funded by the Australian Government and is represented by the Attorney-General's Department and the Department of Social Services. It receives additional funding from the Financial Counselling Foundation.

¹¹⁰ Cameron Tout, *Transcript of evidence*, p. 51.

¹¹¹ knowmore, *Services*.

It was established in 2013 by the National Association of Community Legal Centres Inc to support people providing information to the Royal Commission.¹¹²

The Royal Commission recommended that the Australian Government establish and fund a legal advice and referral service for survivors of institutional child sexual abuse to help people navigate the legal service system, access records and understand their options for initiating police, civil litigation or redress processes as required.¹¹³ As knowmore already existed as an Australian Government funded service, it has continued in this role.

knowmore helps applicants apply for compensation, lodge complaints with police, find old records, understand legal processes and connect with specialist counselling and support services. It has a team of trauma-informed lawyers, counsellors/social workers, financial counsellors and Aboriginal and Torres Strait Islander engagement advisors. It also undertakes systematic advocacy to improve laws, policies and practices that impact survivors of child abuse.

The Committee believes that the Victorian Government should establish and fund a legal advice and referral service to ensure that mothers can make informed decisions when accessing redress. Having a free, independent legal service to provide this service, which is widely publicised to survivors applying for redress, may also help prevent exploitative practices and ‘survivor advocacy’ businesses which may arise in the wake of establishing a redress scheme. This was a concern raised by knowmore in its submission to the Joint Committee on Implementation of the National Redress Scheme.¹¹⁴

RECOMMENDATION 21: That the Victorian Government establish and fund a legal advice and referral service to ensure that applicants to the redress scheme receive free, independent legal advice and make informed decisions about their options in relation to accessing redress and/or civil litigation.

7.5.2 Support for people who are adopted

As discussed earlier and examined at length in Chapter 5, the Committee heard that people who are adopted have also been adversely impacted, particularly those who were forcibly adopted into unsuitable families through negligent screening processes. The Committee considers that redress could also be an option for people who were forcibly adopted. This was raised by some inquiry participants, although the Committee heard from a greater number of people who are adopted who called for improved access to records and increased counselling support.

¹¹² knowmore, *Services: knowmore to provide free legal help to navigate the Royal Commission*, media release, 16 July 2013.

¹¹³ Royal Commission into institutional responses to child sexual abuse, *Final report*, p. 30.

¹¹⁴ knowmore, *Supplementary submission to the Joint Select Committee on Implementation of the National Redress Scheme*, submission to, Joint Select Committee on Implementation of the National Redress Scheme, Implementation of the National Redress Scheme, 2020.

The Committee reiterates the need for an inquiry into the impact of forced adoption on people who are adopted, as recommended in Chapter 5. This inquiry should consider whether a redress scheme for those who were forcibly adopted is needed and what it should look like. The Committee understands that this will require further consideration from the Victorian Government and specific consultation with people who are adopted. It does not believe a redress scheme for people who were forcibly adopted should be tied to the scheme recommended for mothers. The redress scheme for mothers should be established without delay.

RECOMMENDATION 22: That the Victorian Government consider establishing a redress scheme for people who were forcibly adopted, especially those who were placed in institutions or adopted into unsuitable families.

8 Statute of limitations

[T]he committee believes state governments and institutions should take responsibility for past actions taken in their hospitals, maternity homes and adoption agencies. The conduct of the period was not the product of some uncontested acceptance about separating unmarried mothers from their babies. It was the product of decisions made, almost certainly at the institutional level, that decided to accept certain professional opinions, and to disregard (to varying degrees) the professional guidance of social workers of the time, and sometimes the manuals of the period. Taking responsibility means taking responsibility for those choices.¹

Throughout the Inquiry, there was strong support from inquiry participants to remove the statute of limitations to enable mothers and people who are adopted to seek compensation from responsible institutions through the courts. This was identified as a mechanism, in addition to a redress scheme, to address the historical injustices of forced adoption.

Due to the secrecy surrounding forced adoption, many mothers did not begin processing their experiences until decades later. Some women had not told their partners and/or subsequent children about the removal of their baby because they were told never to talk about it by their families or responsible institutions. In some cases, it was not until after the National and State apologies on historical forced adoption raised some awareness of the history and its impact, that women began to speak out about their experiences. As the Committee heard time and time again, there remain countless numbers of women who still cannot speak of their experience. The Committee acknowledges that mothers have carried the burden of shame—a shame that is not theirs—but which has effectively silenced them throughout their lives.

There is a growing number of mothers who are actively pursuing justice, although achieving this through the courts can be difficult due to civil litigation legislation. Defendants, such as medical professionals, hospitals or adoption agencies, can argue that the limitation period has expired and cases should not come before the court. It is then up to the injured person, the plaintiff, to convince the court to exercise its discretion and waive the limitation period.

This chapter discusses this and other barriers to seeking compensation through legal channels. The chapter examines the statute of limitation legislation, the removal of the limitations defence in child abuse cases, the case for removing it in the context of historical forced adoption, and the significant injury test.

¹ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, pp. 213–214.

8.1 The Limitation of Actions Act

The *Limitation of Actions Act 1958* (Vic) (Limitations Act) sets out that a claim for personal injury must be commenced within three years from the date on which the cause of action is discoverable by the plaintiff, or 12 years after the date on which the act of abuse occurred—known as the ‘long-stop’ period—whichever is earlier.² Where a person has a disability or is a minor at the date of the act or omission alleged to have resulted in the personal injury, claims must be brought within six years from the date the cause of the action is discoverable or 12 years after the date on which the act of abuse occurred, whichever is earlier.³

There are special limitation periods for minors injured by close relatives or close associates, extending the long-stop limitation period for a cause of action for a period of 12 years from when the victim turns 25 years of age.⁴

The Limitations Act provides for extensions for personal injury actions of any period if it is ‘just and reasonable’.⁵ The Act sets out matters to be considered in determining applications for an extension of the limitation period, which include the length of and reasons for the delay on the part of the plaintiff.⁶

8.1.1 Policy justifications for limitations periods

The 2002 *Review of the law of negligence* discussed the nature of limitation periods and stated that they:

represent the legislature’s judgment that the welfare of society is best served by causes of action being litigated within a limited time, notwithstanding that their enforcement may result in good causes of action being defeated.⁷

The review drew upon the judgment of the Hon Justice Michael McHugh in *Brisbane South Regional Health Authority v Taylor*⁸ to reflect the four broad public policy justifications for limitations periods, including:

- As time goes by relevant evidence is likely to be lost.
- It is oppressive to a defendant to allow an action to be brought long after the circumstances that gave rise to it occurred.

² *Limitation of Actions Act 1958* (Vic) s 27D.

³ *Ibid.*, s 27E.

⁴ *Ibid.*, s 27I. However, as noted in the Betrayal of Trust report: ‘even under this provision, a victim is likely to run out of time to bring a case between the ages of 31 and 37. See Parliament of Victoria, Family and Community Development Committee, *Betrayal of trust*, November 2013, p. 539.

⁵ *Limitation of Actions Act 1958* (Vic) s 27K.

⁶ *Ibid.*, s 27L.

⁷ The Hon David Andrew Ipp, et al., *Review of the law of negligence final report*, Commonwealth of Australia, Canberra, 2002, p. 85.

⁸ (1996) 186 CLR 541

- It is desirable for people to be able to arrange their affairs and utilise their resources on the basis that claims can no longer be made against them after a certain time.
- The public interest requires that disputes be settled as quickly as possible.⁹

In his judgement, McHugh J said:

A limitation period should not be seen therefore as an arbitrary cut off point unrelated to the demands of justice or the general welfare of society. It represents the legislature's judgment that the welfare of society is best served by causes of action being litigated within the limitation period, notwithstanding that the enactment of that period may often result in a good cause of action being defeated.¹⁰

The Parliament of Victoria's Family and Community Development Committee (FCDC) in its *Inquiry into the Handling of child abuse by religious and other non-government organisations* (Betrayal of Trust report) referred to these policy justifications and undertook an analysis regarding how they relate to child sexual abuse claims. This is discussed in Section 8.2.1.

8.2 Removing the limitations defence in child abuse cases

In Victoria, civil cases relating to child abuse is the only area where the statute of limitations has been removed. This occurred in response to recommendations of the Betrayal of Trust report and the Commonwealth's Royal Commission into institutional responses to child sexual abuse (Royal Commission).

8.2.1 Betrayal of Trust

In 2013, the FCDC tabled the Betrayal of Trust report, which noted that the statute of limitations 'does not allow enough time for victims to bring a case for criminal child abuse'¹¹ and disadvantages victims of child sexual abuse because 'they typically take decades to act on the understanding of the harm arising from their abuse and to issue proceedings'.¹² The report concluded that the Limitations Act does not serve the public interest and that victims should have access to the court system.¹³

FCDC found that the long-stop provisions are 'particularly disadvantageous to victims' because they 'set an absolute maximum period of 12 years from the time of the abuse (or in some cases from the age of 25 of the victim), regardless of whether the victim

⁹ *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541, 552. (McHugh J)

¹⁰ *Ibid.*, p. 553. (McHugh J)

¹¹ Parliament of Victoria, Family and Community Development Committee, *Betrayal of trust*, p. 539.

¹² *Ibid.*, p. xl.

¹³ *Ibid.*, p. 539.

knew or understood that the criminal child abuse had caused them injury' the date the cause of action first arose.¹⁴ It noted:

However, because many victims of criminal child abuse fail to link their condition to the harm from abuse suffered many years before, and frequently do not identify or reveal this until well into adulthood, many victims of criminal child abuse are precluded from using the 'long-stop' provision. Therefore, even if the limitation period for claims arising out of criminal child abuse were extended to run from the age of 25, some victims, who do not reveal their abuse or link their condition to the harm such abuse caused, would not be able to initiate legal action, having passed the cut-off age.¹⁵

It was reported that while the application of the statute of limitations was at the discretion of the defence and judges, there is evidence 'that non-government organisations have aggressively pursued the limitations defence in civil trials' and that the limitation defence adversely affects the bargaining position of victims in settlement negotiations.¹⁶ As demonstrated in Box 8.1, FCDC concluded that there was no public policy justification for applying such limitation periods to child abuse civil cases.¹⁷

Table 8.1 Lack of public policy justification for limitation of actions in cases of child abuse

Justification	Application to child abuse cases
Potential disadvantage to defendants due to loss of evidence.	In criminal child abuse cases, there is rarely a great deal of evidence, because the perpetrator is likely to take extensive precautions to ensure secrecy and to elicit the victim's silence. Accordingly, the argument that limitations statutes are needed because evidence is lost is not relevant in cases of criminal child abuse.
Delay may cause some difficulty for defendants in presenting their case.	In cases of criminal child abuse, the passage of time also significantly prejudices the victim's claim. Victims are likely to face even greater difficulty in proving the case, because they are unlikely to have the benefit of the records maintained by the organisation, nor any corroborating evidence to prove their claim.
The need to ensure certainty for defendants in arranging their affairs.	Given the harm and lifelong disadvantage caused to victims by criminal child abuse, as described throughout this Report, it is not desirable that perpetrators should be able to arrange their affairs as though they will never be held to account for their crime. In the case of organisations, the Committee understands that many settle claims of criminal child abuse despite the expiration of limitation periods and can therefore expect to allocate resources to dealing with such claims regardless of whether statutory limits apply.
Public interest in precluding cases that are not brought quickly.	The inability of victims to discover or attribute the harm they have suffered as a consequence of criminal child abuse results in their being unfairly prejudiced by limitation periods that do not take into account this reason in explaining the delay. The Victorian statute already takes account of delayed discoverability in the case of asbestos and tobacco claims, and the Committee considered that there is an analogy between such claims and the delay in discoverability of injury arising from criminal child abuse.

Source: Parliament of Victoria, Family and Community Development Committee, *Betrayal of trust*, p. 541.

¹⁴ Ibid., p. 537.

¹⁵ Ibid.

¹⁶ Ibid., p. xl.

¹⁷ Ibid., p. 542.

In its report, the FCDC recommended that the Victorian Government consider amending the Limitations Act to exclude criminal child abuse from the operation of the limitations period under that Act (Recommendation 26.3).¹⁸ The Victorian Government response supported this recommendation, indicating that the Government had begun developing legislation to this effect.¹⁹

8.2.2 Royal Commission into institutional responses to child sexual abuse

Prior to presenting its final report in 2017, the Royal Commission released its *Redress and civil litigation* report in 2015 to enable governments and institutions to immediately implement the below recommendations to provide survivors and institutions more certainly on these issues. The Royal Commission recommended:

- that state and territory governments introduce legislation ‘to remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person in an institutional context when the person is or was a child’ (Recommendation 85)
- that the limitation period should be removed with retrospective effect regardless of whether or not a claim was subject to a limitation period in the past (Recommendation 86)
- that these recommendations should be implemented as soon as possible, ‘even if that requires that they be implemented before our recommendations in relation to the duty of institutions and identifying a proper defendant are implemented’ (Recommendation 88).²⁰

The Royal Commission stated that limitation periods ‘are a significant, sometimes insurmountable, barrier to survivors pursuing civil litigation’ and ‘have worked great injustices against survivors for some time’.²¹

The Victorian Government responded by outlining the legislative changes it had already implemented, including the removal of the limitation periods that applied to civil actions founded upon child abuse, with both retrospective and prospective effects.²²

¹⁸ Ibid., p. 543.

¹⁹ Government of Victoria, *Response to the Parliament of Victoria, Family and Community Development Committee, Betrayal of trust*, 8 May 2014, p. 8.

²⁰ Commonwealth of Australia, *Redress and civil litigation report: Royal Commission into Institutional Responses to Child Sexual Abuse*, Australian Government Publishing Service, Canberra, 2015, pp. 76–77.

²¹ Ibid., p. 52.

²² Victorian Government, *Victorian Government response to the Royal Commission into institutional responses to child sexual abuse*, July 2018, p. 6.

8.2.3 *Limitation of Actions Amendment (Child Abuse) Act 2015*

In 2015, Victoria became the first jurisdiction in Australia to remove time limits for civil claims by child abuse victims with the *Limitation of Actions Amendment (Child Abuse) Act 2015*.²³ In his second reading speech, then Attorney-General Hon Martin Pakula MP told the Parliament:

Many of the courageous survivors of abuse that spoke to the Family and Community Development Committee explained the debilitating and confusing effects that child abuse can have on a young child's physical and mental wellbeing, including feelings of shame, embarrassment, and guilt, which continue into adulthood and often result in victims suppressing and concealing their abuse from others for many years.²⁴

The Attorney-General noted that there were multiple instances of elderly survivors who revealed their past abuse to the Royal Commission for the very first time in their lives. He stated:

Many survivors therefore find themselves faced with an expired limitation period by the time they are ready to commence legal proceedings, and must place themselves at the mercy of courts even to have their claim heard. In settlement negotiations, too, survivors have told how the prospect of an expired limitation period has been used against them to reduce the settlement amount that is offered.²⁵

Since removing the statute of limitations, many survivors have been able to successfully launch legal proceedings against institutions and the government.²⁶ The legislative change was welcomed by survivors who advocated for this change throughout the Royal Commission and the Betrayal of Trust inquiry.²⁷ The Supreme Court of Victoria has seen a significant increase in the number of personal injury damages claims relating to historical institutional child sexual abuse. In 2020, it created a specialist list to allow for more efficient and experienced management of cases.²⁸ The Institutional Liability List will be the 13th specialist list within the Common Law Division and is expected to be the third largest.²⁹

²³ Parliament of Victoria, Family and Community Development Committee, *Inquiry into the handling of child abuse by religious and other non-government organisations*, May 2014, pp. 32–34. Volume 2 addresses statute of limitations.

²⁴ Victoria, Legislative Assembly, 25 February 2015, *Parliamentary debates*, Book 3, p. 404.

²⁵ *Ibid.*, pp. 404–405. See also The Hon Martin Pakula MP, *New laws to further protect children from sexual abuse*, media release, Victorian Government, 1 July 2015.

²⁶ Penny Savidis, *\$1.5M child abuse award encouraging for civil cases*, 5 November 2020, <<https://rctlaw.com.au/legal-blog/2020/15m-child-abuse-award-encouraging-for-civil-cases>> accessed 23 July 2021.

²⁷ Richard Willingham, 'Child abuse legal time limits to be lifted in Victoria', *The Age*, 23 February 2015, <<https://www.theage.com.au/national/victoria/child-abuse-legal-time-limits-to-be-lifted-in-victoria-20150223-13mk6t.html>> accessed 23 July 2021; Parliament of Victoria, Family and Community Development Committee, *Betrayal of trust*, pp. 537–541; Commonwealth of Australia, *Redress and civil litigation report*, pp. 357, 450–456; Simon Lauder, 'Commission urged to address statute of limitations on rape cases', *ABC News*, 13 May 2013, <<https://www.abc.net.au/news/2013-05-13/royal-commission-urged-to-address-victoria-27s-statute-of-limit/4685150>> accessed 23 July 2021.

²⁸ Supreme Court of Victoria, *New institutional liability list*, media release, Supreme Court of Victoria, 4 February 2020; Supreme Court of Victoria, *Notice to the Profession—Institutional liability list*, <<https://www.supremecourt.vic.gov.au/law-and-practice/practice-notes/notice-to-the-profession-institutional-liability-list>> accessed 23 July 2021.

²⁹ Supreme Court of Victoria, *New institutional liability list*, media release.

There have been some notable cases where plaintiffs have received significant payouts. In August 2020, the Supreme Court of Victoria awarded a survivor \$1.55 million for the abuse he suffered at Myrtleford Primary School in the early 1980s. The survivor did not disclose his abuse until 2017 after being contacted by police as part of its criminal investigations into the perpetrator for historical sexual offences.³⁰ The State of Victoria, specifically the Department of Education, admitted negligence and direct liability, but not vicarious liability, thus the court was called upon to assess the amount of compensatory damages. In her judgement, Supreme Court Justice Forbes stated:

The aim of awarding damages is to fix a sum that as will, as nearly as possible, put the injured person in the same position as if he had not sustained the injury. An award of damages for the loss of quality of life is an attempt to recognise the impact that the injury has had and will continue to have on the life that the plaintiff is living ... I do accept that the sexual abuse that [the Plaintiff] experienced has deeply affected all aspects of the life that he is living. It has impacted upon family and intimate relationships, as well as leisure and work activities in varying ways. I accept that his young age at the time of the abuse has embedded the events in his mind so they have impacted many of the decisions he has made about the direction of his life.³¹

In April 2021, another survivor reached a \$1.5 million settlement with the Catholic Church for the abuse he suffered as a student at St Alipius Boys' School in Ballarat in the 1970s.³² The Catholic Church in Victoria is reportedly facing at least 800 legal actions for child sexual abuse since the removal of the statute of limitations and the 'Ellis defence', which prevented abuse survivors from suing unincorporated organisations, such as churches and other institutions.³³ It has also been reported that 'the spike in legal action ... suggests that some abuse survivors are shunning' the National Redress Scheme (NRS) which caps compensation at \$150,000 and has been 'widely criticised' for only awarding the maximum compensation for the most extreme cases.³⁴ This is discussed in Chapter 7.

³⁰ *Perez v Reynolds & Anor* [2020] VSC 537, [39]; Penny Savidis, *\$1.5M child abuse award encouraging for civil cases*.

³¹ *Perez v Anor* [2020] VSC 537, 539, [39].

³² Henrietta Cook and Chris Vedelago, 'I can move on': \$1.5 million payout to St Alipius sex abuse survivor', *The Age*, 10 April 2021, <<https://www.theage.com.au/national/victoria/i-can-move-on-1-5-million-payout-to-st-alipius-sex-abuse-survivor-20210409-p57hr0.html>> accessed 23 July 2021.

³³ The 'Ellis defence' was removed by the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic). See also Chris Vedelago, Farrah Tomazin and Debbie Cuthbertson, 'Catholic church swamped with hundreds of new sex abuse claims after legal change', *The Age*, 25 September 2019, <<https://www.theage.com.au/national/victoria/catholic-church-swamped-with-hundreds-of-new-sex-abuse-claims-after-legal-change-20190925-p52uwn.html#comments>> accessed 23 July 2021; Farrah Tomazin, Chris Vedelago and Debbie Cuthbertson, 'How a Melbourne seminary became the breeding ground for paedophile rings', *The Age*, 18 September 2019, <<https://www.theage.com.au/national/victoria/how-a-melbourne-seminary-became-the-breeding-ground-for-paedophile-rings-20190917-p52s1n.html>> accessed 23 July 2021; Danny Tran and Matt Neal, 'Ellis defence' scrapped as Victorian law change opens church up to abuse legal action', *ABC News*, 25 May 2018, <<https://www.abc.net.au/news/2018-05-25/legal-loophole-ellis-defence-catholic-church-close-damages/9800142>> accessed 23 July 2021.

³⁴ Chris Vedelago, Farrah Tomazin and Cuthbertson, 'Catholic church swamped with hundreds of new sex abuse claims after legal change'.

8.3 Removing the statute of limitations for historical forced adoption

In 2019, Fiona Patten MLC, Member for Northern Metropolitan, raised the prospect of enacting a similar change to the statute of limitations for historical forced adoption with the then Attorney-General, the Hon Jill Hennessy MP:

The Limitation of Actions Amendment (Child Abuse) Act 2015 removed the limitation period that applies to causes of action relating to death or personal injury relating to the child abuse, and that limitation was removed to enable historical child abuse cases to be heard and compensated for.

The action that I seek is that the minister apply the same reasoning and consider establishing a mechanism to compensate mothers whose children were forcibly adopted.³⁵

In response, the Attorney-General outlined the apology and legislative amendments to the *Adoption Act 1984* (Vic), while also referring to the work being undertaken by the Committee for this inquiry.³⁶

8.3.1 Senate inquiries

In exploring issues relating to civil litigation in the Inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry), the Senate's Community Affairs References Committee referred to findings of its previous inquiry, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children* (Forgotten Australians report). In the Forgotten Australians report, the Senate Committee expressed concern over the 'difficulties applicants have in taking civil action against the unincorporated religious or charitable organisations' and that this may enable these organisations to deliberately avoid legal liability and accountability.³⁷ It argued that 'seeking compensation through civil action is further complicated by the various statutes of limitation legislation'.³⁸ The Committee also noted in the Forgotten Australians report that this was a continuing theme in previous inquiries, including the *Bringing them home* report into the *National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, *Inquiry into child migration* and *Inquiry into abuse of children in Queensland institutions*.³⁹

³⁵ Parliament of Victoria, *Questions Database: Adjournment matters no 108*, 20 March 2019, <<https://www.parliament.vic.gov.au/publications/questions-database/details/53/4202>> accessed 5 August 2021.

³⁶ Ibid.

³⁷ Parliament of Australia, Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, August 2004, p. 213.

³⁸ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 245, referencing Parliament of Australia, Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, pp. 207–208.

³⁹ Parliament of Australia, Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, pp. 9–13.

The Senate Inquiry reported that applying for an extension of time to the statute of limitations may cost between \$10,000 to \$15,000, with no guarantee that leave to issue proceedings will be granted.⁴⁰ The Committee also noted that statutes may only operate from when an applicant first made the connection between their injuries and past abuses, meaning that people suffering from post-traumatic stress disorder (PTSD) may still have an opportunity to pursue legal action. However, each appeal is ‘subject to the discretion of the Courts and leave is, more often than not, refused’.⁴¹ Furthermore, an unsuccessful applicant will be liable for not only their legal costs, but also the legal costs of the defendant.⁴²

The Senate Inquiry acknowledged that the ‘adversarial nature of civil litigation’ is a barrier for people wanting to sue institutions, as the process is expensive and often highly distressing for victims who have to relive their experiences, face cross-examination and prove what happened to them:

Civil action appears a less than desirable outcome for those affected by forced adoptions. Litigation is a very costly process and the chances of a successful prosecution are slim. Moreover, the adversarial nature of litigation may be very distressing for the plaintiff.⁴³

The Senate Inquiry did not recommend removing the statute of limitations in its report, however, it stated:

In cases where illegality is alleged in the adoption process the prosecution of those responsible should not be hindered by statutes of limitation. The committee urges all states and territories to examine the limitations for infringements of adoption legislation to ensure that they do not act as a barrier to litigation by individuals who were not made aware of their legal rights at the time that offences may have been committed. The committee does not want people who have been damaged by their experience of forced adoption to be damaged further by having to endure a long and bruising legal journey that may ultimately be unsuccessful due to a legal technicality.⁴⁴

Arthur v State of QLD

There have been a few legal cases where people affected by historical forced adoption have sued state governments. None have been successful.⁴⁵ At a public hearing, the Hon Nahum Mushin AM told the Committee that the main reasons these cases were

⁴⁰ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 246.

⁴¹ Ibid. See also Lisa Sarmas, ‘Mixed Messages on Sexual Assault and the Statute of Limitations: Stingel v Clark, the Ipp ‘Reforms’ and an Argument for Change’, *Melbourne University Law Review*, vol. 32, no. 2, 2008, pp. 623–624.

⁴² Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 246; Parliament of Australia, Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, p. 205.

⁴³ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 246.

⁴⁴ Ibid., p. 247.

⁴⁵ The Hon Nahum Mushin AM, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 19; Lily Arthur, *Attachment to submission one (attachment five)*, submission to Community Affairs References Committee, Commonwealth contribution to former forced adoption policies and practices, 2012, p. 4; *Arthur v State of Queensland* [2004] QSC 456.

unsuccessful is because too much time had passed and the evidence was no longer available after so many years.⁴⁶

The most significant case is *Arthur v State of QLD*, where Judge John Byrne dismissed the application for an extension of time for a woman suing the State of Queensland for a breach of fiduciary duty. Fiduciary duty refers to a commitment to act in the best interests of another person or entity. The woman claimed she was forced to give up her son through threats and intimidation from a child care officer employed by the Department of Children's Services.⁴⁷ Byrne J doubted the woman's assertion of coercion in the adoption and considered that her recollections were distorted by time, emotions and a preoccupation with retribution.⁴⁸ Byrne J noted that witnesses had passed away and records were destroyed. He wrote in his judgement:

She was 17, about to leave hospital ... She had no money, no job, no family support; and little financial assistance was available from government for an unmarried mother in those days. It was the 1960s: social stigma attached to illegitimate parenthood. She remained in the Director's care and control, and whenever released from the Home, she had nowhere to take a child, except, perhaps, to live with the mother she had not seen in a year. On a rational evaluation of what confronted the plaintiff the day she met [the child-care officer employed by the Department of Children's Services], threats would not have been needed to persuade her, however tearfully, to choose adoption. Her miserable situation was pressure enough.⁴⁹

In her submission to the Senate Inquiry, Lily Arthur, the mother and plaintiff in *Arthur v State of QLD*, stated that while she had expected to lose the action, she was not prepared for 'the scathing judgement for the entire world to read as a Landmark decision', which left her in a suicidal state.⁵⁰ She referred to Dian Wellfare, founder of Origins Inc, who took two actions for the theft of her child against the State of New South Wales, the first in 1996–97 for negligence and the second in 2006 for fraud and fraudulent concealment. Both these cases were dismissed 'as happening too long ago', and the State demanded her estate for its costs after she died in 2008.⁵¹

The Committee notes that the case of *Arthur v State of QLD* was brought before the Supreme Court of Queensland in 2004, prior to the National and State apologies for historical forced adoption had taken place and there was broader recognition of the illegality of what occurred during the period of forced adoption. It illustrates, however, the barriers that mothers may encounter in establishing claims and the scrutiny they could face in a legal environment.

⁴⁶ The Hon Nahum Mushin AM, *Transcript of evidence*, p. 19.

⁴⁷ *Arthur v Queensland* [2004] QSC 456.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, p. 15 [90]. Byrne J

⁵⁰ Lily Arthur, *Attachment to submission one (attachment five)*, p. 4.

⁵¹ *Ibid.*

8.3.2 Current inquiry

The removal of the statute of limitations was recommended by many mothers, adopted people and advocacy groups to enable individuals to sue institutions and organisations involved in historical forced adoptions.⁵² In advocating for its removal, Shine Lawyers drew on its experience of representing clients and advised that proceedings brought against public hospitals and private agencies that facilitated adoptions have been defended, mainly on the basis of procedural issues relating to the nature of compensation and whether the courts have jurisdiction to hear the case. In particular, some public hospitals defended claims on the basis that they were initiated outside the timeframes and are statute barred due to the legislation.⁵³ Cameron Tout, Senior Associate and Legal Practice Manager at Shine Lawyers, expanded on this point in his evidence to the Committee:

limitation of actions provides that there's a set period of time that a claim can be brought. And if a claim is brought outside that time, a defendant will raise the Limitation of Actions Act to say that the claim can't progress any further. It won't go to a hearing, it has to be stopped then and there. Because we're dealing with incidents that happened between 1958 and early 1970s, the limitation for these types of claims—public liability claims generally—is three years. So in most cases these claims are effectively somewhere between 50 and 63 years out of date. Not all defendants are raising the limitations but in every case that I've seen so far it has been raised by at least one of the defendants. So in my submissions—in my written submissions—I took the stance that we feel like being able to raise a limitation defence is unjust in these circumstances.⁵⁴

In her submission, Barbara Pendrey wrote:

[Lifting the statute of limitation] needs to be done we can't move forward while the churches, single mother homes and hospitals who treated us with no respect we were treated like animals there for them to take our babies and give them to someone else.⁵⁵

At a public hearing, the Committee heard from Lyn Kinghorn and June Smith who have appeared in the media about their efforts to sue the Royal Women's Hospital and adoption agencies in the Victorian County Court for damages.⁵⁶ June Smith told the Committee about her efforts to advocate for the removal of the statute of limitations:

⁵² Council of Single Mothers and their Children, *Submission 23*, received 3 February 2020; Crib Mates, *Submission 25*, received 3 February 2020; Origins Supporting People Separated by Adoption Inc., *Submission 39*, received 2 March 2020; Shine Lawyers, *Submission 42*, received 4 March 2020; Charlotte Smith, Manager, VANISH, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 30.

⁵³ Shine Lawyers, *Submission 42*, pp. 3–4.

⁵⁴ Cameron Tout, Senior Associate and Legal Practice Manager, Shine Lawyers, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 45.

⁵⁵ Barbara Pendrey, *Submission 1*, received 14 November 2019, p. 1.

⁵⁶ Jewel Topsfield, "It walks with you forever": Mothers sue hospital that took their babies', *The Age*, 27 December 2019, <<https://www.theage.com.au/national/victoria/it-walks-with-you-forever-mothers-sue-hospital-that-took-their-babies-20191227-p53n86.html>> accessed 23 July 2021.

Since October 2018 I have written in excess of 30 letters to the Victorian Premier, including the Attorney-General and other ministers, requesting that the statute of limitations be lifted for us mothers to seek litigation against our perpetrators.⁵⁷

June Smith spoke about the frustrations of mothers who are trying to hold organisations to account:

The Women's Hospital, for example, can come in and go, 'Well, you've already gone past the statute of limitations. You've got no hope, so we will just say no—and go away'. Whereas now ... if the statute was lifted, those people would have to come and be accountable, and they need to be. It is not about suing. It is not about money. I know people will think it is, but it is not. It is about making people accountable and making them aware for what they have done so they will not do it again—or we hope they will not.⁵⁸

In her submission, Lyn Kinghorn detailed her experiences of being forcefully removed from the hospital without her baby and made to believe she was a criminal 'for daring to be unmarried and a mother':

How do you fight against everyone telling you that you're a criminal? ... Further brutalised, I lived that for 20 years until my second husband listened and helped in my search. He was the first adult to confirm I had been abused. How then was I in any state to identify this crime within the statute of limitations frame when those around me continually confirmed this was the punishment for girls like me.

I was outside the statutes of limitations before realising no one had the right to punish me for being a single mother. Where is my justice?⁵⁹

At a public hearing in Melbourne, Lyn Kinghorn told the Committee:

We beg, grovel, implore, scream, cry, demand and ask quietly and persistently for your attention to the Senate recommendations that the criminal abduction of our babies be widely acknowledged and documented and the statutes of limitations removed.⁶⁰

In her submission, Judy McHutchison, a mother, adoption reform activist and academic, also called for the removal of the statute of limitations:

There are egregious wrongs, including breaches of duty of care, breaches of sections of the Adoption Act relating to duress and undue influence, possible breaches of the Crimes Act in removing the children at birth. Multiple breaches of human rights.⁶¹

57 June Smith, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 2.

58 *Ibid.*, p. 8.

59 Lyn Kinghorn, *Submission 11*, received 30 January 2020, p. 2.

60 Lyn Kinghorn, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 2.

61 Judy McHutchison, *Submission 72*, received 26 June 2020, p. 1.

In her submission, Jennifer McRae drew attention to the abuse many mothers suffered, including negligent medical care:

Lift the statute of limitations for litigation/compensation. [My mother's] testimony of institutional physical and mental abuse is not unusual. Across Australia Mother have shared their testimonies of negligent medical care, being used a vessel for training medical procedures, and other abuses by medical and midwifery/nursing staff within the hospital setting and while residing within their home of confinement. As a direct consequence many Mothers have suffered lifelong PTSD. Had my Mothers' violation occurred in 2021, criminal charges would have been made and then heard in a court of law. Time should be inconsequential. Justice for the harms inflicted must be brought before the courts and tested.⁶²

Emeritus Professor Shurlee Swain also strongly supported the removal of the statute of limitations and told the Committee:

The royal commission on sexual abuse has done the hard work on this. We know from that, and it has been recognised from that, that people are not necessarily in a position to take legal action within that time, that the damage comes around later or it comes back in another form later. And who are we protecting with the statute of limitations? Not the people who have been impacted. We are protecting the people who did the deeds, knowingly or unknowingly, the people who did it. And when you get to—and I am sure you are hearing some of the cases of outright illegality. I mean, there is a lot about illegality, about whether 15-year-olds could sign and all of that stuff, but there was also outright illegality of babies exchanged under streetlights in the backstreet behind the hospital—all of that. When you get to those, I mean, these are criminal offences. And the evidence would be there, but we are protecting the people who did it by having this. And that baby was not in a position to protest.⁶³

The removal of the statute of limitations also received support from other organisations and advocacy groups, such as the Victorian Adoption Network for Information and Self-Help, Relationships Australia Victoria and the Council of Single Mothers and their Children. Many drew parallels to cases of child sexual abuse and the lifting of the statute of limitations for those cases.⁶⁴ In particular, Cameron Tout from Shine Lawyers noted that some parallels can be drawn to the powerlessness that mothers and children experienced at the time.⁶⁵ This is in addition to the delay in many mothers processing what happened to them and the devastating impact on their lives:

It's only in the last 10 years or so been acknowledged that this was happening and then to say that they can't bring their claim because it's been too long since it happened we think is unjust, in those circumstances. The child abuse amendment didn't remove the court's inherent ability to ... say the defendant can't defend the claim adequately because evidence has been lost over time. So the court still holds that power, but what

⁶² Jennifer McRae, *Submission 82*, received 15 May 2021, p. 4.

⁶³ Emeritus Professor Shurlee Swain, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 9.

⁶⁴ VANISH Inc., *Submission 53*, received 18 June 2020, p. 7; Council of Single Mothers and their Children, *Submission 23*, pp. 6, 9; Julian Pocock, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 34; Relationships Australia Victoria, *Submission 15*, received 27 April 2020, p. 9.

⁶⁵ Cameron Tout, *Transcript of evidence*, p. 47.

this amendment did was mean that this initial barrier to a plaintiff being able to bring the claim was removed and the burden of proof then fell on the defendant to say, 'Well the time that has passed now means that we can't defend this claim properly or adequately.'⁶⁶

The Committee also heard that it is important for people who are adopted and placed in their early years in unsuitable or abusive homes to seek compensation from organisations and individuals who were negligent in their duty of care with regard to facilitating adoptions.⁶⁷ In her submission, Grace Kelly recommended the lifting of the statute of limitations 'so that abused and neglected adoptees can pursue redress from religious bodies, agencies or other parties who arranged the adoption'.⁶⁸ She further stated:

During the forced adoption era, many adoptees were adopted using unethical/illegal methods, and/or placed into unsuitable/abusive/neglectful homes.

An apology has been made for the past practices of forced adoption, and this apology has made it easier for some people to speak out about their horrific experiences, but due to a legal technicality, it is now too late for any meaningful redress.

Organisations or individuals who, in the past, acted illegally in organising and facilitating forced adoptions, and were derelict in their duty of care with regard to placements, should be subject to the ordinary processes by which service providers are held to account.⁶⁹

In examining this issue, the Committee is aware that pursuing civil litigation can be a costly process and may not be the best option for the pursuit of justice for some. From a financial perspective, as it is expensive to engage lawyers and some may have to rely on lawyers to take their case on a 'no win, no fee' basis. This has practical limitations for legal practitioners in terms of how far they can pursue cases. There are also emotional costs of reliving the past in an adversarial court environment in which delays are common and cases may be vigorously defended by institutions.

With the passage of time, evidence and records can also be lost and individuals who behaved illegally or were medically negligent may no longer be alive, which may make claims difficult to prove in court. This point was raised by the Hon Mushin, who told the Committee that while he supported removing the statute of limitations, he questioned its practical use:

There is a good argument, I suppose, to repeal the statute of limitations for actions in respect of forced adoption, and while I support it, it seems to me that it would have no real, practical use, because of what I have said—that there have already been actions which have failed. The most important one is *Arthur v. State of Queensland [2004]*

⁶⁶ Ibid.

⁶⁷ Peter Capomolla Moore, President, Adoptee Rights Australia, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 1; Sharyn White, Secretary, Adoptee Rights Australia, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 5.

⁶⁸ Crib Mates, *Submission 25*, p. 1.

⁶⁹ Ibid.

QSC 456 (Austlii Series). That is the most significant of those actions. So yes, I think there is a good argument to repeal the statute of limitations in forced adoption areas, but I think in practice it has got a very questionable practical use to it.⁷⁰

Therefore, the Committee believes it is important for those subjected to the policies and practices of historical forced adoption to have multiple avenues of compensation available to them, such as a redress scheme and civil litigation, in combination with increased support services. The Committee strongly believes that individuals should choose the path they take and are informed of all available options. In Chapter 7, the Committee recommends that free and independent legal advice be provided as part of the redress scheme. This will allow people to seek advice about pursuing civil litigation, as occurs with the free legal support provided as part of the NRS.

The Committee acknowledges the illegal and improper conduct that people were subject to and the need for some people to seek accountability, acknowledgement and compensation from responsible institutions and organisations. The Committee affirms the position of the Senate Inquiry that people should not be hindered by the statute of limitations where illegality is alleged. The Committee is also very mindful of the length of time that people affected by historical forced adoptions, particularly mothers, have been advocating for this change. It is imperative that this recommendation be implemented without delay.

RECOMMENDATION 23: That the Victorian Government immediately seek to amend the *Limitation of Actions Act 1958 (Vic)* to exclude those affected by forced adoption from the operation of the limitations period under that Act.

8.4 Significant injury test

Another issue raised with the Committee is that the significant injury test under the *Wrongs Act 1958 (Vic)* (*Wrongs Act*) is an additional barrier to civil litigation for historical forced adoption cases. The *Wrongs Act* is ‘the principle statute governing claims for damages for economic and non-economic loss arising from personal injury and death in Victoria, as a result of negligence or fault’.⁷¹ The *Wrongs Act* applies to common law claims for damages for personal injury in cases other than workplace injuries or transport accidents cases and involves claims for compensation, such as where a person falls in a public place or is harmed as a result of medical treatment.⁷² Several limits are imposed by the Act on access to compensation. Under pt VBA of the *Wrongs Act*, a person can only recover damages for non-economic loss—such as pain and suffering, loss of amenities of life, or loss of enjoyment of life—caused by the fault of another person, when the injury is a ‘significant injury’.⁷³

⁷⁰ The Hon Nahum Mushin AM, *Transcript of evidence*, p. 20.

⁷¹ Department of Justice and Community Safety: *Compensation for personal injury*, n.d., <<https://www.justice.vic.gov.au/compensation-for-personal-injury>> accessed 23 July 2021.

⁷² *Ibid.*

⁷³ *Ibid.*

Some injuries are defined to be significant injuries without any further assessment, such as the loss of a foetus or the loss of a child before, during or immediately after the birth and asbestos-related conditions.⁷⁴ A determination of what constitutes a significant injury for other kinds of injuries will usually require an assessment of the degree of impairment caused as a result of the injury and must satisfy the relevant threshold level in order to be a significant injury. For a psychiatric injury, the relevant threshold level is 10% or more.⁷⁵

In her evidence to the Committee, Brenda Coughlan of Independent Regional Mothers advocated for changes to the Wrongs Act, in addition to the statute of limitations, to ensure there is ‘no confusion when it comes to the legal rights of the mothers to commence litigation’:⁷⁶

The Attorney-General should just simply remove the glitch to allow no statute of limitation. The Act says the sexual abuses are covered, but there is a word, I think ‘loss of a child’, and I think I have got that in one of my recommendations—‘Loss of a child’ needs to be maybe ‘abduction’. It is just as simple as changing so mothers can continue with their claims. They already have been through the whole process when you have got to go and see a doctor, and they go through all that process. They are already sitting on the doorsteps of the court, because there is that tiny glitch somewhere.⁷⁷

Shine Lawyers recommended in its submission for the removal of the requirement in the Wrongs Act to prove a significant injury has been suffered as a result of the forced adoption, noting that this is a barrier to justice and a source of further harm.⁷⁸

Shine Lawyers advised that its clients are required to prove they have suffered a significant injury, which amounts to a whole person impairment of 10% or more and is assessed by an appropriate medico-legal psychiatrist and potentially reviewed by a medical panel.⁷⁹ Cameron Tout from Shine Lawyers explained to the Committee what this means for his clients:

if a plaintiff doesn’t meet that threshold, they don’t have the ability to bring that claim at all for pain and suffering. The conversations—and I’ve had direct feedback from some psychiatrists who were engaged to do these assessments is that those guides that are used, they’re perfectly fine if the injury happened two, three, four, five, six years ago.

When you’re dealing with someone who was injured 50 to 65 years ago, being able to say that this is the impairment that resulted from the adoption and disentangle that from everything that might’ve happened in the last 50 to 65 years is near impossible. Psychiatric injuries are cumulative and stretching them out is very difficult to do. So we don’t think the significant injury test, we think it’s almost an unfair barrier for

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Brenda Coughlan, Spokesperson, Independent Regional Mothers, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 3.

⁷⁷ Ibid., p. 7.

⁷⁸ Shine Lawyers, *Submission 42*, p. 6.

⁷⁹ Ibid., p. 5.

something that happened so long ago. The significant injury test and the process also has the ability for—where a plaintiff has been assessed as meeting this significant injury threshold—where a defendant can then refer it to a medical panel. So they're a medical tribunal, and they redo the assessment. And essentially what they say goes. If they say it meets the threshold it's accepted, if they say it doesn't then they fall below it, they can't bring the claim for pain and suffering anymore.⁸⁰

Cameron Tout also stated that it is on the defendant to make that referral to the medical panel, noting the feelings of powerlessness that can arise among the client:

So in cases where—I won't name names—but a claim's brought against a particular defendant for their involvement in the forced adoption, the client who felt very powerless all that time ago at the hands of this organisation gets to this stage of the process and then they feel like effectively they are being challenged as to what effect this injury or the forced adoption has had on them. And again, they feel powerless about it. And it makes them question whether they want to go ahead with it anymore, whether they should go ahead with it. Whether all the problems I've talked about using these guides—for an injury that happened so long ago—is just really going to make matters worse for them, not better.⁸¹

Shine Lawyers proposed to the Committee that injuries caused to a mother or child as a result of forced adoption practices could be added as a subsection to s 28LC (2) of the Wrongs Act. This section lists certain categories of injuries that are exempted by the Act from the requirement to prove that the injury is significant before being able to claim compensation for pain and suffering.⁸²

While the Committee heard limited evidence on removing the significant injury test, the Committee believes that it is important to remove these barriers to civil litigation so that mothers are not impeded by additional obstacles in proving their injury. This is particularly important as it may be difficult to assess psychiatric impairments for historical forced adoption due to the passage of time. Accordingly, the Committee recommends that:

RECOMMENDATION 24: That the Victorian Government investigate removing the requirement to prove a significant injury has been suffered as a result of the separation of mother and baby in relation to personal injury claims made under the *Wrongs Act 1958* (Vic).

⁸⁰ Cameron Tout, *Transcript of evidence*, p. 46.

⁸¹ *Ibid.*

⁸² Shine Lawyers, *Submission 42*, p. 6.

9 Birth certificates

Article 8 of the United Nations Convention on the Rights of the Child

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.¹

Birth certificates are significant documents of identity and history. They are used to prove and verify our identity for numerous legal and administrative purposes including to obtain a passport, open a bank account, buy a house or get married. A birth certificate also establishes the legal guardians of a child. People who are adopted receive an amended birth certificate, or post-adoption certificate, containing the details of their adoptive parents. This replaces their original birth certificate that details their parents: a practice that has existed since 1928.

A key issue raised by inquiry participants, particularly those who are adopted, is that birth certificates of adopted people do not reflect their biological origins and were essentially rewritten at the time of their birth to exclude their parents. Some inquiry participants recommended the introduction of integrated birth certificates, which are certificates that include the details of both the parents and adoptive parents. As discussed in this chapter, integrated birth certificates have been recommended by past state and national inquiries and reviews and implemented in New South Wales (NSW), South Australia (SA) and Western Australia (WA). The Committee is aware, however, that this is a complex issue and not all inquiry participants support their implementation in Victoria. An overview of participants' various views is outlined in this chapter, in addition to the legislative framework and history of birth certificates in Victoria.

Another issue related to birth certificates that inquiry participants raised was the ability to amend certificates to include details of fathers. This has been an ongoing area of concern for people who are adopted, mothers and fathers. It is also explored in this chapter.

¹ United Nations Human Rights Office of the High Commissioner, *Convention on the Rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49*, <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> accessed 26 June 2021.

9.1 Current legislative framework and practice

In Victoria, birth certificates are issued by Births, Deaths and Marriages (BDM) under the legislative framework of the *Births, Deaths and Marriages Registration Act 1996* (Vic) (BDMR Act). To register a child's birth, the parents submit a 'birth registration statement' which contains details about the birth, as well as details about the parents and their relationship.² The Registrar of BDM, who is responsible for registering all births in Victoria, enters these details into the BDM Register.

Adopted people have two birth certificates as they are issued with a new birth certificate when they are adopted, which supersedes the original. The original birth certificate is no longer legally valid and cannot be used as proof of identity.³ The original birth registration entry is marked with the word 'adopted', which has the effect of closing the entry.⁴ The Registrar must not 'issue an extract from, or copy of the entry' except where permitted by the *Adoption Act 1984* (Vic) (Adoption Act) or the court.⁵

The Adoption Act currently states that the general effect of adoption orders is that 'the adopted child shall be treated in law as a child of the adoptive parent or adoptive parents, and the adoptive parent or adoptive parents shall be treated in law as the parent or parents of the child, as if the child had been born to [them]'.⁶ The Act requires steps to be taken which 'result in the replacement of the original birth certificate with an amended one'.⁷ The court sends a record of the adoption to the Registrar of BDM with the details in the form paralleling those in the 'birth registration statement' submitted when a child is born, such as the child's name under the adoption order, the date and place of birth and the adoptive parents' details from when the child was born.⁸

The new certificate 'looks no different from any other person's birth certificate'; it reflects 'their new post adoption identity and is silent about the identity with which they were born'.⁹ In the Victorian Law Reform Commission's (VLRC), 2017 *Review of the Adoption Act 1984* (VLRC Review), stated that for many people who are adopted 'their amended birth certificate represents the erasure of their past, a re-writing of their identity and a falsehood which must be corrected'.¹⁰ In its submission, the Victorian Adoption Network for Information and Self-Help (VANISH) stated:

Children were subsequently raised in families with no genetic relative(s). Their original Birth Certificate was (and still is) cancelled, and a new 'birth' certificate issued with a new adoptive name and the name of the adoptive parent or parents, as if born to them.

² *Births, Deaths and Marriages Registration Regulations 2019* (Vic). Reg 7

³ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, Melbourne, 2017, p. 99.

⁴ *Adoption Act 1984* (Vic) s 74.

⁵ *Ibid.*, s 74 (3).

⁶ *Ibid.*, s 53 (1) (a).

⁷ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 98.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*, p. xiv.

All connection to their family of origin, their ancestry and their culture was severed and deemed to be unimportant.¹¹

The only way for an adopted person to use the birth certificate containing the information of only their natural parents is to pursue a discharge of adoption by applying to the County Court of Victoria to ‘undo the legal effect of an adoption order’.¹² This undoes all legal effects of adoption, such as inheritance and legal guardianship, and does not directly allow the person to use their original birth certificate, but rather enables the creation of a new birth certificate with the details contained in the original birth certificate.¹³ Adoption discharges are discussed in Chapter 5.

9.1.1 History of birth certificates in Victoria

Victoria first introduced adoption legislation with the *Adoption Act 1928* (Vic) (1928 Adoption Act). Prior to this, adoptions were informal arrangements made by individuals, government and non-government organisations. Amended birth certificates were always part of Victoria’s adoption legislation, as illustrated in the 1928 Adoption Act.¹⁴ This Act was written at a time when ‘adoptive parents’ interests were dominant’.¹⁵ Victorian parliamentary debates reflect the prevailing view during this period that the child should be protected from the ‘slur’ and ‘unfortunate stigma of illegitimacy’ and that adoptive parents should have ‘the security of the law’.¹⁶ In his second reading speech for the Act, Attorney-General Hon Bill Slater MP spoke about the ‘importance of a completed act of adoption’:

Having a complete and effective adoption means that there will never be any danger of the severance of the bond between the adopting parents and the child.¹⁷

All the rights of the natural parents are extinguished and they pass to the adopter, who has in his turn to assume the whole of them. This involves a great change in the status of the adopted child, because it means that the child is severed from its family of origin and is admitted into the family of the adopter.¹⁸

The 1928 Adoption Act allowed for a ‘fresh entry’ of a child’s birth to be made when an adoption order had been made, allowing for the registration of the child in the name of the adopting parent/s.¹⁹ It also made ‘evidence of adoption free from disclosure’.²⁰

11 VANISH Inc., *Submission 53*, received 18 June 2020, p. 27.

12 Department of Justice and Community Safety, *Discharge of adoption*, 2020, <<https://www.justice.vic.gov.au/your-rights/adoption/discharge-of-adoption>> accessed 23 October 2020.

13 Ibid.; Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 276.

14 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 96.

15 Ibid., p. 105.

16 Victoria, Legislative Assembly, 7 August 1928, *Parliamentary debates*, pp. 672, 673.

17 Ibid., p. 673.

18 Ibid., p. 676.

19 *Adoption of Children Act 1928* (Vic) s 18.

20 Victoria, Legislative Assembly, 26 September 1928, *Parliamentary debates*, p. 1868.

The practice of ‘sealing’ or cancelling the original birth certificate continued in Victoria’s subsequent adoption legislation. For example, the *Adoption of Children Act 1964* (Vic) imported provisions from ‘model’ legislation which had been implemented in adoption legislation in all Australian states and territories by the end of the 1960s. The legislation imposed secrecy at all stages of the adoption process, consistent with the ‘clean break’ theory, which held that it was in the best interests of both the mother and the soon-to-be-adopted child to be separated as early and as completely as possible, with no further risk or possibility of contact.²¹

The original birth certificate was kept secret and only made available with court approval. As noted in the Senate’s Community Affairs References Committee, in its Inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry), ‘[t]he idea was that the child would in as many respects as possible (and from the earliest practical age) be raised as though he or she were the child of the adopting family’.²² Now, an original birth certificate can be obtained by a person, such as a natural parent, an adopted person over the age of 18 or their adoptive parents, through the Adoption Information Service, as discussed in Chapter 10.²³ The original birth certificate is stamped with ‘adopted’ and cannot be used a legal document.²⁴

Up until 1987, an adopted person’s birth certificate was known as a ‘Sixth Schedule’.²⁵ Sixth Schedule birth certificates showed the child’s date of birth, sex, full given name and surname—the surname of the adoptive father or child’s adopter—and the names and occupations of the adoptive parents who appeared on the certificate as ‘Father and Mother’.²⁶ These details were kept in the Adopted Children Register.²⁷ VANISH stated in its submission:

A discriminatory aspect of this document was that it was issued only to people who were adopted. In many cases where the adoptive parents had not disclosed to their child the latter’s adopted status, the adopted person inadvertently discovered this during adulthood on presenting their Sixth Schedule for identification purposes to someone unrelated to them in the community. VANISH is aware of numerous examples of people having discovered they were adopted only upon making application for the Age Pension or a passport.²⁸

21 Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, Consultation Paper, Melbourne, August 2016, pp. 10, 12–13.

22 Government of Australia, *Response to the Parliament of Australia, Senate Community Affairs References Committee, Commonwealth contribution to former forced adoption policies and practices*, 21 March 2013, p. 12.

23 Births Deaths and Marriages Victoria, *Adoptions*, 2020, <<https://www.bdm.vic.gov.au/births/adoptions#:~:text=Before%201987%2C%20the%20birth%20certificate%20of%20an%20adopted,certificate.%20There%20is%20no%20fee%20for%20this%20service>> accessed 23 October 2020; Births Deaths and Marriages Victoria, *Accessing adoption information, 2020*, <<https://www.bdm.vic.gov.au/births/adoptions/accessing-adoption-information>> accessed 23 October 2020.

24 Births Deaths and Marriages Victoria, *Adoptions*.

25 Ibid.

26 Rebecca Falkingham, Secretary, Department of Justice and Community Safety, correspondence, 26 May 2021, p. 7.

27 *Adoption of Children Act 1958* (Vic) s 18.

28 VANISH Inc., *Submission 53*, pp. 83–84.

From 1987–1993, the format of a legal birth certificate of an adopted person was known as 'Form 21'.²⁹ Since 1993, birth certificates for adopted people have been the same as legal birth certificates for non-adopted people.³⁰ The contents of a birth certificate are no longer prescribed in legislation or regulations.³¹ Sixth schedules can now be replaced with a full birth certificate for free.³²

Below are two examples of birth certificates. Figure 9.1 shows a Sixth Schedule birth certificate.

Figure 9.1 An example of a Sixth Schedule birth certificate in Victoria

VICTORIA
Registration of Births, Deaths, and Marriages Regulations
SIXTH SCHEDULE
Certified Copy of an Entry Relating to the Birth of [REDACTED]
who was born at Melbourne, Victoria

1. No. of Entry	[REDACTED]
2. Date of Birth of Child.. ..	[REDACTED]
3. Full Christian Name or Names of Child	[REDACTED]
4. Surname of Child	[REDACTED]
5. Sex of Child	[REDACTED]
6. Full Christian Name or Names, also Surname and Address and Occupation of Father and Mother respectively of Child.. .. .	[REDACTED]

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF AN ENTRY IN A REGISTER KEPT IN THE STATE OF VICTORIA, IN THE COMMONWEALTH OF AUSTRALIA. IN THE REGISTRY OF BIRTHS DEATHS AND MARRIAGES. MELBOURNE. [REDACTED] REGISTRAR.

Source: Name Withheld, correspondence, 26 February 2021.

²⁹ Births Deaths and Marriages Victoria, *History of adoptions in Victoria*, 2020, <<https://www.bdm.vic.gov.au/births/adoptions/history-of-adoptions-in-victoria>> accessed 23 October 2020.

³⁰ Ibid.

³¹ Rebecca Falkingham, correspondence, p. 7.

³² Births Deaths and Marriages Victoria, *History of adoptions in Victoria*.

The Committee heard from a number of inquiry participants about the shock and hurt they felt at seeing their original birth certificate stamped with ‘cancelled’ or ‘adopted’. Figure 9.2, below, shows an original birth certificate, with the word ‘cancelled’ appearing three times, including two which are stamped in red capitalised font.

Charlotte Smith, the Manager of VANISH, told the Committee:

It is incredibly painful for an adopted person to apply for their records and see their original birth certificate with their real name ‘cancelled’ stamped on it.³³

For example, Suzanne Scholz stated in her evidence:

I ordered my original birth certificate from Births, Deaths and Marriages, and I went in and they put me through the mill. They were yelling out across the room, ‘This person’s adopted. She wants her certificate’. They gave it to me, and it has got ‘Cancelled’ stamped on it. My life was cancelled by the State of Victoria.³⁴

Another person who is adopted explained to the Committee the shock they experienced when first seeing their original birth certificate:

a couple of weeks later to the post office box—walk into the post office on the way to work and there is some information: ‘Beauty, here’s my stuff. I will go and ring my partner ... and open it up’—really excited. One of them is my original birth certificate—never had one of them before. I have only had schedules and my [redacted] name. So here I am, in a car on the side of the road in [redacted], opening this up, thinking, ‘You beauty’. Yes, that is me all right. Has anyone else got a massive red stamp on their birth certificate that says ‘ADOPTED’ that someone in the office could not even do properly and had another go? ... I wanted to talk to [my daughter] about all this. I took all of this back. She was 19 then. I wanted to show her this. I am not showing her that. So, I wrote back to Rowena, saying how confronting I found it. That might as well say ‘DIFFERENT’ ... I understand; you cannot give two legal documents. That is a document ... That was a big roadblock that stopped me in my tracks, and I just put it away. [emphasis in original]³⁵

The Committee understands that a birth certificate that cannot be used as a legal document needs to clearly specify that it is not valid. However, the Committee believes there are more considerate ways to convey this on the document than the current method. An alternative approach should be explored and implemented by BDM to minimise the likelihood of causing distress to people who are adopted.

RECOMMENDATION 25: That the Victorian Government convey that original birth certificates are not valid legal documents in a considerate manner to minimise distress to people who are adopted.

³³ Charlotte Smith, Manager, VANISH, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 34.

³⁴ Suzanne Scholz, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 34.

³⁵ Name Withheld 2, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 28.

Figure 9.2 An example of a cancelled birth certificate in Victoria

VICTORIA
AUSTRALIA
BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT 1996


REGISTRATION NUMBER
[REDACTED]

BIRTH CERTIFICATE

1 CHILD	Surname Given Name(s) Sex Date of Birth Place of Birth	[REDACTED] CANCELLED
2 MOTHER	Surname Birth Surname (if different) Given Name(s) Occupation Age Place of Birth	[REDACTED]
3 FATHER	Surname Birth Surname (if different) Given Name(s) Occupation Age Place of Birth	
4 MARRIAGE OF PARENTS	Date of Marriage Place of Marriage	
5 PREVIOUS CHILDREN OF RELATIONSHIP		
6 INFORMANT(S)	Name Address	[REDACTED]
7 REGISTRATION OFFICER	Name Date	[REDACTED]
8 ENDORSEMENT(S) This registration is cancelled - Adopted		

CANCELLED

THE BACK OF THIS DOCUMENT CONTAINS A HISTORY OF CHANGES OF NAME AND CORRECTIONS.
Before accepting copies, sight unaltered original. The original has a coloured background.



REGISTRY OF BIRTHS
DEATHS AND MARRIAGES
MELBOURNE

I hereby certify that this is a true copy of particulars recorded in a Register in the State of Victoria, in the Commonwealth of Australia.

[REDACTED]

Registrar

Source: Name Withheld, correspondence, 26 February 2021.

9.2 Birth certificates and historical forced adoption in Victoria

Most of the evidence received by the Committee on birth certificates came from people who are adopted. Many people told the Committee how difficult it is to have multiple birth certificates containing different information, to have their original certificates ‘cancelled’ and to not be able to readily access their files. VANISH stated in its submission that the primary purpose of a birth certificate is to provide an accurate and

comprehensive record of the facts of a person’s genetic and/or biological parentage and birth.³⁶ The Committee acknowledges that this purpose of a birth certificate does not apply for people who are adopted.

Adoptee Rights Australia (ARA) advocated in its submission for the ‘absolute end of all state imposed artificial identity changes through fabrication of secondary “birth certificates”’.³⁷ It further stated:

To allow this State imposed identity erasure and imposition of artificial identity to continue into the twenty-first century merely prolongs the suffering and trauma of Stolen Generations and Forced Adoptees, who must continue to live in a society that apologises but appears unable to recognise the fundamental cruelty of maternal neonatal separation by continuing its absolutely insulting reinforcement by a parallel State imposed identity replacement through fabricated birth certificates.³⁸

In his submission, Peter Capomolla Moore, a late discovery adoptee, stated: ‘I am traumatised that I have two Birth Certificates I cannot come to terms that any government would do that to me or any other child then Adult’.³⁹ He wrote that a birth certificate should be a factual and trustworthy document and a recorded snapshot of the time of birth:

I relied on that document my whole life, particularly when I had questions as a teen after a science class discovery that blood types did not match, being presented with my Birth Certificate allayed my fears for another 47 years, that devastates me.⁴⁰

Many people who are adopted also said that their birth certificates do not reflect their identity and heritage, which has been the cause of considerable pain and anguish. Lynne Williamson wrote to the Committee with lived experience as both an adoptee and as a mother who ‘lost children to adoption’:

Every aspect of my personal life is connected to adoption. From 6 weeks of age my name and birth certificate were changed, and I am known as an Adoptee, under the Adoption Act lifelong, without my consent.⁴¹

At a public hearing, Suzanne Scholz told the Committee:

Give us our files, give us our birth certificates, remove the redactions and cancellations, stop with the hollow apologies and compensate us. Adoptees and first parents must have agency in their own story.

...

³⁶ VANISH Inc., *Submission 53*, p. 74.

³⁷ Adoptee Rights Australia Inc., *Submission 46*, received 6 March 2020, p. 2.

³⁸ Ibid.

³⁹ Peter Capomolla Moore, *Submission 44*, received 5 March 2020, p. 1.

⁴⁰ Ibid.

⁴¹ Lynne Williamson, *Submission 70*, received 25 June 2020, p. 1.

Why does the state get to choose when I can have my birth certificate? Why do I have to go to court to get my file and challenge the *Adoption Act* itself?⁴²

In her submission, Isabell Collins, an adopted person, raised concerns that adoption processes have little consideration for the needs and opinions of the child:

To labour the point, I firmly believe that legislation should exist that makes it compulsory that the identity of both the biological mother and father (where known) has to exist on all birth certificates. No child should have to be a victim of identity bewilderment due to their parents' insecurities or selfishness.⁴³

Kerri Young submitted: 'I have 4 x birth certificates when I should only have one'.⁴⁴ She wrote that her natural father was also adopted and that his father is not listed on his birth certificate so she questions what their family name should be. Kerri Young wrote: 'My dad asked me to change my surname to Davis, but I figured I would just be switching from one adopted name to another and as sad as I was about it, I said no'. She illustrated the complexity of her situation with regard to genealogy:

I am very involved with genealogy which makes it difficult for me as I am listed on my adopted parent's Death Certificates (D.C) & I will also be listed on my biological parent's death certificates. In 80 plus years or so when family are doing family trees and find me on my adopted parents D.Cs they will never find my B.C or who am I. At the same time, my biological family might also be doing family genealogy and have copies of my biological mum's D.C and my biological Dad's D.C and see a 'Kerri Young' listed as the oldest child. They may assume 'Young' is my married name and try to find a marriage certificate of me as Kerri Davis marrying a Young. I will never be found as we as adoptees are untraceable either by birth name or adopted names.⁴⁵

In its submission, VANISH stated that 'birth certificate policies and laws need to change in order to facilitate healing for those previously adopted and to prevent the perpetuation of harms for people who may be adopted in future'.⁴⁶ It also stated:

Current policies and laws are outdated—they embody the secrecy and shame of historical 'closed' adoption practices. These policies and laws are also manifestly unfair—they breach various aspects of adopted people's rights to accurate information about their natural parents and continuity of connection to them. Adopted people are forced to use a false birth certificate as their primary proof of identity document which, by the Victorian Government's own standard, is stigmatising.⁴⁷

⁴² Suzanne Scholz, *Transcript of evidence*, p. 32.

⁴³ Isabell Collins, *Submission 62*, received 4 June 2020, p. 8.

⁴⁴ Kerri Young, *Submission 27*, received 12 February 2020, p. 1.

⁴⁵ *Ibid.*

⁴⁶ VANISH Inc., *Submission 53*, p. 85.

⁴⁷ *Ibid.*, p. 84.

9.3 Integrated birth certificates

Throughout the Inquiry, a reoccurring theme in the evidence was the need for reform in birth certificates. The Committee acknowledges that this is an area of ongoing frustration for many people who are adopted. Particularly given past inquiries on adoption legislation in Australia, including the Senate Inquiry and the VLRC Review, recommended their development, alongside post-adoption certificates to protect adopted people from unwanted disclosures.⁴⁸ The VLRC considered that integrated birth certificates support the move towards modern, open adoption practices that do not aim to sever the ties between adopted children and their families, but rather promote knowledge and connection to one's family and cultural heritage.⁴⁹

Further, the Victorian Government supported the development of integrated birth certificates in 2012. Then Minister for Community Services, the Hon Mary Wooldridge MP, announced a range of measures to support those affected by forced adoption during the motion for an apology for past adoption practices in the Victorian Parliament, including 'the support for an integrated birth certificate through a national process'.⁵⁰

Further, in its submission to the Standing Committee on Social Policy and Legal Affairs' 2018 *Inquiry into local adoption*, the Victorian Department of Health and Human Services advised that it was considering the VLRC recommendations regarding integrated birth certificates:

The Victorian Government is carefully considering the report and its recommendations.

Changes to policies and service delivery are also being considered to address some of the immediate issues raised. These changes will be made with a view to increase clarity, bring practice up to date and reflect the best interests of the child.⁵¹

Several participants to the current inquiry expressed frustration that integrated birth certificates were yet to be implemented by the Victorian Government.⁵² Gary Coles wrote in his submission:

On the first point, Victoria has been both tardy and negligent. That integrated birth certificates be introduced was also a recommendation made by the Victoria Law Reform Commission in a report tabled on 7th June 2017, yet there has been no further progress. This recommendation was in addition to an undertaking made by the Minister of Community Services Mary Wooldridge on 25th October 2012, the day of the Victorian

⁴⁸ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. x; Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 97.

⁴⁹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 107.

⁵⁰ Victoria, Legislative Assembly, 25 October 2012, *Parliamentary debates*, Book 16, pp. 4779, 4787.

⁵¹ Department of Health and Human Services, submission to Parliament of Australia, Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption*, 2018.

⁵² Name Withheld, *Submission 34*, received 28 February 2020, p. 3; Gary Coles, *Submission 3*, received 7 January 2020, p. 1; ARMS (Victoria), *Submission 45*, received 5 March 2020, p. 9.

Apology for Past Adoption Practices ... *to support the development of an integrated birth certificate* ... For the wellbeing and identity settlement of adopted persons, this long-deferred matter requires urgent attention. The task is not beyond Victoria, for recently South Australia introduced integrated birth certificates. [emphasis in original]⁵³

Similarly, VANISH stated in its submission:

This issue has been raised and advocated for in various forums, with Ministers, through the Apology consultations and through the VLRC Review of the *Adoption Act*. VANISH is extremely concerned that this matter is now tangled up with a new *Adoption Act* as recommended by the VLRC and strongly urges the Department of Justice and Community Safety to implement Integrated Birth Certificates for those adopted persons who want them ...⁵⁴

The Committee also notes the diverse views regarding birth certificates and that not all people who are adopted want an integrated birth certificate. As discussed, the VLRC Review received 13 different proposals regarding birth certificates and acknowledged that its final recommendation would not appease all parties.⁵⁵

The Committee heard that some people believe a birth certificate should reflect a child's true history and biological origins. Peter Capomolla Moore wrote in his submission that he opposes integrated birth certificates as they are 'another lie or an extension of a lie'. He believes, however, that adopted people should have many options available to them so they can choose how to make sense of their identities. Peter Capomolla Moore does not approve of integrated birth certificates for future adopted people.⁵⁶

ARA stated in its submission that people who are adopted should have access to their original birth certificate and the adoption order to prove a change of name 'just as a married woman would use her marriage certificate to prove her change of name'.⁵⁷ It also stated:

Arguments for only partial name changes such as children being 'allowed' to retain their first names, and arguments for 'integrated' birth certificates with multiple parents do nothing to change the fundamental rights violation that is State-imposed identity change. Changing natural identities is a tool of oppression common to other historical oppressions such as slavery, indentured servitude, fascism and genocide, all of which involved cases of State imposed artificial identities on babies and children and, even, on adults.⁵⁸

⁵³ Gary Coles, *Submission 3*, p. 1.

⁵⁴ VANISH Inc., *Submission 53*, pp. 57–58 (with sources).

⁵⁵ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 104.

⁵⁶ Peter Capomolla Moore, *Submission 44*, p. 1.

⁵⁷ Adoptee Rights Australia Inc., *Submission 46*, p. 2.

⁵⁸ Ibid.

In its evidence, VANISH advocated for the implementation of integrated birth certificates, although it acknowledged the variety of opinions from adopted people on this issue:

As recognised by the National Forced Adoption Apology Reference Group, VANISH understands that many adoptees want their pre-and post-adoption birth certificates to be integrated, so as to link their original (or genealogical) identity with their adoptive identity in one official document. This would assist those adoptees to integrate their individual identity—a developmental task throughout both childhood and adulthood that those raised by the same parents from who they were conceived and born mostly take for granted.

However, VANISH is also aware that many adoptees do not want an integrated birth certificate if it means this is the legal document they must produce in everyday circumstances when identification is required (such as opening a bank account, or applying for a driver’s licence or passport). Rather, they would prefer to keep their accurate birth registration document private and be able to use another legal identity document that provides an extract of their identifying details.⁵⁹

In its submission, Jigsaw Queensland, Queensland’s non-government post-adoption support service, drew attention to the importance of choice for people who are adopted:

With respect to what information should be on birth certificates, we have consistently maintained the principle that *persons should always have access to the historical truth but end users should have choices as to what is on their identity document*. [emphasis in original]⁶⁰

The Association of Relinquishing Mothers expressed a similar sentiment in its submission, stating it is important that people who are adopted have a choice in what they reveal and to whom:

The truthful recording of a birth is fundamental to a person’s identity. We support truth being available and reported, and also believe that an adopted person should be able to choose the extent to which they reveal their status to a public institution or person. One option that we support is to have the adopted family details on one side (Schedule 2) and the original family on the other side (Schedule 6). That enables some choices for the adopted person about the extent to which his/her genealogy is revealed.

In our view the original certificate issued must have both sets of names in equal status. The adopted person can then apply for a full Certificate carrying the names of whichever set of parents s/he wants on the birth certificate for daily use. Both should be recognised as legal documents of identification by all relevant authorities. The child of say (12) twelve years old could make a decision about which Certificate they would prefer, which would require a conversation with the adoptive parents about the adoption, therefore opening up positive communication.⁶¹

⁵⁹ VANISH Inc., *Submission 53*, p. 84 (with sources).

⁶⁰ Jigsaw Queensland Inc., *Submission 14*, received 31 January 2020, p. 7.

⁶¹ ARMS (Victoria), *Submission 45*, p. 9.

Adoption Origins Victoria wrote in its submission that birth certificates should only record the details of birth and that a separate certificate should be issued concerning the adoption.⁶² It also opposes integrated birth certificates, stating that birth certificates ‘should always be an accurate reflection of genealogy’ and that integrated birth certificates ‘do not go far enough to respect the adoptees right to his or her true identity’:

Birth certificates are not parenting certificates. Infertile couples and other people who seek to adopt had nothing to do with the child’s conception and birth therefore have no right to be on the adopted child’s birth certificate. The creation of such false birth certificates by the Adoption Act 1984 (Vic) effectively cuts a child off from their entire family of origin, commoditise the child and transfer ownership of the child to genetic strangers. The issuance of the false birth certificate, post adoption birth certificate creates new owners of the property/child which has nothing to do with the child’s birth. Adoption Origins Victoria believes that birth certificates should always be an accurate reflection of genealogy and birth certificates should not be seen as a certificate of parenting.

Adoption Origins Victoria opposes the introduction of a post adoption integrated birth certificate which includes adopters as parents. Adoption Origins Victoria opposes such integrated birth certificates on the basis that such a birth certificate would name the adoptee as having been adopted and set out that the adopters had nothing to do with the birth. The integrated birth certificate does not go far enough to respect the adoptees right to his or her true identity.⁶³

At a public hearing, the Hon Nahum Mushin AM recommended that an adopted person retain their original birth certificate with their mother and father on it and that in the place of an amended birth certificate for a child to establish that he or she is adopted, they could present the adoption order at the Family Court to show that somebody else has parental responsibility.⁶⁴ The Hon Mushin told the Committee that changing the birth certificate upon adoption to leave out the parents is ‘bad policy and it is inappropriate’:

I think the process of rewriting the birth certificate upon adoption to exclude the parents—the mother and the father—is wrong for a number of reasons. The most important of them is that adoptees want to know their roots, their background. My experience on the Family Court, for example, is that a child even wants to know a parent who is in jail for murder. It is not what they are like, but it is actually knowing what the background is, whether that be good or bad. So I think that should be abandoned, and I would very strongly recommend to the committee that that should take place.⁶⁵

⁶² Adoptions Origins Victoria Inc., *Submission 43*, received 4 March 2020, p. 104.

⁶³ Adoptions Origins Victoria Inc., *Submission 43, Attachment 3*, received 4 March 2020, pp. 7, 10, 1.

⁶⁴ The Hon Nahum Mushin AM, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 21.

⁶⁵ *Ibid.*, p. 20.

9.4 Inquiries into adoption and forced adoption

9.4.1 Senate Inquiry

The Senate Inquiry made two recommendations in relation to birth certificates. The first was that all jurisdictions adopt integrated birth certificates for eligible people upon request which should have equal legal status to other birth certificates as proof of identity; and that jurisdictions investigate the harmonisation of access to the births, deaths and marriages register and the facilitation of a single national access point to these registers (Recommendation 13).⁶⁶

The second recommendation was that all jurisdictions establish an administrative process, rather than a court order, for allowing the names of fathers to be added to the original birth certificates of children who were subsequently adopted and for whom fathers' identities were not originally recorded (Recommendation 14).⁶⁷

In March 2013, the Australian Government responded by agreeing in principle with these recommendations but noted that birth certificates and birth, deaths and marriage registers are the responsibility of state and territory governments.⁶⁸

9.4.2 Victorian Law Reform Commission

In December 2015, the then Attorney-General asked the VLRC to review the Adoption Act. Demonstrating the complexity of these issues, the VLRC listed 13 different options on changes to birth certificates that were proposed to it during the inquiry:

1. A child's birth certificate should never change on adoption. People who are adopted should continue to use their original birth certificate and their adoptive parents should use an adoption or parenting certificate to establish their legal parentage.
2. People affected by past forced adoption practices should be able to have their original birth certificate restored as a valid identity document without having to go to court to have their adoption discharged.
3. Integrated birth certificates with equal legal status to regular birth certificates should be available to people affected by past forced adoption practices.
4. Integrated birth certificates with non-legal status should be available to people affected by past forced adoption practices.
5. Integrated birth certificates with equal legal status to regular birth certificates should be issued in all future adoptions.

⁶⁶ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. x.

⁶⁷ Government of Australia, *Response to the Parliament of Australia, Senate Community Affairs References Committee, Commonwealth contribution to former forced adoption policies and practices*, pp. x-xi.

⁶⁸ *Ibid.*, p. 9.

6. Integrated birth certificates with equal legal status to regular birth certificates should be optional for all people who have been adopted and are adopted in future.
7. Integrated birth certificates with non-legal status should be available to all people who have been adopted and are adopted in future.
8. Adopted people could have an integrated birth certificate for personal use and an abridged document for public uses.
9. Adopted people could have a two-sided document, showing details of their birth and adoption on different sides.
10. The system used for donor-conceived people should be used. Amended birth certificates should be used with an addendum alerting the person that there is further information about their birth.
11. Adopted people should be able to choose between an integrated birth certificate and an amended birth certificate with an optional separate document showing details of the family of origin.
12. Original birth certificates should be maintained in all future adoptions but children aged 12 years or older could choose to have an integrated birth certificate.
13. There should be no change to the current system of issuing amended birth certificates.⁶⁹

The VLRC Review recommended optional integrated birth certificates and the retention of amended birth certificates. The VLRC stated that it was in the best interests of the child that they be allowed to have their identities as adopted people and the reality of their family relationships reflected on their birth certificates. Nonetheless, it noted that ‘this should not be forced on people’:

While some adopted people do and will want a birth certificate which expresses the truth of their birth and adoption, others will not want to disclose they were adopted when using their birth certificate for everyday purposes. Some people would prefer to have a birth certificate which looks no different from anyone else’s. This option should remain available.⁷⁰

The purpose of a birth certificate was a fundamental question for the VLRC who ultimately concluded that while birth certificates have symbolic value, their primary purpose is legal in establishing a person’s legal identity and showing who a child’s legal parents are.⁷¹ The VLRC advised that an adopted person’s original birth certificate cannot be maintained for legal use because it does not show a person’s legal identity or who their legal parents are.⁷² It acknowledged that people affected by past forced adoption would be disappointed with its recommendations because many had advocated for the original birth certificate to be ‘restored’. However, the VLRC found that restoration was not viable.⁷³

⁶⁹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 104.

⁷⁰ *Ibid.*, pp. 107–108.

⁷¹ *Ibid.*, p. xv.

⁷² *Ibid.*

⁷³ *Ibid.*, p. 97.

Regarding the introduction of integrated birth certificates, four practical issues were raised with the VLRC, including possible security risks, possible issues relating to the 'Document Verification Service', possible difficulties when dealing with agencies and cost. The VLRC considered security considerations and cost to be the primary issues and, while recommending integrated birth certificates, it also advised that these considerations should be examined by the Victorian Government:

The Commission concluded that reform should occur, and that only one option is viable. It recommends that, subject to security and cost considerations, integrated birth certificates should be available to all children who are adopted, and all people who have been adopted, in Victoria. It sees no legal reason why integrated certificates should not have the same legal status as other birth certificates. However, there are practical matters which may affect whether it is feasible to use integrated birth certificates as valid identity documents. These matters could not be resolved in this review and should be examined by the Victorian Government. In the meantime, 'commemorative' integrated birth certificates should be made available.⁷⁴

The VLRC noted that some submissions it received referred to a child's right to know their parents and to the preservation of their identity under articles 7 and 8 of the United Nations *Convention on the Rights of the Child* (CRC). Article 7 states that every child 'shall be registered immediately after birth' and has 'as far as possible, the right to know ... his or her parents'.⁷⁵ Article 8 states that every child has the right 'to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference'.⁷⁶ On this, the VLRC stated:

The Commission sees no reason why, in future adoptions, the original birth certificate should not be provided to the adoptive family when the adoption order is made. As well as upholding children's rights under article 7 of the CRC, this may encourage open adoption arrangements between the adoptive family and natural parents.⁷⁷

The Victorian Government has implemented some changes in response to the VLRC's recommendations, but has not made any legislative changes regarding birth certificates. The Department of Justice and Community Safety advised in its response to the Committee that it is considering the VLRC's recommendations.⁷⁸

9.4.3 Standing Committee on Social Policy and Legal Affairs

The House of Representatives' Standing Committee on Social Policy and Legal Affairs tabled its report, *Breaking barriers: a national adoption framework for Australian children—Inquiry into local adoption* in November 2018. In her forward, Committee Chair Julia Banks MP wrote:

⁷⁴ Ibid.

⁷⁵ United Nations Human Rights Office of the High Commissioner, *Convention on the Rights of the Child*, Article 7.

⁷⁶ Ibid., Article 8.

⁷⁷ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 314.

⁷⁸ Rebecca Falkingham, correspondence, p. 6.

One of the most significant issues raised by adoptees, prospective adoptive parents and child protection professionals was that birth certificates still reflect past adoption practices by replacing birth parents' names with the names of adoptive parents as if the child was born to them. This legal severance from birth families has had ongoing impacts on adoptees. In the spirit of open adoption, national legislation could establish the use of integrated birth certificates, which include the names of birth and adoptive parents.⁷⁹

The Standing Committee heard that birth certificates were a barrier to open adoption as many submissions expressed 'concern that open adoption still severs the legal relationship between children and their birth families, through the creation of new birth certificates'.⁸⁰ The Standing Committee noted that many submitters considered new birth certificates to be false and that they contributed to a loss of family, identity and culture.

Case workers told the Standing Committee that they consider the creation of a new identity via amended birth certificates to be in direct contrast to the openness of current adoption work and present an ethical barrier to adoption practice.⁸¹ Similarly, the Department of Social Services submitted 'that a reluctance to legally sever the relationship between a child and his or her birth family may be a reason for the relatively low number of adoptions of children in out-of-home care'.⁸²

The alternative of 'simple adoption' was raised by some submitters to the Standing Committee, which 'allows children to remain legally a part of their family of origin when they are adopted, while forming a new legal relationship with the adoptive family and assigning them parental rights'.⁸³ Under this framework, which is provided for by legislation in Mexico, France, Thailand, Ethiopia and Belgium, a separate legal document—such as an 'adoption certificate', 'parenting certificate' or 'guardianship certificate'—reflects the legal relationship between the adoptive parent or parents and child, while keeping the original birth certificate.⁸⁴

⁷⁹ Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption*, November 2018, p. x.

⁸⁰ *Ibid.*, p. 74.

⁸¹ Associate Professor Karleen Gribble, Adjunct Associate Professor, School of Nursing and Midwifery, Western Sydney University, submission to Parliament of Australia, Standing Committee on Social Policy and Legal Affairs', *Inquiry into local adoption*, 2018, p. 4.

⁸² Department of Social Services, *Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs' inquiry into a nationally consistent framework for local adoption in Australia*, submission to Parliament of Australia, Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption*, 2018, p. 3.

⁸³ Adopt Change, *Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs on the Inquiry into Local Adoption*, submission to Parliament of Australia, Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption*, 2018, p. 20.

⁸⁴ Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption*, p. 72. Citing the following submissions and evidence: Adopt Change, *Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs on the Inquiry into Local Adoption*, p. 20.; Associate Professor Karleen Gribble, p. 5.; Associate Professor Karleen Gribble, University of Western Sydney, Standing Committee on Social Policy and Legal Affairs, private capacity hearing, Canberra, 22 June 2018, *Transcript of evidence*, p. 33.; Professor Denise Cuthbert, Researcher, Standing Committee on Social Policy and Legal Affairs, private capacity hearing, Canberra, 22 June 2018, *Transcript of evidence*, p. 33.

The Standing Committee expressed concern that issuing new birth certificates, which sever the legal ties between adopted children and their birth families, is a significant barrier to progressing open adoptions and instead recommended integrated birth certificates so that children remain connected to their family:

The Committee is of the view that integrated birth certificates will address much of the legacy of past adoption practices as a barrier to adoption. However, the Committee notes that further work may be required to address whether and to what extent the legal relationship between children and their birth parent(s) may be retained through this option.⁸⁵

Recommendation 5 was a key recommendation of the Standing Committee that called for a national adoption law that includes integrated birth certificates which names both natural and adoptive parents, ‘while conferring full parental and legal responsibility for adopted children on the adoptive parent(s)’.⁸⁶ The Australian Government response ‘noted’ this recommendation but stated that the ‘administration of births, deaths and marriages are matters for state and territory governments’.⁸⁷

9.5 Birth certificates in other jurisdictions

Despite calls over the last few decades to establish nationally consistent adoption legislation, the framework in other jurisdictions is varied. One commonality is the practice of producing two birth certificates, with all states and territories issuing new birth certificates following an adoption order. A form of integrated birth certificates are available in SA, WA and NSW, although the approaches taken are not consistent, including the acceptance of an integrated birth certificate as an identity document. The VLRC Review noted that ‘[a] nationally co-ordinated response to the question of the legal status of integrated birth certificates would be helpful’.⁸⁸

9.5.1 New South Wales

Integrated birth certificates were first recommended in the NSW Law Reform Commission’s 1997 *Report 81: Review of the Adoption of Children Act 1965 (NSW)* which concluded that issuing both a post-adoptive birth certificate and an integrated birth certificate was ‘the only practicable solution’ to an ‘unsatisfactory system’.⁸⁹ Previous incarnations of integrated birth certificates in NSW did not have equal status to other

⁸⁵ Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption*, p. 85.

⁸⁶ Ibid.

⁸⁷ Government of Australia, *Response to the Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, Inquiry into local adoption*, September 2019, p. 9.

⁸⁸ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 115.

⁸⁹ Law Reform Commission, *Report 81 (1997): Review of the Adoption of Children Act 1965 (NSW)*, report prepared by NSW Government, Sydney, p. 195.

birth certificates, with the VLRC Review noting that the NSW Registry of BDM stamped the integrated birth certificate with the words ‘not for official use’ and stated that the documents ‘cannot be used for identification purposes’.⁹⁰

The most recent version of integrated birth certificates was recently introduced in NSW following passage of the *Adoption Legislation Amendment (Integrated Birth Certificates) Bill 2020* (NSW) in September 2020. Where a person is adopted and the adoption is registered in NSW, the Registrar of BDM will automatically issue both a post-adoptive birth certificate and an integrated birth certificate, which are both valid identity documents, allowing a person to use whichever they prefer for legal purposes. An integrated birth certificate is issued to all newly adopted persons in NSW with a post-adoptive birth certificate, both of which are legally recognised and contain the same registration number.⁹¹

The process for obtaining an integrated birth certificate varies depending on when the adoption occurred, whether the person is under 18, and ‘in some circumstances other factors which will be managed by the Department of Communities and Justice’.⁹² To illustrate, for adoptions that occurred before 1 January 2010, BDM requires an ‘authority’, such as an Adoption Information Certificate, to supply an integrated birth certificate.⁹³ If a person is under 18, they require the consent of their adoptive parents and natural parents (the Adoption Information Unit can attempt to contact the natural parents if they do not have a relationship).⁹⁴

In his second reading speech for the 2020 Bill, the NSW Attorney-General, the Hon Mark Speakman SC MP, stated that the Department of Communities and Justice consulted the adoption community and the broader community through an online survey to ascertain what information is preferred in a birth certificate.⁹⁵ Almost 600 responses were received with more than 85% agreeing that people who are adopted should have a birth certificate that includes both birth and adoptive family information. More than 90% of respondents found the sample integrated birth certificate easy to understand.⁹⁶ An Adoptions Working Group comprised of representatives from Legal Aid NSW, the Crown Solicitor’s Office, a NSW Supreme Court judge, Accredited Adoption Service Providers and the University of Sydney Open Adoption Institute also considered the proposal to introduce integrated birth certificates and ‘strongly supported’ their introduction.⁹⁷

⁹⁰ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 115.

⁹¹ Department of Communities & Justice, *Introducing integrated birth certificates*, 12 November 2020, <<https://www.facs.nsw.gov.au/families/adoption/introducing-integrated-birth-certificates>> accessed 25 June 2021.

⁹² Ibid.

⁹³ An Adoption Information Certificate has identifying details of all the parties at the time of the adoption, including the adopted person, birth parents and adoptive parents. Department of Communities & Justice, *Adoptions before 2010: applying if you’re 18 or over*, 27 February 2020, <<https://www.facs.nsw.gov.au/families/adoption/finding-info/adoptions-before-2010-over-18/chapters/apply#:~:text=Adoption%20Information%20Certificate%20This%20certificate%20has%20identifying%20details,the%20adopted%20person%2C%20birth%20parents%20and%20adoptive%20parents>> accessed 25 June 2021.

⁹⁴ Department of Communities & Justice, *Introducing integrated birth certificates*.

⁹⁵ New South Wales, Legislative Assembly, 5 August 2020, *Parliamentary debates*, p. 3310.

⁹⁶ Ibid.

⁹⁷ Ibid.

The NSW Attorney-General told the Legislative Assembly that legislation governing post-adoptive birth certificates had not changed since 1965. This is despite recent changes in NSW to adoption laws in other areas that ‘embedded modern, open adoption practices’ and that ‘[t]hese certificates will better reflect the life story and identity of the adopted person and are consistent with modern adoption practice’.⁹⁸

A NSW Government factsheet similarly states:

Post-adoptive birth certificates are consistent with the legal effect of adoption but do not reflect contemporary ‘open’ adoption practices, which promotes connection to birth family and cultural heritage wherever possible.

An IBC [integrated birth certificate] better reflects the full identity of an adopted person.⁹⁹

Further, the Department of Communities and Justice is of the view that this change is ‘a positive reflection of contemporary open adoption practice’.¹⁰⁰

9.5.2 South Australia

Integrated birth certificates were first proposed in a 1986 SA parliamentary review that recommended that birth certificates remain ‘a true record of the birth of the child’ and include the names of the adoptive parents. This was viewed as consistent with ‘the principles of a modern adoption service, which places the child’s interests as paramount and which focus on openness and honesty in adoption practices’.¹⁰¹

In 2016, further changes were made to SA’s adoption legislation following a review of the *Adoption Act 1988 (SA)*, which recommended that an adopted person’s birth certificate reflect the ‘truest possible’ account of a child’s birth history.¹⁰² The review noted that the people listed as parents on a post-adoption birth certificate are not identified as adoptive parents ‘so, to an adopted person, the birth certificate reads as though the adoptive parents are their (birth) parents’ and that the ‘act of “creating fiction”’ is irreparable and causes many flow-on problems for adopted people.¹⁰³

In the second reading, then Minister for Child Protection Reform, the Hon John Rau MP, told the House of Assembly that the Adoption (Review) Amendment Bill 2016 would:

enable the Registrar of Births, Deaths and Marriages to register an adopted child’s birth to reflect the ‘truest possible’ account of their biological parentage and at the same time ensure any certificates produced make clear who is the child’s legal parent. The changes to the legislation will introduce retrospectivity, so people adopted in the past can have,

⁹⁸ Ibid.

⁹⁹ Department of Communities & Justice, *Introducing integrated birth certificates for adopted people*, Fact sheet, NSW Government, 2019.

¹⁰⁰ Department of Communities & Justice, *What happens when an adoption order is made*, 23 September 2020, <<https://www.facs.nsw.gov.au/families/adoption/birth-parents/orders>> accessed 25 June 2021.

¹⁰¹ Parliament of South Australia, The Review Committee, *Adoption Policy and Practice in South Australia*, 1986, p. 62.

¹⁰² Lorna Hallahan, *Adoption Act 1988 (SA) Review*, Flinders University, Adelaide, 2015, pp. 15, 66–67.

¹⁰³ Ibid., p. 36.

on application, an integrated birth certificate showing both sets of parents. This is in line with the relevant recommendation of the 2012 Senate inquiry into the *Commonwealth Contribution to Former Forced Adoption Policies and Practices*.

The Review found that a birth certificate is a foundational document that establishes a person's biological and familial beginnings. For adopted people, Associate Professor Hallahan [who conducted the Independent Review] found that 'this foundational story is disrupted' contributing to a distortion of identity formation.¹⁰⁴

The changes to integrated birth certificates came into effect on 15 December 2018.¹⁰⁵ The certificates also contain the full name that a child is given by their natural parents or guardians, as well as the adoptive name of the child.¹⁰⁶

9.5.3 Western Australia

WA was the first Australian jurisdiction to introduce adoption legislation with the *Adoption of Children Act 1896* (WA). Integrated birth certificates were recommended in a 1991 review to maintain child's connection with their family of origin.¹⁰⁷ The review also recommended that adopted people and/or adoptive parents be able to access a certified copy of the Registration of Birth which does not include reference to natural parents or adoptive status so that they do not have to disclose their adoption or have a certificate that looks different to other birth certificates.¹⁰⁸

The VLRC Review stated in its report that integrated birth certificates in WA do not have equal legal status to regular birth certificates.¹⁰⁹ It wrote:

The amended birth certificate is the legally valid birth certificate. It shows the adopted person's 'new identity' and the 'new parentage'. The Registrar of BDM (WA) told the Commission the integrated certificate is intended to be an 'information source', which provides a record of the adoption and can assist with tracing family members. The Registrar explained that BDM (WA) does not support using integrated birth certificates as official identity documents. It considers that they could cause confusion in the community, because the certificates show two identities.¹¹⁰

¹⁰⁴ South Australia, House of Assembly, 2016, *Parliamentary debates*, p. 6882.

¹⁰⁵ Department for Child Protection, *Adoption (Review) Amendment Act 2016*, (n.d.), <<https://www.childprotection.sa.gov.au/adoption/changes-to-the-adoption-act/adoption-review-amendment-act-2016#:~:text=The%20Adoption%20%28Review%29%20Amendment%20Act%202016%20was%20passed.in%20the%20South%20Australian%20Parliament%20in%20December%202016>> accessed 23 October 2020.

¹⁰⁶ Department for Child Protection, *Integrated birth certificates*, (n.d.), <<https://www.childprotection.sa.gov.au/adoption/integrated-birth-certificates>> accessed 23 October 2020.

¹⁰⁷ Adoption Legislative Review Committee, *A new approach to adoption: final report*, Department for Community Development, Perth, 1991, pp. 6, 84.

¹⁰⁸ *Ibid.*, p. 81.

¹⁰⁹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 114.

¹¹⁰ *Ibid.*

The VLRC quoted the Registrar as advising in email correspondence that:

it is unlikely the integrated birth certificate would be accepted by the multitude of organisations which now require birth certificates for identity purposes given the two identities on the document, leading to additional frustration and anguish for adoptees.¹¹¹

9.5.4 Committee comment

The Committee supports the VLRC Review, Senate Inquiry and Standing Committee on Social Policy and Legal Affairs' recommendations on integrated birth certificates and the retention of amended birth certificates. The Committee believes that people who are adopted should have the option of an integrated birth certificate which recognises their parents and adoptive parents, their identity and their heritage. As reflected in evidence to this inquiry, this is important to many people who are adopted. When asked about her view on birth certificates, SallyRose Carbines told the Committee:

I have a personal position. Since I have met my father, he has died. He was not on my birth certificate. I think if he was alive, I would probably go to have an integrated birth certificate with both my mother and father on it, but he is not. At my age I feel I probably would not pursue that. But I think it varies. It is very individual, but I think as an adopted person and perhaps getting those records, knowing the truth a lot earlier would have helped. What people do with that knowledge I suppose is—you do not know what people are going to do. But I think it is really important that people do know who they are. I spent years just looking at everybody's face. If you had said to me, 'Oh, you look like so and so', that would carry weight for me for ever and ever, and if I had known a name or whatever. I think it is really important and I think it does respect our beginnings, our roots. As much as people tried to bury it, it is just too hard. The curiosity in us, the human desire for us to know where we belong, where we fit in, is so strong that I think it is really important.¹¹²

The Committee believes the implementation of integrated birth certificates is the most appropriate way to balance the best interests of people who are adopted, their right to have their identities and heritage recognised with their right to privacy and protection from unwanted disclosures. The Committee also believes that these certificates should have equal legal status with amended birth certificates. They should be provided free of charge for an initial certificate and be implemented without delay.

RECOMMENDATION 26: That the Victorian Government implement integrated birth certificates without delay, issued to people who are adopted upon request and that they be legal proof of identity of equal status to other birth certificates.

¹¹¹ Ibid., p. 115.

¹¹² SallyRose Carbines, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, pp. 27–28.

Going forward, the Committee believes that original birth certificates should be retained for people who are adopted today and into the future. This is discussed further in Chapter 12.

9.6 The inclusion of fathers on birth certificates

Evidence received by the Committee illustrates that many fathers were not included on birth certificates despite mothers recording those details or requesting that they be added. The Committee heard that many people who are adopted want their fathers on their birth certificates. One person who found their father through DNA testing told the Committee that they would like natural fathers' names to be easily added onto birth certificates:

My birth father is a blank space on my original birth certificate, so half of me is legally missing and will remain that way.¹¹³

Jennifer McRae, who was adopted in WA, wrote of the 'cruel irony' that her birth certificate did not reveal her father's name but did include the names of the hospital staff present at her birth.¹¹⁴ She wrote in her submission:

I was utterly devastated to discover my father's name missing when I received my first birth certificate in 1991, it was an anticlimax to the otherwise euphoric discovery at reading on paper of the names of who I 'was' and belonged to. After reading of others who have done so, I recently approached the WA Births, Deaths and Marriages office to have my biological fathers name added to my birth certificate. It will require considerable paperwork and evidence via DNA that confirms that I am his kin. Thankfully, my brother Mark, is supportive of my application as I require his involvement to achieve this requirement for the registry. Unfortunately, this would not be the case for many adoptees wishing to have their fathers name added to the empty gap in their original birth certificate.¹¹⁵

In his submission, Peter Capomolla Moore stated that he would like his father's name to be inserted on his original birth certificate. In reference to his experience with the NSW BDM, he indicated that despite having a statutory declaration from his mother, ancestry DNA to support this and satisfying the requirements of the BDM application form, he has applied and been rejected twice. He stated: '[o]ne adoptee I know was told by a BDM counter staff member, that he would have to dig up his deceased father and get a DNA test'.¹¹⁶

Evidence received by the Committee illustrates that many fathers were not included despite mother's recording those details or requesting that they be added. One of the reasons for this was so fathers' consent to an adoption would not need to be obtained.

¹¹³ Name Withheld, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 42.

¹¹⁴ Jennifer McRae, *Submission 82*, received 15 May 2021, p. 4.

¹¹⁵ *Ibid.*, pp. 6-7.

¹¹⁶ Peter Capomolla Moore, *Submission 44*, p. 1.

In her submission, Cherylyn Harris told the Committee about her attempts to include the father of her child on the birth certificate:

When the Salvation Army Sister came to me for information to fill in [redacted] birth certificate, I started out by giving [redacted] fathers name. I was promptly told that his name was not allowed to be on it, nor his address. I was angry so when she asked me where I was born I gave instead [redacted] father's birthplace, which was Triabunna in Tasmania. I signed the form such as it was. I had no copy of it. I believe copies were posted out to people but mine would have gone to the Haven as it was the only address written on it. Years later, when I was able to get a copy of the original I found that it had been altered from Triabunna to Hobart, of course after I had signed it and without my initials on the alteration.¹¹⁷

The Committee also received evidence that fathers were excluded from birth certificates despite their details being provided. Lyn Kinghorn wrote in her submission:

I filled in my daughter's fathers' details and I am horrified that her birth certificate came with 'father unknown'. This was the usual procedure to prevent the trouble of gaining two illegal consents. And to condemn mothers as whores. Confirming the lies that we abandoned our babies. Also, to alleviate guilt for those receiving our babies.¹¹⁸

Judy Stiff wrote about a similar experience in her submission when the nurse was filling in the birth certificate application on her behalf:

I was asked the fathers name, I told her, she said we don't normally do that, usually put unknown, I protested told her what to put I don't know if she did, I was told usually in these cases they put unknown, I was distraught as it made me out to be a bad girl seems everyone was protected except for me.¹¹⁹

Jennifer McRae stated in her submission that had fathers been informed, many adoptions would not have been finalised:

[My mother] has told me that they were encouraged to not name known fathers on the birth certificates of their newborns. I suspect that this was a strategy to support the narrative that adoptees were uniformly born without a known or participating father and as such we were illegitimate, from a broken home and 'unwanted'. There was no offer made by adoption authorities and those who facilitated WA adoptions to contact our fathers in a mediatory capacity to inform them of our birth. Our paternal parents were not rightfully informed of our existence and those fathers who did know were sidelined from any involvement or decision making about our welfare. They too, like our Mothers were stripped of their rights as a parent. If our Fathers had been informed, I believe that many adoptions would **not** have been finalised, as given the opportunity many of these young men would have stepped up out from the sidelines to claim us as theirs and to support our Mothers. [emphasis in original]¹²⁰

117 Cherylyn Harris, *Submission 33, Attachment 5*, received 28 February 2020, p. 1.

118 Lyn Kinghorn, *Submission 11*, received 30 January 2020, p. 10.

119 Judy Stiff, *Submission 66*, received 17 June 2020, p. 2.

120 Jennifer McRae, *Submission 82*, p. 6.

The Senate Inquiry also received evidence that fathers' names were rarely included on birth certificates as if they were named they would be required to consent to the adoption along with the mother, which 'would have caused delay and potentially substantially more work for the authorities'.¹²¹

The Senate Inquiry heard that many people wanted it to be easier to amend birth certificates, such as to accurately reflect the details of the natural parents, including fathers. The Committee held the view that '[a]llowing subsequent modification of a document as basic as a birth certificate should never be lightly undertaken' and that '[a]dding new information to old birth certificates should also be approached with caution'.¹²² Nonetheless, the Senate Inquiry held the belief that 'there are cases where it is warranted':

Subject to appropriate controls being in place to verify paternity, the committee supports the names of fathers being added to pre-adoption birth certificates. The process of adding a father's name should be rigorous, but not unduly costly or time consuming.¹²³

As noted above, the Senate Inquiry made the following recommendation (Recommendation 14):

- All jurisdictions adopt a process for allowing the names of fathers to be added to original birth certificates of children who were subsequently adopted and for whom fathers' identities were not originally recorded; and
- Provided that any prescribed conditions are met, the process be administrative and not require an order of a court.¹²⁴

In Victoria, a father's name can currently be added to an adopted person's original birth certificate provided there is a certified copy of either the results of a DNA-based parentage test approved by the National Association of Testing Authorities, a court order directing BDM to add a parent to the birth certificate or a court order declaring the identity of the biological father.¹²⁵ According to BDM, it 'may consider adding the father's details without one of the above documents' [emphasis in original] if the mother named the father on the birth registration but the father did not complete his part of the registration; this is dependent on any paternity disputes.¹²⁶

¹²¹ Government of Australia, *Response to the Parliament of Australia, Senate Community Affairs References Committee, Commonwealth contribution to former forced adoption policies and practices*, p. 252.

¹²² *Ibid.*, pp. 256, 257.

¹²³ *Ibid.*, p. 257.

¹²⁴ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, p. 257.

¹²⁵ Births Deaths and Marriages Victoria, *Add or remove a parent on a birth certificate*, 2020, <<https://www.bdm.vic.gov.au/changes-and-corrections/add-or-remove-a-parent-on-a-birth-certificate#:~:text=If%20the%20birth%20certificate%20names%20a%20father%2C%20apply,a%20parent%20to%20a%20birth%20certificate%20%28External%20link%29>> accessed 23 October 2020.

¹²⁶ *Ibid.*

DNA evidence is not required where the application is in relation to a pre-adoptive birth record of a person adopted before 1985, prior to the commencement of the Adoption Act 1984 and when all parties (parents and their child) have signed the application and supplied the required identity documents.¹²⁷ Correspondence to the Committee from the Department of Justice and Community Safety stated:

Where the person to whom the birth certificate relates has not signed the application and supplied the required identity documents, BDM will work with Adoption Information Services within the Department to obtain their consent to add the father's name to their original birth certificate. The requirement to obtain consent from the person to whom the birth certificate relates is consistent with BDM's practice for all applications to correct a birth certificate for a person who is 18 years or older as the information recorded on the birth certificate relates to them.

The intention of removing the requirement for DNA evidence in these circumstances is to better assist families and individuals affected by forced adoption to correct the historical record.¹²⁸

BDM has received two requests to add a father's name to an original birth certificate in the last three years.¹²⁹

Gary Coles wrote in his submission regarding this:

Here Victoria can report qualified success. The father's name can now be added retrospectively to the original birth certificate, BUT, in the absence of a DNA test, via a court order. As a father, I welcome the implementation of the first provision [of the Senate's recommendations]. [emphasis in original]¹³⁰

The Committee supports the Senate Inquiry's Recommendation 14 and commends Victoria for having a process that allows the names of fathers to be added to original birth certificates, provided there is a certified copy of either the results of a DNA-based parentage test or a court order. The Committee understands that some adopted people may not be able to provide DNA evidence and may not wish to go through a court order. The Committee is pleased, however, that BDM can add a father's name where a mother originally named the father on the birth registration. The Committee would encourage other jurisdictions to develop an administrative process for allowing fathers to be added to original birth certificates where requested.

127 Rebecca Falkingham, correspondence, p. 8.

128 *Ibid.*, pp. 8–9.

129 *Ibid.*, p. 9.

130 Gary Coles, *Submission 3*, p. 2.

10 Accessing information and family reunification

To redress the shameful mistakes of the past, we are committed to ensuring that all those affected get the help they need, including access to specialist counselling services and support, the ability to find the truth in freely available records and assistance in reconnecting with lost family.¹

Accessing adoption records and searching for and reconnecting with family were significant themes raised by inquiry participants. The Committee heard from mothers and people who are adopted about the challenges of accessing their records but the overwhelming need to fill in the missing pieces. Adopted people told the Committee that they request information to understand their identity and reconnect with family due to a ‘deep desire to learn more about their origins and to gain a better understanding of who they are’.² People who are adopted also have a right to access their records to help them determine their medical history:

This is almost a basic human right—to find out these sorts of details. So, yes, I would like to see that adoptees can access at least their—and their descendants’—medical histories.³

The Committee heard from people who are adopted that access to such information is not only important for themselves but also their own children. Lee Whelan told the Committee:

My two sons have also had serious illnesses in their lives, illnesses that could have been in the family before. To have no access to past medical history is what forced adoption dealt me and it has been a heavy detriment to my life and my sons lives.⁴

Mothers request their adoption records and information to know what happened to their children and to reconnect with them. It was previously believed that mothers wanted to remain anonymous.⁵ However, research and experience have shown this to be untrue and that mothers think about their children for the rest of their lives.⁶ The Senate’s Community Affairs References Committee inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry) noted that mothers ‘forever remember the baby to which they gave birth’ and that parents

1 Attorney-General’s Department, Australian Government, *National Apology for Forced Adoptions*, 26 March 2013, <<https://www.ag.gov.au/families-and-marriage/publications/national-apology-forced-adoptions>> accessed 25 May 2021.

2 VANISH Inc., *A post-adoption guide: searching for records and birth relatives*, Melbourne, 2016, p. 6.

3 Name Withheld, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 48.

4 Lee Whelan, *Submission 74*, received 7 July 2020, p. 8.

5 VANISH Inc., *A post-adoption guide*, p. 7.

6 Ibid.

‘wonder what happened to their children and how they have grown up’.⁷ Yvonne May stated in her evidence that many mothers are ‘lost souls’ looking for information but ‘do not ... know where to turn’. She said they ‘want to ... know that their child is okay’.⁸ Marie Meggitt from the Association of Relinquishing Mothers (ARMS) advised the Committee that it was an ‘absolute nightmare’ to live with not knowing what happened to your child.⁹

The Committee heard that applying for adoption records is a time when people are likely to feel significant vulnerability. It is essential then that people are provided with appropriate and timely support. The Committee believes there are many options to streamline access to information, which are discussed throughout this chapter. This chapter also considers the opportunities to improve the search for family and discusses the various complexities of family reunification.

10.1 Accessing adoption records under the *Adoption Act 1984 (Vic)*

Prior to the introduction of the *Adoption Act 1984 (Vic)* (Adoption Act), adoption records were sealed, no contact was allowed or encouraged between parties to an adoption and court hearings were confidential.¹⁰ The Adoption Act established open adoption based on the principle that information could be shared between relevant parties and contact could be made.¹¹

A key principle of open adoption is allowing people to access their adoption records. Notably, the Adoption Act was applied retrospectively to grant access to adoption records pertaining to previous adoption laws.¹² However, the Act did not give equal rights to everyone to access identifying information without the consent of other parties to an adoption. Rather, only adult adopted people were granted this right.¹³

In its submission, the Victorian Adoption Network for Information and Self Help (VANISH) noted the significance of giving adopted people access to information, but also the lack of equal rights to parents and others:

Significantly, it allowed for the first time, adopted persons over the age of 18 to gain access to their original birth certificate and adoption records, and to outreach to their family of origin. Thus, it was acknowledged as a result of lobbying that for many adult adoptees there was a need for this information. Sadly, it did not give the same rights to mothers and fathers who continued to only be eligible to receive non-identifying

⁷ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. 249.

⁸ Yvonne May, *Submission 69*, received 25 June 2020, p. 29.

⁹ Marie Meggitt, ARMS (Vic), hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 26.

¹⁰ See *Adoption of Children Act 1964 (Vic)*.

¹¹ *Adoption Act 1984 (Vic)* s 59A.

¹² *Ibid.*, pt VI, division 2.

¹³ VANISH Inc., *Submission 53*, received 18 June 2020, p. 41.

information under these changes. The right to identifying information was not conferred on parents until 29 years later, after the Victorian Apology, when a 2013 amendment to the 1984 Act allowed parents to receive identifying information about their adult adopted children without the need for the adopted person's permission.¹⁴

The Committee heard that this caused anger and frustration for parents, particularly mothers. It was not until 29 years later in 2013 that an amendment to the Adoption Act gave parents the same right to access identifying information about their adult child without their consent.¹⁵

Various people can now access adoption records under the Adoption Act, as demonstrated in Table 10.1.

Table 10.1 Rights of persons to access information under the *Adoption Act 1984 (Vic)*

Applicant	Rights
Adopted adult	<ul style="list-style-type: none"> An adopted adult can access non-identifying and identifying information about a natural parent or relative. Where an adopted adult seeks to access information that reveals a natural parent or natural relative's whereabouts, and the information is not contained in the records of the 'relevant authority'^a, written consent from the natural parent or natural relative is required before the information can be disclosed. This consent can be given subject to conditions which the relevant authority must comply with.
Adopted child	<ul style="list-style-type: none"> An adopted child may apply for non-identifying and identifying information 'from the records of the relevant authority, or, where the application is made to the Secretary, from the records of the Secretary, an agency, another body or a person'. Each adoptive parent of the adopted child must consent in writing to the child accessing non-identifying or identifying information. An adopted child may only have access to information that reveals the identity of a natural parent with that natural parent's written consent.
Natural parents	<ul style="list-style-type: none"> A natural parent's access to adoption information differs depending on whether the adopted person is an adult or a child. Where the adopted person is an adult, natural parents can access: <ul style="list-style-type: none"> non-identifying information about the adopted person and adoptive parents information about the whereabouts of the adopted person information about the identity of the adoptive parents. Where the adopted person is a child, natural parents can access: <ul style="list-style-type: none"> non-identifying information about the adopted person and the adoptive parents information about the identity of the adoptive parents and the whereabouts of the adopted person, with the written consent of each adoptive parent. An adoptive parent can give consent subject to conditions. The relevant authority must consider any wishes expressed by the adopted child. The relevant authority can withhold information to give effect to the adoptive parents' conditions or the adopted child's wishes.

¹⁴ Ibid., p. 41 (with sources).

¹⁵ Ibid., p. 41.

Applicant	Rights
Adoptive parents	<ul style="list-style-type: none"> • Adoptive parents can access non-identifying information about an adopted person's natural parent or relative. • Adoptive parents can also access identifying information about a natural parent, but only with that natural parent's written consent. This consent can be given subject to conditions. The relevant authority can withhold information to give effect to the conditions. • Where the adopted person is an adult, the relevant authority must notify the adopted person that it intends to give the identifying information to the adoptive parent or parents.
Natural relatives	<ul style="list-style-type: none"> • A natural relative can access non-identifying information that does not reveal the identity of the adoptive parents or the adopted person's whereabouts. • Natural relatives can only access information about the identity of adoptive parents or whereabouts of the adopted person where: <ul style="list-style-type: none"> – 'circumstances exist which make it desirable' to give the information – written consent has been given by: <ul style="list-style-type: none"> – an adopted person who is an adult, or – where the adopted person is a child, the adoptive parents. • The adopted adult or adoptive parents' consent can be given subject to conditions. In addition, any wishes expressed by an adopted child must be considered. The relevant authority can withhold information to give effect to any conditions that attach to the consent or the adopted child's wishes.
Natural adult children of adopted people	<ul style="list-style-type: none"> • A natural adult child of an adopted person can access non-identifying and identifying information about their parent's adoption, including information that reveals the identity of a natural parent or natural relative of the adopted person. • Where the information reveals the identity of a natural parent or natural relative, the relevant authority must notify the adopted person that it intends to give that information to the adopted person's natural child. • Where the information reveals a natural parent or natural relative's whereabouts, and the information is not contained in the records of the relevant authority, written consent from the natural parent or natural relative is required before the information can be disclosed. This consent can be given subject to conditions which the relevant authority must comply with.

- a. The Victorian Registrar of Births, Deaths and Marriages is not a relevant authority for the purposes of the *Adoption Act 1984* (Vic).

Source: Adapted from Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, Consultation Paper, Melbourne, August 2016, Appendix B: Rights to adoption information under the information provisions, pp. 158–160.

The Adoption Act defines the information that people can access. Section 91 defines 'adoption information' broadly as:

information about the adopted person or the natural parents or the relatives of the adopted person which the relevant authority is satisfied—

- (a) is reasonably likely to be true; and
- (b) does not unreasonably disclose information relating to the personal affairs of a natural parent, a relative or any other person.¹⁶

¹⁶ *Adoption Act 1984* (Vic) s 91.

It is important to note the distinction between ‘non-identifying’ and ‘identifying’ information:

- Non-identifying information: ‘general information that does not identify the person, such as information relating to the person’s education, age, nationality, health and general physical appearance’.¹⁷
- Identifying information: ‘information that identifies the person or could lead to a person being identified’.¹⁸

The Committee is aware that the right to access certain identifying information from Births, Deaths and Marriages (BDM) by people who are adopted and natural parents has been identified as unclear by some people. This is addressed in Section 10.3.2.

10.1.1 Adoption Information Services

In Victoria, people can only obtain their adoption records from an Adoption Information Service (AIS). There are five AISs in Victoria: one Victorian Government AIS (Government AIS) and four other approved agencies. The four approved agencies are:

- Anglicare Victoria
- Ballarat Child and Family Services
- CatholicCare
- Uniting Vic.Tas.¹⁹

Section 102 of the Adoption Act defines an AIS by its functions:

- advise persons with respect to the provisions of this Part;
- make arrangements for the provision of counselling in relation to applications under this Part;
- receive applications for information under this Part;
- subject to and in accordance with this Part, facilitate the provision of information to a person whose name is entered in the Adoption Information Register maintained under section 103; and
- assist a person whose name is entered in that register to obtain information about an adopted person who has been adopted, whether before or after the commencement of this section, in a place outside Victoria and whose birth was not registered in Victoria, or about an adoptive parent or a natural parent of such an adopted person, being information of a kind that, if the adopted person had been adopted in Victoria, the person may have been able to obtain under Division 2.²⁰

¹⁷ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, Consultation Paper, Melbourne, August 2016, p. 117.

¹⁸ Ibid.

¹⁹ Rebecca Falkingham, Secretary, Department of Justice and Community Safety, correspondence, 26 May 2021, p. 1.

²⁰ *Adoption Act 1984* (Vic) s 102.

The Government AIS is the responsibility of the Department of Justice and Community Safety (DJCS). It retains the Government's adoption records as an adoption agency, as well as adoption records that were transferred to it by now defunct adoption agencies.²¹ The list of adoption records held by DJCS and the approved agencies is provided in Appendix C.

The Committee received evidence from Anglicare Victoria, CatholicCare and Uniting Vic.Tas., in addition to Berry Street and MacKillop Family Services, both of which operate a heritage and information service. They all spoke about the support they provide to people when they request their adoption records and/or information.

The Committee was encouraged by the proactive, personalised, and informed services these organisations provide. For example, Anglicare Victoria, Berry Street, Uniting Vic.Tas and MacKillop Family Services either partially or fully fund their heritage and information services due to the importance of the service and the demand for information from people affected by historical forced adoption and other people who were in their care.²² Dr Robyn Miller, the Chief Executive Officer (CEO) of MacKillop, told the Committee that accessing records and people 'know[ing] their own story' is a 'human right'.²³ To that end, MacKillop has undertaken projects such as digitising records to improve accessibility.²⁴ These organisations also employ heritage and information staff to avoid impersonal, automated responses and to provide continuity of care. Rowena Robinson, Adoption Information Service Worker at Anglicare Victoria explained:

It is important to note what a big step this first phone call is for most. They may have been considering doing it for years, and it is really important that I give them the time and the space to be heard and answer any questions they may have.²⁵

Uniting Vic.Tas described its model as a 'person-centred, wraparound service' which they believe is 'best practice' for an AIS.²⁶ Catriona Milne, Manager of the Uniting Heritage Service, outlined her team's personal approach:

At the Uniting adoption information service the requests come directly to me. There is no application form; people telephone and I speak with them. They may speak of their wishes and their fears, and we acknowledge how difficult that first call is. They may contact via email. If another Heritage Service caseworker is allocated, the requester is contacted within 2 to 12 hours and connected with the worker, who will stay with them throughout the whole journey, from initial contact to receiving records to ongoing

²¹ Rebecca Falkingham, correspondence, p. 1.

²² Dr Robyn Miller, Chief Executive Officer, MacKillop Family Services, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 19; Rowena Robinson, Adoption Information Service Worker, Anglicare, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 10; Annette Jackson, Executive Director, Berry Street, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 28; Bronwyn Pike, Chief Executive Officer, Uniting Vic.Tas, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 12.

²³ Dr Robyn Miller, *Transcript of evidence*, p. 19.

²⁴ Ibid.

²⁵ Rowena Robinson, *Transcript of evidence*, p. 11.

²⁶ Catriona Milne, Manager of Uniting Heritage Service, Uniting Vic.Tas, hearing, Melbourne, Uniting Vic.Tas, *Transcript of evidence*, p. 13.

searching and support. There can be several conversations leading up to that interview and the release of information, and people are continually updated as to the progress of their request. This takes between five and eight weeks. The worker may travel to meet people at a place of their choosing and with a person that they choose to support them. We provide food. We have several hours with people. We have travelled as far as Bendigo and after lockdown eased have met people in parks, in a local cafe.²⁷

Overall, she said Uniting Vic.Tas aims to make every interaction a therapeutic one:

We would say that every conversation needs to be therapeutic, so every time we talk to someone it is not an admin process for us. It is about listening to that person, giving them space and having several conversations.²⁸

The Committee commends these agencies for investing in heritage and adoption information services. Although it can never change the past, the Committee recognises that providing these best practice services demonstrates a genuine commitment to accountability and serves as a measure of atonement.

10.1.2 Adoption information request process

In Victoria, people must request their adoption records from the Government AIS or one of the four approved agencies. The process relies on cooperation and obligations between numerous government and non-government organisations to supply adoption records and information. In correspondence to the Committee, DJCS explained that adoption records are the records made by the body that arranged the adoption, whereas ‘information’ about an adopted person may be found in a broad range of records which are not in the possession or under the control of the Government AIS or approved agencies. For example, ‘medical or psychiatric records of the adopted person or family members, wardship records of family members and family immigration records’.²⁹ DJCS also outlined that there are three types of records:

Records created by the agency or department who arranged the adoption; records from the court where the order was made and other records that contain information about an adopted person.³⁰

For the Committee’s benefit, DJCS outlined the process to request adoption records and information from the Government AIS, which is summarised in Figure 10.1.

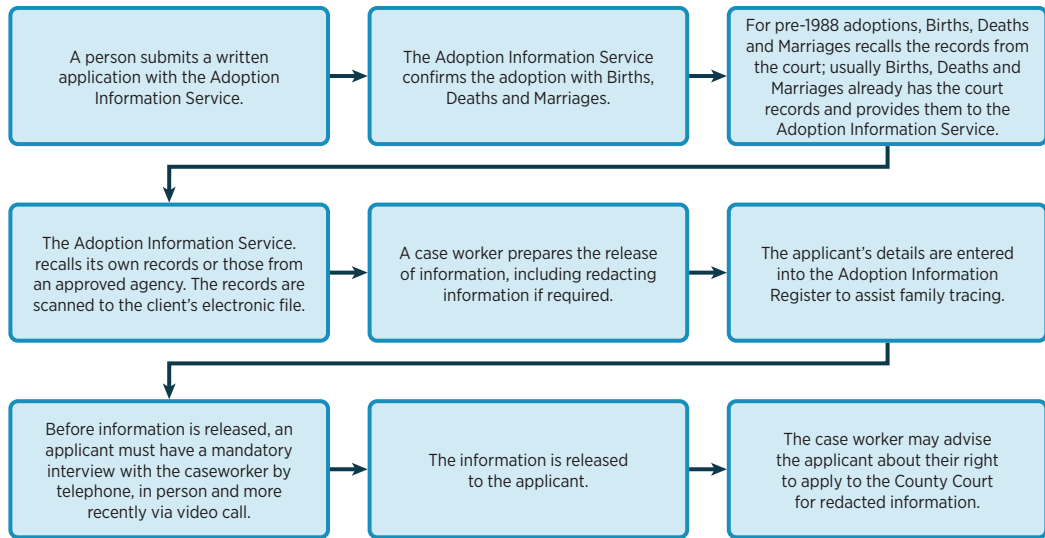
²⁷ Ibid.

²⁸ Ibid., p. 17.

²⁹ Rebecca Falkingham, Secretary, Department of Justice and Community Safety, correspondence, 29 June 2021, p. 1.

³⁰ Ibid.

Figure 10.1 Process to request adoption records from the Government Adoption Information Service



Source: Adapted from Rebecca Falkingham, Secretary, Department of Justice and Community Safety, correspondence, 29 June 2021, pp. 1–2.

DJCS' *Service standards for funded agencies* (Service Standards) specify that a request must be responded to within 42 to 70 days, depending on which organisations are involved in providing information.³¹ The two most common applicant groups are people who are adopted and natural parents. An adopted person who applies for their adoption records should receive the following:

- certificate of counselling session (Section 87)
- a copy of the adoption file which may include their original (pre-adoption) birth certificate
- adoption order
- if available, adoption agency records.³²

A parent who applies for adoption records should receive the following:

- adoption order
- notice of identification
- consent to adoption
- affidavit
- revocation
- summary of the court records

³¹ Ibid., pp. 110–111.

³² VANISH Inc., *A post-adoption guide*, p. 11.

- full name of adoptive parents, their ages, occupations and address at the time of the adoption
- adoption agency records (if there is a time gap between the consent to the adoption and the actual adoption, an explanation will be given as to the delay in the finalisation of the adoption).³³

10.1.3 Volume of adoption records, information and applications

The Government AIS and approved agencies hold a vast amount of adoption records and information. DJCS advised the Committee:

Currently the adoption records held by the Department are stored under contract with Grace Records Management storage facility and the Public Record Office Victoria (PROV). Grace holds 2983 boxes which contain 84,446 files. PROV holds 452 boxes containing 10,950 items.³⁴

Approved agencies and other organisations also have vast volumes of adoption-related information. In her evidence, Marina Pavlovic-Cetkovic, Senior Administrator at CatholicCare, told the Committee that it has an onsite and an offsite archive of about 20,000 records, including '10,000 adoptions in the past, in the 1960s and 1970s, before that'.³⁵ Dr Miller from MacKillop Family Services indicated that it has about 115,000 records dating back to the 1850s, of which about 10,000 relate to adoption.³⁶ Catriona Milne from Uniting Vic.Tas said it has 30,000 records for children across a range of services and files for 6000 people.³⁷

DJCS informed the Committee that since the Adoption Act was passed, 41,464 people have applied to the Government AIS for adoption records.³⁸ It reported that two-thirds of applicants are adopted people.³⁹ Table 10.2 provides a breakdown of the applicant groups.

³³ Ibid., p. 12.

³⁴ Rebecca Falkingham, correspondence, p. 1.

³⁵ Marina Pavlovic-Cetkovic, Senior Administration Officer, CatholicCare, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 43.

³⁶ Dr Robyn Miller, *Transcript of evidence*, p. 19.

³⁷ Catriona Milne, *Transcript of evidence*, p. 16.

³⁸ Rebecca Falkingham, correspondence, p. 1.

³⁹ Ibid.

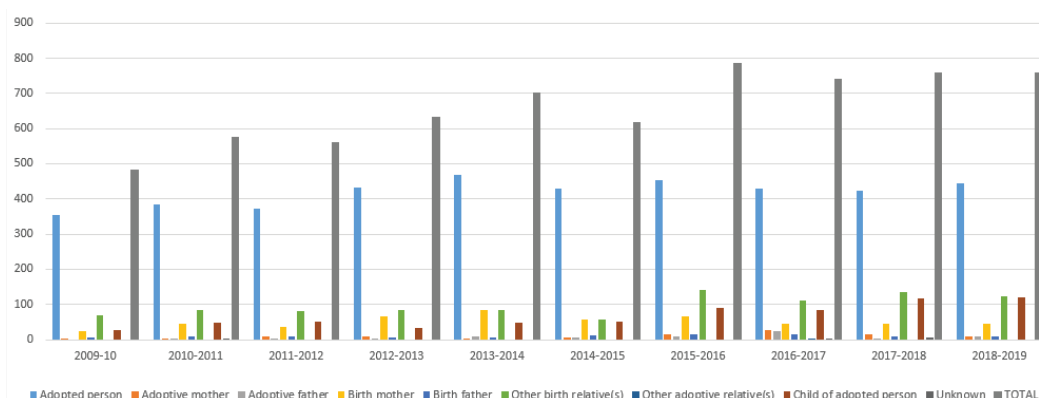
Table 10.2 Number of applications by applicant types since the Adoption Act passed

Applicant	Number	Percent
Adopted person	27,403	66.09
Natural parent	7,217	17.41
Adoptive parent	1,016	2.45
Child of adoptee	1,369	3.30
Natural relative	4,429	10.68
Other	30	0.07
Total	41,464	-

Source: Adapted from Rebecca Falkingham, Secretary, Department of Justice and Community Safety, correspondence, 29 June 2021, p. 1.

VANISH explained that applications for adoption records have increased significantly over the past ten years, from 483 to 758 per year and most are from adopted people.⁴⁰ Figure 10.2 shows that the number of applications by mothers increased from 2010–11, peaking in 2013–14 after the 2013 National Apology for Forced Adoptions, and then decreased again.

Figure 10.2 Number of applications for information logged in Victoria (by personal category), 2009–10 to 2018–19



Source: VANISH Inc., *Submission 53*, p. 91 (with sources).

The Australian Institute of Health and Welfare (AIHW) also collects data on applications for adoption records and submitted the following Australia-wide data for 2018–19 to the Committee:

- 2,691 applications were made and 92% of these were for identifying information
- 69% of identifying information applications were made by adopted people
- 7% of identifying information applications were made by natural parents

⁴⁰ VANISH Inc., *Submission 53*, p. 91.

- 45% of non-identifying information applications were made by adopted people
- 6% of non-identifying information applications were made by natural parents
- 72% of adopted people seeking information were aged 45 and over
- more female adoptees (55%) lodged information applications than male adoptees (45%).⁴¹

Both national and state statistics demonstrate that applications from adopted people far outweigh applications from natural mothers. The Committee is aware of several reasons why this occurs, including that fewer parents are aware that they can access such information, having only been granted the same rights as adopted people to identifying information in 2013.

Marie Meggitt of ARMS stated that many ageing mothers do not know their rights because those access rights were only recently introduced:

We are really aware that there are many women who are now older who do not know that they have that right—who do not exercise that right because they do not know they have that right.⁴²

Furthermore, some mothers ‘are still deeply constrained by the shame story in which they are trapped’.⁴³ This was reflected in one mother’s evidence to the Committee:

Later in my life, in 2005, I commenced the project of trying to find my daughter. I had never told my other daughters about her, as I thought they would think the worst of me for having giving up my daughter for adoption. They would think ‘How can anyone do that?’⁴⁴

Leonie White also told the Committee that her fear of rejection stopped her from applying for her adoption records:

I contact that Catholic Family Welfare Bureau in 1985 wanting to find out information but could not go ahead with the application as I was scared of being rejected.⁴⁵

The Committee is of the view that more should be done to enhance mothers and fathers awareness of their rights to information under the Adoption Act. This is essential given the ageing cohort of mothers whose babies were forcibly removed from them and the limited time available to reconnect with their adult children.

RECOMMENDATION 27: That the Victorian Government undertake a public education campaign to promote the rights of parents to access adoption records and information about their children.

⁴¹ Australian Institute of Health and Welfare, *Submission 20*, received 3 February 2020, p. 7.

⁴² Marie Meggitt, *Transcript of evidence*, p. 26.

⁴³ ARMS (Victoria), *Submission 45*, received 5 March 2020, p. 8.

⁴⁴ Name Withheld, *Submission 51*, received 22 March 2020, p. 3.

⁴⁵ Leonie White, *Submission 41*, received 3 March 2020, p. 2.

10.2 Streamlining the process for requesting adoption records

The Government AIS and approved agencies are responsible for responding to requests for adoption records. DJCS' Service Standards guide the approved agencies on adhering to the Adoption Act when processing requests in regard to:

- which agencies can release records
- who can apply for adoption records
- what information can be released and what should be redacted
- timeframes for the release of information
- the mandatory interview requirements
- releasing and supplying the records to applicants.⁴⁶

Despite genuine attempts by the Government AIS and approved agencies to provide timely and comprehensive responses, many inquiry participants found accessing adoption records a challenging process due to:

- navigating multiple agencies for adoption records
- working with agencies previously involved in historical forced adoption
- the mandatory s 87 interview
- receiving redacted adoption records without explanation
- slow response times and lost information.

This section discusses these issues and makes several recommendations to streamline service delivery. The key recommendation is to centralise access to adoption records through the single Government AIS.

10.2.1 Navigating the multi-agency system

The Committee heard that navigating the multi-agency system can be confusing and many people are unaware of how and where to access their adoption records and other adoption-related information.

In its submission, the Australian Association of Social Workers noted that the multi-agency system can be a barrier for people trying to access adoption records:

It is difficult to have access to the documents of people who have experienced historical forced adoption because they were not all collected by the government. Instead, they are scattered across a vast array of organisations that played a part in historical

⁴⁶ Rebecca Falkingham, correspondence, pp. 110–115.

forced adoption practices, such as hospitals, adoption agencies, and some charitable organisations.⁴⁷

Similarly, Relationships Australia Victoria (RAV) advised that its clients expressed frustration to them—‘and, at times, despair’—at not being able to find the information and answers to their questions across multiple agencies that may or may not have a legal mandate to release records or comply with record searching.⁴⁸

MacKillop Family Services receives enquiries for adoption records from people who find the organisation by googling St Joseph’s Babies Home. As it is not an approved agency, it cannot process formal requests, instead it redirects people to CatholicCare or the Government AIS:

Once the federal government and then the state governments made the apology, clearly in the public domain, that heightened the knowledge that you can get records, but people still do not know where they are. I think the reason we get so many inquiries is that people just google St Joseph’s Babies Home, because they know that is where they were adopted from, and then that is what gets it to us, so then we have to chat on the phone to them and go through what the situation is in Victoria and then give them the choice of CatholicCare or going to the department.⁴⁹

Jenny Glare, General Manager of MacKillop’s Heritage and Information Service, indicated that in these circumstances, MacKillop has to tell people to re-contact them to receive more information once they have been through the formal application process:

The first-time inquirers are advised in Victoria that information relating to adoption needs to be accessed through adoption information services, one of the four. As I said, it can take up to 18 months, and people are often confused about that and frustrated. What we try to say is, ‘Look, let them know straight up that you have contacted MacKillop and we hold records too’, because if it is, say, the Department of Human Services—or now DFFH [Department of Families, Fairness and Housing]—or, say, St Vincent’s Hospital, they may not see that MacKillop also have records, and often we have a lot more and information that is invaluable for people to have. So we advise them about that straightaway. It is particularly important when the adoption was arranged by another agency.⁵⁰

A significant issue that arises when discussing the multi-agency system is the different powers of the Government AIS and approved agencies to recall and request adoption records from other government organisations. While the Government AIS and approved agencies essentially do the same tasks, the Government AIS has more powers to obtain information than approved agencies, particularly in relation to accessing the BDM Register and court records. In correspondence, DJCS outlined the collection powers of approved agencies:

⁴⁷ Australian Association of Social Workers, *Submission 56*, received 1 May 2020, p. 9.

⁴⁸ Relationships Australia Victoria, *Submission 15*, received 27 April 2020, p. 8.

⁴⁹ Jenny Glare, General Manager, MacKillop’s Heritage and Information Service, MacKillop Family Services, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 22.

⁵⁰ *Ibid.*, p. 20.

If an approved adoption agency receives an application for adoption information, they confirm, through Births, Deaths and Marriages (BDM), that an adoption occurred, access relevant Court records, notify Adoption Services (in the Department) of the application and provide adoption information from records in their own possession.⁵¹

DJCS further explained that the Government AIS can seek adoption records and information ‘from a wider range of sources as compared to an approved adoption agency’.⁵² In particular:

This includes Court records under s 86 of the Adoption Act and original birth certificates of adopted persons under s 92 of the Adoption Act. It also includes records that are held by the Department including adoptions arranged by defunct agencies and those arranged by the Department. Adoption Services will also consider other records that are not held by the Department.⁵³

The Victorian Law Reform Commission (VLRC) highlighted the discrepancy between the powers of the Government AIS and approved agencies in its 2017 *Review of the Adoption Act 1984*:

The relevant authorities do not have the same powers. The Secretary has information collection powers ... that are not available to the other relevant authorities. The Secretary may request the court and any agency, body or person to provide information to the Secretary. The other relevant authorities may ask the Registrar of BDM for certain information contained in the BDM Register, but otherwise cannot request information from other approved agencies, bodies or persons. They need [the department] (exercising the power of the Secretary) to obtain records from the court for them.⁵⁴

The VLRC contemplated how to resolve this discrepancy and concluded it was inappropriate for approved agencies to have the same powers as the Government AIS:

Powers to require another government agency to provide information should reside with a government body that is directly and permanently accountable for how the powers are exercised, rather than with a non-government agency.⁵⁵

The VLRC recommended that the Government AIS be solely responsible for the powers and functions that are currently shared in the multi-agency system.⁵⁶

The Committee’s view on navigating this system is addressed as part of the broader discussions in Section 10.2.6 on centralising access to adoption records through the Government AIS.

51 Rebecca Falkingham, correspondence, p. 2.

52 Ibid.

53 Ibid.

54 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, Melbourne, 2017, p. 304.

55 Ibid.

56 Ibid., p. 305.

10.2.2 Section 87 mandatory interview

Section 87 of the Adoption Act requires an applicant to attend a mandatory interview with an ‘approved counsellor’ before they can receive their adoption records.⁵⁷ A counsellor is approved by the Secretary of DJCS and must be an officer or employee of DJCS, an approved agency or a person the Secretary considers has appropriate qualifications and experience.⁵⁸

According to the Service Standards, the purpose of the mandatory s 87 interview is not to assess the applicant, nor make decisions about what to release,⁵⁹ but rather:

- a. To fulfil the legislative requirements of The Act;
- b. To explain to the applicant their rights and obligations under the Adoption Act and associated legislation;
- c. To support the applicant to understand information contained in the adoption record;
- d. To support the applicant to consider any plans to contact natural family;
- e. To offer the applicant emotional support.⁶⁰

Approved agencies explained to the Committee their views on the purpose and value of the s 87 interview. Over the last nine years, Anglicare Victoria has completed 153 s 87 interviews, including 116 with adopted people.⁶¹ According to Rowena Robinson from Anglicare Victoria, the interview is 60 to 90 minutes long, and aims to ‘provide a safe, supportive environment for these records to be released’. It also allows an applicant ‘to be able to speak freely and to be heard and understood’. Rowena Robinson advised that she always asks people if they want to bring a support person and gets ‘a mixture of people taking me up on this offer’.⁶²

Renu Barnes, Manager of Community Programs at CatholicCare, explained that the s 87 interview is a measure to ensure the approved agency is fulfilling its responsibilities in releasing information as an approved agency and ‘interpreting the records appropriately, sensitively and accurately’.⁶³ Renu Barnes explained that a person with a s 87 interview certificate can then access information from multiple agencies:

The purpose of it is not only to solely provide that in order to do the interview with the person, but it is also to ensure that they can use the s 87 interview certificate that is given to the person once their first interview is completed. That enables them to use that for the purpose of accessing—if it is an adopted adult in particular—their birth certificate for example, and any other documents they want to have access to.⁶⁴

⁵⁷ *Adoption Act 1984 (Vic) s 87(1)*.

⁵⁸ *Ibid.*

⁵⁹ Rebecca Falkingham, correspondence, p. 112.

⁶⁰ *Ibid.*, pp. 110–115.

⁶¹ Rowena Robinson, *Transcript of evidence*, p. 11.

⁶² *Ibid.*

⁶³ Renu Barnes, Manager, Community Programs, CatholicCare, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 40.

⁶⁴ *Ibid.*

The Committee heard from several inquiry participants that the s 87 interview was disempowering, retraumatising, slow, bureaucratic and discriminatory. According to VANISH, it 'is often considered problematic by all parties separated by adoption'⁶⁵ and identified as disempowering:

They report feeling vulnerable and upset that they are not considered 'fit' or 'responsible' enough to receive their records without being interviewed.⁶⁶

VANISH also stated that people can find it difficult and traumatising to return to the agency that arranged their adoption to undertake the s 87 interview.⁶⁷

When asked if the s 87 session is paternalistic and disempowering, Rowena Robinson from Anglicare Victoria acknowledged that it could be:

I have had people who have felt like 'Am I being judged?' or 'Are you evaluating me to see whether I can receive my records or not?'.⁶⁸

In her view, it is therefore essential to have a person-centred approach:

For me, just having somebody there who understands some of the complexities of adoption and can answer any questions they have and actually go through their records—you know, not all of their records, because it is all too much. I also then give a pack of other stuff that they can take home with them so they can into that at a different stage, because I think you hear stuff and you take in a certain amount, then you read stuff and you can kind of digest it to a further level. So I see it as a supportive, empowering interview, and that is the aim.⁶⁹

The s 87 process was also criticised for being slow and inefficient by inquiry participants. For example, Catriona Milne from Uniting Vic.Tas indicated that it can take months and involve multiple interactions with different officials:

The time to get to an interview can take six months. Over the course of the whole experience a person may be dealing with two or three different workers, and contact often ceases with the adoption information service at the end of that interview.⁷⁰

Dr Miller from MacKillop Family Services explained that because it is not an approved agency, there can be further delays for people to access their information:

[The] section 87 is a very complicated process and we cannot give out that interview certificate. They have to go to one of the four registered adoption information services to get that before we can release records for adopted people. As you know, that can often take 18 months. That delay is a huge issue for us.⁷¹

65 VANISH Inc., *Submission 53*, p. 91.

66 *Ibid.*, pp. 90–91.

67 *Ibid.*, p. 92.

68 Rowena Robinson, *Transcript of evidence*, p. 12.

69 *Ibid.*

70 Catriona Milne, *Transcript of evidence*, p. 13.

71 Dr Robyn Miller, *Transcript of evidence*, p. 20.

The VLRC examined the mandatory s 87 interview in detail, noting that ‘it is apparent that the key issue is not whether an interview may be useful, but that it is mandatory’.⁷² The VLRC identified that the interview has many benefits, including to help people deal with the information they are about to receive:

An applicant who has not seen the information may not realise that they will need help in understanding and coming to terms with what the information reveals. The information and opinions expressed in the records, particularly those created when the adoption process was shrouded in secrecy, can be harsh, unfair, inaccurate and hurtful.⁷³

The VLRC concluded that it would ‘not be prudent’ to do away with the s 87 interview without introducing a new obligation to alert the applicant where there is a risk to their health and wellbeing upon receiving records and information.⁷⁴ For example, the DJCS Secretary should have an obligation to alert ‘an adopted person [who] was conceived as a result of incest or a sexual assault of his or her natural mother’.⁷⁵

The VLRC recommended that support should be available to all applicants but should not be mandatory.⁷⁶ In her evidence to the Committee, Suzanne Scholz spoke of her experience of receiving highly sensitive information without any warning from the Government AIS:

I found out in [redacted] that I was a state ward, and at that time the government was sending out our files. It was a pretty new thing. They sent me 60 pages of information to my letterbox which stated that my mother was raped and that I was a state ward. I had not known until that day, and it was absolutely shocking to me.⁷⁷

Suzanne Scholz also told the Committee that those processes no longer exist and ‘their practices were not [as] good as they are now’.⁷⁸

VANISH, like the VLRC, recognises that support can be helpful at the time of releasing information, but that it should be voluntary and not imposed on people. Further, people should have the opportunity to choose from a list of qualified professionals as to who can support them at that time. VANISH advised that this is the practice for adoption records sent from the United Kingdom to Australian residents and that it could easily be replicated for Australian records.⁷⁹ VANISH also advised that applicants should be:

- able to open the records and be the first to read them and then have the opportunity to ask questions or get support as needed
- able to choose to receive their records directly by collection or post

⁷² Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 320.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Suzanne Scholz, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, pp. 32–33.

⁷⁸ Ibid.

⁷⁹ VANISH Inc., *Submission 53*, p. 93.

- asked to sign a document stating that they understand that records may contain judgemental, demeaning language and possibly false information
- asked to sign a document stating they understand Victoria’s privacy legislation regarding publishing identifying information about parties to an adoption.⁸⁰

The Committee agrees with the VLRC and VANISH and believes that even in the most supportive environment, the obligation to undergo the s 87 interview is disrespectful to people who were subjected to the policies and practices of historical forced adoption and who had little to no decision-making power.

The Committee endorses a voluntary interview where the power to request and receive adoption records is primarily the decision of the applicant. The Committee agrees with the VLRC that there should be an obligation on the DJCS Secretary to alert an applicant where there is a risk to their health and wellbeing, and support should be offered but not mandatory.

Revoking the s 87 interview may also reduce the time taken to access records and provide information to applicants. Approved agencies and other organisations like Berry Street and MacKillop Family Services also stand to benefit from this, which may allow them to provide quicker access to people wanting their adoption-related information.

RECOMMENDATION 28: That the Victorian Government implement Recommendation 86 of the Victorian Law Reform Commission’s *Review of the Adoption Act 1984*:

The current requirement for an applicant for access to information to be interviewed by an approved counsellor in section 87 of the Adoption Act should be replaced with an obligation on the Secretary [of the Department of Justice and Community Safety] to:

- offer applicants counselling before providing them with access to information
- advise an applicant if the information could reasonably be expected to be distressing to the applicant.

10.2.3 Redacting information

In terms of providing information to applicants, an AIS must decide if a person is entitled to information or whether it should be redacted or withheld. This can be a complex decision that includes deciding what is ‘identifying’ and ‘non-identifying’ information and whether consent is required to release certain information.

The Committee was concerned about quality control regarding the release and redaction of adoption records, especially in a multi-agency system. In its review, the VLRC noted that the Government AIS and approved agencies operate independently and work to internal guidelines and procedures, which can have implications for people’s privacy:

⁸⁰ Ibid.

This decision might be difficult. Depending on the circumstances, it can be difficult to determine whether information is ‘identifying’ or ‘non-identifying’ information under the Adoption Act. For example, while a person’s date of birth alone may not identify the person, in combination with other pieces of information, it could lead to the person being identified.⁸¹

In correspondence to the Committee, DJCS stated:

The Department has no direct control over how approved agencies release adoption records. Once the Department approves an organisation as an adoption agency, their Principal Officer determines how that agency meets its requirements under the Act.⁸²

However, the Service Agreements and funding arrangements ‘require agencies to meet expectations set in the Service Standards’.⁸³ For example, sections 88 and 91 of the Adoption Act relate to the release of inaccurate, irrelevant and personal information. Regarding inaccurate and irrelevant information, the Service Standards state:

Record keeping practices in adoption files has at times be suboptimal. If the counsellor believes that information in the file was placed there in error and is therefore either inaccurate or not relevant to that file, the information should not be released.⁸⁴

The Service Standards explanation for withholding personal information is more complicated, outlining that it is similar to the exception in the Information Privacy Principles (IPPs) in the *Information Privacy Act 2000* (Vic) and section 33 of the *Freedom of Information Act 1982* (Vic) (FOI Act):

The exception in IPP 6.1(b) that provides that if access ‘would have an unreasonable impact on the privacy of other individuals’, an exemption from disclosure is allowed in order to protect personal privacy where disclosure would be ‘an unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).’⁸⁵

However, the Service Standards note that the exemption under the FOI Act and the IPPs is not absolute and that information can be released where disclosure would not be ‘unreasonable’.⁸⁶ The Service Standards provide examples of personal information that may arise in this context, including police records, which should not be released; and health records, which may be redacted.⁸⁷ It also discusses the release of sensitive information, for example:

Sometimes information should only be released in a highly sensitive manner. Background information about rape, sexually transmittable diseases and incest should

⁸¹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, p. 117.

⁸² Rebecca Falkingham, correspondence, p. 4.

⁸³ Ibid.

⁸⁴ Ibid., p. 109.

⁸⁵ Ibid.

⁸⁶ Ibid., p. 110.

⁸⁷ Ibid.

be given to an adult adopted person as information relevant to the affairs of the adopted person.⁸⁸

The Service Standards conclude that information is not ‘withheld simply because it is difficult to address’.⁸⁹

The Committee asked approved agencies and organisations how they approach the release of information. Rowena Robinson from Anglicare Victoria told the Committee that she advocates for the extensive release of information:

I try to release as much information as possible. I just think information is gold. It might not seem important to me, but to somebody else it is just so important. But obviously there need to be guidelines that we work within.⁹⁰

She also gave an example of the type of information that she might redact:

So information I would be taking out is if there is information about another sibling who was in the adoptive placement who was also adopted. That is their private information, so I would be taking their birth details and that kind of thing out if they were in the records. It would be information like that that I would be taking out, so it would be more to do with the privacy of somebody else in that respect.⁹¹

In its review, the VLRC highlighted that there is the potential for inconsistencies in the release of adoption records among decision-makers about:

- whether the information is reasonably likely to be true
- whether providing access will unreasonably disclose information about a person’s personal affairs
- whether information of a medical or psychiatric nature should be disclosed to a medical practitioner nominated by the applicant, in the interests of protecting the applicant’s physical or mental health or wellbeing
- whether the whereabouts of an adopted person or an adopted person’s natural parent or grandparent, brother, sister, uncle or aunt may directly or indirectly be ascertained from the information
- the weight given to the wishes expressed by an adopted person under 18.⁹²

The VLRC argued:

The current provisions leave too much to interpretation. This creates uncertainty, which can cause disputes. There is scope for disagreement between applicants and agencies and between agencies. Lack of clarity can also lead to inconsistent decision making.

88 Ibid.

89 Ibid.

90 Rowena Robinson, *Transcript of evidence*, p. 12.

91 Ibid.

92 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 307–308.

Decision makers may interpret and apply the law differently, particularly when they have to make subjective assessments.⁹³

The VLRC recommended a new information access scheme comprising guidelines to increase consistency in decision making and a clear outline of what information can be released and under what circumstances.⁹⁴ The Committee acknowledges the Service Standards set out clear parameters for releasing information and largely fulfil the VLRC recommendation. The Committee also notes that sections 99 and 100 of the Adoption Act allows a person to apply to the County Court to obtain their full adoption records.⁹⁵

Requesting adoption records through the County Court

The Committee received evidence from two inquiry participants, both of whom are adopted, who applied to the County Court to receive their unredacted files. An inquiry participant stated in their submission that they applied for their records on two separate occasions and noticed a disparity in the information released:

What I did notice that was different from 1992 was that my file was page numbered from a PDF, and I noticed straight away that many pages were missing from my file. I was told that those were redacted pages. I asked why they were redacted, and I was told it was to protect the privacy of my adoptive parents ... I asked for the redacted parts of my file and I was told the State laws would not allow me to have them, even though the file had my name on it.⁹⁶

They were not satisfied with the grounds for withholding information, and applied to the County Court of Victoria to receive their record fully unredacted:

Representing myself, I had my day in the County Court on the 5th of November 2015, and on the 12th of November 2015 Judge Pullen ruled in my favour and gave me my file fully unredacted. I was the first person in Victoria to do so, and I did it without the help of any support service.⁹⁷

Dr Penny Mackieson also applied to the County Court to receive additional adoption and medical information pertaining to the identity of her natural mother, which was unclear due to Dr Mackieson being swapped, potentially on more than one occasion, at birth. She told the Committee:

At the time of lodging my written submission I was awaiting the outcome of an application to the County Court seeking access to the adoption records of the person it appears I was switched with at the Queen Victoria Hospital. Those records contain identifying information about the Greek mother living in Greece who the Adoption Information Service strongly believes is my natural mother. The presiding County Court judge ordered the release of the records on 14 July. Up until that time I believed the

⁹³ Ibid., p. 310.

⁹⁴ Ibid.

⁹⁵ *Adoption Act 1984* (Vic), ss 99, 100.

⁹⁶ Name Withheld, *Submission 34*, received 28 February 2020, p. 1.

⁹⁷ Ibid., p. 2.

Adoption Information Service had already sought and obtained relevant medical files from Monash Health, with which the Queen Victoria Hospital merged in 1987, and that those medical records would also be released to me. That was in fact not the case. I was under a misapprehension, and I therefore wish to correct this aspect of my written submission.⁹⁸

The Committee appreciates that there are legitimate grounds for redacting some information in people's adoption records and believes the current Service Standards are a useful guide about what can and cannot be released. Despite this, the Committee believes there are likely to be special circumstances when it is appropriate for people to apply to the County Court to obtain their unredacted records. In these cases, it is inappropriate for people to pay for such applications to the County Court.

The Committee takes a principled approach to the issue of fees and costs, arguing that historical forced adoptions were imposed on people and they should not have to bear the cost of unravelling their identity and family history.

RECOMMENDATION 29: That the Victorian Government waive any court costs or fees for a person applying to obtain information that was previously redacted or withheld under the *Adoption Act 1984* (Vic).

10.2.4 Time delays

Since the 1980s, access to adoption records has been marred by waiting lists and time delays, and is still a significant issue for applicants today. This is concerning given the vulnerability of people as they await access to their records. The Committee is aware that although some people take a long time to decide to apply for records, once they make the request the urgency to receive them can be overwhelming.

VANISH explained that when the Adoption Act passed, the Government AIS was immediately swamped with thousands of applications:

Before the proclamation of the 1984 legislation in April 1985, there was a flood of applications. There were 1,300 applications to the Adoption Information Services (AIS) from adult adoptees and, by June 1987, 4,100 had applied.⁹⁹

SallyRose Carbines spoke to the Committee about immediately applying for her adoption records at this time. She stated that she 'registered as soon as she could' and 'waited five long years to receive my records'.¹⁰⁰ When asked why it took five years, SallyRose Carbines said she was aware that there was a 'flood' of requests and that the Department was 'inundated with inquiries'. Further, people over a certain age were given priority, and where a mother and a child both registered they prioritised 'joining

⁹⁸ Dr Penny Mackieson, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 47.

⁹⁹ VANISH Inc., *Submission 53*, p. 41.

¹⁰⁰ SallyRose Carbines, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 25.

those two dots together first'. She was sympathetic to the Department's need to prioritise people, but said that as a result, obtaining her records took a long time.¹⁰¹

Another inquiry participant also registered immediately for their records when the Adoption Act passed, and they were placed on a five-year waitlist to start the process and see an approved counsellor.¹⁰² Similarly, Sue Miiller-Robbie explained in her submission that she applied to access her records in 1987 to begin the official search for her son. She wrote that 'hope soon turned to despair' when she learnt about the waiting lists and time delays.¹⁰³ VANISH stated in its submission that the average wait time in the first few years after the introduction of the Adoption Act was 'at least seven years'.¹⁰⁴ It recalled that advocacy groups started a 'reduce the waiting list campaign' to encourage the timelier release of information.¹⁰⁵

Changes were eventually made to streamline access to records. For example, the Adoption Act was amended to require only a single counselling session; the previously discussed s 87 interview. At this time, VANISH was established as an independent search and support organisation to reduce time delays for requesting information and searching for family.¹⁰⁶

The Committee acknowledges that since the 1980s, time delays to access records has considerably reduced. However, some inquiry participants expressed that waiting lists and time delays were still a barrier. The Committee heard that people can wait up to 18 months to have the s 87 interview and be granted their s 87 certificate, which then allows them to receive their records.

In her evidence to the Committee, Lee Whelan spoke positively of her experience engaging with the Government AIS, although she referred to it as a slow process:

I think that they have been amazing, but it is very slow. It just takes a long time, and people have got to be patient for it to all happen. I do not know if there is a lot of funding into those organisations and whether they are well staffed. The people I have spoken with have just been amazing, the counsellors, but are there enough? Are there enough of them for people who have been affected like me? It takes a long, long time.¹⁰⁷

Uniting Vic.Tas stated in its submission that there are still long waitlists of up to 6 months across the Government and approved agencies:

There are currently long waitlists for clients to access records through either the Family Information Networks and Discovery (FIND) service or community-based agencies such as Uniting, CatholicCare and Anglicare. Some people are waiting up to six months.¹⁰⁸

¹⁰¹ Ibid., p. 26.

¹⁰² Name Withheld, *Submission 101*, received 31 May 2021, p. 2.

¹⁰³ Sue Miiller-Robbie, *Submission 100*, received 31 May 2021, p. 5.

¹⁰⁴ VANISH Inc., *Submission 53*, p. 41.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., p. 42.

¹⁰⁷ Lee Whelan, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 17.

¹⁰⁸ Uniting Vic. Tas, *Submission 48*, received 16 March 2020, p. 7.

Jenny Glare from MacKillop Family Services told the Committee that the ‘waiting list to actually get the records, once you have logged your applications—that is where the problem is’.¹⁰⁹ Dr Miller added that people’s suffering is ‘added to by the secrecy around records and the wait time to access records’.¹¹⁰

Charlotte Smith, Manager of VANISH, recommended to the Committee that information releases be subject to much stricter timeframes, ‘much like Forgotten Australians, which is 45 days’.¹¹¹

The Service Standards specify that a request should be provided within 42 to 70 days, depending on which agencies are involved in providing the information.¹¹² DJCS reported that the average time to receive adoption records is currently ‘12.4 weeks from the date of application’.¹¹³ Some applications are prioritised, such as those based on age or medical needs.¹¹⁴ DJCS noted that applications from natural parents and adopted people who are Aboriginal and Torres Strait Islander are also considered priority applications.¹¹⁵ Priority applications are given ‘information in under 10 weeks from the date of application’.¹¹⁶

Given clarification in the Service Standards regarding timeframes, and in the context of this report recommending a centralised Government AIS, the Committee believes further exploration of prescribed timeframes can wait. Revoking the mandatory s 87 interview, as per Recommendation 28, may also reduce timeframes.

10.2.5 Lost and destroyed records

As discussed in Chapter 3, lost and destroyed records is more of an issue for mothers requesting medical information than it is for people applying for adoption records. However, the Committee still received evidence about missing adoption records and what that means for records management and accountability.

VANISH identified in its submission that lost or destroyed records is a problem for people affected by historical forced adoption and it often receives reports from clients who are told ‘their records fell off the truck in transit’ or were ‘destroyed in a fire’. Problematically, VANISH said this information is often conveyed ‘in a matter of fact manner with little regard for what this might mean for the person applying’.¹¹⁷

¹⁰⁹ Jenny Glare, *Transcript of evidence*, p. 25.

¹¹⁰ Dr Robyn Miller, *Transcript of evidence*, p. 18.

¹¹¹ Charlotte Smith, Manager, VANISH, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 30.

¹¹² Rebecca Falkingham, correspondence, pp. 110–111.

¹¹³ Rebecca Falkingham, correspondence, p. 1.

¹¹⁴ Rebecca Falkingham, correspondence, p. 110.

¹¹⁵ Ibid.

¹¹⁶ Rebecca Falkingham, correspondence, p. 1.

¹¹⁷ VANISH Inc., *Submission 53*, p. 95.

Yvonne Fix recalled her efforts to find out more information about her adoption in regional Victoria. When she started the process, she was told no such records existed:

I know I am ‘family’ but Bendigo in the 1940s every one had a familiar look and you could tell up until the 1970s when many people started moving to the country if you were from the Bendigo region. But when I started looking to the Bendigo Freedom of Information to find out more I was told such things were not publicly available.¹¹⁸

In her submission, Leonie Horin discussed how she had been trying for years to obtain her records from Australian Jewish Welfare, now Jewish Care, but was told that they had been destroyed in a fire. She later found out that her records had been sent to the United States Holocaust Memorial Museum in Washington and that she is categorised as a Holocaust Survivor, along with her late brother. Leonie Horin stated that this is not true because she was not born until after World War II. She described how the experience of trying to access her records contributed to her trauma and feeling ‘like my whole family never existed’. Leonie Horin stated that she has ‘been left in unresolved grief all my life by all these separations and file-hiding’.¹¹⁹

CatholicCare told the Committee that in its experience the vast majority of people who request their records do receive them. Marina Pavlovic-Cetkovic said that she knows of only one or two instances of lost or destroyed records in her more than ten years with CatholicCare:

The vast majority would get their records. I have been with CatholicCare for 11 years. Maybe only, I do not know, I came across a case that records were lost—or maybe one, a couple of times.¹²⁰

Because approved agencies receive relatively few information applications annually, the Committee is encouraged to hear that lost or destroyed records are not a common occurrence for CatholicCare. Unfortunately, without further information from DJCS, which deals with more than 90% of requests, the Committee cannot comment on the extent of this problem more generally.

VANISH recommended implementing an accountability measure to address claims of records being lost or destroyed. Under this measure, the AIS should have to explain its attempts to locate the information and what other options are available to locate it. VANISH advised that in the case of a destroyed file, the AIS should be required to ‘provide the details regarding when and why this occurred, including evidence such as the report of the fire or flood’.¹²¹ The Committee supports this accountability measure that should, in significant events of fire or flood, be verifiable through historical records. A similar recommendation was made in the context of lost or destroyed hospital records in Chapter 3.

¹¹⁸ Yvonne Fix, *Submission 4*, received 9 January 2020, p. 1.

¹¹⁹ Leonie Horin, *Submission 113*, received 28 July 2021, pp. 1–2.

¹²⁰ Marina Pavlovic-Cetkovic, *Transcript of evidence*, p. 43.

¹²¹ VANISH Inc., *Submission 53*, p. 95.

RECOMMENDATION 30: That the Victorian Government require the Adoption Information Service to provide a full report on lost or destroyed records and/or adoption information, including the search process and any evidence of destruction, for example, the report of fire or flood.

10.2.6 Centralising the Adoption Information Service

The sections above demonstrate the need to enhance access to adoption records by streamlining numerous services. Overall, the Committee has considered the value of having a single, centralised Government AIS, rather than a multi-agency system. As discussed in the previous sections, the Committee is of the view that a centralised system will:

- reduce confusion among people about where to access information
- ensure consistency in the provision of information under the Adoption Act and the Service Standards.

The Queensland Government provides a successful model for a centralised system. Due to the Government being the only adoption agency in Queensland, it has a single, centralised Government AIS by default. Jigsaw Queensland, Queensland's post-adoption support service, explained in its submission that the Department of Child Safety, Youth and Women:

provides access to adoption information, advice on adoption legislation, and referral to non-government support services.¹²²

It also has a coordination and leadership role among service providers in Queensland:

The Department also holds quarterly meetings with representatives of stakeholder groups, including Jigsaw Queensland, Origins Qld, ALAS [Adoption. Loss. Adult. Support Australia Inc], Association for Adoptees and You Gave Me a Voice.¹²³

The Committee notes that the Queensland Government provides adoption records in a similar timeframe as the Victorian Government AIS:

In Queensland all records are centralised. In most cases the release of adoption information to parties is an entitlement and takes on average 12 weeks to process.¹²⁴

Dr Trevor Leslie Jordan, President of Jigsaw Queensland, told the Committee that the Queensland Government also funded an 'experienced community development worker [to] work with individuals and groups affected by past forced adoption to identify how

¹²² Jigsaw Queensland Inc., *Submission 14*, received 31 January 2020, p. 4.

¹²³ Ibid.

¹²⁴ Ibid.

it was they wanted to engage with the government'.¹²⁵ A key outcome was to enhance collaboration by addressing any underlying conflict, working on building trust and setting ground rules for engagement and meetings.¹²⁶

The Committee asked approved agencies and non-government organisations for their views on centralisation. Anglicare Victoria representatives commented on the merits of centralising the AIS through DJCS. When specifically asked about Queensland's system versus Victoria's system, Rowena Robinson stated:

I think there are pros and cons. That is why I said that I was pleased to hear that the other agencies were also having a dedicated worker like myself. We feel that that is really important that there is one person that they speak to that sees them through that whole process. My adopted clients do then go on to VANISH, who I think is such a big resource—they really are. I mean, they have been around since 1984–85 with open adoptions. We have got a good working relationship there, I believe. I think that it is really important that there is the continued experienced support, which I think works well, I think it could be developed further. We need to look at how we can make it more user friendly, as such, for clients, even in terms of the collating of information and all of that.¹²⁷

Paul McDonald, the CEO of Anglicare Victoria, explained that there were strengths and weaknesses to having a centralised system:

I think, as you have heard from Rowena, it is that ability to find that information and then how to communicate and how to own and, I suppose, feel responsible for the finding of that. We feel our dialogue, not only through our adoption services but our heritage clients, is an important dialogue, and it is important, I suppose, accountability back to them from us about our ability to find those files where they are.¹²⁸

Jenny Glare from MacKillop Family Services explained that a centralised system could work, although she emphasised the importance of choice:

A single system could work as long as people have real choice about who they go to to get their information from. So not everybody will want to go to the provider that created the records in the beginning. Some people will want to go through more of an advocacy and support organisation and have them standing with them.¹²⁹

Centralisation would more accurately reflect the workload of DJCS which already accepts more than 90% of information applications. DJCS' figures show that from July 2018 onwards:

- 1,408 applications were made for adoption records
- 28 (1.99%) went to Anglicare Victoria

¹²⁵ Dr Trevor Leslie Jordan, President, Jigsaw Queensland, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 21.

¹²⁶ *Ibid.*, p. 22.

¹²⁷ Rowena Robinson, *Transcript of evidence*, p. 13.

¹²⁸ Paul McDonald, Chief Executive Officer, Anglicare, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 13.

¹²⁹ Jenny Glare, *Transcript of evidence*, p. 22.

- 39 (2.77%) went to Uniting Vic.Tas
- 54 (3.84%) went to CatholicCare.¹³⁰

As the VLRC pointed out, although it would initially need to collect all records from other agencies, the Government AIS would then be relieved of having to collect information from these agencies when responding to an information application.¹³¹

The VLRC recommended making the Government the sole AIS in Victoria.¹³² Similarly, VANISH recommended in its submission for ‘centralisation of adoption services to a single authorised provider, being the responsible government department’.¹³³

DJCS notified the Committee that the ‘approval of the four adoption agencies expires October 2021’¹³⁴ and that it is ‘currently investigating the centralisation of adoption records management through ceasing the approval of adoption agencies’.¹³⁵ DJCS highlighted that with a centralised Government AIS, the agencies could still provide other services under the Adoption Act:

For example, adoption agencies could still provide counselling to someone considering placing a child for adoption, undertake assessments of people wanting to adopt, supervise placements and support someone receiving adoption information.¹³⁶

It also stated that it is useful for other services to support applicants when receiving records, such as VANISH which already provides support functions, although not the s 87 interview. DJCS advised that this function could be considered. Further, DJCS identified the benefit of having ‘an Aboriginal Community Controlled Organisation provide such services’ for Aboriginal and Torres Strait Islander communities,¹³⁷ a move that is supported by the Committee.

On balance, the Committee believes that establishing a centralised Government AIS would streamline the application process, therefore simplifying access to records and ensuring the consistent release of information. As discussed earlier, the DJCS Secretary has greater powers under the Adoption Act regarding the collection of information from other agencies and organisations, and the Government AIS already manages more than 90% of applications.

Another consideration for centralisation is ensuring that people affected by historical forced adoption do not have to engage with agencies that were involved in the systemic removal of babies from their mothers. The Committee commends approved agencies and NGOs for their efforts to atone for their involvement in historical forced adoption.

¹³⁰ Rebecca Falkingham, correspondence, p. 5.

¹³¹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 304.

¹³² Ibid.

¹³³ VANISH Inc., *Submission 53*, p. 73.

¹³⁴ Rebecca Falkingham, correspondence, p. 4.

¹³⁵ Ibid., p. 2.

¹³⁶ Ibid., p. 5.

¹³⁷ Ibid.

However, it recognises that people may find it retraumatising to engage with such agencies.¹³⁸

RECOMMENDATION 31: That the Victoria Government cease the operation of adoption information services within approved agencies and centralise Victoria's Adoption Information Service.

10.3 Searching for family using adoption records and information

Once a person has received their adoption records, they can begin the search for a family member, be it their child, mother, father or extended family. People can undertake the search process with assistance from a search support service or they can do it on their own.

The Government AIS and VANISH are the primary search support services in Victoria. While the Government AIS is not required to deliver this service, it has facilitated contact between people in nearly 12,500 cases.¹³⁹ VANISH's purpose is to help people use their adoption records to search and trace their family and since its establishment, it has provided a free search service to over 31,000 people.¹⁴⁰

10.3.1 Victorian Adoption Network for Information and Self Help

VANISH is funded by the Victorian Government to provide search and support services to people affected by adoptions in Victoria, although it also relies on an extensive network of volunteers to conduct its work. VANISH complements the Government's search service in DJCS. It also provides essential information and referral services, community education, advocacy and as discussed in Chapter 11, various mental health and emotional support services, in addition to professional training.

VANISH operates on a 'self-help ethos' that allows people to enter and exit the service when they need it. This encourages people to be 'empowered to make decisions and choices regarding which services they access, and the pace and their level of involvement in searches'.¹⁴¹ VANISH also created the *Post-Adoption Search Guide* to assist people who are initiating a search on their own.

Throughout the Inquiry, various participants advocated for more funding and resourcing for VANISH. In response to a question about funding, Charlotte Smith, the Manager of VANISH, responded that it is 'a very small organisation that runs on the smell of an oily

¹³⁸ VANISH Inc., *Submission 53*, p. 92.

¹³⁹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 323.

¹⁴⁰ VANISH Inc., *Submission 53*, p. 12.

¹⁴¹ *Ibid.*, p. 10.

rag'.¹⁴² She explained that paid staff go above and beyond for users, working additional hours to help people and providing extra access to search tools when required.¹⁴³ In correspondence to the Committee, Charlotte Smith further outlined VANISH's funding constraints:

Essentially, current funding does not cover the costs of providing the services our existing and potential service users need. We are not adequately resourced to visit service users who face barriers to completing application forms or accessing support by telephone. We do not have adequate funds to assist all the people who cannot afford certificate fees. We are not adequately funded to hold regular regional events and workshops that could provide information and connect people into the service. We are not able to provide legal advice or to undertake advocacy on behalf of individuals struggling to navigate or negotiate with institutions. We are not resourced to do outreach to prisons. We cannot afford to promote our service across Victoria or to professionals in other sectors. We want to provide therapeutic courses such as art therapy which has been shown to be incredibly beneficial and we want to run family constellations and other healing workshops. We have only been able to do this through applying for small grants and those small grants do not pay for staff wages or travel so they further drain our scant resources.¹⁴⁴

ARMS explained that a lack of ongoing funding limits VANISH's ability to support people and that increased funding would allow it to deliver state-wide services.¹⁴⁵ Similarly, the Council of Single Mothers and their Children submitted that VANISH's level of funding is inadequate to support all Victorians affected by past adoption practices and recommended its funding be increased.¹⁴⁶

Individuals also advocated for more funding and support for VANISH. Lee Whelan identified VANISH as vitally important for people to find their families and personal history.¹⁴⁷ One inquiry participant found it incomprehensible that an organisation as valuable, experienced and knowledgeable as VANISH is so underfunded and struggles to maintain even its most basic services to people who are adopted, mothers and others in the adoption community.¹⁴⁸ Several inquiry participants discussed with the Committee that VANISH is an essential organisation, although some of its processes are outdated. The Committee agrees that this is indicative of the limited funding it receives.¹⁴⁹

Concerns were also raised regarding the perception that VANISH is overly focused on people who are adopted. Charlotte Smith from VANISH stated in her evidence that when the Adoption Act passed, more rights were granted to people who are adopted

¹⁴² Charlotte Smith, *Transcript of evidence*, p. 31.

¹⁴³ Ibid.

¹⁴⁴ Charlotte Smith, Manager, VANISH Inc., correspondence, 31 July 2021, pp. 2-3.

¹⁴⁵ ARMS (Victoria), *Submission 45*, pp. 10-11.

¹⁴⁶ Council of Single Mothers and their Children, *Submission 23*, received 3 February 2020, pp. 6-7.

¹⁴⁷ Lee Whelan, *Transcript of evidence*, p. 17.

¹⁴⁸ Name Withheld, *Submission 99*, received 29 May 2021, pp. 1-2.

¹⁴⁹ Kerri Young, *Submission 27*, received 12 February 2020, pp. 19-20; Suzanne Scholz, *Transcript of evidence*, p. 31.

to access adoption information compared to parents. Accordingly, VANISH was supporting many adopted people who swamped the Government AIS with applications. She said that these circumstances created the perception among some mothers that VANISH did not support them.¹⁵⁰ However, she explained that VANISH supports mothers to use its services and that ‘they very much appreciate it’.¹⁵¹ The Committee engaged with many mothers who reflected this in their evidence. Charlotte Smith also referred to a 2017 user survey, which showed that more than 90% of users rated VANISH’s service and support as excellent or good.¹⁵²

The Committee commends VANISH for its search and support services and agrees with inquiry participants that it is under-funded and under-resourced. The Committee believes the Victorian Government should fund VANISH on an ongoing basis to ensure the provision of a comprehensive and appropriately resourced post-adoption support service, including family search and support services. This is essential given the number of people affected by the policies and practices of historical forced adoption in Victoria and adoption more broadly. It is also essential based on the fact that no other Victorian service currently exists at this level for this cohort of people. The provision of ongoing funding by the Victorian Government should not influence VANISH’s important advocacy role, its independence and it should be structured in a way that allows people to ‘enter and exit as needed over their lifetime’.¹⁵³ It should also be flexible to allow VANISH to allocate resources to services and different matters as they arise.

The Committee discusses VANISH’s potential role in supporting people who use DNA testing in Section 10.3.2 and calls for further funding of VANISH in relation to mental health and emotional support services in Chapter 11.

RECOMMENDATION 32: That the Victorian Government fund the Victorian Adoption Network for Information and Self Help on an ongoing and flexible basis to ensure the provision of a comprehensive post-adoption support service in Victoria.

10.3.2 Opportunities to improve the search for family

The Committee heard that searching for family ‘is a very personal journey’ which some people may find ‘exciting, rewarding and quite straightforward’, while others may find it ‘overwhelming, frustrating and possibly disappointing’.¹⁵⁴ The Committee was not surprised to learn that searching can be difficult and sometimes people cannot find their family.

VANISH’s *Post-adoption search guide* discusses how a person can use their adoption records to search for a family member. Typically, a self-search involves exploring

¹⁵⁰ Charlotte Smith, *Transcript of evidence*, p. 35.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, p. 31.

¹⁵³ *Ibid.*, p. 30.

¹⁵⁴ VANISH Inc., *A post-adoption guide*, p. 3.

various sources for contact information, such as BDM for certificates, phone books, state and commonwealth electoral rolls, the internet and especially social media, and DNA testing.¹⁵⁵

The Committee heard that there can be barriers that impede attempts to search for family, such as access to current BDM information, limited support for DNA testing and the death of a natural parent or person who is adopted. These are discussed below.

Births, Deaths and Marriages: access to current information and fees

BDM is arguably the most important source of information for people searching for a family member. This is because a person can request current information that may help them determine the contact details of another person, such as a marriage certificate, change of name certificate or death certificate.¹⁵⁶ This information can be helpful to find a person, such as a natural mother, whose details may have changed since the adoption took place many years earlier.

As discussed earlier, the 2013 changes to the Adoption Act gave natural parents the same rights as adult adopted people to access information, although there remains some confusion about the access of parents to current information from BDM relating to their adult child.

Both ARMS and VANISH were concerned that while adult adopted people have a right to access current birth, marriage or death certificates from BDM, natural parents do not have a right to access current information about their child. ARMS stated:

Natural parents are not entitled to birth, death and marriage certificates in the same way adoptees are. This means that a natural parent undertaking a search for their adult child is not able to apply to BDMs to establish whether the person has died, married or legally changed his/her name.¹⁵⁷

VANISH argued that the inability to access current information through BDM is a form of discrimination towards parents and that it impacts parents of daughters in particular:

They [parents] are unable to access their son or daughter's marriage certificate from BDM. This particularly discriminates against natural parents of a daughter who was adopted, given it is more common for females to change their name on marrying.¹⁵⁸

This perceived lack of access to current information through BDM is interpreted by some as 'a continuation of the denigration and punishment of mothers and fathers that they experienced when their child was removed'.¹⁵⁹

¹⁵⁵ Ibid.

¹⁵⁶ Ibid., pp. 13-14.

¹⁵⁷ ARMS (Victoria), *Submission 45*, p. 10.

¹⁵⁸ VANISH Inc., *Submission 53*, p. 93.

¹⁵⁹ Ibid.

VANISH explained that the same lack of access occurs for the child of an adopted person:

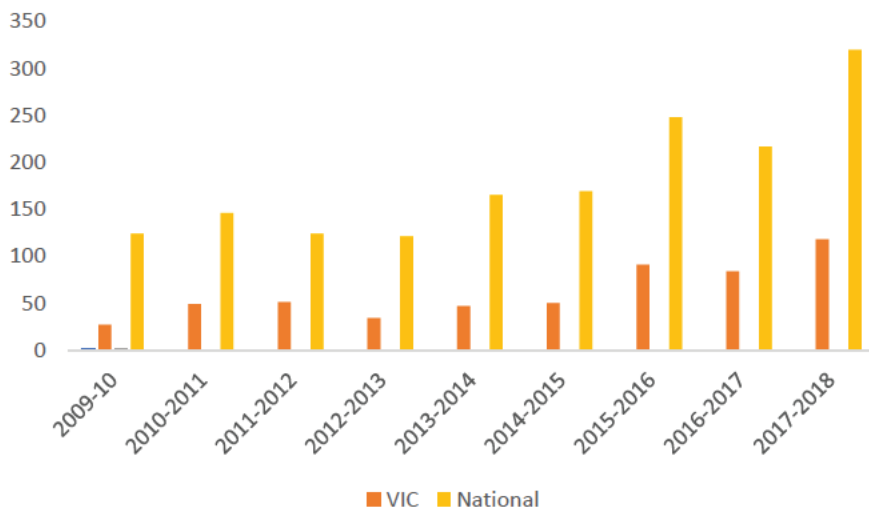
A child of an adopted person is eligible to apply for identifying information with the adopted person’s consent or if the adopted person is deceased but does not have the same rights with BDM.¹⁶⁰

An inquiry participant who is a second-generation adoptee referred to this issue in their evidence, stating that they are not permitted under the Adoption Act to access any information about their maternal grandparents:

Because I am a second-generation adoptee, the Adoption Act prevents me from legally obtaining the names of my ancestors without my estranged mother’s approval, so I am actually probably the only person in Victoria who is banned from knowing who my maternal grandparents are. The department holds that information and I am not to have it because my mother will not allow it. It might be her personal information, but it is also mine.¹⁶¹

VANISH argues that this issue is important, given the increasing national trend for the children of adopted people to search for their family, as reflected in Figure 10.3.

Figure 10.3 Applications for information lodged by a child of an adopted person in Victoria and Australia, 2009–10 to 2017–18



Source: VANISH Inc., *Submission 53*, p. 94.

The VLRC received similar evidence during its review of the Adoption Act and noted it was a contentious issue that highlights the ‘tension between the benefits of providing personal information to people affected by adoption and the privacy principles reflected’ in the *Births, Deaths and Marriages Registration Act 1996* (Vic) (BDMR Act)

¹⁶⁰ Ibid.

¹⁶¹ Name Withheld, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 42.

and the BDM Access Policy.¹⁶² The VLRC advised that it was not clear whether the information-gathering power of Secretary—now the Secretary of DJCS—‘may include the power to ask the Registrar for any information in the BDM Register about the adopted person, if requested by a natural parent’.¹⁶³

When asked about people’s access to identifying information, DJCS provided a detailed response, which the Committee believes is a useful guide to the relevant provisions in the BDMR Act and the Adoption Act. This response is provided in Box 10.1.

BOX 10.1: Department of Justice and Community Safety response to question on accessing identifying information

In general terms, the rationale for differing mechanisms for access to identifying information held by BDM is governed and informed by the different access regimes in the *Births, Deaths and Marriages Registration Act 1996* (Vic) (BDMR Act) and the Adoption Act.

First, under Division 4 of Part 7 of the BDMR Act, a person can apply to the BDM Registrar for information in the Register maintained by the BDM Registrar under Part 7 of the BDMR Act. The BDM Registrar can then grant or deny access in accordance with the relevant provisions of Division 4 of Part 7 of the BDMR Act.

The BDM Registrar, when making a decision about whether to grant or deny applications for access to information under Division 4 of Part 7, must be satisfied that the applicant has an adequate reason for wanting the information. Factors which may be relevant to that assessment include:

- the nature of the applicant’s interest;
- the sensitivity of the information;
- the use to be made of the information;
- the relationship (if any) between the applicant and the person to whom the information relates;
- the age of the entry;
- the contents of the entry; and
- other relevant factors.

The BDMR Act requires that when providing information extracted from the Register, the BDM Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

(continued)

¹⁶² Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 324.

¹⁶³ *Ibid.*

BOX 10.1: Continued

In relation to granting an adopted person access to identifying information about their natural parents that might be contained in the Register, the BDM Registrar recognises the specific sensitivities of the personal information and their obligation to protect a person's privacy. This means that BDM has policy settings in place that guide decision-making when a person applies to access identifying information about their natural parents/child in the context of an adoption. When assessing whether release is appropriate under the BDMR Act, relevant factors to inform that consideration might include evidence of the consent of the person to whom the information relates (e.g. the applicant's natural parent or child), whether they have undergone counselling authorised by the Adoption Act, or whether there is evidence that identifying information about their natural parent/child has already been exchanged. The BDMR Act gives the BDM Registrar (or their delegate) broad decision-making powers and in exercising their discretion the BDM Registrar is not limited to consideration of the above factors.

Second, ss 93–98 in Division 2 of Part VI of the Adoption Act set out mechanisms for accessing 'information about an adopted person' from a 'relevant authority'. 'Information about an adopted person' is defined in s 91 and includes identifying information about an adopted person's natural parents or a person's natural child who was adopted.

A 'relevant authority' is defined in s 82 of the Adoption Act to mean either the Secretary of the Department (supported by Adoption Services within the Department) or an approved adoption agency (namely, Anglicare Victoria, Child and Family Services Ballarat, Catholic Care Archdiocese of Melbourne, and Uniting Limited). The BDM Registrar is not included in the definition of a 'relevant authority'. It follows that it is not possible for applicants to apply directly to the BDM Registrar for access under those sections of the Adoption Act for 'information about an adopted person' within the meaning of Division 2 of Part VI. However, relevantly, where a person applies for information to the Secretary as a relevant authority (supported by Adoption Services), and the information is held by the BDM Registrar, s 90 of the Adoption Act provides a mechanism for that information to be obtained by the Secretary.

Source: Rebecca Falkingham, Secretary, Department of Justice and Community Safety, correspondence, 26 May 2021, pp. 3–4.

The Committee notes the confusion among some inquiry participants about the rights of different groups under the BDMR Act and the Adoption Act to apply directly to BDM to obtain current identifying information about a person, without their consent. It is further confused by the power of the Secretary to access information from BDM as part of an application for adoption records and whether consent is required for the release of identifying information about another person as part of that request.

This requires clarification from the Victorian Government to ensure people, especially natural parents, know what identifying information they can request and receive as part of:

- an application for adoption records via an adoption information service
- a direct application to BDM for current information about a person, that is, a birth, death or change of name certificate.

The Committee also believes that the tension identified by the VLRC between the benefits of providing personal information and protecting people's privacy is an important consideration when information is released about an individual, whether it is a natural parent or a person who is adopted.

RECOMMENDATION 33: That the Victorian Government clarify and clearly publicise the rights of people to access current information from the Births, Deaths and Marriages Register that may contain identifying information about other people.

In the process of clarifying access to current BDM information, the Victorian Government should also assess the fees imposed on people affected by historical forced adoption who apply for current information from BDM. Applying for information from BDM is key to the search process and is not necessarily part of the initial request for information from the Government AIS or an approved agency. Therefore, when an individual conducts a search with BDM or requests an electronic or hardcopy certificate, they bear the costs for this. VANISH raised this issue in its submission, highlighting that the costs are prohibitive and even impact how fast someone conducts a search for family:

For some VANISH service users, the costs are too prohibitive, and this curtails their ability to complete their search. For some they have to pace their search according to what is affordable for them.¹⁶⁴

BDM provides an overview of fees on its website, which includes costs for searching the Register as well as costs for any scanned images of unofficial certificates. A scanned image of an unofficial historical certificate costs \$20 and cannot be used for legal purposes. Each hard-copy of a certificate costs \$34.30 and is valid for official purposes. The fees schedule for BDM to search records ranges from \$60 to \$140, for between 1 to 10 records. These searches include either one or two free scans of an unofficial certificate, with every subsequent scan costing \$15.¹⁶⁵

An inquiry participant who struggled with the service they received at BDM also raised the issue of costs:

¹⁶⁴ VANISH Inc., *Submission 53*, p. 98.

¹⁶⁵ Births Deaths and Marriages Victoria, *Search your family history*, n.d., <<https://www.bdm.vic.gov.au/research-and-family-history/search-your-family-history>> accessed 27 July 2021.

I think it should be easier for people to get information. Every time I try to do something it costs me 200 bucks. I do not think adopted people should have to pay for their certificates.¹⁶⁶

Another inquiry participant told the Committee that their son ‘wasted all his money’ searching through BDM, which could not produce any information over five decades because his name was incorrect in their records.¹⁶⁷

The Committee takes a principled approach to the issue of fees and costs, arguing that historical forced adoptions were imposed on people and they should not have to bear the cost of searching for family. In 2013, the Victorian Government waived the costs and fees for searching for adoption information and it should do the same for BDM searches and certificates.

RECOMMENDATION 34: That the Victorian Government waive Births, Deaths and Marriages’ search and certificate costs for people affected by forced adoption.

DNA testing

The Committee heard that DNA testing is no longer an emerging technology or practice; it is commonly used by people who are adopted to learn more about their identity and find family. One DNA testing service is Ancestry.com, which according to its website is the world’s best-known direct to customer DNA testing service. It has sold more than six million at-home DNA tests and claims to have created more than one billion family connections.¹⁶⁸

VANISH stated in its submission that there is an obvious appeal in DNA testing for people who do not have identifying information about their parents; are not aware of their rights to adoption records; or have been told that information is lost, destroyed, incomplete or inaccurate.¹⁶⁹ VANISH also stated that DNA testing sites like Ancestry.com can be used to find relatives who have not submitted a DNA test themselves:

Relatives can be identified through DNA testing even if they have not tested themselves. This is because it is possible to research familial connections through the DNA matches of other family members, even third and fourth cousins, particularly if those matches have an online family tree.¹⁷⁰

In evidence to the Committee, an inquiry participant advised that DNA testing has become normalised in the adoption community and they volunteer to help adopted people find their families using DNA testing in favour of other methods. They stated

¹⁶⁶ Name Withheld 2, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 29.

¹⁶⁷ Name Withheld, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 17.

¹⁶⁸ See Ancestry.com, *Overview*, n.d., <<https://www.ancestry.com.au/cs/legal/Overview>> accessed 27 July 2021.

¹⁶⁹ VANISH Inc., *Submission 53*, p. 100.

¹⁷⁰ *Ibid.*

that DNA tests are used because ‘a lot of people don’t know how to get their file, don’t know how to get their parents’ file’, they do not have the ‘education or the understanding or it’s too confronting for them to be able to go to these agencies to get the paperwork’.¹⁷¹

This inquiry participant told the Committee that DNA testing is particularly useful for finding fathers:

Especially birth fathers because they’re not listed on documents, as you guys know, and it’ll give you surnames and it’ll match you up and there’s a lot of fathers and siblings who are actually testing to look for their adoptive sibling that they can’t find. So sometimes within eight weeks they’ve got a sibling match and they’ve found their father straight away. Been, gone, done, finished, and they’re happy.¹⁷²

Similarly, another inquiry participant indicated that they found their father through DNA testing:

After 30 years of struggling to try and get in contact with my birth mother, who is obviously quite traumatised from her experiences, I found my birth father and my birth mother’s family by DNA testing, so I have to ask: why all the secrecy?¹⁷³

Suzanne Scholz told the Committee that adopted people now use DNA testing and social media to find their family and ‘bypass outdated processes’.¹⁷⁴ She indicated that it is common for adopted people to joke about being detectives and ‘cyberstalking’ their families.¹⁷⁵

Benita Rainer wrote in her submission that after years of searching through other means, she sees DNA testing as her only option:

Adoptees are under a lot of financial pressure when it comes to trying to locate their natural families. I went to Denmark to meet one candidate for my father, and am now beginning to wonder if I should really just pay for a DNA expert to untangle all of the threads that may or may not be paternal matches, as I can’t get my head around the websites and how to use them.¹⁷⁶

VANISH also advised that DNA testing can reveal the falsehood of official adoption records and ‘in these sorts of circumstances, DNA testing is invaluable’.¹⁷⁷ This was the experience of Dr Mackieson, whose natural mother was initially confirmed through official means in 1997 and with whom she established a relationship. Dr Mackieson told the Committee in a public hearing that she ‘never felt that I looked especially like them’, but she was assured by her family that ‘[n]o, you’re dark like your father’s family’. As the

171 Name Withheld, 7 December 2020, *Transcript of evidence*, p. 15.

172 Name Withheld, 10 March 2021, *Transcript of evidence*, p. 16.

173 Name Withheld, 7 December 2020, *Transcript of evidence*, p. 42.

174 Suzanne Scholz, *Transcript of evidence*, p. 32.

175 Ibid.

176 Benita Rainer, *Submission 88*, received 6 May 2021, p. 1.

177 VANISH Inc., *Submission 53*, p. 100.

'father' died in 2002, Dr Mackieson was unable to confirm this with him.¹⁷⁸ Due to her ongoing doubts, Dr Mackieson did a DNA test and the results were shocking:

Of course I saw all these names in the list of matches that were Greek names. I was like, 'Greek names? I should be seeing Irish, English and whatever names', and there were no close relatives. But then I looked at the ethnicity part of the results and there was literally 0 per cent English, Irish or Welsh, and that was supposed to be my mother's and father's backgrounds. If it had had something there, I probably would not have been so alerted, but it said 0 per cent.¹⁷⁹

Because the AIS had confirmed who her mother was, Dr Mackieson was convinced Ancestry.com had switched the test accidentally and asked them to clarify the result, which they confirmed 'very clearly that it had not been'. She took a test with another DNA company to verify Ancestry.com's test and the results were the same. Her husband and son also underwent DNA analysis, which confirmed the accuracy of the original DNA test.¹⁸⁰ The results proved that Dr Mackieson was switched at birth, maybe once or more:

Well, it may mean that I was literally switched directly with one other person, or it may mean that there was that switch but then I may have been switched again. It is hard to tell.¹⁸¹

The woman who had originally been identified as her mother was reconnected with her actual daughter, again, with the help of DNA testing.

Given her new DNA profile, Dr Mackieson asked the Queen Victoria Hospital about any Greek mothers that gave birth during the week she was born:

They had looked in a register—I understand it was a social work register of women who had relinquished or whose babies were identified to be relinquished—and they saw that another baby was born the same day to a Greek mother. There was only one Greek mother I think around that time, so they felt it had to be pretty much her. That is how they described it to me—that there were two other Greek mothers, but they had boys.¹⁸²

As the woman lives in Greece, it has been difficult to arrange a DNA test with her. Consequently, the legal validity of Dr Mackieson's adoption is unclear, as is her identity and the process for changing her birth certificate. Dr Mackieson told the Committee that she 'feel[s] like an imposter in my own life'.¹⁸³

The Committee also heard how DNA tests can reveal unexpected news to people who have no idea they are adopted until they take one for other purposes. This was the

¹⁷⁸ Dr Penny Mackieson, *Transcript of evidence*, p. 49.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*, p. 48.

¹⁸² *Ibid.*, p. 49.

¹⁸³ *Ibid.*, p. 48.

experience of Peter Capomolla Moore who at almost 60 years of age discovered he was adopted after he took a DNA test:

Three years ago, at age 59 I did an Ancestry DNA test and discovered something was not right, there were no surnames in my DNA matches that I was familiar with. I always knew I was born at Salvation Army Bethesda Hospital I had Google it many years before which produced nothing but a image of an old building. In desperation I Googled it again: Forced Adoption Government Apology. What? I have never heard of this before, how was this I am an avid watcher of news? I was Adopted. I was shocked, my whole identity erased.¹⁸⁴

The Committee understands that DNA tests can come with data and privacy risks, such as the misuse of data by testing companies and questions about who owns the data. VANISH highlighted in its submission:

There are conflicting views about who owns your DNA once you have tested - testing companies state that you always own your DNA, while some commentators say that, given this has not been tested in a court in Australia, it is impossible to know with any certainty. Other risks include the testing companies going bust, being sold, or being hacked. Further, legal and privacy risks might not only apply to those who take a test, but also to the people who share their DNA (i.e. their relatives).¹⁸⁵

While these risks deter some people from using DNA testing, there is broader support for it among people who are adopted, along with other groups such as donor conceived people and former state wards.

Based on the overall evidence received, the Committee has no doubt about the usefulness of DNA testing, but is concerned about the limited support currently available to people when they receive their results and determine next steps. An inquiry participant discussed with the Committee the difficulty in working through test results and the need to support people through this process:

What you cannot find from DNA and what people hide is anybody who is alive. So if you do a DNA thing, you will find all your dead ancestors, but you do not find anybody who is alive, because that is all private. You cannot see it. So you have to track through that, and that is where the paper trail comes in—so you can actually do that tracking. I think that is really important—to help people to do that, because it is not simple. I managed to do it, but then I have to say I am a well-educated person. I have got a science background. I can sift through evidence.¹⁸⁶

VANISH advised that aside from data and privacy risks, DNA testing comes with social and emotional risks regarding reunification:

DNA testing puts the searcher in contact with anyone with shared DNA, who might be a close or distant relative ... This factor can make DNA testing precarious for the searcher

¹⁸⁴ Peter Capomolla Moore, *Submission 44*, received 5 March 2020, p. 1.

¹⁸⁵ VANISH Inc., *Submission 53*, p. 101.

¹⁸⁶ Name Withheld, 7 December 2020, *Transcript of evidence*, p. 45.

because it puts their information into the hands of unknown family members who might not handle this news with sensitivity. They might be overzealous in their attempts to help, or they might seek to block the searcher from finding out more, based upon their own views about adoption. This type of contact with other relatives can also put the person being sought in a precarious position, depending on their situation and their relationship with the person in their family who is contacted.¹⁸⁷

In her evidence, Charlotte Smith from VANISH stated that increased DNA testing is inevitable, therefore, it is important to support people in the decision to use DNA testing appropriately. She advised that people should be informed, first of all, that they have the right to apply for information before taking a test, but at the same time recognise that for someone whose search has been fruitless that ‘absolutely they should do a DNA test’.¹⁸⁸ In correspondence to the Committee, Charlotte Smith further advised that VANISH conducted a pilot project in 2019 and 2020 to support individuals analyse their DNA results:

The research was carried out by a VANISH staff member who had attended training in DNA analysis. It involved 28 searches, 17 of which resulted in a found parent and eight in a found sibling or siblings. The pilot found that the research is complex and time-consuming and it can take many hours of research to locate a relative. Furthermore, it can be costly for the service user, both in terms of the tests and purchasing birth, death and marriage certificates and other records such as immigration files.¹⁸⁹

At the end of the pilot, VANISH concluded that for this type of search work to be incorporated into its service, additional funding would be required specifically for this purpose, plus some discretionary funds to ensure equal access for those who face financial barriers.¹⁹⁰

The inquiry participant who helps adopted people find their families using DNA testing recommended that the Government fund DNA testing for people affected by historical forced adoption, because the speed and accuracy of the tests will deliver results for an aging cohort of people trying to find and reconnect with family.¹⁹¹

In correspondence, DJCS confirmed that DNA testing is already used to verify parentage, but stated that it is not an effective approach to ‘identify previously unknown people’. Further, the ‘Adoption Act does not contemplate or empower a relevant authority to search for otherwise unidentified family members using DNA testing and/or analysis’.¹⁹²

¹⁸⁷ VANISH Inc., *Submission 53*, p. 101.

¹⁸⁸ Charlotte Smith, *Transcript of evidence*, p. 32.

¹⁸⁹ Charlotte Smith, correspondence, p. 4.

¹⁹⁰ *Ibid.*

¹⁹¹ Name Withheld, 10 March 2021, *Transcript of evidence*, p. 16.

¹⁹² Rebecca Falkingham, correspondence, p. 9.

Based on the evidence received, DNA testing is already widely used by people trying to trace family members, and the greatest risk is people finding family and then proceeding without any support to navigate the complex outreach and reunification process. As DNA testing is cheap and easily accessible, it is essential that DJCS reconsider its stance and work with relevant groups like VANISH to establish practice guidelines to support the use of DNA tests as a search tool where appropriate. Additionally, as part of its ongoing funding, VANISH should be empowered to support people to understand the accuracy of test results and the possibility that they may receive adverse news about their identity and genealogy. The Committee acknowledges that the first priority should be encouraging people to access their records through the AIS.

RECOMMENDATION 35: That the Victorian Government endorse the use of DNA testing and develop practices guidelines to support its use as a search tool.

Death notifications to parents and children

Some inquiry participants raised the sensitive and important issue of being notified when a parent or person who is adopted dies. As first discussed in Chapter 4, when Robyn Flanagan began the search for her twin daughters, she learnt that one had died of cancer as a child.¹⁹³ To make matters worse, in the lead up to receiving her adoption records, Robyn Flanagan was not informed that she would be receiving this traumatising news:

I was not given any warning that I might receive bad news. I travelled from a southern suburb of Melbourne by public transport to North Melbourne, and sitting in an office I was given paperwork and then told, ‘Oh, unfortunately’—it was just overwhelming. I could not walk, so I hailed the first taxi and got home. I do not know how.¹⁹⁴

Asked if she was given any support at the time, Robyn Flanagan said she was only given the standard advice to bring a friend or a partner, but the gravity of the situation was not conveyed to her:

No, not even just a standard, ‘We recommend you bring someone with you. It’s just what we do. But bring a girlfriend or bring a partner’. If they did not want to tell me until I got there, that would have been okay, but at least I would have had someone who could function to get me home. It was just horrible.¹⁹⁵

Another mother had a similar experience. She made contact with Copelen Street Family Services to see if there was any chance of finding out the whereabouts of her son and if he wanted any contact with her. She learned that her son had died at 4 years old as a

¹⁹³ Robyn Flanagan, *Submission 65*, received 17 June 2020, p. 1.

¹⁹⁴ Robyn Flanagan, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, pp. 16–17.

¹⁹⁵ *Ibid.*

result of a bee sting.¹⁹⁶ Through Copelan Street, the adoptive family was able to share some memories and a memento with the mother:

Copelan Street contacted the adoptive parents and they shared with me some of their memories of my/their son and they gave me photographs (and a lock of his hair) of the short time they had him in their lives, and I was able to visit his grave at Horsham cemetery and grieve for what I had lost—small consolation. A very sad day. A tragic experience for everyone.¹⁹⁷

An adopted person wrote in their submission that they identified their mother but had not been able to reunite with her. In 2014, more than two decades after their first attempt to reconnect, they found out accidentally about their mother's death:

I learned of my birth mother's death in 2014. I found this information by accident—a death notice in a newspaper.¹⁹⁸

Robyn Flanagan recommended to the Committee that parents be informed at the time of a child's death:

I would like to see that if an adoption takes place, if there is a death of a child that is adopted, they should be notified upon the death—the natural mother should be notified. This did not happen when my daughter died ... Information like this, when shared, is giving some power or voice back to mothers when they have been completely powerless.¹⁹⁹

ARMS recommended an immediate change to the Adoption Act to notify people about a relative's death:

When Births, Deaths and Marriages is notified of the death of any person, they should be required to consult their files to determine whether the birth certificate is a Schedule 2, signifying that this person was adopted, and contact the original parents to notify them of the death. This should be implemented as soon as practicable.²⁰⁰

The Committee supports this recommendation, in addition to consideration of privacy concerns for all relevant parties in developing this policy.

RECOMMENDATION 36: That the Victorian Government explore opportunities to notify a natural parent if their child dies and an adult adopted person if their parent dies, taking into account any privacy concerns for all relevant parties.

¹⁹⁶ Name Withheld, *Submission 83*, received 24 March 2021, p. 1.

¹⁹⁷ Ibid.

¹⁹⁸ Name Withheld, *Submission 101*, p. 3.

¹⁹⁹ Robyn Flanagan, *Transcript of evidence*, p. 15.

²⁰⁰ ARMS (Victoria), *Submission 45*, pp. 9–10.

10.4 Family reunification

Family reunification is complex as reflected in the evidence received by the Committee and explored in Chapter 4. Some people find each other and maintain a relationship, while others are not able to do so. The pressure and stress on all parties can be immense and overwhelming, exacerbated by the decades spent apart. As noted by VANISH in its submission:

Reflecting back on the practices described earlier in this submission, the way mothers (and fathers) were treated, including barbaric practices such as rapid adoption, it is easy to understand why.²⁰¹

Like every other part of the adoption experience, there were common themes among participants about reunification, but each person and family's experience are ultimately unique. Both mothers and their now-adult children are often living with ongoing impacts created through forced separation from one another and adoption. In the time since the initial separation, mothers have carried the trauma of their experience and adopted people have lived with questions about their identity and innate feelings of abandonment.

Jennifer McRae identified in her submission that the internal struggle about self-worth is often triggered by reunification:

These are the typical dilemma's many adoptees silently experience when they are reunited with their biological family. One of the many internal dialogue's which you battle against. Your wounded inner child narrates a point of view, that you were not worthy enough to be kept by your own flesh and blood, your Mother.²⁰²

Helen Nicholson wanted to find her father for her own sense of identity, however, her fear of rejection was realised when she tried to reunite with him:

'G' and I had a brief connection. He initially denied all knowledge of 'E's' pregnancy and his paternity. Demanded why I wanted contact—did I want money from him?? He stressed that he didn't want his current wife and sons to know about me. There is no denying he was my father as we look so much alike. However, through Ancestry.com I have found out he passed away 2014. No love lost there.²⁰³

The Committee heard from mothers who in the act of reunification could empathise with these feelings of abandonment often felt by adopted people. Patricia Gall stated that her reunification with her son was understandably hampered by his feelings of abandonment:

He was in a relationship at the time, and I think she encouraged him a lot to find me. Yes, but that reunion did not really work very well. He is very angry for being abandoned. They all had abandonment issues.²⁰⁴

²⁰¹ VANISH Inc., *Submission 53*, p. 103.

²⁰² Jennifer McRae, *Submission 82*, received 15 May 2021, p. 8.

²⁰³ Helen Nicholson, *Submission 86*, received 30 March 2021, p. 4.

²⁰⁴ Patricia Gall, *Submission 29*, received 18 February 2020, p. 39.

Cherylyn Harris empathised with her daughter's perspective, and a common perspective among adopted people, that she was rejected from birth:

She made contact with me in 1989. She feels she was rejected by me when she was two days old ... I have given her the circumstances re the adoption etc but the papers that I received were distressing for me to read so I do have some understanding of how adopted people must feel and think when they read these papers.²⁰⁵

One mother was troubled to hear her daughter's adoption experience was not as it had been promoted to her, but had a positive reunification with her:

I have since found my beautiful daughter. I am so blessed to have her in my life now. She is such a wonderful girl, but had a rough life growing up. Far from the nice, Christian home I was told about at sixteen.²⁰⁶

Sue Miiller-Robbie reconnected with her son after his adoptive parents passed away, and they have had a relationship for more than seven years:

Thankfully he agreed to contact commencing with the exchange of information via email followed by phone contact and finally a meeting. Seven years latter [sic] we continue to have regular contact and try to overcome the enormous impact that separation at birth and years of disconnection and hurt has had on our relationship and that of our family members.²⁰⁷

The Committee heard that some people are initially able to reconnect with each other, only to have their relationship become strained or breakdown.

Helen Nicholson's relationship with her mother became increasingly challenging and limited communication from her mother during a significant holiday left Helen wondering what she had done wrong:

I have spent every day of the last 14 months ruminating about her, adoption, what I've said to her, what I forgot to say, did I say something wrong!²⁰⁸

The ramifications have been significant. She has 'developed somatic back pain as a result' and said is 'preparing for abandonment again'.²⁰⁹

In her submission, Wendy Willis also shared the challenges she experienced when reconnecting with her natural family:

Contact became difficult for myself as I felt that I was there to fix my biological mother, heal her and her ongoing issues. How could I when I was the traumatised child? I would go months without contacting her or my siblings with an uncomfortable feeling of not knowing who I was, where I fitted in, or feeling I would let people down and disappoint

²⁰⁵ Cherylyn Harris, *Submission 33, Attachment 5*, received 28 February 2020, p. 2.

²⁰⁶ Name Withheld, *Submission 59*, received 3 June 2020, p. 1.

²⁰⁷ Sue Miiller-Robbie, *Submission 100*, p. 7.

²⁰⁸ Helen Nicholson, *Submission 86*, p. 6.

²⁰⁹ Ibid.

them. I struggled with who and when to call my biological mother ‘mum’ and the life with my siblings I was denied and how I may hurt the feelings of both my adoptive and biological siblings.²¹⁰

Another inquiry participant’s experience demonstrated some of the challenges of maintaining an ongoing relationship:

And then she had a child at that time, and he asked us to go to his—I cannot remember if it was his communion or confirmation. We went down, and we were met and she said, ‘Sit at the back of the church. My mum’s at the front’, and then when we went to the house, ‘Don’t come inside. My mum’s in there’. So you are naturally made to feel second rate.²¹¹

10.4.1 Support during reunification

The Committee’s view is that more support is required throughout the lifetime of the relationship between people affected by historical forced adoption who have been able to reunite, whether they describe their relationship as positive or otherwise. VANISH works with people to prepare them for the possible outcomes of reunification and stated in its submission:

Contact also brings with it a range of feelings. It can bring joy and relief; however, it may also bring further rejection and loss. It can be an intensely emotional experience and can trigger grief, shame and trauma.²¹²

According to Charlotte Smith, VANISH is often asked to deliver a ‘range of services that we just can’t provide’.²¹³ For example, because reunification can be challenging and traumatic, some people prefer to use an intermediary service to contact the family. VANISH normally refers people to a professional intermediary service because it is ‘not sufficiently resourced to fully meet the demand for intermediary services—this service can be quite resource intensive’.²¹⁴

The Inquiry evidence demonstrates the need for support during and after reunification. For example, when Leonie White was reunited with her son, she was not offered support:

Eventually it was arranged for me to meet my son, at the CFWB [Catholic Family Welfare Bureau], 94 Grattan Street, Carlton. We were not given any counselling, just introduced to each other and left for 1 hour to talk before they closed for the day. My son was 17 and had travelled by himself from Ballarat for the meeting which I never wanted to end.²¹⁵

210 Wendy Willis, *Submission 114*, received 29 July 2021, p. 2.

211 Name Withheld 2, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 19.

212 VANISH Inc., *Submission 53*, p. 103.

213 Charlotte Smith, *Transcript of evidence*, p. 35.

214 VANISH Inc., *Submission 53*, p. 13.

215 Leonie White, *Submission 41*, p. 3.

SallyRose Carbines met her father and he immediately asked for a DNA test and if someone else could be her father.²¹⁶ SallyRose Carbines proposed that reunification support be offered to deal with the entire ripple effects of reunification across a family:

I was sensitive enough to give my father time, and that is why eventually he came forward—because of that. So I do have those skills; not everyone does. People want to do it for whatever reason. So I really think there should be more support for that ongoing post reunion, because then you have got children. Children did not know, husbands did not know, wives did not know, mothers did not know, grandmothers—you know. It does open another whole can of worms.²¹⁷

VANISH similarly proposed such support, noting that people are involved with multiple families, and there are other family members to consider including siblings, parents and grandparents:

a professional support worker who is respectful of, and focussed on, the individual's needs and interests can assist with navigating the relationships and complexities inherent in adoption.²¹⁸

VANISH also proposed mediation when relationships become strained and people struggle to understand another person's perspective:

This can be beneficial when adoption reunions have stalled or broken down and require external support to help the parties involved to communicate more effectively and strengthen mutual understanding. Mediation can also be helpful where individuals are not supported by their other family members or are fearful of their reactions.²¹⁹

The Committee strongly agrees that ongoing support is required for people affected by historical forced adoptions on an ongoing, flexible basis and particularly during major life events, such as reunification. Currently, there is not enough support at the time of reunification and as people build their relationships and work through challenging periods. The next chapter addresses support services more generally, but in the context of reunification, the Committee endorses VANISH's proposal for more support from specialist adoption-information counsellors and support workers.

RECOMMENDATION 37: That the Victorian Government offer specialist adoption-informed counsellors and support workers to people reuniting with family, including as they build their relationship in the post-reunification period.

²¹⁶ SallyRose Carbines, *Transcript of evidence*, p. 27.

²¹⁷ *Ibid.*

²¹⁸ VANISH Inc., *Submission 53*, p. 103.

²¹⁹ *Ibid.*

11

Mental health and emotional support services

The issue of the mental health of those affected by forced adoption overlays every other consideration ... No matter what else is done in the area of forced adoption, that issue must always be foremost ... It is imperative that the issue be highlighted at every opportunity.¹

In the lead up to and after the National Apology on Forced Adoptions, research and reports established the need for effective mental health and emotional support services for people affected by forced adoption. For example, the Australian Institute for Family Studies (AIFS) report, *Past adoption experiences: national research study on the service response to past adoption practices* (AIFS Adoption Study), demonstrated the serious and complex negative effects of forced adoption and concluded that people need support to address those effects, live fulfilling lives and maintain healthy relationships. This was also identified in the Senate's Community Affairs References Committee Inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry).

Despite the allocation of Forced Adoption Support Services (FASS) funding by the Australian Government, the Committee heard that mental health and emotional support services are not effectively responding to people's needs. Inquiry participants told the Committee that access to specialised mental health services has been inadequate due to limited availability and high costs, or services not being attuned to their needs. These issues are discussed in this chapter.

The chapter also provides an overview of Victorian and Australia-wide mental health and emotional support services and considers how these can be improved. It further explores enhancing awareness of historical forced adoptions and the impact of adoption among various health professionals and across the community services sector. Finally, it discusses the vital role of peer support groups.

11.1 Inquiry participant experiences

As explored in previous chapters, the negative mental health impacts of historical forced adoptions cannot be overstated. The Committee heard that many people who are adopted will often appear composed but are in fact traumatised. They experience a range of mental health issues, including post-traumatic stress disorder (PTSD), trauma relating to separation and loss, personal and inter-group identity problems,

¹ Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, Australian Government, Canberra, 2014, pp. 10–11.

abandonment issues, relationship dysfunction and lower self-worth, life satisfaction and health and wellbeing outcomes.

The Committee also received overwhelming evidence about the mental health impacts on mothers whose newborn babies were forcibly removed from them and which continues to shape them today. Mothers received no counselling at the time their babies were taken and still struggle to access mental health and emotional support today.

The negative impacts on both groups require specialised interventions from professionals with training in trauma, historical forced adoption and adoption. As discussed throughout this chapter, state and national funding has been allocated to enhance the provision of such interventions. However, it was clear that people either lacked awareness of services or were unable to access them. Lyn Kinghorn stated in her submission:

This [specialised professional support and counselling service] has not been widely or easily accessible. Millions of dollars have been promised but mothers have found it too difficult to find. I have had tremendous support through Relationships Australia but it seems hard for others to get this. I was lucky to find someone willing to take me on, but am feeling the pressure now that support has its limits.²

The Committee heard that in the absence of specialised mental health support, many people have sought out private or general services. This includes engaging General Practitioners (GPs) for advice and emotional support, with varied success.

After her mother died, Lee Whelan accessed bereavement counselling from her mother's hospice:

After mum passed I received bereavement counselling for thirteen months from the hospice where mum had died. During my bereavement counselling sessions my past started to come to the surface. Fifty years of contained, suppressed abuse was finding it's way out, I started remembering things that I had cast aside for so long. I was told that this was the start of 'Recovering Memory' as it was okay now to allow myself to be confronted with the trauma that I had held so deep within my soul.³

An inquiry participant told the Committee they have participated in extensive therapy:

Since 2001, I have undertaken extensive therapy from both psychiatrists and psychologists and I have spent 3 weeks in hospital, I am still on medication. I still require therapy and in fact, tomorrow (march 16) my psychiatrist has arranged for me to meet with a psychologist who uses EMDR Therapy (eye movement desensitization and reprocessing) to his patients.⁴

Twenty years ago, Yvonne Stewart sought out mental health support as an in-patient in the psychological ward at a Bendigo hospital. She told the Committee that she did

2 Lyn Kinghorn, *Submission 11*, received 30 January 2020, p. 8.

3 Lee Whelan, *Submission 74*, received 7 July 2020, p. 6.

4 Name Withheld, *Submission 51*, received 22 March 2020, p. 3.

not mention the forcible removal of her daughter because she had not considered its impact, but that her time at the hospital had helped her.⁵

Throughout the Inquiry, there was overwhelming support from participants for the Victorian Government to provide free and specialised mental health and emotional support services. For example, Hannah Spanswick recommended:

I sincerely hope that the provision of affordable and ongoing psychological services will be made available to any person with an adoption experience that has had and or continues to have, a negative impact on their health and well-being.⁶

Whilst I haven't actually sought counselling through VANISH, I know that it's available, although not extensive. It's very minimal. I think that it needs to be expanded to a point where anyone who's been touched by adoption or has a lived experience needs to be able to access counselling through people who have some specialty in the area. Because I know of people who have—with an adoption experience who have sought counselling, and depending on the counsellor, the adoption experience doesn't seem to have entered their radar, in terms of acknowledging that many of their issues stem back to that adoption, or the loss of their child. So it does need to be specialised by people who understand the issues.⁷

Wendy Willis wrote in her submission:

Please listen to the little girl and her ongoing life long need for information, trauma based therapy, support for all affected and compensation for all the therapy I/she has needed and for what I/she will endure for a lifetime of something so unforgivable it can never be healed.⁸

Another inquiry participant proposed:

My desire from this inquiry is for authorities to provide financial trauma support to myself and others affected by adoption due to the profound effect this experience has had & continues to have, on the personal & professional lives of those affected.⁹

Jennifer McRae recommended long-term, free and accessible counselling for all 'survivors' of forced adoption, including adoptive parents, and that it be promoted nationally to encourage people to use it.¹⁰

Yvonne May, who found a counsellor willing to go on 'her journey' with her, advocated for ongoing counselling with a professional of a person's choosing:

I certainly think that if counselling is provided all the women that I come in contact with, it should be ongoing, not just, 'Start here, stop'. And of course you have got to find the

5 Yvonne Stewart, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 22.

6 Hannah Spanswick, *Submission 9*, received 27 January 2020, p. 1.

7 Hannah Spanswick, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 3.

8 Wendy Willis, *Submission 114*, received 29 July 2021, p. 3.

9 Name Withheld, *Submission 47*, received 11 March 2020, p. 2.

10 Jennifer McRae, *Submission 82*, received 15 May 2021, p. 12.

right counsellor. People chop and change, don't they, until they find the one. I think it would be really beneficial.¹¹

Some inquiry participants who did not themselves want specialised mental health support recommended its provision for other people. A mother told the Committee:

I think so, but not for myself. I have lived with this for that long. I am near the end of my life. What good is it going to do me? It is not going to do me any good. It is not going to do me any good ... For other people; I really do not think it is any good for me, because I have lived with it for 60 years. It is not going to do me any good. Yes, for other people.¹²

The Committee acknowledges that some inquiry participants were ambivalent about the value of mental health and emotional support services. For example, Karyn Williams stated in her submission:

Funding another group of counsellors to hear our story is just dredging up the past, we have all spoken and all now feel its time the government see it for what it is.¹³

This was a view also expressed by some mothers, as reflected in the following quotes:

To this day and for the rest of my life no amount of medication and counselling could fix what is broken. I just get through each day.¹⁴

None of the counselling I have had has helped me get over this, because there is no getting over it. It was all too little, too late. I needed counselling when they took my baby away, not now.¹⁵

Counselling—I do not think I need that anymore. I am 72 now, and I think I have done it all and said it all. Nothing helped me more than the group. I mean, I probably did not have it as much as I should have in the early days, but it cost money and we did not have that money and my husband was not supportive of that situation. I probably needed counselling then, but I did not get it and I battled through. I think it is too late now for me.¹⁶

An inquiry participant, speaking on behalf of their mum, advised the Committee that their mother has never accessed mental health services:

Mum has never received counselling, she was brought up not to 'air her dirty laundry'. My mum has significant emotional trauma and yet has never allowed herself permission to get help.¹⁷

11 Yvonne May, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 30.

12 Name Withheld 4, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 33.

13 Karyn Williams, *Submission 84*, received 3 April 2021, p. 4.

14 Name Withheld 1, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 12.

15 Name Withheld 3, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 25.

16 *Ibid.*, p. 26.

17 Name Withheld, *Submission 76*, received 21 July 2020, p. 1.

The Committee heard that people affected by historical forced adoption have incurred significant costs for counselling, medication and doctor's visits. Helen Nicholson specified in her submission that she has spent at least \$80,000 'on social workers, psychologists, psychiatrists, counsellors, GPs, medication and hospitalisation' and predicted spending another \$60,000 over her lifetime.¹⁸ In a public hearing, an inquiry participant shared their feelings of guilt for spending a significant amount of their family's income on doctor's bills, counselling and medication to address their mental health issues arising from their experiences. They explained that the cost of medication alone is substantial:

The medication—I always comment that it costs me more at the chemist than it does at the supermarket—has just been ongoing for all these years, and you feel guilty. You start to feel like, 'I'm taking the family's money, my children's'—and I needed to take this medication to function. So I think that is probably one of the biggest things.¹⁹

Similarly, other inquiry participants told the Committee:

I have remained engaged in treatment since that time. I estimate the treatment costs over the years to be around \$15,000. While some initial sessions were covered by a mental health care plan, I have largely borne the cost myself of treating the damage done by state policy.²⁰

Well, it is very expensive. I went to a counsellor and I cannot think of the—oh, on My doctor gave me a Medicare thing to get it, but it was still \$98 a visit out of my pocket, and I felt bad because it is out of our joint money, and we are retired. Money is not pouring out.²¹

Further, Barbara Pendrey outlined in her submission that her monthly costs are significant as she is on a fixed income:

It's costing over \$200 a month and I am on a pension. The psychologists, counsellors, doctor's appointments, physio, a rheumatologist. I've paid for all these myself.²²

Numerous inquiry participants proposed to the Committee the introduction of a recognised health care card for mothers subjected to the policies and practices of historical forced adoption to provide them with life-long access, or access after they were retired, to cheaper or no-cost health care.²³ The Committee agrees there is merit in this proposal for a concession health care card for mothers, similar to the low-income health care card model through Medicare or the Veterans Gold Card. However, such an initiative would need to be initiated and funded by the Australian Government.

¹⁸ Helen Nicholson, *Submission 86*, received 30 March 2021, p. 7.

¹⁹ Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 12.

²⁰ Name Withheld, *Submission 101*, received 31 May 2021, p. 2.

²¹ Name Withheld 2, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 18.

²² Barbara Pendrey, *Submission 1*, received 14 November 2019, p. 2.

²³ Jennifer McRae, *Submission 82*, p. 12; Judy McHutchison, *Submission 72*, received 26 June 2020, p. 1; Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 13; Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 25.

11.2 Overview of Victorian mental health and emotional support services

There are a range of organisations and agencies involved in the provision of mental health and emotional support services in Victoria for people affected by historical forced adoption. As discussed in later sections, in 2014 the Australian Government commissioned AIFS to conduct the *Forced Adoption Support Services (FASS) scoping study* (AIFS Scoping Study). As part of this, AIFS mapped all support services available to people affected by forced adoption in Australia and identified the following:

- adoption information services
- post-adoption support services
- search and contact services
- peer-support groups
- other services
 - therapeutic services
 - GPs
 - generalist health, welfare and other human services
 - peer-support services online.²⁴

Although these core services are common across Australia, the AIFS Scoping Study noted that no two states or territories have the same approach. Rather, 'each state and territory has its own unique service system that has manifested from the relationships built between the agencies delivering the services, as well as the level of resourcing available to individual agencies and groups'.²⁵

Notably, the AIFS Scoping Study showed that all support services are involved, to some degree, in the provision of mental health or emotional support services.²⁶ For example, search and family tracing services do not as a rule provide counselling, but they do 'provide support for other family members', facilitate access to counselling 'before, during and after connection' and 'provide access to therapeutic interventions'.²⁷

The AIFS Scoping Study mapped and evaluated the support services in each of the states and territories. The services AIFS identified in Victoria are listed in Table 11.1.

²⁴ Daryl Higgins, et al., *Forced adoption support services scoping study*, report prepared by Australian Institute of Family Studies, report for Department of Social Services, Australian Government, Canberra, 2014, pp. 72–79.

²⁵ *Ibid.*, p. 73.

²⁶ *Ibid.*, pp. 117–128.

²⁷ *Ibid.*, pp. 121–122.

Table 11.1 Victorian support services identified by the Australian Institute of Family Studies *Forced Adoption Support Services scoping study*

Service name	Service type	Services offered
Family Information Networks & Discovery (FIND)	Adoption information service	<ul style="list-style-type: none"> • Access to identifying information • Counselling services • General information services
Association of Relinquishing Mothers (Vic.) Inc. (ARMS)	Peer support group	<ul style="list-style-type: none"> • Support group meetings • Advocacy, lobbying, awareness-raising and community education • Monitoring and reviewing policy and practice
Catholic Care (Adoption and Permanent Care Teams)	Not-for-profit organisation providing adoption-related services	<ul style="list-style-type: none"> • An information service about previous adoptions • Counselling for the adoptee and parents • Advice and arrangement of permanent care, healthy infant and special needs adoptions
Connections UnitingCare	Non-Government Organisation	<ul style="list-style-type: none"> • Statewide information service
Origins (Vic.) Inc.	Peer-support group	<ul style="list-style-type: none"> • Support group meetings • Telephone service • Assist with reunion of family members separated by adoption • Advocacy, lobbying and awareness raising • Encourage and promote research • Quarterly newsletter
Victorian Adoption Network for Information and Self Help (VANISH) Inc.	Post-adoption support service	<ul style="list-style-type: none"> • Support groups • Search and contact • Register of counsellors • Training workshops • Information and referral

Source: Adapted from Higgins, et al., *Forced Adoption Support Services scoping study*, p. 105.

The AIFS Scoping Study also acknowledged the important advocacy and support role of Independent Regional Mothers (IRM), which it identified as providing ‘much-needed support to mothers living in regional Victoria’.²⁸

As part of the AIFS Scoping Study, AIFS consulted with organisations and individuals about the support service needs of people affected by historical forced adoption. The first round of consultations examined the effectiveness of support services against five ‘good practice principles’: accountability, accessibility, service quality/efficacy, diversity and continuity of care.²⁹ Table 11.2 demonstrates the performance of Victoria’s support services against these five good practice principles.

²⁸ Ibid., pp. 108.

²⁹ Ibid., pp. 59–72.

Table 11.2 Victorian support services for forced adoption evaluated against five good practice principles

Measure	
Accountability	<ul style="list-style-type: none"> • The Victorian Government has made a formal apology for its role in forced adoption. As a consequence of the apology, the state government provided additional funding to the Melbourne-based group VANISH to develop and deliver a training package targeted at professionals—Looking Through the ‘Lens of Adoption’ in Working With Loss and Trauma. • Neither the Department of Human Services^a (DHS) nor the FIND website have any information regarding the state or national apologies. • VANISH are an independent, non-secular support organisation for all parties to past adoption. They receive funding from the Victorian Department of Human Services. VANISH has very clear policies and protocols relating to quality of service provision and professional accountability. These are readily available to the public. • The DHS has a clearly described complaints processes in place. • It remains unclear what administrative data (if any) is collected by agencies. • Peer support groups in Victoria are largely facilitated by volunteers. There is little information regarding any governing/overseeing body of these groups.
Accessibility (including affordability)	<ul style="list-style-type: none"> • Services provided by FIND are free. • Services provided by VANISH to those affected by past adoption are free. • Government services are provided during business hours only. Peer groups have ongoing availability, however this is often reliant on the convener of the group to coordinate. Timeliness of responses will be variable. • Information provided on the FIND website is easily navigated, however it is very difficult to access the FIND information from the DHS main site. • Information regarding Victorian support groups is variable—some have websites, while others are ‘closed’ groups. • There are some support groups operating at a regional level, however the face-to-face, more formalised services are very metro-centric. • Specialist therapeutic services are limited.
Efficacy and quality	<ul style="list-style-type: none"> • FIND services offer a limited level of support throughout the information-obtaining process and counselling, but not long-term. • Support groups are variable in the level of training and experience of facilitators. • Origins state that they provide counselling, but there are no trained therapists on staff. There is clear information regarding the philosophies of the group. • Apart from VANISH, it is unclear what professional development and ongoing supervision opportunities (if any) are available to staff of other services.
Diversity	<ul style="list-style-type: none"> • There is a lack of specialised therapists available. • VANISH offers a suite of post-adoption services that are available to all parties to adoption. • FIND is a service provided by the DHS, which is in charge of current adoptions and therefore not necessarily regarded as being independent. • Both Origins and ARMS have a strong lobbying focus, which may be a barrier to some seeking support. • Modes of delivery are largely by telephone and face-to-face. • There is no official online/web-based support available in Victoria. However, social networking sites will obviously have Victorian membership.

Measure	
Continuity of care	<ul style="list-style-type: none"> • There appears to be a well-established relationship between ARMS and VANISH. FIND is also well-connected to these two groups. • Training provided by VANISH to professionals is an example of creating connections within and across disciplines to meet the needs of those affected by forced adoptions. • There are no formalised relationships between agencies that would provide a distinct and seamless process for those accessing support.

a. Adoption services have since been transferred to the Department of Justice and Community Safety.

Source: Adapted from Higgins, et al., *Forced adoption support services scoping study*, pp. 109–110.

Similar to other states and territories, the AIFS Scoping Study showed that the implementation of support services in Victoria was inconsistent and could be more effective. Often one aspect of a support service was identified as effective, only to be undermined by being ineffective in another aspect. For example, regarding accountability, the Parliament of Victoria's Apology for Past Adoption Practices was not promoted or publicised by the Victorian Government, including on the relevant departmental website. Regarding accessibility, the Government Adoption Information Service (AIS) provided free search and tracing services and its website was easy to navigate. However, the service itself was reported to offer a 'limited level of support throughout the information-obtaining process, and counselling but not long-term'.³⁰

Most relevantly for this chapter, the first round of consultations revealed that specialist mental health services were not accessible and there was a lack of diversity of appropriately trained GPs and mental health practitioners to deliver those specialist services.³¹ Measured against the good practice principles, particularly access, availability and diversity, it was evident that at the time the provision of mental health and emotional support services in Victoria needed improving.

11.2.1 Victorian Adoption Network for Information and Self Help

The AIFS Scoping Study looked at all Victorian support services, although it focused closely on Victoria's post-adoption support service, VANISH, due to the significance of its work in the adoption sector and the breadth of its services. Beyond its primary role of supporting people to search for adoption information and family, VANISH provides other support services such as mental health and emotional support services. For individuals, VANISH provides:

- support by phone, email or face to face
- facilitated support groups
- in-house counselling service

³⁰ Ibid., p. 109.

³¹ Ibid., pp. 109–110.

- referrals from counsellor register
- referrals to other services.³²

For professionals, VANISH provides:

- secondary consultations
- counsellor training
- information and resources about forced adoption
- regional and metro information sessions.³³

In 2013, after the Victorian Apology, the Victorian Government awarded \$500,000 to VANISH to deliver a Workforce Capacity Development Project (Workforce Project).³⁴ The objectives of the Workforce Project were to design a training course for professionals on counselling individuals who have experienced separation and loss through past and forced adoption practices, establish in-house counselling, design a pilot brokerage counselling program in 2011, set up a website, establish regional support groups and publish educational resources.

Two mental health and emotional support service developments undertaken by VANISH were:

- the Pilot Brokerage Counselling Program in 2011
- in-house counselling service established in 2013.

VANISH's Pilot Brokerage Counselling Program established a register of forced adoption-informed counsellors that VANISH could refer people to for mental health support.³⁵ It was required that counsellors be 'trauma informed, and/or who have undertaken the VANISH two-day training course'.³⁶ As a result of the Program, VANISH now has a permanent counsellor register comprising at least 90 counsellors that it can refer people to.³⁷

Regarding the in-house counselling service, VANISH employed two part-time, specialist counsellors 'to establish a strength-based, recovery-focused service to respond to referrals from VANISH staff and other service providers, and to clients who self-refer'. VANISH reported an 87% satisfaction rate with the in-house service.³⁸ However, Victorian Government funding for this service expired in 2016-17.³⁹

³² VANISH Inc., *Submission 53*, received 18 June 2020, p. 11.

³³ *Ibid.*

³⁴ *Ibid.*, p. 66.

³⁵ *Ibid.*, p. 67.

³⁶ *Ibid.*

³⁷ *Ibid.*, p. 68.

³⁸ *Ibid.*, p. 66.

³⁹ *Ibid.*, p. 67.

The two-day professional training course that VANISH developed and delivers is discussed in Section 11.6, and VANISH's peer support groups are explored in Section 11.8.1.

The AIFS Scoping Study report praised nearly all aspects of VANISH's services, and it was identified as performing well against the five good practice principles. In particular, it noted that VANISH has extensive knowledge of issues related to trauma, loss, grief, identity and attachment; and staff receive regular training and professional development and also have direct experience with adoption.⁴⁰

Two concerns were raised about VANISH in the AIFS Scoping Study, firstly that there was a perception that regional support groups are only for adopted people and not mothers, and secondly, VANISH could potentially be viewed as a partisan organisation because its staff and volunteers include adopted people.⁴¹

11.3 Australia-wide support services

In 2010, AIFS examined the key issues from Australian research on the impact of past adoption practices and policies in their report *Impact of past adoption practices: Summary of key issues from Australian research* (AIFS Adoption Impact Review). A key finding was the need for further support services for people affected by past adoption practices, including therapeutic mental health services and emotional support.⁴² Subsequently, state and national governments commissioned AIFS to complete the AIFS Adoption Study.⁴³

The AIFS Adoption Impact Review concluded there was a deficiency in the level of available and affordable services and that health professionals lacked awareness of adoption-related issues.⁴⁴ Therefore, in 2012 the AIFS Adoption Study found that these services were largely ineffective at providing appropriate mental health interventions for people affected by historical forced adoption.⁴⁵

In 2012, the Senate Inquiry, drawing heavily on the AIFS Adoption Study, recommended:

that the Commonwealth, states and territories urgently determine a process to establish affordable and regionally available specialised professional support and counselling

⁴⁰ Higgins, et al., *Forced adoption support services scoping study*, p. 110.

⁴¹ Ibid.

⁴² Daryl Higgins, *Impact of past adoption practices: summary of key issues from Australian research*, report prepared by Dr Daryl Higgins, report for Australian Government Department of Families, Housing, Community Services and Indigenous Affairs Australian Institute of Family Studies, 2010, pp. 3–4.

⁴³ Government of Australia, *Response to the Parliament of Australia, Senate Community Affairs References Committee, Commonwealth contribution to former forced adoption policies and practices*, 21 March 2013, p. 9.

⁴⁴ Higgins, *Impact of past adoption practices*, pp. 3–4.

⁴⁵ Pauline Kenny, et al., *Past adoption experiences: National research study on the service response to past adoption practices*, Australian Institute of Family Studies, Melbourne, 2012, pp. 68, 116.

services to address the specific needs of those affected by former forced adoption policies and practices.⁴⁶

The Senate Inquiry also recommended that the Commonwealth fund peer support groups in various locations.⁴⁷ In response, the Australian Government announced new FASS funding to 'improve access to specialist support services, peer and professional counselling support and records tracing support for those affected by forced adoption'.⁴⁸

In addition, the Australian Government will provide funding of \$5 million over four years for the development of guidelines and training materials for mental health professionals to assist in the treatment of those affected and increase capacity of the Access to Allied Psychological Services (ATAPS) program to deliver psychological services to this target group in the immediate post apology period, while the specialist support and counselling services are being established.⁴⁹

The Australian Government also established the Forced Adoption Implementation Working Group (FAIWG) to advise it on the implementation of services and projects. FAIWG delivered its *Final Report to The Honourable Scott Morrison MP Minister for Social Services* in December 2014.⁵⁰ Mental health and emotional support services emerged as the central issue for FAIWG, which argued that the 'issue of the mental health of those affected by forced adoption overlays every other consideration'.⁵¹ FAIWG explained:

It is essential that in the implementation of the various programs described below and in all other considerations of forced adoption, the various agencies are completely attuned, and give appropriate emphasis, to the issue of mental health.

It concluded that '[i]t is imperative that the issue [of mental health] be highlighted at every opportunity'.⁵²

11.3.1 Access to allied professional services

In recognition that the National Apology could adversely impact peoples' mental health, the Australian Government assigned \$3.5 million in one-off funding from its initial FASS allocation to therapeutic mental health services. The service was provided through the ATAPS program where funding was allocated through 'all 61 Medicare Locals to increase

46 Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. x.

47 Ibid.

48 Government of Australia, *Response to the Parliament of Australia, Senate Community Affairs References Committee, Commonwealth contribution to former forced adoption policies and practices*, p. 3.

49 Ibid., p. 7.

50 Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, pp. 4–6.

51 Ibid., p. 10.

52 Ibid., pp. 10–11.

their capacity to meet the expected increase in demand'. It was only available for a brief period from the date of the National Apology to 30 June 2014.⁵³

As noted by FAIWG, ATAPS was welcomed by people affected by historical forced adoptions.⁵⁴ However, FAIWG reported low awareness among health professionals and numerous complaints from service users:

Anecdotal evidence obtained by members of the Working Group strongly suggests that the existence of the program was inadequately publicised to the extent that many health professionals were unaware that it had been established. That, together with a lack of information to professionals about even the basics of forced adoption, has resulted in widespread dissatisfaction within the forced adoption sector. Members of the Working Group have received large numbers of complaints to that effect.⁵⁵

FAIWG advised that this dissatisfaction was exacerbated by the limited timeframe to access ATAPS and the 'apparent clawing back of the remaining funds' when access expired in June 2014.⁵⁶ AIFS Scoping Study participants concluded that the limited timeframe to access support and limited awareness of the program led to 'very poor uptake' of the ATAPS program.⁵⁷

The AIFS Scoping Study also commented that there were 'very consistent reports from stakeholders that they perceived the allocation of funds for ATAPS services to have been poorly advertised'.⁵⁸ Participants also 'felt there was a lack of consultation regarding the appropriateness of allocating funds to this particular support option'.⁵⁹

In her evidence to this inquiry, June Smith informed the Committee that she had tried to access the ATAPS counselling, but was unsuccessful:

After the recommendations came out and we were supposed to be able to get counselling, I went to my doctor and said we are supposed to get counselling. We could not get it. We could not find it. I had tried through other—I do not know; it was through RAV maybe—I cannot remember who it was now. I was sent to them for counselling and they had never even heard of what had happened to us. So I just, you know, did not want to do that.⁶⁰

53 Department of Social Services, *2013-14 Additional estimates hearings, February 2014: forced adoptions*, (n.d.), <https://www.dss.gov.au/sites/default/files/documents/04_2015/1_2013-14_additional_estimates_hearings_-_february_2014_0.pdf> accessed 9 August 2021, p. 4. Medicare Locals are non-for-profit organisations, principally funded by the Australian Government, that are 'responsible for developing strategies to meet the overall primary health care needs of their communities'. See Senate Select Committee on Health, *Chapter 4: Medicare Locals—history and implementation*, 2014, <https://www.aph.gov.au/parliamentary_business/committees/senate/health/health/First%20Interim%20Report/c04> accessed 9 August 2021.

54 Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, p. 11.

55 Ibid.

56 Ibid.

57 Higgins, et al., *Forced adoption support services scoping study*, p. 71.

58 Ibid.

59 Ibid., p. 72.

60 June Smith, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 9.

VANISH was critical of the implementation of ATAPS in its submission, noting that people were not aware of the program and that some Medicare Local professionals were either ignorant of or ill-equipped to implement ATAPS for this cohort:

Once the program commenced VANISH heard from members and service users that they were not able to access counselling because their Medicare Locals did not have arrangements in place to see clients under the program and/or were not even aware it existed.⁶¹

To enhance accessibility and awareness of ATAPS, VANISH wrote to all Medicare Locals in Victoria, advertised it to its own users and promoted it across its networks.⁶² VANISH reported that it was 'impossible to find out whether the funding allocation had been utilised or might continue'.⁶³ It described the lack of implantation and poor uptake of ATAPS as a 'travesty given the need was so great'. VANISH told the Committee that it ultimately failed due to poor coordination and a lack of political will to ensure its success.⁶⁴

11.3.2 Forced Adoption Support Services

Scoping Study

As explained in Section 11.2, the AIFS Scoping Study completed a support service mapping exercise and consulted with a range of stakeholders to consider how to enhance the provision of support services in each jurisdiction. The lack of specialised therapeutic mental health services emerged as the fundamental issue in the consultations:

Mental health practitioners generally have very limited knowledge on forced adoption and its long-term effects. There is concern that the effects of forced adoptions are often not recognised as mental health issues; only recognisable symptoms such as depression, anxiety or insomnia are being treated. As a result, symptoms are being treated separately and in no context to people's forced adoption experiences that may have caused or contributed to the presenting mental health problems.⁶⁵

The AIFS Scoping Study identified this as damaging to people affected by historical forced adoptions as it could 'discourage patients from disclosing their experiences and receiving appropriately tailored services'.⁶⁶ It found that mental health and emotional support services should aim to:

- be attuned to the complex symptoms, needs and responses of all those directly affected

⁶¹ VANISH Inc., *Submission 53*, p. 50.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*, p. 51.

⁶⁵ Higgins, et al., *Forced adoption support services scoping study*, p. 125.

⁶⁶ *Ibid.*

- provide services across a range of health domains—including mental and physical health, and relationship, social and economic wellbeing
- provide intensive and ongoing psychological and psychiatric counselling
- provide flexible and individually focused care.⁶⁷

It also identified that mental health and emotional support services need to be trauma-informed and aware of the grief, loss and attachment separation experienced by people affected by forced adoption.⁶⁸

The AIFS Scoping Study proposed several options for state and national governments to coordinate, connect and build the capacity of mental health and emotional support services, namely:

- Enhance mainstream services—for example, GPs, psychiatrists, psychologists, counsellors, social workers, child welfare workers, aged care workers.⁶⁹
- Expand, enhance and build the capacity of existing post-adoption support services—for example, adoption information services, peer-support groups, tracing agencies, government agencies such as Births, Deaths and Marriages (BDM).⁷⁰
- Develop new—and improve existing—resources for professional development and training—for example, specific training for post-adoption support workers, good practice guidelines, awareness training for relevant professionals and brokerage and small grants funding.⁷¹

The AIFS Scoping Study also emphasised that any implementation of FASS needed to prioritise enhancing or creating services in rural and regional areas to ensure a ‘critical mass of services’ in these areas.⁷²

Implementation of Forced Adoption Support Services

After receiving the AIFS Scoping Study, the Australian Government selected Relationships Australia Victoria (RAV) as Victoria’s FASS provider. RAV is a not-for-profit organisation whose focus is:

providing high-quality, effective and accessible services for people with complex relationship issues, and delivering prevention services that lead to system-wide change that reduces the incidence of relationship problems.⁷³

⁶⁷ Ibid., p. xiv.

⁶⁸ Ibid.

⁶⁹ Ibid., pp. xiv–xv.

⁷⁰ Ibid., p. xv.

⁷¹ Ibid.

⁷² Ibid., p. 149.

⁷³ Relationships Australia Victoria, *Who we are*, n.d., <<https://www.relationshipsvictoria.com.au/about-us/who-we-are>> accessed 27 July 2021.

Relationships Australia was also chosen as the FASS provider in five other states and territories. It was identified as a neutral organisation with no affiliation with historical forced adoption and it specialises in providing relationship support. In Queensland, Jigsaw Queensland, the local post-adoption support service, is the FASS provider.

In addition to the initial \$5 million funding commitment, the Australian Government has continued to allocate FASS funding in subsequent federal budgets. In 2016–17, \$5.7 million was allocated over four years to 2020–21,⁷⁴ and in 2020–21, \$6.1 million was allocated over three years until 2023–24.⁷⁵

RAV started its FASS program, called Compass, in March 2015.⁷⁶ It was allocated over \$2 million between 2015–2021.⁷⁷ RAV delivers services from 13 centres in Melbourne and regional areas, and offers a range of services to people affected by historical forced adoptions, including free, trauma-informed counselling; referrals to community services; support with searching for records and family members; and the FASS small grants program.⁷⁸

The Committee became aware throughout the Inquiry of general commentary about RAV being chosen to deliver FASS in Victoria over VANISH. The Committee does not question the quality of RAV's services, however, it was surprised that VANISH was not chosen given it already provided a number of relevant services and its Queensland counterpart, Jigsaw Queensland, was chosen as Queensland's FASS provider.

The Australian Government-commissioned AIFS Scoping Study recommended that FASS providers deliver specialist support and counselling services and peer support groups, and family tracing and support services.⁷⁹ VANISH either already provided some of these support services or had strong connections and referral networks with organisations that did. RAV did not provide any adoption-specific services but established the FASS program in 2015, which has delivered specialised counselling only since 2019. While RAV does not facilitate peer support groups, support groups can apply for funding through the FASS Small Grants Program administered by RAV.

Post-implementation review

Four years after the Scoping Study and FAIWG Report, the Australian Government appointed Australian Healthcare Associates (AHA) to undertake the *Forced Adoption*

74 VANISH Inc., *Submission 53*, p. 53.

75 The Treasury, *Australian Budget 2020–21 Paper No. 2: Budget measures*, Canberra, 2020, p. 154.

76 Australian Healthcare Associates, *Forced Adoption Support Services post implementation review: Final report*, Department of Social Services, Melbourne, 2018, p. 141.

77 Ibid.

78 Emily Hanscamp, Program Manager Forced Adoption Support Service, Relationships Australia Victoria, hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 22.

79 Higgins, et al., *Forced adoption support services scoping study*, p. 118.

Support Services post implementation review (FASS Post-Implementation Review).⁸⁰ Its overall aim was to identify the ‘successes, issues and service gaps’ in FASS.⁸¹

The Review highlighted several issues relating to the implementation of FASS throughout Australia, including limited:

- awareness of FASS among people affected by historical forced adoptions
- therapeutic counselling and trained specialised counsellors
- knowledge of forced adoption by some FASS staff
- funding
- management of small grants.⁸²

The most significant issue raised was that therapeutic mental health services were not delivered through FASS. It was identified ‘as the most frequently cited service gap by informants, post-adoption service providers, advocacy groups and other stakeholders’.⁸³ In fact, the major disparity between the AIFS Scoping Study and implementation was the lack of therapeutic counselling, which was not a requirement of the FASS providers’ funding agreements:

The primary difference between the AIFS FASS scoping study and implementation was that therapeutic counselling was not provided by FASS staff in the funding period to June 2017, nor was brokerage available to cover the cost of counselling through external providers. The absence of therapeutic counselling stemmed from an understanding among FASS providers that this form of counselling was not a requirement of their funding agreements. Instead, provision of general counselling and emotional support was the norm.⁸⁴

The Committee was frustrated to learn of this major service gap despite the clear recommendations and evidence from the AIFS Adoption Study, Senate Inquiry, FAIWG Report and the AIFS Scoping Study for the provision of specialised mental health services. It was irresponsible of the Australian Government to not require FASS providers to deliver therapeutic counselling given the well-known serious mental health issues among people affected by historical forced adoptions.

⁸⁰ Australian Healthcare Associates, *Forced Adoption Support Services post implementation review*, p. 3.

⁸¹ Ibid.

⁸² Ibid., pp. 2–13.

⁸³ Ibid., p. 10.

⁸⁴ Ibid., p. 6.

In regard to user satisfaction levels, the FASS Post-Implementation Review reported:

FASS users reported high levels of satisfaction with FASS services overall, with the highest levels of satisfaction evident for:

- Accessing general information (73.1% of survey respondents were satisfied/very satisfied).
- Emotional support and counselling provided by FASS (72.8% were satisfied/very satisfied).
- Considerably lower levels of satisfaction were reported with regards to access to peer support (52.7%) and referrals (56.1%).⁸⁵

The Committee believes these conclusions are misleading given that the national statistics heavily rely on the large dataset from Jigsaw Queensland. For example, of all the users surveyed, 40% were from Queensland, whereas only 8% were from Victoria. In fact, only 13 Victorians were surveyed. Almost 90% of Queensland users surveyed were satisfied or very satisfied, whereas only 30%, or 4 Victorians, were satisfied or very satisfied. The conclusion was drawn that 'FASS users reported high levels of satisfaction with FASS services overall'.⁸⁶ However, for Victoria, it was the opposite.

The user engagement numbers also revealed that RAV had struggled to publicise FASS and secure clients. For example, between January 2015 and June 2017, Jigsaw Queensland, with a smaller and more diverse population across a vastly larger geographic area, had ten times as many client sessions as Victoria: 616 in Queensland as opposed to 60 in Victoria. Queensland also accounted for more than 50% of the total clients engaged across all seven FASS providers. RAV only managed to engage 424 users over two and half years, which is only 13% of the 3,139 users Jigsaw Queensland engaged.⁸⁷

Another major issue is that the FASS Post-Implementation Review was unable to measure user satisfaction levels regarding specialised counselling because FASS providers did not deliver this service at that time.

Relationships Australia Victoria

In its evidence to the Committee, RAV discussed how the FASS has improved since the FASS Post-Implementation Review, including that it had been providing therapeutic counselling since 2019 after a change in the FASS operational guidelines. Emily Hanscamp, the Program Manager at RAV, explained:

Since our service began in 2015, we have actively listened to the feedback of our clients. They made it clear to us that counselling was the central service they required and that this was missing in the service sector.⁸⁸

⁸⁵ Ibid., p. 10.

⁸⁶ Ibid., p. 172.

⁸⁷ Ibid., p. 192.

⁸⁸ Emily Hanscamp, *Transcript of evidence*, p. 22.

Emily Hanscamp explained RAV's approach to therapeutic counselling:

So we have specialised our counselling approach to be trauma-informed and we have staff skilled in the delivery of trauma therapy. We focus on providing psycho-education about the traumatic impacts of forced adoption in our client's lives and we resource them with the psychological skills and tools to cope with distressing trauma symptoms.⁸⁹

RAV now offers up to 20 therapeutic counselling sessions to 40 clients a year, although Emily Hanscamp advised that RAV would like to have capacity to offer more sessions, with a view to offering limitless sessions:

Up to 20—that is the definition of mid-term counselling. Long-term would probably be either unlimited or 40 to 50 sessions. This is ideally what we would like to be able to offer.⁹⁰

Emily Hanscamp also acknowledged that RAV had initially struggled to engage users in the first years of FASS, but after a slow start, RAV was gaining momentum and trust among people affected by historical forced adoptions:

In terms of how many people we have supported, we have, on average, supported 40 individual clients per year and that is a significant increase in the last two years. It took about two or three years for our service to gain momentum, to build trust and to build up referrals. For the first few years, 2015, 2016 and even through 2017, the numbers were very low. Recently, we have had a lot more momentum which we are thrilled about.⁹¹

She further advised that '[f]orty clients a year is obviously a drop in the ocean compared to the amount of impact'⁹² but due to limited resources, RAV is 'unable to adequately meet the needs of all affected Victorians and we are not able to offer long-term support'.⁹³ The Committee also heard that due to a lack of ongoing funding, there is no certainty that it is a permanent service, which can be upsetting for their clients. Emily Hanscamp stated:

The short three to four-year funding cycles for service delivery make it really challenging to build a long-term service framework and plan for continuity. This in turn reduces our capacity to establish trust among the impacted people in our community because we cannot give them assurance that this service will be here in the future. We have heard from many in the community that this causes anxiety.⁹⁴

The Committee appreciates that RAV provided evidence about the issues it experienced as Victoria's FASS provider. Ultimately, the Committee is frustrated for people affected by historical forced adoption that they were promised a specialised support service that

⁸⁹ Ibid., p. 23.

⁹⁰ Ibid., p. 25.

⁹¹ Ibid., pp. 24–25.

⁹² Ibid., p. 25.

⁹³ Ibid., p. 23.

⁹⁴ Ibid.

was marred by slow progress, poor advertising and errors in its implementation as a result of operational guidelines.

The Committee supports the ongoing delivery of FASS in Victoria through RAV with continued funding from the Australian Government. However, RAV should not be the only therapeutic and emotional support service in Victoria for people affected by historical forced adoptions. There is too huge a demand and the Victorian Government has a responsibility to enhance access to mental health and emotional support services.

11.4 Enhancing access to mental health and emotional support services

The Committee believes that in lieu of advocating for changes to FASS in Victoria, the Victorian Government should fund mental health and emotional support services for people affected by historical forced adoptions. The Committee believes that VANISH should be funded to facilitate the delivery of such services throughout the State.

As explored in this chapter, VANISH has existing expertise in this area, having at times provided in-house counselling, as well as operating a brokerage service where it refers people to mental health and emotional support providers from its register of specialised health professionals. It also provides professional training on counselling individuals who have experienced loss and separation through past and forced adoption practices, and operates a complementary search support service to the Victorian Government's AIS. Further, the FASS Scoping Study report praised nearly all aspects of VANISH's post-adoption support services.

The Committee is of the view that VANISH's existing infrastructure and programs, with funding from the Victorian Government, can provide the appropriate structure for a comprehensive mental health service for people affected by historical forced adoptions. Through this service, people should be offered free or heavily subsidised support that is ongoing, yet flexible and focused on their individual needs. Different types of services should be available across various health domains to ensure people have choice and control, and most importantly the support provided must be trauma-informed and specialised. Some of these issues are explored further below.

Lastly, the Committee recognises that not everyone wants to engage with VANISH, and it endorses the continued delivery of FASS through RAV as funded by the Australian Government. The Committee does not doubt that once people access RAV's services, they receive valuable and appropriate support.

11.4.1 Trauma-informed and specialised services

A key finding of the FASS Scoping Study is that mental health and emotional support services must respond to the diverse needs of people affected by forced adoption. To that end, services must be equipped to meet the complex needs of people, be available across various health domains, provide intensive and ongoing support, and be flexible

and person-focused. It also identified that services need to be trauma-informed.⁹⁵ The Royal Commission into Victoria's mental health system recognised the importance of providing trauma-informed care as part of a holistic service,⁹⁶ identifying that one of the core values of a capable workforce is that it should be:

Trauma-informed and responsive: Services, teams and practitioners seek to understand, acknowledge and actively respond to a person's experiences of trauma and to ensure their care does not inflict further trauma.⁹⁷

Similarly, VANISH submitted that due to significant issues of mistrust, it is critical that people are protected from re-traumatisation by services using a trauma-informed approach. Accordingly, best practice suggests that 'counsellors should approach all people affected by adoption as if they might be trauma survivors and assess for trauma symptoms'.⁹⁸

The Australian Psychological Society (APS) also submitted that trauma-informed support services are essential to providing effective mental health services to people affected by forced adoptions, and that they be delivered by 'trained health professionals with an understanding of forced adoption and trauma-informed approaches'.⁹⁹

The value of receiving trauma-informed care was also highlighted by some of the inquiry participants in their evidence:

What has been helpful in recent years is the Post Adoption Support Queensland service which has provided a forum to meet others with similar histories and offered trauma-informed counselling specifically for adoption-related issues. The validation and healing I have experienced in this setting has been significant.¹⁰⁰

My desire from this inquiry is for authorities to provide financial trauma support to myself and others affected by adoption due to the profound effect this experience has had and continues to have, on the personal and professional lives of those affected.¹⁰¹

12 years ago I found a fabulous Counsellor, trained in adoption trauma. I have had regular meetings with her and still do.¹⁰²

I am, through ongoing trauma based therapy slowly learning as the logical adult woman to sooth and heal the little girl who was given away, had her identity taken and adopted by a good family.¹⁰³

⁹⁵ Higgins, et al., *Forced adoption support services scoping study*, p. xiv.

⁹⁶ State of Victoria, *Royal Commission into Victoria's mental health system, final report: Summary and recommendations*, Royal Commission into Victoria's Mental Health System, Melbourne, 2021; State of Victoria, *Royal Commission into Victoria's mental health system, final report: Volume 1: a new approach to mental health and wellbeing in Victoria*, Royal Commission into Victoria's Mental Health System, Melbourne, 2021, p. 128.

⁹⁷ State of Victoria, *Royal Commission into Victoria's mental health system, final report*, p. 527.

⁹⁸ VANISH Inc., *Submission 53*, p. 36.

⁹⁹ The Australian Psychological Society Limited, *Submission 24*, received 3 February 2020, p. 2.

¹⁰⁰ Name Withheld, *Submission 32*, received 26 February 2020, p. 3.

¹⁰¹ Name Withheld, *Submission 47*, p. 2.

¹⁰² Helen Nicholson, *Submission 86*, p. 5.

¹⁰³ Wendy Willis, *Submission 114*, p. 3.

11.4.2 Choice of services and service providers

Rather than trying to fit people into a one-size fits all model, the AIFS Scoping Study acknowledged that ‘it is the client’s individual needs and circumstances that determine which and when particular treatment choices are used’.¹⁰⁴ The need for choice reflects the differing types of trauma experienced by the different groups.¹⁰⁵

The FASS program recognises this by funding a broad range of therapeutic and alternative mental health and emotional support services through its funding of small grants programs, including some of the following:

- mental health first aid training
- historical forced adoption retreats
- art therapy courses
- a self-healing event.¹⁰⁶

The Committee received evidence about different types of support services, including art therapy. Michele Hutchins is an art therapist and arts psychotherapist who delivered a creative expressive program to people affected by historical forced adoption. Michele Hutchins outlined the program in her submission, which uses ‘a multi-modal approach, using many creative and expressive techniques, including movement, music, two-dimensional visual arts, sculpture and three dimensional visual arts, meditative and visualization exercises, and group work’.¹⁰⁷ The program included a three-hour session once a week for six weeks and aimed to:

Strengthen participant’s recourse to an authentic sense of self and self-worth, that is independent of, whilst intimately connected with, the relationships they have to ‘other’.¹⁰⁸

Michele Hutchins believes the experiential nature of the program is its strength and offers people a vital opportunity to:

Experience a deep connection with their authentic self, whilst at the same time experiencing being truly ‘seen’ or witnessed, honoured and celebrated by others, thereby strengthening their capacity for positive and genuine intimacy.¹⁰⁹

Further, Dr Rosemary Saxton, a GP of 30 years, discussed in her evidence the research into ‘somatic, embodied, implicit memories’ associated with the trauma of the forced separation of a mother and her newborn baby and advised that this requires mental health support from more than one approach:

¹⁰⁴ Higgins, et al., *Forced adoption support services scoping study*, p. 31.

¹⁰⁵ VANISH Inc., *Submission 53*, p. 36.

¹⁰⁶ Australian Healthcare Associates, *Forced Adoption Support Services post implementation review*, p. 146.

¹⁰⁷ Michele Hutchins, *Submission 97*, received 21 May 2021, p. 5.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

The most effective therapeutic modalities I have discovered involve body-centred somatic therapies combined with psycho-education and talk therapies. This so-called bottom-up, top-down approach requires more training than is undertaken by the majority of mental health professionals. A very simple explanation of basic neuroscience helps my patients and my colleagues to understand why experiences that have overwhelmed their nervous system require more than one approach.¹¹⁰

An inquiry participant recommended to the Committee that people be able to access a range of support services that are ongoing and often.¹¹¹ They listed types of trauma-informed therapies that should be available:

Psychotherapy (in addition to standard counselling or psychological services/talk therapies); experiential & somatic therapies such as Somatic Experiencing, nature/eco-therapies, animal/equine therapies; craniosacral therapy and yoga/dance/movement therapy.¹¹²

The participant advised that they have used many of these therapies and found them valuable for addressing the negative impacts of forced adoption. However, the costs can be prohibitive, especially as they had been paying for counselling for 20 years.¹¹³

In a public hearing, SallyRose Carbines advocated for a choice of services in recognition that not everyone finds the support they need in groups:

I really think there needs to be, I suppose, a smorgasbord of options, because groups are not for everybody. A one on one is often important. And then some people prefer a more, you know, perhaps arts therapy and more holistic approach. So I think it needs to be a smorgasbord of opportunities for people.¹¹⁴

VANISH proposed that there needs to be a 'continuum of services offering different levels of intervention available to meet differing client needs'. It also advocated for people to access these services from a range of providers to 'ensure clients have choice and control'. In VANISH's experience, its ability to provide in-house counselling and maintain a register of trauma-informed and forced adoption-informed counsellors is 'the best way to meet the diverse mental health needs of people affected' by forced adoption.¹¹⁵ The Committee strongly supports this approach.

¹¹⁰ Dr Rosemary Saxton, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, pp. 32–33.

¹¹¹ Name Withheld, *Submission 47*, p. 2.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ SallyRose Carbines, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 28.

¹¹⁵ VANISH Inc., *Submission 53*, p. 36.

RECOMMENDATION 38: That the Victorian Government provide ongoing funding to the Victorian Adoption Network for Information and Self-Help (VANISH) to deliver a low-cost, or preferably free, state-based specialised mental health support service for people affected by historical forced adoptions. The Victorian Government consider the following factors when funding the service:

- people should be able to access support on an ongoing and flexible basis, including episodically in recognition that the negative effects of historical forced adoption are lifelong and can be triggered at different times
- it should offer alternative mental health services outside of traditional therapy, for example art therapy
- it should build upon VANISH’s existing brokerage system and register of trauma-informed and specialised counsellors and other health professionals.

11.5 Enhancing awareness of historical forced adoption among health professionals

Another key theme in the evidence was the limited awareness and understanding of historical forced adoption among health professionals. The Committee learned that positive experiences with an informed GP or mental health practitioner can be life-changing for people, whereas the opposite experience can reinforce the negatives effects and invalidate a person’s experience.

The Committee heard that people often seek help from their GP. An inquiry participant explained in their submission that they have tried numerous types of specialist therapy since the 1970s, but it was their GP who they trusted to share their symptoms with:

I have a very close relationship with my GP, who has saved me several times. I knew it was time I went to see him. I explained that my depression and anxiety had gotten on top of me and I felt suicidal. He knows I would never do this to my family, however I feel like it’s the right thing to tell him if I feel this way. My GP knows I have had so much go on since he has cared for me the last 10 years, but I have never really told him my story. I still skate around it, give bits and pieces but visits are short and I don’t want to hold him up ... I’d spent so much time in the 70’s trying every therapy known to man I was done. I’d rather talk to him.¹¹⁶

A mother told the Committee that her GP connected their mental health symptoms to not addressing having their child forcibly adopted:

I have anxiety and panic attacks. I went to the doctor and he said I needed to deal with the baby that I had given away and diagnosed me with PTSD, depression, anxiety, panic attacks and social anxiety, and I was put on a lot of medication.¹¹⁷

¹¹⁶ Name Withheld, *Submission 89*, received 25 May 2021, pp. 11-12.

¹¹⁷ Name Withheld 1, 31 March 2021, *Transcript of evidence*, p. 11.

She told the Committee that she was referred to a psychiatrist whose treatment plan was heavy medication. The mother abandoned this approach in favour of seeing her GP:

He sent me to a psychiatrist, who unfortunately treated me with more medication. I slept all day and had to set the alarm to pick up my children from school. When my doctor found out about this, the treatment was immediately ceased. The doctor then went on to counsel me himself.¹¹⁸

Another mother said that her GP was the first person she ever talked to about her experience of forced adoption. The GP referred her to a counsellor that was expensive but useful:

I ended up going to the doctor, and he was the first person I ever told this story to, apart from the girls in the group. So naturally he put me on antidepressants and sent me along to this counsellor that cost a fortune. But I suppose the only thing that I got out of that was she made me see it, because I have always felt inferior ... So I guess this counsellor helped me to see that that was embedded in me through that.¹¹⁹

For Marilyn Murphy, finding a mental health professional who was attuned to her needs was nothing short of cathartic:

I think I have been to six psychologists. One, she was a lady that dealt with child sexual abuse. I have always said that this runs parallel with the child sexual abuse. She was wonderful, so wonderful that the day after the session I came home—I was driving into the drive—and it was like a coat falling off me; it was that good.¹²⁰

A mother similarly reflected on her positive experience in her evidence to the Committee:

My GP, when I was really crook, sent me to a psychiatrist, because he would have been about the same age then. I think it must have been a friend. And if it had not been for him—because he would be old; well, he was older than me; he is retired now—and also a psychologist that I found by myself, I do not know what I would have been doing.¹²¹

In a public hearing, Elizabeth Edwards referred to a Sydney psychiatrist who is highly valued among mothers as an informed specialist:

Well, he had some kind of connection to Dr Rickarby from New South Wales. Dr Geoffrey Rickarby had been a psychiatrist who tended children who'd been adopted at the Children's Hospital and when he moved to New South Wales, there were mothers who had been adopted and then lost their child to adoption, and he was starting to make the connections. And of course then there's word of mouth and people started to flood to him because he was the first known doctor to understand, or seem to understand what had happened to us. Because the trauma doesn't go away.¹²²

¹¹⁸ Ibid.

¹¹⁹ Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 16.

¹²⁰ Marilyn Murphy, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 21.

¹²¹ Name Withheld (a), hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 36.

¹²² Elizabeth Edwards, Adoptions Origins Vic. Inc., hearing, Melbourne, 10 March 2021, *Transcript of evidence*, p. 8.

June Smith praised RAV for continuing to educate and inform itself about historical forced adoption. She described RAV's willingness to take on feedback:

The other thing it proves that they are, because if you go back to your submissions they wrote in there and called us 'relinquishing mothers'. I lost it, Lyn lost it, we sent our letters and emails to RAV, and they apologised. If you have a look at their submission now, it has been redone and there is no 'relinquishing' in there, and we got thanked for it. We got thanked for informing them of how mothers reacted to this—to hear the word 'relinquishing' when you did not relinquish your children. So I think they have been unbelievable. I think they are more unbelievable because they are the only ones that have done anything positive.¹²³

People who are adopted identified the importance of engaging with GPs and mental health practitioners with specialist training. One person told the Committee:

I had some major stress-related health issues, and I realised that adoption had something to do that. So I found a counsellor on the internet. I do not know if she is still there, but she was in East Melbourne, just down the road here. She was brilliant because she was a specialist adoption psychologist. As I said, she was really good.¹²⁴

Another inquiry participant who is adopted was referred to a mental health professional by VANISH, and it is the first time they felt truly understood:

I had some great counselling by for the first time in my life (at 54, 30 years after my first step of requesting my records) through Vanish. The appointed counsellor would speak to me on Skype, and it was the first time that someone could explain the dynamics and make me feel understood with very few words.¹²⁵

They further stated 'it took me 30 years to find solid support' and then suddenly funding was cut and the counselling ended.¹²⁶

Unfortunately, the Committee received extensive evidence from inquiry participants who had negative interactions with GPs and mental health professionals. Many indicated that trauma-informed specialist care is not widely available, nor is there broad understanding of the impact of historical forced adoption.

A mother wrote in her submission how her experience of having her baby taken from her was ignored by counsellors:

Over the years I have been to counselling at various times and always it gets 'swept under the mat' the fact that I gave a child up for adoption as though it is too hard, or it doesn't matter. Does anyone understand?¹²⁷

¹²³ June Smith, *Transcript of evidence*, p. 9.

¹²⁴ Name Withheld, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 43.

¹²⁵ Name Withheld, *Submission 103*, received 9 June 2021, p. 2.

¹²⁶ *Ibid.*

¹²⁷ Name Withheld, *Submission 83*, received 24 March 2021, p. 2.

Patricia Gall saw multiple mental health practitioners who never made the connection between her mental illness and the forced removal of her babies:

Although I spent a lifetime in and out of counselling and mental health hospitals, not one professional ever detected the source of my anguish as stemming from adoption—and neither did I ... One of the other factors was that counsellors had little or no expertise in adoption for mother and child. They assumed it was consensual. They had no idea, and neither did I.¹²⁸

One mother shared in her submission:

I did seek therapy but the majority of therapists, paid for out of my own earnings, were keen to absolve my parents of any responsibility which amounted to victim-blaming. This made me feel further isolated, faulty, and increased my anxiety and depression, which impacted my ability to work and support myself.¹²⁹

In her evidence, Robyn Flanagan discussed her attempts to find informed therapeutic mental health support but abandoned it after the practitioner made inappropriate comments:

Then during lockdown I tried again. It was someone I had used before, and I thought I would go back to this person for a second and third and whatever time, but the person's ending statement to me was something about, 'I had someone in who has had a termination, and she has told me that that is'—not using the words 'so your situation could be worse', because our conversation was about trying to find peace within about decisions that were made all those years ago. It was hard to leave and get out, and I have not been back, because that was just a ridiculous statement to make.¹³⁰

Similarly, Elizabeth Edwards sought out specialised support after receiving sub-standard care from a psychiatrist:

And I even had a psychiatrist tell me that I should get on with my life, that he had clients who were happy with their adoptions. And I got up and walked out. You know he had no insight whatsoever. So, I finally did find a psychiatrist who was connected.¹³¹

Judith Hendriksen stated that after a long stint on anti-depressants, she was finally asked about her trauma and received trauma-informed counselling:

I finally refused any more antidepressants in 2011 and a couple of years after that finally received TRAUMA counselling for the first time with good results. Also feel much better being off antidepressants. I'm appalled so many doctors simply didn't bother to ask me if I had Ever suffered some kind of trauma? But they all were quick to continue to reaffirm I was mentally ill. [emphasis in original]¹³²

¹²⁸ Patricia Gall, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, pp. 37–38.

¹²⁹ Name Withheld, *Submission 32*, p. 2.

¹³⁰ Robyn Flanagan, hearing, Kangaroo Flat, 30 March 2021, *Transcript of evidence*, p. 16.

¹³¹ Elizabeth Edwards, *Transcript of evidence*, p. 8.

¹³² Judith Hendriksen, *Submission 78*, received 9 September 2020, p. 1.

These negative experiences with health professionals were similarly shared by people who are adopted. Given the prominence of adoption, the Committee was concerned to hear of the limited awareness of the negative effects of adoption among health professionals. For example, Helen Nicholson explained in her submission that she has sought mental health support over many decades from various professionals but very few understood the source of her adoption trauma and its lifelong impact.¹³³ One doctor told her adoption trauma is not real, stating that:

Thousands of African children have been separated from their parents and gone on to lead successful lives. I do not believe in adoption trauma.¹³⁴

Helen Nicholson was recently told by a caseworker to simply seek help at the emergency department to address any trauma-related distress:

At my last session with my caseworker, I said I'm sick to death and tired of asking for help and getting nowhere. She said, when you're in distress you can go to A & E. As I've noted above—that is pointless. 'That my next visit to the hospital will be to the morgue'.¹³⁵

In his submission, Martin Rayner wrote of the need for increased availability of psychological assistance for people who are adopted, particularly in areas outside of metropolitan Melbourne. He also indicated that more psychologists need to be trained in adoption-related grief and loss:

In addition I'd like more psychologists trained in Adoption related grief and loss. The small number of psychologists that I have seen, I felt like I was providing them with more of an interesting test case than receiving any constructive benefit for myself.¹³⁶

Another inquiry participant stated that many of the counsellors they had seen had no awareness of the negative impacts of adoption:

Over the years I have sought the professional help of counsellors and therapists but have found many to be unaware of the impact of adoption and the challenges of reunion. In my teens I was diagnosed with depression, looking back I believe issues of identity and loss—never raised by psychologists at the time—were at the heart of my illness.¹³⁷

They recommended funding for specialist counsellors:

For this reason I believe it is imperative that people impacted by past adoption practices have access to counsellors trained in adoption issues at little or no cost. VANISH has not had funding for counselling services for some years, and the organisation that has Forced Adoption Support Services (FASS) funding does not prioritise counselling services.¹³⁸

¹³³ Helen Nicholson, *Submission 86*, pp. 5–6.

¹³⁴ *Ibid.*, p. 6.

¹³⁵ *Ibid.*, p. 7.

¹³⁶ Martin Rayner, *Submission 110*, received 22 July 2021, p. 2.

¹³⁷ Name Withheld, *Submission 99*, received 29 May 2021, p. 1.

¹³⁸ *Ibid.*, pp. 1–2.

In its submission, VANISH also commented on the lack of specialised training among health professionals and the harmful impact this can have on people:

VANISH has many times heard examples of where health and mental health professionals have displayed ignorance and insensitivity with regard to adoption, with frequent reports of counsellors and psychologists dismissing adoption as irrelevant to the presenting issues ... Given the trust issues faced by many individuals affected by separation and adoption, it can be extremely stressful looking for a counsellor who will not do more harm than good. It is therefore important that individuals be offered counselling (and counselling referrals) by a service with a sound understanding of post-adoption issues and a solid track record of providing sensitive support.¹³⁹

In her evidence to the Committee, Dr Saxton discussed the low level of awareness among GPs:

Is Hansard able to record an eye roll on that one? No. My colleagues are very, very unaware. I mean, I do have one colleague who has a relative. Ones who have relatives who have been involved with an adoption history clearly do, but otherwise no. And in fact certainly one of my clients has seen two psychiatrists in the last six months, both of whom actually told her that an adoption was not a trauma.¹⁴⁰

Dr Saxton also told the Committee that she wished her colleagues had heard the testimonies of inquiry participants because then they might change their minds about forced adoption.¹⁴¹ In her submission, Dr Saxton further explained that she belongs to an international network of trauma therapists and ‘even in that forum, the understanding of the wounding caused by adoption practices is variable’.¹⁴² She noted that therapists held the same view as broader society: that adoption is a blessing for the child and adoptive parents, a view she noted is harmful:

While such unhelpful beliefs are held by professionals handling people who have experienced forced adoption, insult will continue to be added to injury in the therapeutic setting.¹⁴³

Dr Saxton advised the Committee that “until I took VANISH’s training, I had little knowledge of the psychological effects of adoption practices on individuals other than that which I had acquired personally from friends’ and patients’ testimonies”.¹⁴⁴ Accordingly, she recommended mandated adoption-informed training for ‘those involved in psychological services, including the medical training’. She specifically recommended VANISH deliver the training and ‘not generic providers, as they do not have specific adoption-informed experience’.¹⁴⁵

¹³⁹ VANISH Inc., *Submission 53*, p. 103.

¹⁴⁰ Dr Rosemary Saxton, *Transcript of evidence*, p. 34.

¹⁴¹ *Ibid.*

¹⁴² Dr Rosemary Saxton, *Submission 52*, received 6 April 2020, p. 1.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*, p. 2.

Emily Hanscamp from RAV also informed the Committee that its clients identified the lack of awareness of historical forced adoption in mainstream services as a significant service gap:

Our clients shared with us that there continues to be a significant gap within mainstream services understanding the existence and impact of historic practices of forced adoption. This means when our clients attend their GP or another health professional, they need to educate that professional themselves to gain the appropriate care they need to address the physical and mental health issues stemming from the impact of forced adoption.¹⁴⁶

11.6 Training for health professionals

Limited awareness of historical forced adoption among health professionals is not a new issue, with specialised training to enhance such awareness developed at both the state and national levels following the Senate Inquiry and the apologies. These are outlined below.

11.6.1 VANISH training

Following the Victorian Apology, the Victorian Government provided \$500,000 to VANISH for the Workforce Project. As part of this, VANISH developed a two-day training course entitled: *Looking through the 'lens of adoption' in working with loss and trauma*. The training was designed by psychologist and trainer, Dr Sue Green, who consulted 'with people with lived experience, representatives from professional bodies, post-adoption support agencies, government organisations, researchers and experienced counsellors'.¹⁴⁷

The course was designed for 'professionals in the community welfare, aged care and health sectors' and 'registered helping professionals such as psychologists, social workers, counsellors and psychotherapists'. The first day of the course focuses on understanding past and forced adoption practices and the second day focuses on counselling people affected by past and forced adoption practices.¹⁴⁸ Between October 2013 and July 2015, VANISH 'delivered ten training events throughout Victorian metropolitan and regional centres, mostly at Medicare Local venues'.¹⁴⁹ After attending the course, 'suitably qualified participants were then invited to register on the VANISH Counsellor Register'. VANISH was also engaged to deliver the course to RAV, Victoria's FASS provider.¹⁵⁰

¹⁴⁶ Emily Hanscamp, *Transcript of evidence*, p. 24.

¹⁴⁷ VANISH Inc., *Submission 53*, p. 63.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*, p. 64.

¹⁵⁰ *Ibid.*

VANISH provided the Committee with a breakdown of attendees, reporting that 80% were ‘registered clinicians’.¹⁵¹

Table 11.3 VANISH training attendees and type of profession: *Looking through the ‘lens of adoption’ in working with loss and trauma, 2013–2015*

Date	Medicare Local	Location	Number of attendees	Psychologist/ social worker/ counsellor (%)	Allied Health (%)	Other (%)
10–11 October 2013	Inner North West Melbourne	Parkville	25	84	4	12
14–15 November 2013	Loddon-Mallee	Bendigo	12	75	25	0
19–20 November 2013	Eastern Melbourne	Knox	9	78	22	0
3–4 December 2013	Frankston-Mornington	Frankston	14	82	12	6
11–12 February 2014	Barwon	Geelong	30	80	13	7
19–20 February 2014	East Melbourne & Macedon	Parkville	24	79	4	17
3–4 April 2014	South Eastern Melbourne	Rowville	20	80	5	15
10–11 April 2014	South Western Melbourne	Werribee	19	80	10	10
1–2 October 2014	None	Parkville	30	63	0	10
6–7 July 2015	None	Parkville	18	50	50	–
Total participants	–	–	201	78	11	8

Source: Vanish Inc, *Submission 53*, p. 64.

VANISH received positive feedback about the course from participants, with some saying it was the best training they had received in over three decades.¹⁵² VANISH contracted Professor Yvonne Wells from the Lincoln Centre for Research on Ageing, La Trobe University, to independently evaluate the course. Professor Wells concluded that participants had increased their knowledge of adoption and its delivery in therapeutic settings:

Professor Wells concluded that post-test ratings were significantly higher than pre-test ratings on both days, and that the analyses support the view that people’s ratings of their knowledge of adoption and its effects improved significantly as a result of their training. Many comments by participants reflected this change in awareness as a result of the training.¹⁵³

¹⁵¹ Ibid.

¹⁵² Ibid., p. 65.

¹⁵³ Ibid.

The funding to deliver the training has now ceased, although due to demand VANISH offers the training once a year on a cost-recovery basis.¹⁵⁴ VANISH proposed in its submission that the training be offered to professionals in the broader support services sector to increase general awareness of forced adoption:

There are many more workers and, indeed, counsellors in health, justice, and drug and alcohol services that would benefit from this training which would, in turn, benefit people affected by past and forced adoption practices.¹⁵⁵

11.6.2 Australian Psychological Society training

In 2015, the Australian Government funded APS to:

develop a suite of professional resources and tools including national online training ... to better support health professionals delivering services to people affected by forced adoption.¹⁵⁶

APS developed the project, *Guidance and training on forced adoptions for health professionals*, with the following aims:

- increase health professionals' awareness and understanding about forced adoptions policies and practices in Australia, and the impact of these practices on individuals and their families;
- provide readily accessible resources and reference material for clinicians to enable them to better structure treatments to meet the mental health needs of affected individuals; and
- enhance and up-skill clinicians in the provision of clinical mental health services to this client group through access to training, resources and guidance that advises on best practice evidenced-based diagnosis, referral, treatment and management options, including trauma-informed treatment and care approaches.¹⁵⁷

APS delivered three online training courses for health practitioners with different needs. The free introductory one hour course provides an overview of forced adoption that is:

Suitable for all health professionals who wish to gain general knowledge, but who aren't currently working or planning to work with people affected by forced adoption.¹⁵⁸

APS offered a two hour course specifically designed for GPs who intended to work with people affected by forced adoption.¹⁵⁹ It also offered an eight hour course specifically for mental health professionals that are currently working or planning to work with

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Marguerite Hone and Dr Lyn O'Grady, 'Past forced adoption policies and practices in Australia: it's time to make amends', *InPsych*, vol. 38, no. 3, 2016.

¹⁵⁷ The Australian Psychological Society Limited, *Submission 24*, p. 2.

¹⁵⁸ Marguerite Hone and Dr Lyn O'Grady, 'Past forced adoption policies and practices in Australia: it's time to make amends'.

¹⁵⁹ Samantha Barton, Senior Policy Advisor, Australian Psychological Society, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 7.

this cohort. In its submission, APS noted that the course was nationally focused, but that 206 Victoria health professionals had completed the training.¹⁶⁰ Samantha Barton, Senior Policy Advisor at APS, confirmed during a public hearing that over 800 health professionals had now completed the course across Australia.¹⁶¹

Satisfaction rates among participants were overwhelmingly positive. APS stated that its courses on historical forced adoption were reported as 'high quality and well-regarded'.¹⁶² Based on its own evaluations, 90% of respondents agreed:

- The course added to their knowledge and understanding of practices and techniques when working with people affected by forced adoption
- The learning objectives were appropriate for the level and delivery mode of the course
- The content for the course was clear and communicated sufficient information on the topics covered.¹⁶³

The training was fully-funded by the Australian Government up until 2017, but since 2018 the training has only been available on a user-pays basis. The uptake of training declined significantly since it is no longer free.¹⁶⁴

Professor Daryl Higgins, Director of the Institute of Child Protection Studies at the Australian Catholic University, proposed that there was an opportunity for the Victorian Government to use this training to enhance Victorian health professionals' knowledge of historical forced adoption:

I think there is an opportunity for the Victorian government to be thinking about what has been the take-up here in Victoria and what could be done to better promote and engage Victorian health professionals with this training—or an adaptation or the next stage of development with this kind of training.¹⁶⁵

¹⁶⁰ The Australian Psychological Society Limited, *Submission 24*, p. 2.

¹⁶¹ Samantha Barton, *Transcript of evidence*, p. 8.

¹⁶² The Australian Psychological Society Limited, *Submission 24*, p. 3.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*, p. 2.

¹⁶⁵ Professor Daryl Higgins, Director, Institute of Child Protection Studies, Australian Catholic University, Australian Psychological Society, hearing, Melbourne, 22 March 2021, *Transcript of evidence*, p. 8.

Further, Samantha Barton advised that the GP training is now inactive due to funding constraints:

Basically the commonwealth funding on that one came to an end and the project sort of ceased in its current form at the same time, so it became inactive. So it is time now that it was sort of refreshed. It needs to have some funding put behind it.¹⁶⁶

The Committee is concerned that a lack of funding for both the VANISH and APS training means neither is being offered on an ongoing basis, especially when the evidence demonstrates that:

- there is a potentially vast but unidentified cohort of people affected by historical forced adoption across Australia and Victoria
- there is significant demand for specialised mental health and emotional support services from this cohort
- there is a lack of awareness of historical forced adoption among health professionals and limited provision of trauma-informed care
- two specialised training programs for health professionals already exist and have proven to be effective.

For these reasons, the Committee believes that the VANISH and APS training should always be available to health professionals for free or at a highly subsidised rate to encourage participation. Both VANISH and APS have training packages for various professional groups that could be immediately rolled out if funding was provided.

RECOMMENDATION 39: That the Victorian Government ensure its funding to Victorian Adoption Network for Information and Self Help (VANISH) to deliver mental health and emotional support services as proposed in Recommendation 38 include a specific allocation of funding for the regular provision of VANISH training to health professionals.

RECOMMENDATION 40: That the Victorian Government facilitate the delivery of the Australian Psychological Society training among health professionals throughout Victoria.

11.6.3 Specialised support at Births, Deaths and Marriages

The Committee heard from several inquiry participants about their negative experiences engaging with BDM staff when requesting adoption-related information. In particular, Suzanne Scholz informed the Committee that when she attended BDM in person, she found staff to be insensitive:

I ordered my original birth certificate from Births, Deaths and Marriages, and I went in and they put me through the mill. They were yelling out across the room, 'This person's

¹⁶⁶ Samantha Barton, *Transcript of evidence*, p. 9.

adopted. She wants her certificate'. They gave it to me, and it has got 'Cancelled' stamped on it. My life was cancelled by the State of Victoria.¹⁶⁷

Another inquiry participant struggled with inconsistent service and, sometimes, offensive and dismissive attitudes from BDM staff:

When I showed them this, I got, 'What's that? I don't care about your special letter. What is it? I think someone came in here a few years ago with one of them. I'm not quite sure what to do with it', or words to that effect. I got bounced by one person, who then said, 'You have to go and fill those documents out before I deal with you'. It was like 10 lines. 'Can I fill it out here?'. 'No. Off you go. Go and get another ticket', because they were finishing in about 10 minutes and did not want to deal with it. And then when I went to go back to them, they said, 'Sorry. I'm finishing in 2 minutes. Back to the line'. Great.¹⁶⁸

The participant stated that there were 'nearly 7000 kids adopted in Victoria in 1969', and yet, somehow, they were the first person to visit BDM in Melbourne for several years to ask for information.¹⁶⁹ They were eventually served by a senior staff member who facilitated access to their information. The participant commented that, based on the service they received, someone 'less stubborn than me might have walked straight out'.¹⁷⁰

The AIFS Scoping Study identified that BDMs across Australia 'often came under criticism for the variable quality of their interactions with clients'.¹⁷¹ A lack of sensitivity, support and explanation from BDM staff in the provision of information was identified as an issue. Scoping Study participants proposed that this could be resolved by providing:

- trauma-sensitive and general adoption awareness training for BDM staff; and
- specialist adoption staff member(s) who handle adoption requests at each jurisdiction's BDM registry.¹⁷²

The Committee is of the view that BDM staff who engage with people affected by historical forced adoption be required to attend the VANISH training.

RECOMMENDATION 41: That the Victorian Government require staff at Births, Deaths and Marriages to participate in the Victorian Adoption Network for Information and Self Help professional training on past and forced adoption practices.

The Committee also believes that some of the issues associated with accessing information from BDM could be addressed if a designated staff member is appointed

¹⁶⁷ Suzanne Scholz, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 34.

¹⁶⁸ Name Withheld 2, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 27.

¹⁶⁹ *Ibid.*, p. 29.

¹⁷⁰ *Ibid.*

¹⁷¹ Higgins, et al., *Forced adoption support services scoping study*, p. 63.

¹⁷² *Ibid.*, p. 64.

with expertise in this area. The designated staff member would be responsible for overseeing adoption-related information requests and responding to relevant queries. This, in addition to Recommendation 41, will strengthen BDM's capacity to provide a specialised and trauma-informed service to people affected by historical forced adoptions.

RECOMMENDATION 42: That the Victorian Government designate a specialist staff member at Births, Deaths and Marriages with responsibility for overseeing adoption-related information requests.

11.7 Recognition in the community services sector

The Committee considers there is a need to raise awareness about historical forced adoption in the community services sector, for example, non-government organisations that provide homelessness, post-prison release or drug and alcohol support services, because:

People affected by forced adoption may experience distress and are at risk of re-traumatisation accessing services due to their past experiences. They may struggle to feel safe and to trust individuals, services and systems. Understanding the history and experiences of forced adoption and applying trauma-informed principles that promote empathy and understanding are likely to result in a better experience for, and better-informed response to, people with a forced adoption experience accessing [services].¹⁷³

In addition, '[s]igns of trauma may manifest differently in people due to age, gender, trauma experience, setting and environment. What is important is to be alert to the possibility of trauma and trauma reactions'¹⁷⁴. Better recognition of this would ensure that trauma-informed care can be provided to people affected by historical forced adoptions in a way that adequately recognises the long-term impacts of their experience, as discussed in Chapters 4 and 5.

The Committee considers the lack of trust that some people feel towards support services, stemming from the trauma of their experience, is a particularly important issue. The Committee believes increased awareness in the community services sector could help build trust with clients and improve access to services. This was also recognised by RAV, which proposed in its submission:

that further resources be dedicated towards educating professionals across all health, social and community service sectors about the issue and impacts of forced adoption.¹⁷⁵

¹⁷³ Jessica Smart, *Providing care and support to individuals with a forced adoption experience key considerations*, Australian Institute of Family Studies, Melbourne, 2020, p. 2.

¹⁷⁴ Ibid.

¹⁷⁵ Relationships Australia Victoria, *Submission 15*, received 27 April 2020, p. 9.

In order to achieve this, better data is needed on the number of people affected by historical forced adoption who are accessing community services. For example, Robin Turner suggested in her submission that Victoria's corrections system, mental health facilities and housing services should ask people whether they are a person affected by historical forced adoption.¹⁷⁶ The Committee considers that understanding how many people from this cohort access these services and their experience could form part of a follow up to the AIFS Adoption Study, as recommended in Chapter 5.

The AIFS Adoption Study found that for people accessing forced adoption support services, 'there were not enough services, and when they were available, the professionals were often not knowledgeable about adoption-specific issues'.¹⁷⁷ The importance of increased recognition in the community services sector is also exemplified in a submission the Committee received from a person who is adopted and worked as a community worker with people over 60. They described the difference between the knowledge of adoption-related issues between two of their colleagues:

When a new community worker came into the community they would be taken around the other agencies to give them an idea of what was in the community and the people involved in running those agencies. One day the old mental health service worker brought round the new worker who was replacing her. It was the new worker's first week in the job. We chatted for a bit and I asked the old mental health worker how many adoptees she had as clients. She looked shocked at the question and informed me she didn't know of any. The new health worker turned to me and started listing the ones she knew, emphasising that she hadn't met all the clients yet. The old mental health worker just sat there with her jaw dropping. The new mental health worker was an adoptee, so she noticed. You don't know if you don't look, and with adoption in Australia no one seems to be looking at what is happening or gives recognition to the impact adoption has on our lives.¹⁷⁸

Further, the Committee was informed that 'parents separated from their children by forced adoption or removal' are recognised under the *Aged Care Act 1997* (Cth) as people with special needs.¹⁷⁹ Lynne Williamson recommended that people who are adopted should also be recognised as a group of people with special needs.¹⁸⁰ The Committee supports this, particularly considering the long-term effects of adoption and that people who are adopted from the historical forced adoption period are ageing and may begin to access aged care services soon.

¹⁷⁶ Lynne Williamson, *Submission 70*, received 25 June 2020, p. 2.

¹⁷⁷ Kenny, et al., *Past adoption experiences*, p. xix.

¹⁷⁸ Name Withheld, *Submission 94*, received 30 March 2021, pp. 31–32.

¹⁷⁹ *Aged Care Act 1997* (Cth) ss 11–3. See also Lynne Williamson, *Submission 70*, p. 2.

¹⁸⁰ Lynne Williamson, *Submission 70*, p. 2.

The inclusion of mothers and fathers subject to historical forced adoption in the *Aged Care Act 1997* (Cth) shows there is already some recognition in the community services sector about their specific needs. However, the Committee considers that this can be strengthened.

RECOMMENDATION 43: That the Victorian Government consider how to raise awareness about the effects of historical forced adoption in the community services sector, including through the provision of Victorian Adoption Network for Information and Self-Help training to staff employed in state funded services.

11.8 Peer support groups

Peer support is widely acknowledged as an essential element of effective mental health and emotional support for people with significant mental health issues, including those dealing with the negative effects of trauma. For example, the Royal Commission into Victoria's mental health system discussed the importance of peer support and support groups to encourage mental health recovery. It recommended a new integrated mental health system in Victoria that includes expanded peer support across a range of services, including developing digital peer-led support platforms that offers people greater access to peer support networks.¹⁸¹

In this inquiry, participants almost unanimously endorsed support groups as an essential service. The Committee saw firsthand the benefit of support groups and the strong bonds among members. It believes the peer support network needs to be strengthened across Victoria and complemented by specialised mental health services that address the most acute effects of historical forced adoptions. It is important that support groups are one component of the overall suite of available services to people. This was demonstrated by Robyn Flanagan in her evidence to the Committee:

At times I have found that that whole collective grief can be a little bit too much at times too, so that is why I seek out my own counselling from time to time, and that has been really, really good. The last time I did it was probably two years ago after my mother died, because she knew all about this. When you are dealing with one it sort of topples over into others, so I did seek some counselling then.¹⁸²

The Committee anticipates that without funding for specific mental health services in this space, support groups may become overwhelmed.

¹⁸¹ State of Victoria, *Royal Commission into Victoria's mental health system, final report*, p. 15.

¹⁸² Robyn Flanagan, *Transcript of evidence*, p. 16.

11.8.1 Peer support groups in Victoria

In Victoria, VANISH and ARMS have facilitated support groups since the 1980s.¹⁸³ RAV does not coordinate or facilitate support groups as Victoria's FASS provider. However, support groups can apply to RAV to receive funding through the FASS small grants program.

ARMS was founded in 1982 'out of a common need to support women who have lost a child or children to adoption' and offers a range of support services:

It is governed by a committee of volunteers who have each personally experienced separation from a child through adoption. Committee members are well-trained incidental counsellors based in a self-help model that has, for thirty seven (37) years, provided high quality, insightful, personal support, information and advice to other mothers. ARMS offers support through a 24/7 telephone service, website and email.¹⁸⁴

Support groups are a fundamental part of ARMS' support service model. For example, ARMS 'has run a monthly peer support group meeting, unbroken for 37 years in Melbourne'. For the past eight years, through a joint venture with VANISH, ARMS has successfully facilitated support groups on a fortnightly or monthly basis in various regional and rural areas of Victoria.¹⁸⁵

VANISH has also run support groups since it was established.¹⁸⁶ They provide a unique opportunity for people affected by separation through adoption to come together in a supportive and safe environment. VANISH's support groups have run continuously for more than 20 years:¹⁸⁷

VANISH groups are facilitated by professionals with a personal experience of adoption and/or separation through adoption. VANISH has produced a Support Group Facilitators' Handbook which gives a broad outline of what a support group is, the skills and responsibilities of a support group facilitator as well as best practice and code of ethics; it is available online or by contacting VANISH.¹⁸⁸

VANISH runs two support groups out of its Melbourne office: one group exclusively for adopted people and another mixed group open to adopted people, mothers, fathers and other relatives.¹⁸⁹ VANISH said it was not uncommon for people to move in and out of groups, attend when the need arises and leave groups when 'they are in a more comfortable place in their lives'.¹⁹⁰ VANISH reported that the feedback from its

¹⁸³ VANISH Inc., *Submission 53*, p. 68.

¹⁸⁴ ARMS (Victoria), *Submission 45*, received 5 March 2020, p. 2.

¹⁸⁵ *Ibid.*

¹⁸⁶ VANISH Inc., *Submission 53*, p. 68.

¹⁸⁷ *Ibid.*, p. 14.

¹⁸⁸ *Ibid.*, p. 15.

¹⁸⁹ VANISH Inc., *Submission 53*, pp. 14–15.

¹⁹⁰ *Ibid.*, p. 15.

members is overwhelmingly positive and 'and reinforces the benefits of such groups for all people affected by adoption in both metropolitan and rural areas'.¹⁹¹

As part of the Workforce Project, VANISH was funded to establish support groups in regional Victoria.¹⁹² ARMS was chosen as a service delivery partner 'due to the organisation's shared values and objectives regarding regional groups'.¹⁹³ Support groups were established in six locations: Traralgon, Ballarat, Bendigo, Albury/Wodonga, Geelong and Mildura.

Participants' feedback regarding their experience with the regional support groups was positive, with 83% of participants rating their experience as excellent or good.¹⁹⁴ VANISH views the delivery of regional support groups as essential:

As a result of the positive feedback received and in recognition of the value of an integrated service delivery model in meeting a range of service users' needs, the Committee of Management undertook that VANISH should continue delivering this model as long as funds permit.¹⁹⁵

It recommended that regional outreach programs be implemented to reach regional and rural Victorians.¹⁹⁶

Dr Saxton has been facilitating VANISH's Albury/Wodonga support group for the last year and describes it as providing:

A safe place for people to discuss the complexities they are facing with peers whose lived experience gives them an understanding that is often not appreciated by their friends or family.¹⁹⁷

Dr Saxton advocated for more funding for support groups, including in regional areas.¹⁹⁸

Michele Hutchins facilitated the VANISH adoptee support group once a month for approximately three years from 2009 to 2012.¹⁹⁹ In her submission, she describes support groups as an essential mental health and emotional support service:

The Adoptee Only Support Group that VANISH provides is without doubt an essential service. For the facilitators, it is a very complex space to hold. Adoptees have very complicated and multi-faceted experiences to share and, no doubt in an effort to assimilate and make sense of these experiences, they can expend a lot of energy in describing and seeking to explain them.²⁰⁰

191 Ibid.

192 Ibid., p. 63.

193 Ibid., p. 68.

194 Ibid., p. 69.

195 Ibid., p. 70.

196 Ibid.

197 Dr Rosemary Saxton, *Transcript of evidence*, p. 31.

198 Ibid., p. 34.

199 Michele Hutchins, *Submission 97*, p. 1.

200 Ibid., p. 3.

SallyRose Carbines told the Committee that she had been fortunate to be involved with support groups, including as a current facilitator in Ballarat.²⁰¹ She explained that the groups started as a more self-help model, but over time they have become professional, including due to privacy considerations.²⁰² SallyRose Carbines also stated that the organisations responsible for peer support are ‘very under-resourced in running the groups’.²⁰³

11.8.2 Participant experiences with peer support groups

As stated, there was almost unanimous endorsement of support groups among inquiry participants. According to VANISH, its members frequently report that the highlight of attending a support group is ‘being heard, being validated and sharing common experiences’.²⁰⁴ Mothers whose babies were taken from them told the Committee that when joining a support group, they found others with a shared history. Yvonne May explained:

It is comforting to hear similar experiences to mine, and it builds a sisterhood of understanding and love, although the experiences are so different and varied. We are all very damaged women, who survived the trauma of having a child taken, the consequences we live with forever.²⁰⁵

Yvonne May further explained that people can bond over the specific details of their past experiences:

They are very compassionate and quite often say, ‘Oh, yes, I was on the verandah at the women’s hospital too’. Like anything it is nice to have people that you can identify with.²⁰⁶

Marilyn Murphy told the Committee:

Look, I have had, since coming to—because I live in Victoria now, nine years—Victoria I have joined up with ARMS. That is always good, because we know—it is like the war vets, and I have nursed the war vets. It is like that, you know—the war wounded. You really connect and you help heal each other.²⁰⁷

²⁰¹ SallyRose Carbines, *Transcript of evidence*, p. 25.

²⁰² *Ibid.*, p. 27.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*, p. 69.

²⁰⁵ Yvonne May, *Submission 69*, received 25 June 2020, p. 2.

²⁰⁶ Yvonne May, *Transcript of evidence*, p. 30.

²⁰⁷ Marilyn Murphy, *Transcript of evidence*, p. 21.

Similarly, Robyn Flanagan stated:

Yes. I am a current member of ARMS. I have been since probably 1989 ... I do not go as often because I am in the Macedon Ranges now ... I do go but not every month, because it is wonderful to sit there and not have to explain at the ARMS meetings ... And there is quite a mixture of women from different places, different walks of life, and it is just great.²⁰⁸

ARMS is great, and they do wonderful things. They have things for Mother's Day, where you go, and all these women get together, and they are lovely. They are great. You can ring them. I ring them occasionally. It is just amazing. Really good people.²⁰⁹

In her evidence, a mother described joining a support group as the best thing she has ever done:

In 2012 I made contact with the Association of Relinquishing Mothers, and it was the best thing I had ever done. I finally met with other women who had been where I had been—women who knew my pain and understood it. They helped me tremendously.²¹⁰

For some mothers, the bonds they make in support groups transform into friendships, as reflected in the following quotes:

I am now part of a birth support group here in my home town of Geelong. We are a small group and are very supportive of one another. They are my beautiful friends.²¹¹

The support group, yes. We are just so close and have the best friendships I have ever had. I have got friends from school from way, way back, but was at St Joseph's just before me—the year before, I think it was—and out there married the partner, the father of the child, like I did. It is like we were meant to meet. It has just helped in so many ways. They are closer than my sisters, who I love dearly, and if anything happened to them I would miss them so much.²¹²

Nothing is as supportive as your peers who has been through the same experiences as you.²¹³

We started in Melbourne, and we were part of ARMS. We are a breakaway now. We are a group of friends now that meet up. That is important just to us because we get along so well and we support each other. I have been extremely lucky and blessed to have found these girls.²¹⁴

208 Robyn Flanagan, *Transcript of evidence*, p. 16.

209 Ibid.

210 Name Withheld 3, 31 March 2021, *Transcript of evidence*, p. 25.

211 Ibid.

212 Name Withheld 2, 31 March 2021, *Transcript of evidence*, p. 18.

213 Name Withheld, *Submission 34*, received 28 February 2020, p. 2.

214 Name Withheld 5, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 36.

People who are adopted also spoke in their evidence about the value of peer support groups. Kerina Martin wrote in her submission:

I have been attending the VANISH support group in Ballarat since it started. I look forward to it and make it a priority. Sharing stories and hearing others' stories has really helped me.²¹⁵

Another adopted person discussed how important support groups were during the post-adoption search and reunion process:

I have attended support groups at Vanish and have found them an invaluable resource when going through reunion and the life shattering experience of acceptance and rejection from our birth families.²¹⁶

One inquiry participant also discussed how a VANISH support group helped them during the family reunion process:

VANISH located K in 2011 and assisted me in writing contact letters. She initially refused contact with me; this rejection was very painful and I found the VANISH support group I attended every month to be very beneficial. Being able to talk to people who had similar experiences was of great help and comfort. The VANISH team leading the support group were also available to me on the phone between meetings and I was most grateful for this.²¹⁷

While the feedback for support groups was mostly positive, some participants raised concerns with them. Lyn Kinghorn told the Committee she was concerned that more significant issues were sometimes lost in the personal narratives of support groups:

I found groups unsatisfactory, often promoting personal agendas more than the larger issues. We certainly all agree that public awareness is crucial for the exposure of history and so that those affected know their truth is being recognised.²¹⁸

11.8.3 Enhancing and expanding peer support groups

People told the Committee that joining a support group was one of the most valuable things they had done. The Committee heard that support groups reaffirm to people that their experiences are valid and that there are other people facing similar challenges.

The Committee is convinced of the value of support groups for people affected by historical forced adoptions. However, it is unclear what financial support, if any, is provided to VANISH and ARMS to operate these groups. The Committee heard that through the FASS small grants program, RAV provides '\$25,000 per year to fund projects delivered by local stakeholders'.²¹⁹ RAV has approved grants of up to \$5,000

²¹⁵ Kerina Martin, *Submission 95*, received 23 May 2021, p. 2.

²¹⁶ Name Withheld, *Submission 34*, p. 2.

²¹⁷ Name Withheld, *Submission 99*, p. 1.

²¹⁸ Lyn Kinghorn, *Submission 11*, p. 9.

²¹⁹ Emily Hanscamp, *Transcript of evidence*, p. 22.

for support groups, or for the training of support group facilitators, across the first three rounds of funding.²²⁰ VANISH and ARMS received funding through the small grants for their Victorian regional outreach support groups.²²¹

In its submission, VANISH acknowledged that RAV managed to successfully deliver more funding through its small grants program than FASS in all other states. It advised that it had 'successfully applied for grants for activities such as regional support groups, art therapy courses and support group facilitator training'. However, it criticised the 'overly bureaucratic application and acquittal process for a grant of just \$5,000'. Further, because of spending criteria and the exclusion of staff salaries and travel 'it was not always possible to develop projects that would fit the criteria' and the grant limit.²²²

Despite the small grants program, RAV acknowledged that its clients indicated:

That services are inaccessible and often too far from away from where they live, or there are insufficient group programs available to them.²²³

It recommended an increase in funding for small grants to expand local support services and activities:

An increase in funding for small grants would also enable RAV to expand its support of existing and new projects that increase awareness of forced adoption, and would help to enhance access to support for those affected by forced adoption, including through support groups in metropolitan and regional areas that are delivered by adoption support organisations.²²⁴

It noted that increasing this funding would allow people affected by historical forced adoption to determine what support services work best for them, to express their identities and connect with one another:

This would allow agencies and groups to self-determine what best meets the needs of their members and community, including information awareness, support groups, healing and recovery, and artistic and creative enterprises such as art therapy and creative writing, to enable the expression of self, identity and connection to their life journey and community.²²⁵

Based on the evidence, the Committee strongly endorses the delivery of support groups and believes their expansion is essential. The Government should consult with VANISH, ARMS and RAV to evaluate the ongoing costs and resources required to maintain a network of support groups in metropolitan and regional Victoria. This should consider the most efficient and effective way to provide centralised, ongoing funding to support groups either through the Victorian Government and/or the FASS small grants program.

²²⁰ Australian Healthcare Associates, *Forced Adoption Support Services post implementation review*, p. 6.

²²¹ Ibid.

²²² VANISH Inc., *Submission 53*, pp. 55–56.

²²³ Relationships Australia Victoria, *Submission 15*, p. 8.

²²⁴ Ibid.

²²⁵ Ibid.

RECOMMENDATION 44: That the Victorian Government, in consultation with key stakeholders, review the operation of the current peer support group network for historical forced adoption, with the aim of enhancing the network across Victoria.

As with accessing mental health and emotional support services, the Committee believes that people who want to join a support group should have choice and be able to decide for themselves which support group is right for them, even if that means creating their own.

For most people, VANISH and ARMS's support groups satiate their emotional support needs. However, if someone does not want to engage with them or for geographic reasons, people should be able to form their own support group if they can demonstrate that there is sufficient demand.

The Committee believes independent support groups should be given the opportunity to apply for Victorian Government funding to cover administrative costs such as hiring a meeting space, printing materials or establishing a small library of resources. The Committee acknowledges the need for guidelines and criteria for these support groups, including having an appropriately-trained facilitator or nominate someone to complete the free training course with VANISH or APS to become an independent support group facilitator. The Committee believes the Victorian Government should be responsible for developing the guidelines and criteria and for approving the establishment of independent support groups.

RECOMMENDATION 45: That the Victorian Government develop guidelines and funding criteria for the establishment of independent forced adoption peer support groups.

12 Going forward: the future of adoption

history is not irrelevant, that what happened then will happen again and again and again and again, if we try and use this blunt instrument [of adoption] to solve complex social problems.¹

The Committee heard throughout the Inquiry about the need to avoid repeating the mistakes of the past. Interestingly, while the Inquiry's key focus was historical forced adoption, a significant number of participants discussed the future of adoption in their evidence. As Lauren Howe submitted: 'Please learn from lessons of the past. Please listen.'²

Consistent themes brought to the Committee's attention included a perceived pressure from the Australian Government on the Victorian Government to promote adoption, consent provisions and a continued lack of openness and transparency in adoption, in addition to the ranking of adoption in the permanency hierarchy in the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic) (CYF Act).

This chapter considers these concerns and provides an overview of what adoption looks like in Victoria today. The Committee concludes by providing overarching principles that the Victorian Government should consider when designing and implementing Victoria's future adoption policy.

This chapter references both adoption and child protection legislation in Victoria. The Committee acknowledges that they are separate subjects and are administered by different government departments, but according to many of the inquiry participants, the removal of children from their families through the child protection system reflects a modern forced adoption policy. With this in mind, the Committee does not always distinguish between the two systems throughout the chapter when discussing the removal of children from their parents.

12.1 Current adoption framework in Victoria

Adoption in Victoria is currently administered through the *Adoption Act 1984* (Vic) (Adoption Act). The Victorian Law Reform Commission (VLRC) recommended in its 2017 *Review of the Adoption Act 1984* (VLRC Review) that the Act be replaced with a

1 Emeritus Professor Shurlee Swain, hearing, East Geelong, 31 March 2021, *Transcript of evidence*, p. 7.

2 Lauren Howe, *Submission 6*, received 16 January 2020, p. 1.

new Act.³ This was not implemented by the Victorian Government, rather it released new Adoption Regulations in 2019,⁴ stating that it

has commenced implementing changes to policies and service delivery to address some of the immediate issues raised and is updating its adoption policies within the scope of the existing Act.⁵

According to the Government, these regulations increase the transparency of the adoption process, promote consistency in administrative processes, set better standards for adoption service provision and protect children and parent's wellbeing.⁶

There are three main types of adoption: intercountry adoptions, local adoptions and known child adoptions. Intercountry adoptions 'are of children from other countries who are usually unknown to the adoptive parent(s)'. Local adoptions 'are those of children born or permanently residing in Australia, but who generally have had no previous contact or relationship with the adoptive parents'. Known child adoptions 'are of children born or permanently residing in Australia who have a pre-existing relationship with the adoptive parent(s), such as step-parents, other relatives and carers'.⁷

Adoption can also be facilitated under the CYF Act. This is referred to as 'adoption from care'. The CYF Act comprises a 'hierarchy of permanency objectives' where adoption is listed as the third preferred option, before permanent care and long term out-of-home care.⁸ Generally, the permanency hierarchy in the CYF Act promotes placement with family members including through adoption. In practice, adoption is not used by the Victorian Government in this context.⁹

The Committee also notes that there is 'no established pathway between orders made under the CYF Act and the Adoption Act',¹⁰ and are the responsibility of two different government departments.

3 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, Melbourne, 2017, pp. 22–3.

4 Victorian Government, *Safe and wanted—an inquiry into the implementation of permanency arrangements*, 2018, <<https://www.dhhs.vic.gov.au/publications/safe-and-wanted-inquiry-implementation-permanency-arrangements>> accessed 27 May 2021; Department of Health and Human Services, *Regulatory Impact Statement: Proposed Adoption Regulations 2019*, Victorian Government, Melbourne, October 2018.

5 Department of Health and Human Services, *Regulatory Impact Statement*, p. 13.

6 Ibid., p. 44.

7 Pauline Kenny, et al., *Past adoption experiences: National research study on the service response to past adoption practices*, Australian Institute of Family Studies, Melbourne, 2012, p. 8.

8 Commission for Children and Young People, *...safe and wanted...: Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*, Commission for Children and Young People, Melbourne, 2017, p. 16.

9 Ibid.

10 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 200–201.

12.1.1 Key agencies

Adoptions are administered directly by Adoption Victoria, which sits within the Department of Justice and Community Safety (DJCS).¹¹ In addition, community organisations Anglicare Victoria, CatholicCare, Uniting Vic.Tas and Children and Family Services (CAFS) indirectly administer adoptions in different Victorian regions.¹²

In correspondence to the Committee, DJCS outlined that Adoption Victoria and the four adoption agencies deliver ‘counselling to people who are considering placing a child for adoption, approving people to be able to adopt and supervising the placement of children placed for adoption until an adoption order is made’.¹³

DJCS advised the Committee that in June 2020, the four adoption agencies nominated DJCS as the guardian of a child when consent for adoption is given:

This means that the Department makes all significant decisions for children placed for adoption, has oversight of their wellbeing and provides the report to Court when an adoption is applied for. As Guardian the Department decides which adoptive family is selected for a child, usually with the involvement of the natural parents.¹⁴

Adoption Victoria can also arrange overseas adoption and known child adoptions,¹⁵ as well as undertake the functions of:

- ensuring there are enough people who have been approved as suitable to adopt to meet the needs of Victorian children and our partnerships with overseas adoption programs;
- assessing people to be approved, delivery of education programs, supervising placements and supporting any Court processes associated with making an Adoption Order; and
- providing support and supervision to families after an adoption order is made, whether under an agreement with an overseas partner or because of extraordinary circumstances relating to the family and child.¹⁶

DJCS outlined to the Committee:

While the Department does provide counselling to people who are considering placing a child for adoption, where appropriate parents are referred to one of the four agencies. This is because the four agencies sometimes provide complementary services that may assist a parent to decide to retain care and parentage of a child. Typically, the Department provides counselling to a parent where they do not want a faith-based service or are not located in an area of agency regional coverage.¹⁷

¹¹ Department of Justice and Community Safety, State Government of Victoria, *Adoption: Adoption Services, 2020*, <<https://www.justice.vic.gov.au/your-rights/adoption>> accessed 27 May 2021.

¹² Ibid.

¹³ Rebecca Falkingham, Secretary, Department of Justice and Community Safety, correspondence, 29 June 2021, p. 5.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid., p. 30.

¹⁷ Ibid., p. 5.

Prior to DJCS becoming the guardian of children being placed for adoption, CatholicCare placed children aged between 0–12 months who had been ‘voluntary relinquished’ and offers counselling and support to all families participating in an adoption.¹⁸ In its submission, CatholicCare stated that it placed three children for adoption in 2019, the highest number since 2014.¹⁹

CAFS placed one child for adoption in 2019–20.²⁰ CAFS also facilitates foster care, kinship care and permanent care arrangements.²¹

Uniting Vic.Tas provides counselling to parents considering the adoption of a child and offers a permanent care program for children up to the age of 12.²² Anglicare Victoria facilitates care arrangements, including foster and kinship care, and adoptions for children under 12 months and provides information and counselling support services to those wanting to adopt a child.²³

Information pertaining to the number of adoptions facilitated by Adoptions Victoria, Anglicare Victoria and Uniting Vic.Tas in 2019–20, before the DJCS took responsibility for arranging all adoptions, is not publicly available.

12.1.2 Eligibility criteria to adopt

Under the Adoption Act, before the suitability of a prospective adoptive person or couple is assessed, they must meet certain eligibility criteria.²⁴ For local adoptions, applicants must be either a couple in a relationship that meet certain criteria, such as being married or living together for no less than two years, or a single applicant in special circumstances.²⁵ For a sole applicant, the special circumstances requirement has been ‘interpreted to mean that single people can only adopt a child with “special needs”, generally being children more than 12 months old or who have complex needs’.²⁶

The VLRC recommended modernising these provisions to prevent discrimination, including expanding the eligibility criteria to remove the requirement that couples in a relationship must live together and that the same eligibility criteria that apply to couples apply to single applicants.²⁷ The Victorian Government has not made any legislative amendments in this regard but updated the Adoption Regulations to clarify the application process for single parents.²⁸

18 CatholicCare, *Adoption*, n.d., <<https://www.ccam.org.au/page/118/adoption>> accessed 27 May 2021.

19 CatholicCare, *Submission 55*, received 27 April 2020, p. 4.

20 Child and Family Services, *Annual report 2019–2020*, Melbourne, 2020, p. 21.

21 *Ibid.*, pp. 20–21.

22 Uniting Vic. Tas, *Submission 48*, received 16 March 2020, p. 6.

23 Anglicare Victoria, *Adoption programs*, n.d., <<https://www.anglicarevic.org.au/our-services/foster-care/adoption-programs-at-anglicare-victoria>> accessed 27 May 2021.

24 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 179.

25 *Ibid.*, pp. 179–180.

26 *Ibid.*, p. 187.

27 *Ibid.*, pp. 186, 191.

28 Department of Health and Human Services, *Regulatory Impact Statement*, p. 40.

For known adoptions, a step-parent can apply for an adoption order as a single applicant, given they have been married or living with the child's parent for at least two years.²⁹ A relative to the child can make an application either as a sole person or with their partner.³⁰ In both instances, to grant a known child adoption order, exceptional circumstances must exist and the adoption must provide better support for a child than a different order under the *Family Law Act 1975* (Cth).³¹

The VLRC Review stated that known child adoptions are generally discouraged because they can cause hereditary confusion, unnecessarily sever biological relationships and it is likely the relative or step-parent would continue to care for the child regardless of an adoption order being made.³² In her evidence to the Committee, Emeritus Professor Shurlee Swain raised a concern regarding expanding the eligibility criteria to adopt:

once you make available a group of children for adoption, by whatever means, you create a market, and the other side of that market are people who are anxious to adopt ... the pressure from that group starts to move back into the judgement of those who are making the children available for adoption, and what you see is ever-expanding eligibility.³³

The VLRC acknowledged concerns that widening the eligibility criteria may lead to more adoption applications.³⁴ It recommended that the Secretary of DJCS³⁵ manage application assessments in a transparent way that is in the best interests of the child, rather than use the eligibility criteria as a means to restrict applications.³⁶

12.1.3 Key statistics

The Australian Institute of Health and Welfare (AIHW) publishes statistics on adoptions each year, collating the figures from each state and territory to produce national statistics. The AIHW also provides the raw data as supplementary tables in an excel spreadsheet, some of which are broken down into figures for each state. There are no comprehensive statistics on adoptions available in Victoria.

In 2019–20, there were 334 adoptions in Australia: 37 (11%) were intercountry adoptions and 297 (89%) were Australian child adoptions. Of the Australian child adoptions, 249 (75%) were known child adoptions and 48 (14%) were local adoptions.³⁷ In this

²⁹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 193.

³⁰ *Ibid.*, p. 195.

³¹ *Ibid.*, p. 194. According to the VLRC 'Under the Family Law Act, leave of the Family Court of Australia is required before an application for an adoption order can be filed by a step-parent in the County Court. This requirement is not reflected in the Adoption Act.' The Family Court must consider the best interests of the child when making the decision to grant leave.

³² *Ibid.*, p. 196.

³³ Emeritus Professor Shurlee Swain, *Transcript of evidence*, p. 3.

³⁴ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 191.

³⁵ Since the VLRC review, responsibility for adoptions has been moved to the DJCS from the Department of Health and Human Services. Consequently, all recommendations that were made to the Department of Health and Human Services have been updated in this chapter to the DJCS.

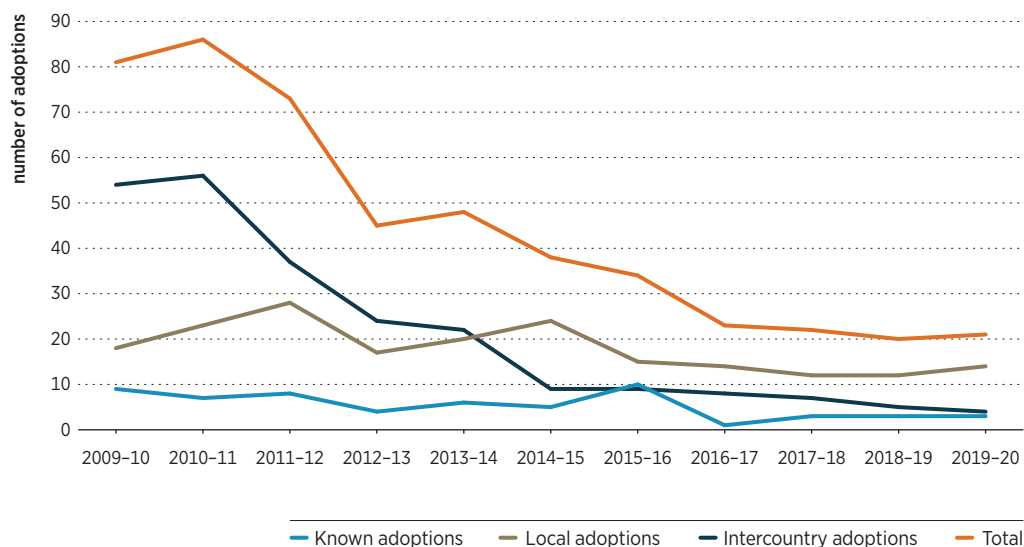
³⁶ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 192–193.

³⁷ Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, Australian Institute of Health and Welfare, Canberra, 2021, p. 15.

period, 21 children were adopted in Victoria: 3 were known adoptions and 14 were local adoptions.³⁸

Since 2015–16, there has been a 20% increase in the number of adoptions in Australia, driven by a rise in known child adoptions in New South Wales (NSW).³⁹ In Victoria, all types of adoption have either maintained stability or decreased over the past 10 years, as shown in Figure 12.1.

Figure 12.1 Number and type of adoptions in Victoria



Source: Australian Institute of Health and Welfare, Table Adoptions Australia 2019–20, 2021, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2019-20/data>> accessed 21 July 2021; Australian Institute of Health and Welfare, Table Adoptions Australia 2018–19, 2019, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2018-19/data>> accessed 21 July 2021.

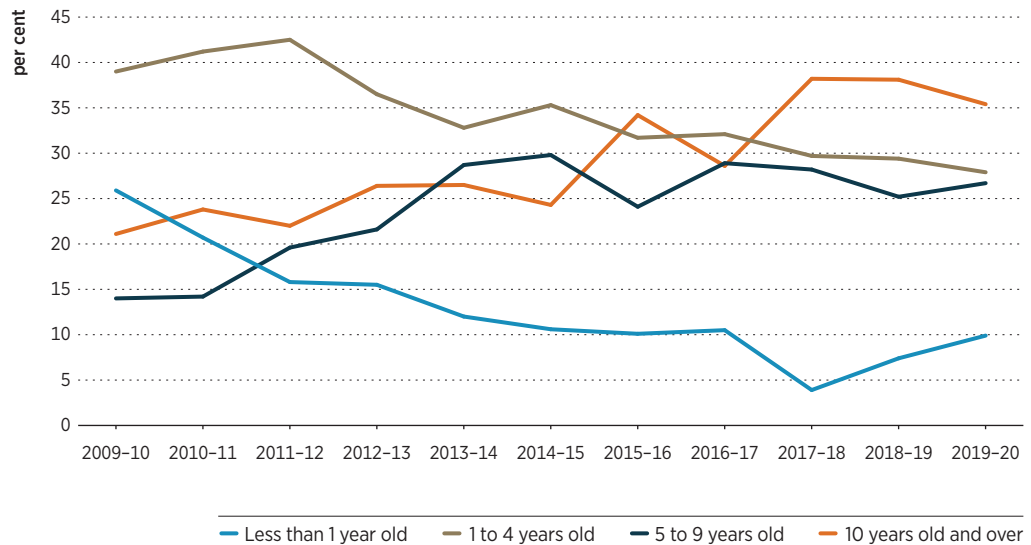
As shown in Figure 12.2, the majority of adoptions in Australia are for children over the age of 10 (38% in 2018–19). This has been increasing over the past ten years and is driven by a rise in known child adoptions in NSW (in known child adoptions, children are generally adopted at an older age due to the time taken to form step-families).⁴⁰ In contrast, in Victoria the main form of adoptions are local adoptions of infants under the age of 12 months.⁴¹

³⁸ Australian Institute of Health and Welfare, Table *Adoptions Australia 2019–20*, 2021, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2019-20/data>> accessed 21 July 2021.

³⁹ Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. iv.

⁴⁰ *Ibid.*, pp. 29–30.

⁴¹ Department of Health and Human Services, *Regulatory Impact Statement*, p. 20.

Figure 12.2 Percentage of adoptions by age group in Australia

Source: compiled from Australian Institute of Health and Welfare, Table Adoptions Australia 2019-20, 2021, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2019-20/data>> accessed 21 July 2021; Australian Institute of Health and Welfare, Table Adoptions Australia 2018-19, 2019, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2018-19/data>> accessed 21 July 2021.

In Australia in 2019-20, children placed through intercountry adoptions were mostly aged one to four. Local adoptions were of babies aged less than 12 months and most known child adoptions involved children above the age of ten.⁴² The Committee is aware that the age at which children are adopted is important because it influences the ability of a child to participate in the adoption process and for their wishes to be considered. This is explored further in Section 12.4.

The Committee considers that reporting on adoption statistics is an important means of increasing transparency and accountability in Victoria's adoption framework. Given the significant impact that adoptions can have on the lives of children, parents and adoptive parents, adoption statistics should be regularly published and easily accessible to stakeholders.

RECOMMENDATION 46: That the Victorian Government require Anglicare Victoria, CatholicCare, Uniting Vic.Tas and Children and Family Services to publicly report on the number of adoption referrals made or counselling provided each year.

RECOMMENDATION 47: That the Victorian Government publicly report on the Department of Justice and Community Safety's website the numbers of adoption referrals, applications and children placed for adoption each financial year, as well as other key statistics such as the type of adoption, the contact and information exchange conditions in adoption orders, and the age and cultural background of children and parents.

⁴² Australian Institute of Health and Welfare, *Adoptions*, 2021, <<https://www.aihw.gov.au/reports/australias-welfare/adoptions>> accessed 27 May 2021.

12.1.4 A note on the New South Wales approach

It is important to acknowledge the effect of the NSW Government's approach to adoption on Australia's statistics given the rise in adoptions since 2015–2016.⁴³ The VLRC reported that the NSW Government 'has a policy of increasing the use of adoption', primarily through legislative changes in 2014 that 'facilitated the use of adoption for children in out-of-home care, and established a framework that simplified adoption from care'.⁴⁴

The NSW pro-adoption policy was supported by the House of Representatives' Standing Committee on Social Policy and Legal Affairs in its 2018 *Breaking barriers: a national adoption framework for Australian children: Inquiry into local adoption* report:

The Committee notes that the adoption law in New South Wales reflects an evidence-based approach, and that the New South Wales approach has resulted in an increase in the numbers of children finding safe, permanent homes through adoption.

...

The Committee notes the success of adoption reforms undertaken in New South Wales and is of the view that New South Wales' adoption legislation contains a number of useful elements that could inform a national law for adoption.⁴⁵

The Standing Committee recommended making adoption a more viable option for all children in out-of-home care.⁴⁶ In response to the *Inquiry into local adoption*, the Australian Government 'noted' the recommendations that in a national adoption framework 'adoption should be considered before long-term foster care or residential care'. It 'partially supported' the recommendation that a national framework should 'recognise legal permanency is key in providing stability and permanency for children'.⁴⁷ The Australian Government also recognised the jurisdiction of individual states and territories to establish their own permanency hierarchy and noted that stability for children can be achieved without legal permanency.⁴⁸

The Western Australian Government also reintroduced adoption from care in 2012. In contrast, the South Australian 2015 *Adoption Act 1988* (SA) review concluded that adoption from care should be used as a last resort.⁴⁹ Similarly, the South Australian 2016 *Child Protection Systems Royal Commission* concluded:

Adoption is no panacea for the current shortage of suitable care placements for children who cannot remain with their families of origin. The fact that there is a cohort of families

⁴³ Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 15.

⁴⁴ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 201.

⁴⁵ Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into local adoption*, November 2018, p. 31.

⁴⁶ *Ibid.*, p. 33.

⁴⁷ Government of Australia, *Response to the Parliament of Australia, House of Representatives Standing Committee on Social Policy and Legal Affairs, Inquiry into local adoption*, September 2019, p. 3.

⁴⁸ *Ibid.*, pp. 6–7.

⁴⁹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 202.

who are interested in starting or growing their families through local adoption, and who may relieve placement pressure in the care system, is irrelevant to the question of a child's best interests.⁵⁰

The Committee also received evidence from various inquiry participants that contradicts the NSW approach. For example, the Association of Relinquishing Mothers (ARMS) argued the Victorian Government should take a leading role in encouraging other states to move towards a child protection model that de-prioritises adoption.⁵¹

In a broader context, the Hon Nahum Mushin AM advised in his evidence to the Committee that adoption should be a national approach, either by all states enacting uniform legislation or referring their powers to the Australian Government.⁵² The Hon Mushin stated:

I think that there is a really significant problem with the whole of the legislation in forced adoption. I think our jurisdiction is so fractured as to be really unthinkable in the 21st century so that of course a child adopted in Wodonga and a child adopted in Albury are adopted pursuant to two different laws, and that seems to me to be wrong. The laws are not all that much different, but they are different. As, for example, with family law, which obviously I know well, it is a national approach—I think it is strongly arguable that that is what we should have here in Australia. We have got six different laws and they are administered by the respective state courts, and they are not specialists in the area either. I am being entirely respectful to judges; I am not suggesting that there is anything improper or anything else like that. However, I think it is inappropriate.⁵³

The Committee considers that given the NSW Government's policy of increasing adoption and the Australian Government's position, any legal changes that may lead to an increased promotion of adoption in Victoria should be avoided.

12.1.5 Current trends in adoption: intercountry adoptions and international students

In 2019–20, there were 37 intercountry adoptions finalised in Australia, a 35% drop from the previous year.⁵⁴ In the early 2000s, intercountry adoptions were the most common form of adoption, although this has been steadily decreasing since 2011.⁵⁵

This trend is not unique to Australia, with intercountry adoptions decreasing globally. The reasons for this are complex, but can be attributed to changes in overseas countries, such as economic growth and stability, improved living standards, attitudinal changes towards single mothers and better-established child protection systems. In addition, eligibility criteria to adopt has become more rigorous in these countries.⁵⁶

⁵⁰ Ibid.

⁵¹ ARMS (Victoria), *Submission 45*, received 5 March 2020, p. 17.

⁵² The Hon Nahum Mushin AM, hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 20.

⁵³ Ibid.

⁵⁴ Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 16.

⁵⁵ Australian Institute of Health and Welfare, *Adoptions*.

⁵⁶ Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 42.

In 2012, the Australian Institute of Family Studies (AIFS) acknowledged concerns about parallels between intercountry adoptions and historical forced adoption practices in its *Research study on the service response to past adoption practices*:

Both adoptees and mothers in particular raised their concerns regarding broader community attitudes to current overseas adoptions in Australia; in particular, that the needs of the child aren't necessarily at the centre of people's motivations to adopt. The issues of identity, attachment and 'knowing where you come from' were all highlighted as being potential effects on children adopted from overseas if there is a failure to properly inform the child of their heritage and integrate that knowledge and culture into their everyday life. The view of the child as a commodity; something that is 'acquired', ran parallel to the stories of many of the adoptees who participated in this study's own adoption experience. The attempt to assimilate the child into Australian culture without recognition of their family and country of birth is a major concern for many who are concerned that history will indeed repeat itself.⁵⁷

The Senate's Community Affairs References Committee, in its Inquiry into *Commonwealth contribution to former forced adoption policies and practices* (Senate Inquiry), also acknowledged concerns that the mistakes of historical forced adoptions were being repeated with intercountry adoptions.⁵⁸

This is similar to reservations raised in this inquiry, including from ARMS, which stated in its submission:

Largely, intercountry adoptions are forced adoptions because the country of origin won't accept the pregnancy and birth of ex-nuptial children. The stigma gives the mother no choice, just as we had none.⁵⁹

There are concerns that intercountry adoptions involve a range of coercive practices that are used under humanitarian or economic justifications.⁶⁰ This includes the potential for child trafficking or abduction, mothers who have no understanding of the legal implications of adoption, and little or no use of qualified interpreters.⁶¹ In addition, intercountry adoptions are not typically open, meaning people who are adopted may not know the identity of their natural parents or have any connection to their country of birth.⁶²

The Committee notes that while there is a downward trend in intercountry adoptions, which will likely be further impacted by COVID-19,⁶³ the Victorian Government should ensure that intercountry adoptions do not repeat the practices of historical forced adoptions.

⁵⁷ Kenny, et al., *Past adoption experiences*, p. 186.

⁵⁸ Parliament of Australia, Community Affairs References Committee, *Commonwealth contribution to former forced adoption policies and practices*, February 2012, p. 281. See also Judy McHutchison, *Submission 72, Attachment 1*, received 26 June 2020, p. 5.

⁵⁹ ARMS (Victoria), *Submission 45*, p. 7.

⁶⁰ Patricia Fronek and Denise Cuthbert, 'Apologies for forced adoption practices: implications for contemporary intercountry adoption', *Australian Social Work*, vol. 66, no. 3, 2013, p. 405.

⁶¹ Ibid., p. 406; Department of Health and Human Services, *Regulatory Impact Statement*, p. 23.

⁶² Kenny, et al., *Past adoption experiences*, p. 10.. See also p. 186-187.

⁶³ Australian Institute of Health and Welfare, *Adoptions Australia 2019-20*, p. 16.

Another noteworthy trend is international students in Victoria seeking information on how to place a child for adoption. CatholicCare stated in its submission (made prior to adoptions being centralised under DJCS) that it facilitates a small number of adoptions each year but has observed a growing trend of clients who are international students from culturally and linguistically diverse backgrounds.⁶⁴ Emeritus Professor Swain considers that this is due to social expectations preventing international students from returning home with a child.⁶⁵

CatholicCare told the Committee that while it has been able to draw upon its existing staff and resources to provide culturally appropriate support, it recommended that adoption agencies should be 'supported to develop their capacity to provide linguistically and culturally appropriate counselling for relinquishments and adoptions'.⁶⁶ The Committee considers the Victorian Government may want to make enquiries of other adoption agencies to ascertain the extent of the trend and whether more specialised support services are required.

RECOMMENDATION 48: That the Victorian Government monitor the cultural and linguistic diversity of parents considering placing their child for adoption and consider whether more specialised, culturally appropriate support is required.

12.1.6 Adoption in Aboriginal and Torres Strait Islander communities

Typically, the number of Aboriginal and Torres Strait Islander children that are adopted each year is small. Australia-wide in 2019–20, 12 Aboriginal and Torres Strait Islander children were adopted, the highest number in the past 25 years and equal to last year.⁶⁷ It is not known how many of these occurred in Victoria.

Of the 12 total adoptions, 4 were adopted by non-Indigenous Australians and 8 by Indigenous Australians. For adoptions by non-Indigenous Australians, 7 were known child adoptions by either a carer, step-parent or another relative.⁶⁸ Over the past 25 years, 56% of Aboriginal and Torres Strait Islander children placed for local adoption entered families with at least one Aboriginal and Torres Strait Islander-identifying parent.⁶⁹

DJCS recognises that 'Aboriginal and Torres Strait Islander communities have been significantly affected by past government policies which removed children from their families and included the adoption of Aboriginal children to non-Aboriginal families'.⁷⁰ Consequently, there are additional safeguards in the Adoption Act for Aboriginal and

⁶⁴ CatholicCare, *Submission 55*, p. 4.

⁶⁵ Emeritus Professor Shurlee Swain, *Transcript of evidence*, p. 4.

⁶⁶ CatholicCare, *Submission 55*, p. 5.

⁶⁷ Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 54.

⁶⁸ *Ibid.*

⁶⁹ Australian Institute of Health and Welfare, *Submission 20*, received 3 February 2020, p. 9.

⁷⁰ Rebecca Falkingham, correspondence, p. 38.

Torres Strait Islander children, including consultation with DJCS' 'Adoption Service Integrity Unit'. This unit ensures that an Aboriginal Community Controlled Organisation is consulted early on and works 'closely to ensure that each decision is made in a culturally informed and culturally safe manner'.⁷¹

The VLRC Review concluded that the adoption of Aboriginal and Torres Strait Islander children should only be used as a last resort as it is generally not culturally appropriate.⁷² This is supported by the Victorian Aboriginal Child Care Agency (VACCA), which argued in its submission to this inquiry that adoption should always be a last resort and that emphasis should be placed on 'culture, self-determination and connection'.⁷³ If adoption is used, cultural connections need to be maintained and communities need to be consulted consistently and early on.⁷⁴ As Adjunct Professor Muriel Bamblett Hon DLitt SW AO, Chief Executive Officer of VACCA, told the Committee:

Aboriginal children have the right to know who their elders are, the true actions of their ancestors, the ceremonies, the stories, the living culture of our people. They deserve to have a say in their future, their lives.⁷⁵

The Adoption Act contains Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPPs). ATSICPPs apply when an Aboriginal and Torres Strait Islander parent or a non-Indigenous parent who believes the other parent to be Indigenous consent to the adoption and wish for their child to be adopted within the Aboriginal and Torres Strait Islander community. The Adoption Act has a placement hierarchy, preferencing that either both or one of the adoptive parents are members of an Aboriginal and Torres Strait Islander community or are approved by an Aboriginal agency as suitable to adopt.⁷⁶

The VLRC noted in reference to the ATSICPPs in the Adoption Act that '[i]t is difficult to find this provision because it is not expressly identified as an ATSICPP. It is located well into the Adoption Act (section 50) and is difficult to interpret'.⁷⁷ In response, the Victorian Government's Adoption Regulation changes in 2019 aimed to strengthen processes to maintain connection between an Aboriginal and Torres Strait Islander child and their culture. This was through increasing consultation 'about a child's cultural heritage' and increasing information about the importance of maintaining cultural connections provided by counsellors to prospective adoptive parents.⁷⁸

71 Ibid.

72 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. xv.

73 Victorian Aboriginal Child Care Agency, *Submission 28*, received 13 February 2020, p. 14.

74 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. xv, 134–135.

75 Adjunct Professor Muriel Bamblett Hon DLitt SW AO, Chief Executive Officer, Victorian Aboriginal Child Care Agency, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 32.

76 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 124.

77 Ibid.

78 Department of Health and Human Services, *Regulatory Impact Statement*, p. 38.

The VLRC Review recommended amending the Adoption Act to be consistent with the CYF Act, which includes more extensive and clearly defined ATSICPPs.⁷⁹ This would ensure an Aboriginal agency is involved in all phases of the adoption process and a cultural support plan for the child is prepared.⁸⁰ Connie Salamone, Project Officer at VACCA, told the Committee that ATSICPPs are important as ‘Aboriginal children being placed in Aboriginal care [get] better results’ and that increasing clarification of the principles in the legislation:

will lead to families being strengthened, supported earlier and children connected to their culture, their family, their communities—and this is how you build resilience. We want to build strong, resilient Aboriginal children.⁸¹

The Committee supports this recommendation of the VLRC.

In relation to the enforcement of ATSICPPs, Adjunct Professor Bamblett told the Committee:

We know that the past is linked to the present, and what happened with forced adoptions has influenced and impacted on present-day policies. For Aboriginal people the best interests of a child cannot be separated from the best interests of the child in the context of our Aboriginal community and being raised as a strong Aboriginal child ... We need to give bipartisan support to enforcing stronger compliance with the Aboriginal child placement principle. We have got the best legislation, but no-one complies with it ... This means that we need funding and contracting that are available to us to be able to better support our people in understanding their rights before the legal system around the Aboriginal child placement principle.⁸²

Consequently, the Committee also supports VACCA’s recommendation that:

The Victorian Government needs to resource and improve the implementation of the Aboriginal Child Placement Principle, and connection to culture and community, to prevent the cycle of continuing child removal and over-representation in out of home care.⁸³

RECOMMENDATION 49: That the Victorian Government seek to amend the Aboriginal and Torres Strait Islander Child Placement Principles in the *Adoption Act 1984* (Vic) to be consistent with the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic), as recommended by the Victorian Law Reform Commission.

⁷⁹ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 136–137.

⁸⁰ *Ibid.*, p. 137.

⁸¹ Connie Salamone, Project Officer, Victorian Aboriginal Child Care Agency, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 33.

⁸² Adjunct Professor Muriel Bamblett Hon DLitt SW AO, *Transcript of evidence*, pp. 33–34.

⁸³ Victorian Aboriginal Child Care Agency, *Submission 28*, p. 14.

RECOMMENDATION 50: That the Victorian Government provide adequate resourcing to ensure the Aboriginal and Torres Strait Islander Child Placement Principles under the *Adoption Act 1984* (Vic) and *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic) are effectively implemented.

12.2 Concerns about the practice of adoption

Given the inquiry topic and the experiences of inquiry participants, it is unsurprising that there was limited support for adoption. As discussed in Chapter 5, a growing body of research demonstrates the impact of separation trauma, questions around identity and feelings of rejection among people who are adopted. The AIFS' *Research study on the service responses to past adoption practices* found that mental health issues were not unusual for its participants, even those who had positive adoption experiences.⁸⁴

Several submissions to the inquiry argued that adoption should not exist at all.⁸⁵ Concerns were raised about the long-term impacts of adoption, regardless of whether they were forced.⁸⁶ As Isabell Collins wrote:

Put simply, being adopted is like being separated from everyone else by a picket fence. You can see people, talk, laugh and cry with them, but no matter how much you want to be on the same side of the picket fence with them, something stops that from happening. Adopted people are relegated to walk on the other side of the picket fence on your own. As one adoptee once stated, 'being adopted can be one of the loneliest experiences on earth.'⁸⁷

There were several mothers who also advocated to the Committee that adoption should not continue, as demonstrated by the following quotes:

I would like adoption to be banned altogether because it is not good for anybody—not good for the babies or for the parents or anybody. It really does not always work for adoptive parents either.⁸⁸

my biggest wish is that adoption could stop and that we were never in that situation, but if we do have adoption, that it is done with a caring heart, particularly for the woman.⁸⁹

When will you have heard enough to actually do something about stopping a practice that still goes on today? Only when the practice is stopped will our pain stop because it will have been meaningful.⁹⁰

⁸⁴ Kenny, et al., *Past adoption experiences*, p. xiv.

⁸⁵ Rosemary Neil, hearing, Wodonga, 18 May 2021, *Transcript of evidence*, p. 23; Yvonne May, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 29; Virginia Frauder, *Submission 98*, received 28 May 2021, p. 1; ARMS (Victoria), *Submission 45*. See also Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. xiii, 153.

⁸⁶ Isabell Collins, *Submission 62*, received 04 June 2020.

⁸⁷ Isabell Collins, *Submission 62, Attachment 1*, received 04 June 2020, p. 1.

⁸⁸ Rosemary Neil, *Transcript of evidence*, p. 23.

⁸⁹ Yvonne May, *Transcript of evidence*, p. 29.

⁹⁰ Virginia Frauder, *Submission 98*, p. 1.

Adoption programs often commence with a recognition of a genuine need. There are children who through the death of their parents or abandonment need adults to take responsibility for them until they are of an age to determine their own future ... However, the pattern of adoption in Australia and elsewhere reveals that once adoption programs get under way the demand for children (which is largely for healthy, pale skinned, newborns) grows until it outstrips the number of children available. Henceforth these programs commence seeking children for parents not vice versa. Families, particularly mothers in very powerless positions (usually poor and/or single), are induced to make children available for adoption that would not otherwise be available.⁹¹

I am a staunch opposer of adoption—ever. Whilst long term forms of care should be available for some children who can't live with their parents, the institute of infant adoption is an indictment of a society's capacity to preserve the sacred bonds between a mother, father and their child. It is a human right that is wilfully and legally abused. It should not be seen as anything other than a cost and resource saving to government. It is not and never has been a service to children in need. 'Vountary' [sic] infant relinquishment discourse should be re-constructed to be seen as a tragedy. Human beings deserve to be supported adequately in caring for their own children. It is our society's responsibility to find other options for those who do not wish to relinquish care of their children. We should be bending over backwards to maintain a human's right to have an ongoing and meaningful relationship with their family members.⁹²

Similarly, Marie Meggitt of ARMS stated in her evidence to the Committee:

The bottom line is it is the severing of one family to facilitate the creating of another family, and given what we know now around child psychology, around family units and around the business of community, there is no justification for such a thing happening ... adoption has no place in the 21st century.⁹³

ARMS advocated that it makes more sense, both economically and in terms of wellbeing, to offer support and help for mothers rather than to promote adoption.⁹⁴ ARMS believes there are circumstances when children should be removed from their parents, for the child's safety and wellbeing, however, with the right support parents can raise their child.⁹⁵ Consequently, ARMS believes that the CYF Act provides enough legal avenues to remove children from their family and adoption should be abolished from Victorian law.⁹⁶

Adoptee Rights Australia (ARA) argued in its submission to the Queensland Parliament's *Inquiry into the Child Protection and Other Legislation Amendment Bill 2020* that there is a 'false divide' between past and current adoption practices. Similarities between adoption practices of the past and present include the cancellation of birth certificates, the ability to discharge adoptions and an absence of welfare checks

⁹¹ Judy McHutchison, *Submission 72, Attachment 1*, p. 1.

⁹² Name Withheld, *Submission 112*, received 28 July 2021, p. 6.

⁹³ Marie Meggitt, ARMS (Vic), hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 24.

⁹⁴ *Ibid.*, pp. 25–26; Jo Fraser, ARMS (Vic), hearing, Melbourne, 24 February 2021, *Transcript of evidence*, p. 26.

⁹⁵ ARMS (Victoria), *Submission 45*, p. 2.

⁹⁶ *Ibid.*, p. 3.

after adoption.⁹⁷ ARA also contended that open adoption has effectively reduced issues associated with adoption to transparency, but characterising the main issue as openness detracts from the complexity of the issue.⁹⁸ ARA believes that if adoption is to continue, more evidence on the long-term impacts of adoption is required before its usage is increased.⁹⁹

As discussed in Chapter 5, several inquiry participants highlighted that there are still public misconceptions about the realities of adoption. Emeritus Professor Shurlee Swain outlined that the popular narrative of the past that adoption is ‘happily ever after’ remains in the public’s imagination and impacts on current pressures to broaden adoption.¹⁰⁰ Isabell Collins believes the idea that adoption is a good thing is a ‘false narrative’.¹⁰¹

I think adoption is about owning children. It should be about loving children, and if people are genuine about wanting to love a child, guardianship should be sufficient.¹⁰²

Further, Faye Burnham submitted to the Committee:

Most people do not look at Adoption in a real way. It is still seen as some kind of lovely fairy story. They do not think about the devastation of the mother who loses her most precious part. Or the child who loses his/her very identity. They see this couple get a baby, how lovely, the heartbroken couple who could not conceive. All other real issues are completely ignored.¹⁰³

The VLRC Review did not consider whether adoption should be abolished, deeming the question outside the scope of the review. It did highlight, however, that previous reviews of adoption law have considered this and did not recommend abolishing adoption.¹⁰⁴

The Forced Adoptions Implementation Working Group (FAIWG), established to monitor the implementation the Senate Inquiry recommendations and chaired by the Hon Mushin, who also gave evidence to this inquiry, reported:

the move towards open adoption leads to questioning whether adoption remains the answer to the placement of children who cannot be cared for by parents or other family.

There is no doubt that any development of pro-adoption policy traumatises many people affected by forced adoption. In that light and on the basis that the Australian Institute of Health and Welfare has recently reported that the number of adoptions is at its lowest in the last 50 years, there is a question as to whether it is time to consider

⁹⁷ Adoptee Rights Australia Inc., *Adoptee Rights Australia (ARA) Inc. Submission to the Legal Affairs and Community Safety Committee Child Protection and Other Legislation Amendment Bill 2020*, submission to Parliament of Queensland, Community Support and Services Committee, Inquiry into the Child Protection and Other Legislation Amendment Bill 2020, 2020, p. 7.

⁹⁸ *Ibid.*, p. 8.

⁹⁹ *Ibid.*, pp. 4, 9.

¹⁰⁰ Emeritus Professor Shurlee Swain, *Submission 67*, received 18 June 2020, p. 2.

¹⁰¹ Isabell Collins, hearing, Melbourne, 16 December 2020, *Transcript of evidence*, p. 21.

¹⁰² *Ibid.*, p. 24.

¹⁰³ Faye Burnham, *Submission 58*, received 28 May 2020, p. 1.

¹⁰⁴ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 5.

a move away from historic adoption altogether. Significantly, removing a child from his or her family is premised on very different grounds today than in the era of forced adoption and the delineation of past forced adoption and a more open arrangement based on a best interests principle should be made apparent in the language used. It is recommended that in place of “adoption”, “parenting orders” is more appropriate and less traumatising to survivors of forced adoption.¹⁰⁵

FAIWG also referenced the Australian Government’s commitment in the National Apology for Forced Adoptions to ‘remember the lessons of family separation. Our focus will be on protecting the fundamental rights of children and on the importance of the child’s right to know and be cared for by his or her parents’.¹⁰⁶ However, FAIWG expressed that it ‘regrets having to record its view that the development of certain policies does not accord with that resolution’.¹⁰⁷ FAIWG considered that the development of pro-adoption policies, or any promotion of the supposed ‘right’ of parents to adopt a child, is ‘contrary to the best interest of the children who are in need of care and nurture’.¹⁰⁸

While nationally there may be a perceived shift towards promoting adoption, the Committee acknowledges the declining number of adoptions in Victoria and believes that the Victorian Government’s policy is not at odds with the best interests of the child and the protection of mothers. The Committee further considers that given the small number of adoptions facilitated in Victoria each year, adoption does not need to be abolished so long as it is used in the best interests of the child and mothers are supported and provide informed consent. As discussed in the following sections, adoption policy can be improved in Victoria. The Committee also believes that if a mother wants to raise her child, she should unquestionably be supported to do so.

12.3 Openness and transparency in adoption

12.3.1 Historical shift towards transparency

As discussed in Chapter 2, the shift from closed to open adoptions began in the late 70s, with all parties to an adoption being able to access some information about the other parties and the potential for ongoing relationships to be formed. This was due to advocacy by people who are adopted, mothers and parents on the effects of secrecy and for legislative reform that enabled adopted people to know their natural parents and family origins. Open adoptions became more popular and less restricted over the 80s and 90s.¹⁰⁹

¹⁰⁵ Forced Adoptions Implementation Working Group, *Final report to The Honourable Scott Morrison MP Minister for Social Services*, Australian Government, Canberra, 2014, p. 19.

¹⁰⁶ *Ibid.*, pp. 18–19.

¹⁰⁷ *Ibid.*, p. 19.

¹⁰⁸ *Ibid.*, p. 20.

¹⁰⁹ Kenny, et al., *Past adoption experiences*, p. 10; Parliament of New South Wales, Legislative Council Standing Committee on Social Issues, *Releasing the past: adoption practices 1950–1998*, December 2000, p. 47.

Open adoptions were legislated in Victoria's Adoption Act in 1984.¹¹⁰ Currently, most adoptions except intercountry adoptions are open. This means that people who are adopted and adoptive parents can know the identities of natural parents, but birth certificates are still changed to the names of the adoptive parents.¹¹¹

The benefits of open adoptions include positive identity formation for an adopted person, who can grow up with an understanding of their family background. It can also lead to improvements in adoption practices, for example, by safeguarding the consent process, increasing accountability and ensuring greater transparency in the assessment of potential adoptive parents.¹¹²

12.3.2 The right to know natural parents and family

The right to know natural parents is grounded in articles 7 and 8 of the United Nations *Convention on the Rights of the Child*:

Article 7 states that every child 'shall be registered immediately after birth' and has 'as far as possible, the right to know ... his or her parents'. Article 8 states that every child has the right 'to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference'.¹¹³

It is understood in the adoption sector that the right to know natural parents is essential for identity formation:

What is important for adoptees' ability to form a healthy and positive identity—including their identity as an adopted person—is that they have access to knowledge about their biological/familial history and the circumstances of their adoption.¹¹⁴

The right to contact and have an ongoing relationship with natural parents and family supports a system of open adoption that works in the best interests of the child.¹¹⁵ Victoria's Adoption Act gives a person who is adopted above the age of 18 the right to access their original birth certificate and information regarding their natural parents, subject to compulsory counselling.¹¹⁶

As discussed in previous chapters, the Committee heard throughout the Inquiry that family reunions between mothers and people who are adopted can be challenging. However, the importance of connecting to natural parents was a central theme raised in the evidence. Isabell Collins submitted that:

¹¹⁰ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. xii.

¹¹¹ Kenny, et al., *Past adoption experiences*, p. 10.

¹¹² Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 28; Kenny, et al., *Past adoption experiences*, p. 10.

¹¹³ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 106.

¹¹⁴ Marc de Rosnay, Betty Luu and Amy Conley Wright, *Young children's identity formation in the context of open adoption in NSW: An Examination of Optimal Conditions for Child Wellbeing*, Institute of Open Adoption Studies, University of Sydney, Sydney, 2016, p. 3.

¹¹⁵ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 91.

¹¹⁶ Kenny, et al., *Past adoption experiences*, p. 7.

Our culture places much emphasis on family, the bond with and love of parents for their children, in particular mothers ... It is this impact, the things that are missing in us, which drive many adoptees to search out our biological identity.¹¹⁷

Sandra Collins, a mother, stated in her submission:

There are many stories of unsatisfactory reunions. There are some stories of nourishing reunions. Whenever it is Life affords me the gift of meeting my son I will experience some sense of completion. I trust it will be similar for him too. Who knows if we will connect well ... We will both have to dig deep to understand each other's life stories and feelings. I sincerely hope we are able to achieve a good outcome.

I believe everyone deserves the right to know where they came from, it's a basic part of our identity. We may not like what we hear, yet in the long term truth is healing when dealt with appropriately.¹¹⁸

The importance of having contact with family, parents and grandparents was highlighted in submissions received by the Committee. Peter Capomolla Moore, a person who is adopted, told the Committee:

we want to find our own biological families. That is incredibly important to us. Whether the reunion is good or not, it is an overwhelming desire and need.¹¹⁹

...

Reunion is a hard thing. I am more fortunate than most that I have had a reunion and it has been reasonably good. I have various close connections between siblings, some more than others, some cousins more than others. My reunion has been a silver lining under a very dark cloud, and I take that for what it is.¹²⁰

An inquiry participant who is adopted submitted to the Committee that:

I eventually gained courage to champion efforts in making contact with my Mother with the help of Jigsaw and a couple of other friends who had been adopted. I remember to this day the phone call. I was told my Mother had died two weeks ago, she was 51 years old. I was told she always wanted to meet me. She died from breast cancer, but to me she died of a broken heart, which has broken my heart!

I found out I had a sister, who contacted me soon after, and we got along from that first call she made to me. My Sister died a couple of years ago from cancer, she was 46 years old, and I miss her!¹²¹

¹¹⁷ Isabell Collins, *Submission 62, Attachment 1*, pp. 3–4.

¹¹⁸ Sandra Collins, *Submission 105*, received 28 June 2021, p. 3.

¹¹⁹ Peter Capomolla Moore, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 2.

¹²⁰ *Ibid.*, p. 3.

¹²¹ Name Withheld, *Submission 79*, received 9 October 2020, p. 1.

12.3.3 Current practices and challenges in open adoption

According to the VLRC, contact between a child and those they had a relationship with prior to adoption is extremely important, including with siblings, parents, extended family, 'people of significance' and members of the community.¹²² Ongoing contact functions in the best interests of the child as it:

- helps children 'understand where they come from'
- provides a means for a child to 'have contact with people who are important in their life'
- can address the trauma of adoption by allowing the 'natural parents and other people of significance to know that the child is well and happy'
- can preserve sibling relationships and recognise that a child will always have two families
- provides children with a greater opportunity to participate and express their views about an adoption.¹²³

Currently, s 59 of the Adoption Act permits ongoing contact with family and people of significance to occur through adoption orders.¹²⁴ The VLRC considered that written adoption plans¹²⁵ and cultural support plans for Aboriginal and Torres Strait Islander children¹²⁶ should also be utilised to facilitate contact between children, their family and other significant people.

While data is not available for all types of adoption, 92% of local adoptions finalised in Australia in 2019–20 were considered 'open', meaning 'all parties agreed to allow a degree of contact or information exchange to occur between families'. This has been consistent over the past 20 years.¹²⁷

As Figure 12.3 below shows, 58.3% of adoptions in Australia involved contact and information exchange, 29.2% involved information exchange only, 4.2% involved contact only and 8.3% involved no contact or information exchange.¹²⁸

122 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 61, 67.

123 *Ibid.*, p. 67.

124 *Ibid.*, p. 61.

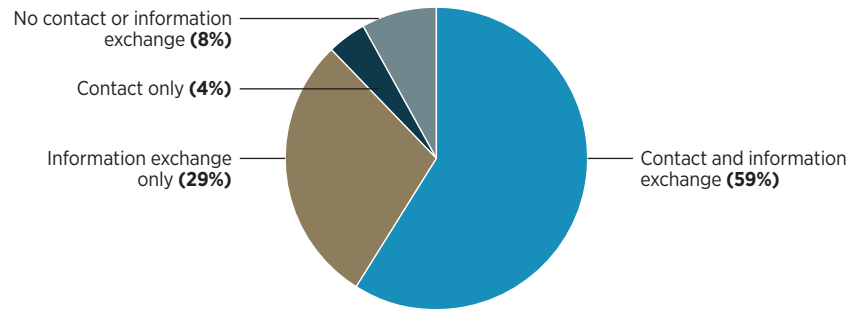
125 *Ibid.*, p. 67.

126 *Ibid.*, p. 136.

127 Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 27.

128 *Ibid.*, p. 28.

Figure 12.3 Local adoptions by type of contact and information agreement, 2019–20

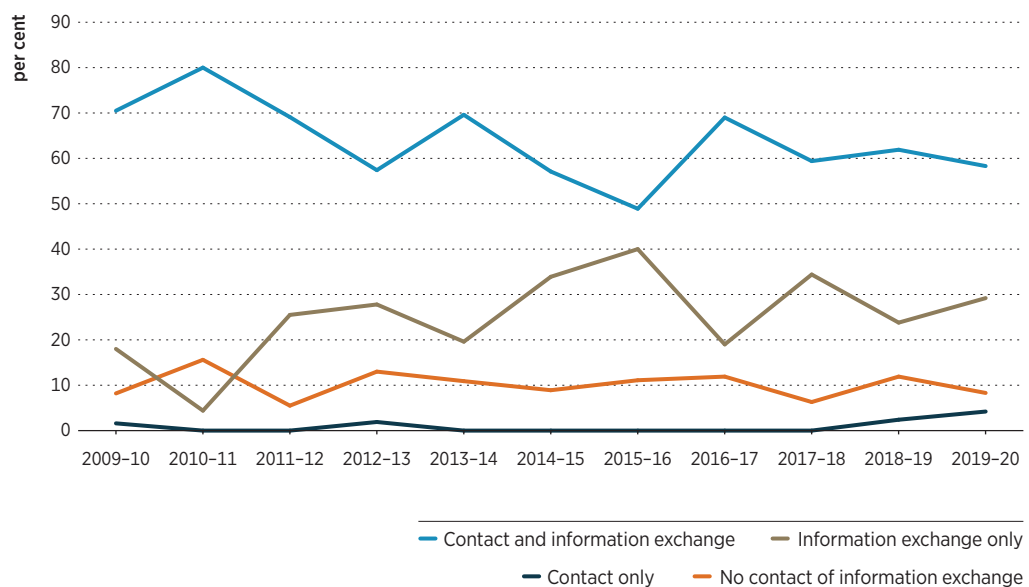


Note: figures have been rounded to the nearest whole number.

Source: adapted from Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 27.

As Figure 12.4 shows, contact arrangements as a percentage of total adoptions has fluctuated over the past ten years in Australia, but has generally remained stable. However, there seems to be a slight incline in the number of information only exchanges and a decline in the number of information and exchange arrangements. In 2009–10, 70.5% of adoptions involved contact and information exchange. In 2019–20 this was 58.3%.¹²⁹

Figure 12.4 Local adoptions by type of contact and information agreement as a percentage of total adoptions, 2009–10 to 2019–20



Source: compiled from Australian Institute of Health and Welfare, Supplementary data table, *Adoptions Australia 2019–20*, 2021, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2019-20/data>> accessed 21 July 2021; Australian Institute of Health and Welfare, Supplementary data table, *Adoptions Australia 2018–19*, 2019, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2018-19/data>> accessed 21 July 2021.

¹²⁹ Australian Institute of Health and Welfare, *Adoptions Australia data visualisations*, 2019, <<https://www.aihw.gov.au/reports/adoptions/adoptions-data-visualisations/contents/local-adoption-in-australia>> accessed 27 May 2021; Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*.

While these statistics relate to adoptions in Australia, the Committee is concerned that there seems to be a declining trend in the number of contact and information exchange arrangements facilitated each year and believes that further research into this trend is needed. As noted earlier, the Committee is of the view that if adoptions are to continue in Victoria they must only occur if it is in the best interests of the child. This includes ongoing contact with the natural family. It is therefore important that the Government explores the effectiveness of contact arrangements.

RECOMMENDATION 51: That the Victorian Government conducts further research into the level of contact and information exchange between children who are adopted and parents in the context of open adoption in Victoria.

The VLRC Review concluded that adoptions and contact arrangements in Victoria generally commence as ‘semi-open’, where:

non-identifying information is given to the birth and adoptive parents by the agency at the beginning of the placement, and birth parents may have a role in selecting the adoptive parents from profiles. Contact may become ‘fully open’ over time as the families begin to feel confident to make and maintain direct contact.¹³⁰

The VLRC outlined there has been two studies into the effects of open adoption in Victoria which demonstrated mixed results.¹³¹ Open adoptions can allow children and natural parents to form relationships, although they are not an ‘unqualified solution for a child’s loss of connection with their biological family, or a mother’s loss of her child’.¹³²

ARA contended in its submission to the Queensland Parliamentary inquiry that open adoptions are problematic in that children may be traumatised by the feeling of insecurity or jealousy from adoptive parents, creating a ‘minefield’ that a child has to navigate.¹³³ Further, open adoptions are essentially dependent upon the emotions and whims of the adults.¹³⁴ ARA contended in its submission to this inquiry that ‘[r]ebranding adoptions as “open” does not change in any way the fundamental identity change and disinheritance that is intrinsic to all adoption.’¹³⁵

Similarly, in her evidence to the Committee, Isabell Collins expressed that:

The dilemma you place the child in with open adoption is awful. The child is going to be conflicted. If they act too excited about seeing their natural mother, they are going to

¹³⁰ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 9.

¹³¹ This includes Robyn Ball’s PhD on *Open Adoption in Victoria, Australia: Adoptive Parents’ Reports of Children’s Experience of Birth Family Contact in Relation to Child Wellbeing*, 2005 and Phillipa Castle, *Current Open Adoptions: Mother’s Perspectives’* in Alan Hayes and Darryl Higgins (eds), *Families, Policy and the Law*, Australian Institute of Family Studies, 2014.

¹³² Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 11.

¹³³ Adoptee Rights Australia Inc., *Adoptee Rights Australia (ARA) Inc. Submission to the Legal Affairs and Community Safety Committee Child Protection and Other Legislation Amendment Bill 2020*, p. 9.

¹³⁴ *Ibid.*

¹³⁵ Adoptee Rights Australia Inc., *Submission 46*, received 6 March 2020, p. 6.

hurt their adoptive parents. If they hurt their adoptive parents, they could get rejected. It is a horrible thing.¹³⁶

Several submissions also questioned how open adoptions work in practice. Isabell Collins told the Committee that open adoptions assume the adoptive parents are open and comfortable with the child having an ongoing relationship with the natural parents, however, this does not always occur in practice.¹³⁷ In its submission, ARMS wrote that it had observed the concerning practice of restricting the number of visits with natural parents (when this is not a legal requirement) and adoptive parents demonstrating they have ‘no real intention of providing ongoing contact’.¹³⁸ Further, agency practices demonstrate that they value the placement of a child over the requirement for access and that requests for access are sometimes omitted from an adoption order, meaning access is denied.¹³⁹ In addition, ARMS believes adoption ‘agencies do not have the trust of vulnerable families in the community and they do not truly support open adoption’.¹⁴⁰

These concerns highlight that the adoptive family play a significant role in encouraging positive, balanced and cohesive identity formation for the child that they adopted. The Committee acknowledges that this might be challenging for some adoptive parents, however, it is essential to help their child better understand their identity and adoption story. The Committee strongly agrees that adoptive parents should encourage open communication and support a child’s ‘developmental journey to understand, accept and perhaps also embrace their identity as an adopted person’.¹⁴¹ The Committee considers that if adoptive parents do not do this, they are not acting in the best interests of the child.

The VLRC Review concluded that ‘a strong culture of confidentiality and sometimes secrecy remains around adoption’¹⁴² and open adoptions are not always implemented effectively in practice:

Some confidentiality is justified to protect parties’ psychological or physical safety. However, there is a continuation of historical legislative provisions which are not consistent with the principle of openness and not in the best interests of the adopted person.¹⁴³

Further, the VLRC considered that many impediments to openness are structural and due to legislative requirements that are outdated and unnecessary. This includes:

- the provision of a new identity and name to a child when an adoption order is made
- adoptive parents are not required to inform their child they are adopted

¹³⁶ Isabell Collins, *Transcript of evidence*, p. 21.

¹³⁷ *Ibid.*

¹³⁸ ARMS (Victoria), *Submission 45*, p. 4.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ Rosnay, Luu and Wright, *Young children’s identity formation in the context of open adoption in NSW*, p. 4.

¹⁴² Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. xiii.

¹⁴³ *Ibid.*, p. 13.

- adoptive and natural parents are not informed of each other's full names
- adoption information services are unable to provide a child or an adoptive parent with information that would disclose the natural parents' identity without their consent
- prior to turning 18, a person who is adopted is ineligible to access information through an adoption information service without the agreement of the adoptive parent.¹⁴⁴

The Committee received a submission from one mother that demonstrated the complexities of open adoption. In 1987 (while the 1984 Adoption Act was in effect), the mother was sent to a maternity home at age 17 to give birth to her daughter and was forced to give her up for adoption. In relation to open adoptions, she stated:

In 1984, the Victorian Adoption Act was changed to include contact between the child and their natural parent/s and to ensure this relationship was legally protected. This was the only thread of hope I held, that I could continue to know and love my child despite her adoption. It was the carrot that it was clearly meant to be. And, in my case, it was a lie ... I discovered that my legally protected contact visits with my daughter were actually not legally protected. The adoption consent is written in a way that the parent's desire for contact and/or information exchange is written as 'wishes'. 'Wishes' can be included in the adoption order. What I did not notice at the time was that my legally protected rights only included information to be provided to the adoption agency twice a year by the adopter's. My face to face contact was to be negotiated between the adopter's and I. I have absolutely no recollection of ever having this ever explained to me prior to or after consent was taken. I was totally blindsided.¹⁴⁵

The mother was able to see her daughter about twice per year for the first ten years but describes the hostility of the adoptive parents who saw her as a threat and were not supportive of her having a relationship with her daughter. She said:

I had to think and act carefully to ensure I did not get the adopter's offside, least they make life difficult for me and my relationship with my daughter. Living in a state of constant vigilance, walking the line between pursuing a meaningful relationship with my child and keeping the adopter's happy, is a mentally damaging thing to have to do. I knew I was important to my daughter, and I was determined to fight for our rights to know each other. I also knew that the adopter's saw me as a constant reminder of what they could never be to my child. I was an absolute threat.

This state of being- anxious, distressed, people-pleasing, guilty ... whilst biologically driven to pursue a meaningful relationship with my own child, is a shameful indictment on adoption as a process of severance. Openness in adoption is trauma-inducing, enables game playing, and perpetuates the power imbalance between the adopter's and the natural family. It is not good enough to permit openness in adoption without

¹⁴⁴ Ibid., pp. 13-15, 313.

¹⁴⁵ Name Withheld, *Submission 112*, pp. 1-2.

providing the professional supports, legislative protections, resources and oversights that are required to ensure that the best interests of the child involved are elevated and prioritised.¹⁴⁶

This mother described a lengthy court process in which the adoptive parents attempted to limit the amount of contact she had with her daughter. Of the eventual resolution, she said:

We finally got Consent Orders signed and I had 2–3 visits with my daughter before she turned 17 and became independent from her adopter’s. She contacted me via text one fine day and I’ve not had to have any contact with the adopter’s since then.

Whilst my daughter and I have had intermittent contact over the years—always at my instigation and travel, it is clear that she is conflicted. The court action caused significant harm to my daughter and our relationship. It should not have been allowed to occur, and it should not have been able to be dragged out for so many years.¹⁴⁷

The Committee believes the Victorian Government should do more to allow for meaningful access and the Committee believes a useful starting point is exploring the effectiveness of current contact arrangements in adoption orders, as proposed in Recommendation 51. The next section explores additional ways that open adoptions could be better facilitated in Victoria.

12.3.4 Best practice

Contact between family and children

ARA submitted that if adoption is going to continue as a practice, it should be ‘transparent, truthful and visible to all’.¹⁴⁸ Further, ARMS submitted:

Current knowledge in the field accepts that the permanent separation of a child and denial of family of origin and the falsifying of records is bad public policy, bad practice and damages the child, family, community and the reputation of governments and the legal system.¹⁴⁹

In a public hearing, Dr Penny Mackieson, a person who is adopted and who completed a PhD in 2019 on permanent care orders (PCOs) in Victoria, told the Committee that she would like to see the ‘effective implementation of the learnings from past practices to protect children’s connections with their families and identity of origin throughout their lives’.¹⁵⁰

¹⁴⁶ Ibid., pp. 2–3.

¹⁴⁷ Ibid., p. 6.

¹⁴⁸ Adoptee Rights Australia Inc., *Submission 46*, p. 2.

¹⁴⁹ ARMS (Victoria), *Submission 45*, p. 5.

¹⁵⁰ Dr Penny Mackieson, hearing, Melbourne, 7 December 2020, *Transcript of evidence*, p. 48.

Despite issues with open adoptions, the VLRC concluded that the benefits are strong enough for greater transparency and openness to be introduced in Victoria.¹⁵¹ It recommended that current adoption practices should better accommodate for contact and information exchange with natural family for people who are adopted of all ages:

contact and information help an adopted person make sense of their life and identity. It helps the person know what their life would have been like if they had not been adopted, understand why they were adopted, allows the continuation of existing relationships with parents, siblings, grandparents, carers or other people of significance, and helps with grief and loss.

Adoption law must provide better for existing relationships that the adopted person has before their adoption. Decision makers should consider existing relationships and provide for them to continue after adoption. A failure to do so poses risks for the identity formation of the adopted child and increases the chance of trauma for the child and their family of origin.¹⁵²

This includes relationships with siblings, family and people of significance who may not necessarily be related to the person who is adopted, for example, members of cultural communities.¹⁵³ This is particularly relevant for Aboriginal and Torres Strait Islander communities. The VLRC recommended that when Aboriginal and Torres Strait Islander children are placed for adoption, their identity and culture must be maintained through contact with the child's community:

The situation should not arise where an Aboriginal or Torres Strait Islander child does not know their culture, community and country.¹⁵⁴

The right to know natural parents can be further complicated when the father is not identified on a birth certificate. Consequently, the VLRC made several additional recommendations around improving access to information and facilitating the identification of natural parents.¹⁵⁵ This includes taking reasonable steps to establish the identity of the father (the VLRC stressed the importance of a child's right to know this)¹⁵⁶ and removing the age requirement for accessing birth certificates. Currently, children under the age of 18 are not entitled to access their original birth certificates.¹⁵⁷

The Committee supports the recommendations made by the VLRC in regard to access to information and supporting the formation of relationships between people who are adopted and their natural families. To achieve this, the VLRC recommended:

151 Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 13.

152 *Ibid.*, p. 56.

153 *Ibid.*, pp. 57, 61.

154 *Ibid.*, p. 136.

155 *Ibid.*, p. xli.

156 *Ibid.*, p. xxxiii.

157 *Ibid.*, p. 314.

A written adoption plan should be made for each child who is to be placed for adoption. An adoption plan should be approved and registered by the court. A registered adoption plan should become part of the adoption order and enforceable as an order of the court.

...

Adoption plans should be able to provide for any other matters relating to the child but the Adoption Act should require that they include the following details:

- a. contact arrangements with natural parents, siblings and grandparents, and any requirement that there not be contact
- b. information exchange, and any requirement that information not be exchanged
- c. how the child is to be assisted to develop a healthy and positive cultural identity ...¹⁵⁸

The Committee also considers that legally enforceable adoption plans—tailored to each adopted person—should be mandated in Victoria that outline contact and information exchange arrangements and should ensure contact and identity formation that is in the best interests of the child.¹⁵⁹

RECOMMENDATION 52: That the Victorian Government mandate the use of adoption plans to facilitate identity cohesiveness and continuity for people who are adopted through the right to know natural parents and ongoing contact with their natural family and community.

Birth certificates

As discussed in Chapter 9, the birth certificate process for people who are adopted has remained unchanged in Victoria since 1928 and predominately reflects the interests of adoptive parents. Importantly, these birth certificates are contrary to the United Nations *Convention on the Rights of the Child*. Views about adoption have changed radically since then, as reflected in the evidence received by several inquiry participants. The testimony of inquiry participants is discussed in detail in Chapter 9, but the Committee thinks it is worth repeating the arguments of the Victorian Adoption Network for Information and Self-Help (VANISH) and the Hon Mushin in the context of future adoption practice.

In its submission, VANISH argued:

It is inconsistent that contemporary ‘open’ adoption policy, legislation and practice in Victoria does not preserve the child’s original name, identity and birth certificate ... Current policies and laws are outdated—they embody the secrecy and shame of historical ‘closed’ adoption practices. These policies and laws are also manifestly unfair— they breach various aspects of adopted people’s rights to accurate information

¹⁵⁸ Ibid., p. xxx.

¹⁵⁹ Ibid., pp. 67–68.

about their natural parents and continuity of connection to them. Adopted people are forced to use a false birth certificate as their primary proof of identity document which, by the Victorian Government's own standard, is stigmatising.¹⁶⁰

The Hon Mushin told the Committee:

I think the process of rewriting the birth certificate upon adoption to exclude the parents—the mother and the father—is wrong for a number of reasons. The most important of them is that adoptees want to know their roots, their background ... I think that should be abandoned, and I would very strongly recommend to the committee that that should take place.

Then you have got to consider whether you have the integrated birth certificate that New South Wales has introduced, which includes both families, or whether you have two separate birth certificates—one with the original family and one with the adoptive family, and the adoptee has the choice. But there is a third and really quite radical matter which I would like to raise with you, and that is that essentially you do nothing. That is, you start with a birth certificate which has the mother and father on it—and siblings, if it is not a first child—and that is there. That is the child's birth certificate. Then for a child to establish as an adoptee that he or she is adopted, all that is necessary is to show the adoption order ...¹⁶¹

VANISH also recommended updating adoption law in Victoria to ensure the 'continuity of original name and identity of any person adopted in Victoria in the future, and to ensure the accuracy of the details recorded on their birth certificate'.¹⁶²

The VLRC Review supported the issuing of integrated birth certificates upon request, however it argued that the purpose of birth certificates is primarily legal: they establish a person's legal identity and the legal parents of a child.¹⁶³ The VLRC explored a range of birth certificate options and concluded that birth certificates should continue to be changed to name the adoptive parents as it is the most viable option.¹⁶⁴ However, the Committee considers that this does not adequately represent the views of people who are adopted, nor reflect the purpose of a birth certificate as an accurate representation of a child's birth, including their date and place of birth and their birth parents.

Further, the Hon Mushin told the Committee that he perceives there has been a shift in the perspectives of the adoption community towards the idea that the birth certificates of people who are adopted not be changed.¹⁶⁵ Given this shift and the evidence provided by inquiry participants, the Committee believes original birth certificates should be maintained for people who are adopted.

¹⁶⁰ VANISH Inc., *Submission 53*, received 18 June 2020, p. 84.

¹⁶¹ The Hon Nahum Mushin AM, *Transcript of evidence*, p. 20.

¹⁶² VANISH Inc., *Submission 53*, p. 85.

¹⁶³ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 110–111.

¹⁶⁴ *Ibid.*, p. 116.

¹⁶⁵ The Hon Nahum Mushin AM, *Transcript of evidence*, p. 21.

The Committee considers that the Victorian Government should deliberate on how to best achieve this and whether listing the adoptive parents on an adoption order as the legal guardians is sufficient.

RECOMMENDATION 53: That the Victorian Government seek to amend the *Adoption Act 1984* (Vic) to retain original birth certificates for people who are adopted in the future.

12.4 Consent

Consent is a fundamental component of adoption and ensures that the right of parents and children not to be arbitrarily separated is protected.¹⁶⁶ The effect of forcibly separating newborn babies from their mothers during the ‘great adoption era’¹⁶⁷ and the trauma caused by denying mothers a choice about whether to keep their child is a testament to the importance of consent.

There is strong recognition and acceptance that consent provisions in adoption laws should be robust and consent must be freely given and informed.¹⁶⁸ To ensure this, parents considering adoption need to be advised of all potential care options and provided with detailed and relevant information regarding adoption, including potential psychological and lifelong impacts.¹⁶⁹

In addition, consent must be accompanied by counselling and a consent form that demonstrates parents understand the effects and legal implications of adoption.¹⁷⁰ Current law dictates that consent can be dispensed with, for example, when a person cannot be found, has abandoned the child, has a mental or physical disability that means they are unable to care for the child or adequately consider the question of consent, or in ‘any other special circumstances’.¹⁷¹

For local adoptions in Australia in 2019–20:

- 56% of the time, consent was given by the mother only. There were no recorded instances of fathers being the only parent to give consent.
- 40% of the time, consent was given by both parents.
- 4% of the time, consent was either dispensed with or not required.¹⁷²

These numbers have remained relatively consistent over the past ten years.¹⁷³

¹⁶⁶ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. xvi, 169.

¹⁶⁷ Lyn Kinghorn, hearing, 7 December 2020, *Transcript of evidence*, p. 2.

¹⁶⁸ *Ibid.*, p. 140.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, p. 148.

¹⁷¹ *Ibid.*, p. 164.

¹⁷² Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 27. Figures have been rounded to the nearest whole number.

¹⁷³ Data collated from Australian Institute of Health and Welfare Adoptions Australia reports, 2009–10 to 2019–20.

For known child adoptions in Australia in 2019–20:

- 4% of the time, consent was given by both parents.
- 6% of the time, consent was given only by the mother and 4% of the time consent was given only by the father.
- 86% of the time, consent of both parents was dispensed with or not required.¹⁷⁴

The AIHW only started collecting data on consent for known adoptions in 2018–19, so is it not known if this trend has changed over time.¹⁷⁵

While the consent of a child being placed for adoption is not required, the VLRC identified that participation by a child in the decision-making process is important to ensure they can express their views. It can also facilitate respect and understanding of an adoption decision.¹⁷⁶ Currently, in Victoria, a child's wishes must be considered and given due consideration.¹⁷⁷ The VLRC made a variety of suggestions aimed at maximising the participation of a child in the adoption process, without placing undue pressure or burden upon the child.¹⁷⁸

Consent provisions in current adoptions was a consistent theme raised during this inquiry, with some participants indicating that adoption is innately non-consensual under either the Adoption Act or CYF Act.

VANISH submitted:

In the context of statutory child protection and out-of-home care, adoption is inherently coercive—the child has generally been removed from their parents involuntarily ...¹⁷⁹

This is supported by Dr Mackieson, who argued that the introduction of adoption above PCOs in the CYF Act hierarchy is 'incompatible with the emphasis on informed and duress-free parental consent'.¹⁸⁰

ARMS also raised concerns regarding the statistic that fathers do not often give their consent to an adoption.¹⁸¹ The VLRC explored this issue and highlighted several positive outcomes associated with identifying and contacting the father, including increased care options, better identity development for the child and the opportunity to develop a relationship with the father and his family, and reduced grief or feelings of loss for both the child and father.¹⁸² The VLRC recommended that greater onus be

¹⁷⁴ Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 32. Figures have been rounded to the nearest whole number.

¹⁷⁵ Data collated from Australian Institute of Health and Welfare Adoptions Australia reports, 2009–10 to 2019–20.

¹⁷⁶ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 47, 42.

¹⁷⁷ *Ibid.*, p. 47.

¹⁷⁸ *Ibid.*, pp. 51–52.

¹⁷⁹ VANISH Inc., *Submission 53*, p. 81.

¹⁸⁰ Penelope Kathleen Mackieson, 'The introduction and implementation of permanent care orders in Victoria, PhD thesis, Department of Social Work, School of Health Sciences, The University of Melbourne, Melbourne, 2019, p. 8.

¹⁸¹ ARMS (Victoria), *Submission 45*, p. 5.

¹⁸² Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 143, 145.

placed upon the DJCS Secretary to establish the father's identity but that it be done in a non-coercive way to minimise harm to mothers.¹⁸³ The VLRC identified that coercing mothers to reveal fathers' identities would have several problems, including that it may deter mothers from approaching an adoption service, may compromise the health and safety of the mother and child, and it is hard to verify a mother's claim that the father's identity is unknown.¹⁸⁴ In response, the Victorian Government specified in its Adoption Regulations that it would increase efforts to identify the father, although it did not introduce legislative changes to implement the full suite of recommendations made by the VLRC.¹⁸⁵

The VLRC Review also considered that the current grounds for dispensing of consent are too broad and are not in line with best practice.¹⁸⁶ In addition:

Consent to an adoption can currently be dispensed with on the basis of what may be summarised as 'child protection' grounds. These considerations are not appropriate in the adoption framework, as adoption is premised on consent. The child protection system is established to make decisions in relation to children at risk of harm.¹⁸⁷

The VLRC recommended narrowing the grounds for dispensing of consent and excluding its use in child protection matters.¹⁸⁸ It also made further recommendations to increase the quality of counselling about consent and information provided to parents, and extend the timeframe for revoking consent.¹⁸⁹ The Victorian Government has added the information recommended by the VLRC to the counselling process, but has not made any substantial changes to consent provisions in the Adoption Act.¹⁹⁰

The Committee recognises the importance of consent and supports the recommendations made by the VLRC to strengthen the consent process for adoption in Victoria.

RECOMMENDATION 54: That the Victorian Government seek to implement the legislative amendments recommended by the Victorian Law Reform Commission in regard to consent provisions in the *Adoption Act 1984 (Vic)*. This includes increasing efforts to identify the father of a child, extending the period to revoke consent, ensuring that a parent under 18 has the capacity to provide informed consent and restricting grounds for dispensing consent.

¹⁸³ Ibid., p. 145.

¹⁸⁴ Ibid.

¹⁸⁵ Department of Health and Human Services, *Regulatory Impact Statement*, pp. 36–37.

¹⁸⁶ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 169.

¹⁸⁷ Ibid., p. xvi.

¹⁸⁸ Ibid., pp. 169–170, xvi.

¹⁸⁹ Ibid., pp. xxxiii–xxxiv.

¹⁹⁰ Department of Health and Human Services, *Regulatory Impact Statement*, pp. 35–36.

12.5 Alternatives to adoption

Aside from the Adoption Act, adoption can be facilitated under the CYF Act through the hierarchy of permanency objectives. Adoption was introduced into the hierarchy in 2014 and is the third preferred option for the care of children in Victoria's child protection system. As Box 12.5 demonstrates, there is a hierarchy of alternatives to adoption under the CYF Act, including family preservation, family reunification, permanent care or long-term care orders.

BOX 12.1: The permanency objective in the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014 (Vic)*

Under the CYF, the Secretary of the relevant government department prepares a case plan for a child who is to be placed under a care order. The CYF Act states:

A case plan must include one of the following objectives (a permanency objective) to be considered in the following order of preference as determined to be appropriate in the best interests of the child—

- a. family preservation—the objective of ensuring a child who is in the care of a parent of the child remains in the care of a parent;
- b. family reunification—the objective of ensuring that a child who has been removed from the care of a parent of the child is returned to the care of a parent;
- c. adoption—the objective of placing the child for adoption under the Adoption Act 1984;
- d. permanent care—the objective of arranging a permanent placement of the child with a permanent carer or carers;
- e. long-term out of home care—the objective of placing the child in—
 - i. a stable, long-term care arrangement with a specified carer or carers; or
 - ii. if an arrangement under subparagraph is not possible, another suitable long-term care arrangement.

Source: *Children, Youth and Families (Permanent Care and Other Matters) Act 2014 (Vic)* s 167 (1)

After an order is initiated, several arrangements can be made such as foster, kinship, residential or permanent care.¹⁹¹ These are often facilitated by community service organisations such as Anglicare Victoria, CatholicCare, CAFS¹⁹² and VACCA.¹⁹³

¹⁹¹ Commission for Children and Young People, *...safe and wanted...*, p. 140.

¹⁹² *Ibid.*, p. 170.

¹⁹³ Adjunct Professor Muriel Bamblett Hon DLitt SW AO, *Transcript of evidence*, p. 31.

Foster care is a temporary agreement and involves placing a child with an approved carer. Its purpose is to reunite a child with their parents.¹⁹⁴ Kinship care is ‘the preferred placement type for children who cannot live with their parents’ and involves placing a child with other relatives or a ‘significant friend’.¹⁹⁵ In Victoria, it is mandatory that kinship care is explored before other options, as kinship carers provide ‘connection and shared family history, culture and identity’. It is also identified as less traumatising for the child and their family.¹⁹⁶

The Committee recognises that alternatives to adoption and child protection were not a focus of this inquiry. Consequently, while the Committee did receive evidence in relation to these topics and acknowledges that improvements can be made, it has refrained from considering the matter in depth. The following sections discuss the issues as raised throughout the Inquiry.

12.5.1 Concerns raised by inquiry participants

The Committee understands, based on the evidence from inquiry participants, that concerns about historical forced adoption practices today are centred around adoption or child removal in the context of the child protection system. Several inquiry participants raised concerns that an inadequately resourced child protection system and social pressures on single mothers may create a political and social climate similar to the one present during the historical forced adoption period.

In her PhD, Dr Mackieson discussed the political climate regarding adoptions in NSW, Victoria and federally and indicated that the changes to the permanency hierarchy in NSW and Victoria in 2014 were accompanied by a push by the Australian Government to increase adoption in the out-of-home care system. Dr Mackieson stated:

current advocacy for adoption from out-of-home care argues that contemporary open adoption practices overcome the negatives associated with former forced adoption practices, despite a lack of supporting evidence. Such advocacy also overlooks the inherently coercive nature of adoption in the child protection context.¹⁹⁷

Similarly, Isabell Collins submitted to the Committee:

Given the recent push to introduce changes to legislation to make it much easier for people to adopt, one has to ask, when will children genuinely become the priority? Very few children are unwanted, and to use this as an argument to change legislation not only creates a false premise, but is overtly cruel to the affected children.

¹⁹⁴ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 18; State Government of Victoria Department of Health and Human Services, *Families & children: Foster care*, 2019, <<https://services.dffh.vic.gov.au/foster-care>> accessed 27 May 2021.

¹⁹⁵ Health and Human Services, State Government of Victoria, *Families & children: Kinship care*, 2019, <<https://services.dffh.vic.gov.au/kinship-care>> accessed 27 May 2021.

¹⁹⁶ Kinship Carers Victoria, *What is kinship care?*, n.d., <<http://kinshipcarersvictoria.org/what-is-kinship-care>> accessed 27 May 2021.

¹⁹⁷ Penelope Kathleen Mackieson, ‘The introduction and implementation of permanent care orders in Victoria’, p. 6 (with sources).

Circumstances sometimes make it very difficult for mothers to raise their children. If we are genuine in our desire to put children first, then the biological mother ought to be provided with the assistance necessary to keep and raise her child.¹⁹⁸

Emeritus Professor Swain contended that the pressures that led to forced adoption in the past remain present today:

Whenever adoption has been promoted in the past, the demand from people seeking children has always led to those charged with satisfying this pressure to remove children from their parents using increasingly questionable justifications, including pre-emptive removals from young mothers, rather than resourcing programs designed to enable children to remain with their families. Yet there is little evidence to suggest that such authorities are any better now than they were in the past of evaluating the relative parenting skills of the two parties involved.¹⁹⁹

Emeritus Professor Swain thinks that ‘if we can find another way of actually keeping children safe without making them a market object’, the pressure created by people seeking to adopt on the child protection system can be avoided.²⁰⁰ Emeritus Professor Swain advocated to the Committee that permanent care should be used as a mechanism to allow children to make fully informed choices about adoption by delaying the decision. This provides security to the adoptive parents, does not erase the identity of the child, allows adoptive parents to receive support and alleviates pressures on mothers.²⁰¹

ARA submitted to a Queensland Parliament inquiry that adoption is not about increasing stability for children in care, as permanent orders already offer this. Instead, adoption is effectively about removing children ‘from the out of home care system without returning them to their family, and also of removing the duty of care obligations from the State’.²⁰² In its submission to this inquiry, ARA argued that pro-adoption advocates have effectively rebranded adoption: ‘it is no longer the “rescue of illegitimate children” but is the “rescue of children removed under child protection legislation”’.²⁰³

Given that Aboriginal and Torres Strait Islander children are overrepresented in the child protection system, the impacts of contemporary adoption practices are greater for them. As Connie Salamone from VACCA stated in her evidence:

Today adoption is less utilised by government and it is much more about permanent care. And given that Aboriginal children are over-represented in out-of-home care, they are also over-represented in children on permanent care orders. VACCA is very clear

198 Isabell Collins, *Submission 62*, p. 8.

199 Emeritus Professor Shurlee Swain, *Submission 67*, p. 2; See also Emeritus Professor Shurlee Swain, *Transcript of evidence*, pp. 3–4.

200 Emeritus Professor Shurlee Swain, *Transcript of evidence*, p. 3.

201 *Ibid.*, p. 4.

202 Adoptee Rights Australia Inc., *Adoptee Rights Australia (ARA) Inc. Submission to the Legal Affairs and Community Safety Committee Child Protection and Other Legislation Amendment Bill 2020*, p. 4.

203 Adoptee Rights Australia Inc., *Submission 46*, p. 3.

that we believe in children's rights to stability and the best permanent care placement that can be made for a child. And if we had greater compliance with the Aboriginal child placement principles, we would not be seeing the trajectory into permanent care orders.²⁰⁴

Further, Adjunct Professor Bamblett expressed to the Committee:

I am concerned that if we had a similar inquiry to this in a number of years, say, one on permanent care orders or the overrepresentation of Aboriginal children in out-of-home care, we would all be found wanting because despite really good legislation and really good policy, the practice of placing Aboriginal children in Aboriginal care is either too slow or does not happen, and so there is not a clear plan that exists to ensure that our children are case planned and managed by an Aboriginal agency. We know that Aboriginal children in Aboriginal care get better outcomes, and we can provide a lot more information on that. We also know that with 90 per cent of young people, when they leave care they go home. So how do we invest in supporting that transition if we know that 90 per cent of children go home? We need to learn from practice, the practice of forced adoptions, and we know that it requires new ways of working together.²⁰⁵

Another concern raised with the Committee related to poverty becoming a social pressure on single mothers and potentially leading to their child being removed from them. Connie Salamone told the Committee:

often what we see is poor families are so over-represented in the child protection system, and what we need to be thinking about is that poverty of itself should not be triggering a child protection response. We should be able to be providing poor families with access to good, high-quality services delivered in a timely way so they are able to support their children and keep their children at home, and that is the permanency placement that we need to be focusing on.²⁰⁶

Further, the Council of Single Mothers and the Children (CSMC) stated in its submission that '[f]orced adoption is ongoing in a number of guises', for example, when children are removed from their mothers due to social problems they may be experiencing, like substance dependency.²⁰⁷ In addition, CSMC argued that the Australian Government policy of switching single mothers from the Parenting Payment Single benefit to Newstart when their child turns eight penalises single mothers and 'is creating poverty that undermines the wellbeing of the mother and children ... and may be complicit in some mothers losing children to out-of-home care'.²⁰⁸ This is evidenced by:

single-mother-headed households is the family structure most frequently in poverty in Australia, with many experiencing systemic pressures that impact upon their ability

²⁰⁴ Connie Salamone, *Transcript of evidence*, p. 33.

²⁰⁵ Adjunct Professor Muriel Bamblett Hon DLitt SW AO, *Transcript of evidence*, p. 32.

²⁰⁶ Connie Salamone, *Transcript of evidence*, p. 33.

²⁰⁷ Council of Single Mothers and their Children, *Submission 23*, received 3 February 2020, p. 2.

²⁰⁸ *Ibid.*, p. 4.

to raise their children, including widespread financial hardship, lack of adequate accommodation, ongoing marginalisation, and negative bias.²⁰⁹

CSMC advocated to prevent these practices and argued that if it is necessary to remove children from their mothers, the decision should 'be made only on the proviso that the mother will be provided with all support needed to maximise the probability of getting her children back in her care'.²¹⁰

Lastly, the Commission for Children and Young People (CCYP) acknowledged in its 2017 *Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* ('CCYP Inquiry') that Victoria's:

adoption and permanent care system has been the subject of at least 10 reviews, which have consistently recommended centralising the system to better integrate with other home-based placement services and child protection services; however, these recommendations have not been implemented.²¹¹

The Committee believes that these concerns highlight that improvements to the child protection system are needed to avoid repeating the mistakes of the policies and practices of historical forced adoption.

As discussed, the Committee believes that Victoria's adoption policy should emphasise the best interests of the child and the free and willing consent of the parents. In addition, the Victorian child protection system should be adequately resourced. The Committee is also of the view that recent reviews into adoption and child protection in Victoria, which have made numerous recommendations for improvement, provide enough guidance to the Victorian Government to improve these separate but related policy areas. Some of these areas of improvement are discussed below.

12.5.2 Family preservation and family reunification

Under the CYF Act, family preservation 'aims to ensure that a child who is in the care of a parent remains in the care of a parent' and family reunification 'aims to return a child who is in out-of-home care to the care of their parent'.²¹² According to the CCYP Inquiry, family preservation and family reunification are the preferred options to care for children in the child protection system.²¹³ This was supported by testimonial provided by inquiry participants to the Committee.

CSMC stated in its submission that family preservation should be the first priority and the Victorian Government should provide adequate support services to achieve this.²¹⁴ CSMC recommended family preservation be improved by increasing funding to support

²⁰⁹ Ibid.

²¹⁰ Ibid., p. 2.

²¹¹ Commission for Children and Young People, *...safe and wanted...*, p. 170.

²¹² Ibid., p. 44.

²¹³ Ibid., p. 115.

²¹⁴ Council of Single Mothers and their Children, *Submission 23*, p. 2.

families, maintaining contact between a child and their family in the child protection system and prioritising kinship care options.²¹⁵

Similarly, ARMS told the Committee that the Victorian Government should focus on family preservation and early intervention rather than adoption because it is more cost-effective and has long-term benefits. This can be done by supporting young parents (both during pregnancy and post-birth), reducing family violence, assisting parents with a substance dependency, educating young people on birth control and relationships, and finding homes for mothers who are homeless.²¹⁶ ARMS recommended that the:

government should take a systems approach to ensuring that families in crisis do not lose their children into permanent care, by providing extensive, properly funded early interventions to support these families. This should be a long term approach that builds a different future for families at risk.²¹⁷

In her evidence to the Committee, Dr Robyn Miller, Chief Executive Officer at MacKillop Family Services, advised that ‘the strongest part of our innovative practice is to actually prevent children coming into care’ through the provision of family support services.²¹⁸ Similarly, Rowena Robinson, Adoption Information Service Worker at Anglicare Victoria, told the Committee that it provides information to mothers on alternatives to adoption and empowers them to ‘look at other options’:

initially it just looks black and white, like there are not many options, but actually once we speak to them and they can explore family members and that kind of thing as well, we explore those as much as possible ... it really is about listening to the mother and trying to involve the father too ... and other family members—because we recognise the ripple effect of it all. It is lifelong.²¹⁹

Regarding Aboriginal and Torres Strait Islander children, Connie Salamone from VACCA stated in a public hearing:

the permanency of the family is the place that we should be supporting. It is important that in our case planning we do not actually cut off children from their families, their communities, their country and their culture, as the outcomes are devastating for young people, and they continue that cycle.²²⁰

The Committee understands, however, there are ways to improve family preservation and reunification in Victoria.

²¹⁵ *Ibid.*, pp. 3–4.

²¹⁶ ARMS (Victoria), *Submission 45*, p. 13.

²¹⁷ *Ibid.*, pp. 13–14.

²¹⁸ Dr Robyn Miller, Chief Executive Officer, MacKillop Family Services, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 19.

²¹⁹ Rowena Robinson, Adoption Information Service Worker, Anglicare, hearing, Melbourne, 12 May 2021, *Transcript of evidence*, p. 13.

²²⁰ Connie Salamone, *Transcript of evidence*, p. 33.

The CCYP Inquiry highlighted several factors impacting the ability of family preservation and family reunification orders to be implemented effectively. This includes an inability to meet legislated timeframes; court delays; constraints on the capacity of child protection workers to do their jobs effectively; barriers to access support services for parents, such as family services specific to reunification; and long waitlists for men's behavioural change programs, public housing and alcohol and drug services.²²¹ The CCYP concluded:

Given these barriers, and the context of Victoria's under-resourced child protection system, it is likely that some children who should be reunified with their parents will not be because of the operation of the legislated timeframes. This warrants an immediate legislative solution.²²²

The Committee notes that in relation to family preservation and reunification for Aboriginal and Torres Strait Islander children in Victoria, in 2018–19:

47.5 per cent of Aboriginal children and young people were reunified with parent(s) within 12 months of admission to care. The rate is lower than the 2008–09 level when the corresponding rate was 57.6 per cent.

...

69.5 per cent of Aboriginal children and young people who exited care did not return to care within 12 months. This is a significant negative outcome as the corresponding rate in 2008–09 was 80.6 per cent.²²³

Adjunct Professor Bamblett from VACCA told the Committee:

healing means investment in prevention and early intervention. Our Aboriginal children make up roughly 29 per cent of all kids in out-of-home care, and we receive only 2 per cent of the prevention and early intervention [funding]. So what does that mean for children? It means that children are less likely to go home to parents and stay at home safely.²²⁴

Further, Connie Salamone stated:

investing in early intervention and prevention helps break the cycle, and Aboriginal organisations are very poorly funded in this space. What is really critical is that we are looking at that early intervention so that in fact children are not removed from their families. This is going to save lives, reduce trauma, but also from a monetary perspective, out-of-home care is a very expensive place to be and we will be able to actually reduce that cost.²²⁵

221 Commission for Children and Young People, *...safe and wanted...*, pp. 131, 133, 135.

222 *Ibid.*, p. 132.

223 Victorian Government, *Victorian Government Aboriginal Affairs Report 2020*, Department of Premier and Cabinet, Melbourne, 2021, p. 36.

224 Adjunct Professor Muriel Bamblett Hon DLitt SW AO, *Transcript of evidence*, p. 32.

225 Connie Salamone, *Transcript of evidence*, p. 33.

The Committee strongly supports the preference for family preservation and family reunification under the CYF Act when this is deemed to be in the best interests of the child. However, the Committee acknowledges that adequate funding and support is needed to ensure the system can operate effectively and achieve the desired outcomes.

The Victorian Government did provide additional funding in response to the findings of the CCYP Inquiry.²²⁶ However, considering that VACCA told the Committee it is still poorly funded in this space, the Committee considers that the Victorian Government may want to revisit this issue to ensure all early intervention and family preservation services receive the support they need.

RECOMMENDATION 55: That the Victorian Government ensure community organisations providing family and parenting support are adequately resourced to ensure permanency for children.

12.5.3 Permanent care orders and long-term care orders

PCOs are intended to provide a child with a ‘permanent substitute family and to create enduring bonds for a child who is not able to live with their biological family and for whom there is no consent to adoption’.²²⁷ PCOs do not sever the legal relationship with a child’s family, as they typically include a requirement for ongoing contact between the child and family, and expire when the child turns 18.²²⁸ Long-term care orders also expire when a child turns 18 and are used when a person has been identified as a suitable carer but will not consent to a PCO. Instead, the child lives with that person but parental responsibility is conferred on the Secretary of the Department of Families, Fairness and Housing,²²⁹ who continues to be involved with the child and their carer.²³⁰

Figure 12.6 shows that in Victoria, the number of PCOs increased overall between 2012–13 and 2018–19, with a slight decline experienced after 2015–16.²³¹

²²⁶ Victorian Government, *Safe and wanted—an inquiry into the implementation of permanency arrangements*.

²²⁷ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. 17.

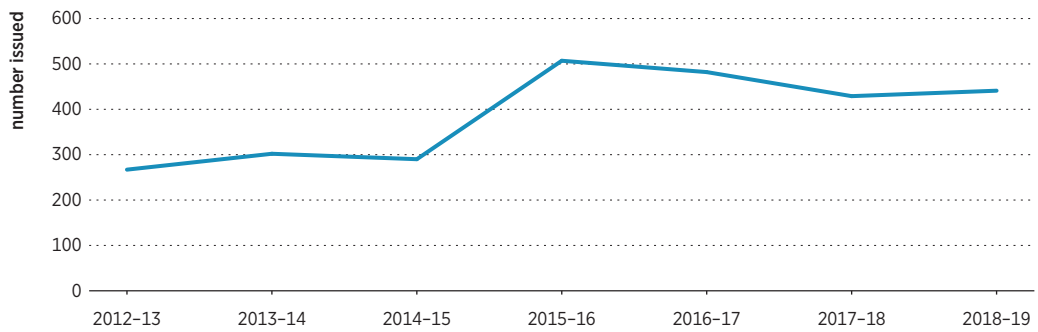
²²⁸ *Ibid.*, pp. 17–18.

²²⁹ The Adoption Act states the relevant department is the Department of Human Services but the Committee understands this now falls under the responsibility of the Department of Families, Fairness and Housing.

²³⁰ Commission for Children and Young People, *...safe and wanted...*, p. 155.

²³¹ Australian Institute of Health and Welfare, *Adoptions Australia 2019–20*, p. 57.

Figure 12.5 The number of permanent care orders issued in Victoria



Note: The increase in 2016 coincided with the permanency amendments to the CFY Act. At writing date, the figures for 2019-20 were not available.

Source: Adapted from Australian Institute of Health and Welfare, *Adoptions Australia 2019-20*, p. 57.

Aboriginal and Torres Strait Islander children are over-represented in out-of-home care and 56% are placed in kinship care options.²³² The Victorian Government’s *Aboriginal Affairs Report 2020* reported:

In 2019-20, the rate of Aboriginal children in care services was 20 times the rate for non-Aboriginal children in care. This is the highest rate of over representation in any jurisdiction and well above the national rate (11 times the rate of non-Aboriginal children).²³³

Currently, 43% of Aboriginal children in care have their orders managed by an Aboriginal Community Controlled Organisation, an improvement from 8.7% in 2015-16.²³⁴

Submissions to the Committee highlighted the benefits of PCOs over adoption. VANISH argued that while PCOs can be obtained against the parents’ wishes, they are preferable as they avoid the most serious impacts of adoption. For example, they maintain social and legal connections between a child and their parents, siblings and other family members and it ‘legally maintains the child’s name and identity of origin through continuity of their original birth certificate’.²³⁵ ARA submitted to a Queensland Parliamentary inquiry that PCOs achieve the same or better outcomes in a less restrictive, radical and damaging way.²³⁶

²³² Commission for Children and Young People, *...safe and wanted...*, pp. 140, 147.

²³³ Victorian Government, *Victorian Government Aboriginal Affairs Report 2020*, p. 34.

²³⁴ *Ibid.*, pp. 34-35.

²³⁵ VANISH Inc., *Submission 53*, p. 82.

²³⁶ Adoptee Rights Australia Inc., *Adoptee Rights Australia (ARA) Inc. Submission to the Legal Affairs and Community Safety Committee Child Protection and Other Legislation Amendment Bill 2020*, p. 23.

ARMS argued permanent placement options need to be a ‘dynamic service’ that is child-focused.²³⁷ This is supported by the VLRC, which acknowledged the importance of providing stability and permanency for a child, but that the best interests of the child should be considered when deciding which care option is more suitable.²³⁸

The Committee is aware that effective implementation of PCOs can be challenging. The CCYP Inquiry demonstrated issues relating to determining the appropriate level of contact to be maintained between the child and the parent,²³⁹ ensuring that regular sibling contact is protected and promoted²⁴⁰ and inefficiencies and delays in the permanent care system.²⁴¹ The CCYP Inquiry further found inconsistent practices and inadequate placement support for vulnerable children or children with ‘high-level medical, disability and trauma-related behavioural needs’.²⁴²

VACCA also drew the Committee’s attention to current weaknesses in Victoria’s PCO system, including that VACCA cannot monitor placements, other agencies do not comply with Aboriginal permanent care principles and ‘[o]nce a child is permanently cared for there are no resources to Aboriginal organisations’.²⁴³ Adjunct Professor Bamblett told the Committee:

We want bipartisan agreement to monitoring and supporting Aboriginal children being given permanent care orders or adoption outside of Aboriginal communities. We want the same to go for kinship care where the child is placed with non-Aboriginal kin. We want cultural supports and connections to be integral to the long, healthy and happy lives of our children. It is their right as First Peoples of this country.²⁴⁴

This issue was also raised in the CCYP Inquiry. The CCYP concluded that systemic issues, such as the resourcing requirements of VACCA, ‘inadequate cultural competence training’ and ‘poor cultural support planning’ were resulting in ‘unacceptable’ delays in achieving permanent care for Aboriginal and Torres Strait Islander children. The CCYP Inquiry recommended that VACCA be adequately resourced to ‘undertake timely, permanent care assessments for Aboriginal children’.²⁴⁵

In 2018 the Victorian Government responded to the CCYP Inquiry, stating:

The Victorian Government has adopted the majority of the recommendations relating to additional resourcing, training and workforce, improving policy and practice, and is committed to monitoring the impact of the changes.²⁴⁶

²³⁷ ARMS (Victoria), *Submission 45*, p. 5.

²³⁸ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 18–19.

²³⁹ Commission for Children and Young People, *...safe and wanted...*, p. 168.

²⁴⁰ *Ibid.*, p. 169.

²⁴¹ *Ibid.*, p. 173.

²⁴² *Ibid.*, p. 178.

²⁴³ Adjunct Professor Muriel Bamblett Hon DLitt SW AO, *Transcript of evidence*, pp. 33–34.

²⁴⁴ *Ibid.*, p. 34.

²⁴⁵ Commission for Children and Young People, *...safe and wanted...*, pp. 173–175.

²⁴⁶ Victorian Government, *Safe and wanted—an inquiry into the implementation of permanency arrangements*.

Further, the Victorian Government, in the *Aboriginal Affairs Report 2020* and *Closing the Gap Jurisdictional Implementation Plan*, identified that reducing the number of Aboriginal and Torres Strait Islander children in the child protection and care system is a priority.²⁴⁷ The Government's aim is that:

all Aboriginal children and young people thrive and live in culturally rich and strong Aboriginal families and communities. Victoria has developed initiatives to reform the child protection system guided by the commitment to increase Aboriginal self-determination by transferring decision-making, resources and responsibility to Aboriginal organisations.

Victoria has a range of parenting and family services in place to promote children's safety, stability and healthy development and learning from pre-birth up to 18 years and to support children to remain safely at home. This includes intensive responses aimed at preventing entries to care.²⁴⁸

12.5.4 Adoption in the permanency hierarchy

The Committee heard specifically from inquiry participants regarding issues with the inclusion of adoption in the CYF Act permanency hierarchy.

The Committee is aware that the Victorian Government has not promoted adoption for children in out-of-home care prior to its introduction into the CYF Act in 2014. The amendments to the CYF Act also demoted permanent care options²⁴⁹ and were introduced to prioritise legal permanency and timely decision-making.²⁵⁰ This occurred despite a lack of supporting evidence and was at odds with the views of non-government child protection and welfare stakeholders.²⁵¹ For example, AIFS noted in its *Research study on the service responses to past adoption practices*:

Despite the large growth in the number of Australian children in out-of-home care over the last two decades adoption of these children is rare. This is because there is a strong push for them to be restored to—or maintain active contact with—their parents.²⁵²

The Committee understands that the Victorian Government's policy position has been to promote permanency and stability for children through long-term PCOs, rather than through adoption.²⁵³ This approach is supported by the Committee.

²⁴⁷ Victorian Government, *Victorian Government Aboriginal Affairs Report 2020*, p. 34; Victorian Government, *Closing the Gap jurisdictional implementation plan*, 2021, pp. 45–46.

²⁴⁸ Victorian Government, *Closing the Gap jurisdictional implementation plan*, p. 45.

²⁴⁹ VANISH Inc., *Submission 53*, p. 81; Commission for Children and Young People, *...safe and wanted...*, p. 16.

²⁵⁰ Commission for Children and Young People, *...safe and wanted...*, p. 43.

²⁵¹ VANISH Inc., *Submission 53*, p. 81; Commission for Children and Young People, *...safe and wanted...*, pp. 62–63; Penelope Kathleen Mackieson, 'The introduction and implementation of permanent care orders in Victoria', p. 6.

²⁵² Kenny, et al., *Past adoption experiences*, p. 8.

²⁵³ Victorian Law Reform Commission, *Review of the Adoption Act 1984: consultation paper*, Consultation Paper, Melbourne, August 2016.

While adoption under the CYF Act is not used by the Victorian Government, many submissions to the Committee advocated for its removal from the CYF Act. For example, in its submission, VANISH stated:

re-purposing inherently coercive adoption as the preferred permanency pathway for children unable to be safely reunified with their parents is far from progressive or pioneering, rather it is regressive ... The current legislative framework in Victoria that prioritises use of inherently non-consensual adoption ahead of the purpose-specific PCO for children in out-of-home care also deviates harmfully away from the original purpose of adoption and towards historical forced adoption practices.²⁵⁴

VANISH argued the permanency hierarchy in the CYF Act was introduced without any supporting evidence and ‘represents a contemporary “forced adoption” policy’.²⁵⁵ Further, Dr Mackieson considered the systemic factors affecting the ability of the child protection system to operate effectively and adoption practices, when combined with changes to the CFY Act’s permanency hierarchy, could contribute to conditions in which unethical behaviour can thrive.²⁵⁶

ARMS recommended that while the Victorian Government has indicated adoption from care would not be used, it should be removed from the CYF Act to guarantee this. ARMS and VANISH suggested that this would also remove the potential for fostering to be used as an avenue to promote adoption.²⁵⁷ The CCYP Inquiry also recommended that adoption be removed from the permanency hierarchy in the CYF Act:

In light of the widespread community concern, particularly for Victoria’s Aboriginal community, and the evidence that adoptions are not occurring in practice, the Commission recommends that it be removed from the hierarchy of permanency objectives.²⁵⁸

The CCYP Inquiry stated that if adoption is removed from the hierarchy in the CYF Act, this does ‘not affect the availability of adoption orders under the *Adoption Act 1984* [to be made] where a child has been subject to child protection intervention and adoption is in their best interests’. The CCYP Inquiry considered that there are circumstances in which this could be pursued in the child’s best interest.²⁵⁹

The VLRC reported that currently in Victoria, there is no pathway for ‘a person with responsibility for a child under a permanent care order’ in the child protection system to adopt the child. The VLRC Review recommended that a pathway be created in very limited circumstances,²⁶⁰ and outlined:

²⁵⁴ VANISH Inc., *Submission 53*, p. 83.

²⁵⁵ *Ibid.*, p. 81.

²⁵⁶ Dr Penny Mackieson, *Submission 21*, received 3 February 2021, pp. 13–14.

²⁵⁷ ARMS (Victoria), *Submission 45*, p. 6; VANISH Inc., *Submission 53*, p. 83.

²⁵⁸ Commission for Children and Young People, *...safe and wanted...*, p. 16.

²⁵⁹ *Ibid.*, pp. 16, 65.

²⁶⁰ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. xviii.

The consent of a child's natural parents should remain the fundamental requirement. 'Child protection' grounds for dispensing with consent should not be available in granting an order for adoption from permanent care.²⁶¹

This would be classified as a form of known child adoption. As discussed earlier, known child adoptions are generally discouraged in Victoria, the preference being for other placement options under the *Family Law Act 1975* (Cth).²⁶² Adoption Origins Victoria also argued against known adoptions and step-parent adoptions in a submission to the Committee, primarily because it severs the relationship with the existing family.²⁶³

The Committee believes that removing adoption from the CYF Act is a useful starting point to address concerns from inquiry participants about the potential for the promotion of adoption from care. If a pathway to adoption after the making of a PCO is created (as recommended by the VLRC) and adoption on child protection grounds can still be facilitated under the Adoption Act (as noted by the CCYP), the removal of adoption from the permanency hierarchy in the CYF Act is largely symbolic. The Committee considers that if these avenues are to exist, the best interest of the child and the consent of the parents need to be strongly safeguarded.

RECOMMENDATION 56: That the Victorian Government remove adoption from the permanency hierarchy in the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic) and restrict the use of adoption on child protection grounds as far as practicable.

12.6 Future considerations

Based on the evidence received throughout the Inquiry, the Committee strongly believes that the Victorian Government should consider the following when reviewing the future of Victoria's adoption policy:

- The language used by the Government should involve input from people who are adopted, rather than be centred around the 'dominant narrative informed by those who have adopted or want to adopt'.²⁶⁴ The Government should respect that self-determination is important and people who are adopted should have input into policy decisions.²⁶⁵ Meaningful consultation with relevant stakeholders is therefore essential.

²⁶¹ Ibid.

²⁶² Ibid., p. 178.

²⁶³ Adoptions Origins Victoria Inc., *Submission 43*, received 4 March 2020, pp. 85–90.

²⁶⁴ Peter Capomolla Moore, *Submission 44*, received 5 March 2020, p. 3.

²⁶⁵ Ibid.

- The best interests of the child are paramount.²⁶⁶ Current and future adoption practices should prioritise the ‘health, wellbeing and interests of the child’. This should include robust post-adoption services for all parties to an adoption.²⁶⁷
- The Victorian Government should consider culturally appropriate support and services when designing policy, for example, for Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities.
- The effects of adoption are lifelong. The Victorian Government should adequately resource post-adoption support services for all parties to an adoption to minimise the risk of adoption breakdown and avoid further trauma.²⁶⁸
- Given that only a small number of adoptions are facilitated each year, the Victorian Government should provide tailored and wrap-around support services. In addition, given that many people who are adopted have different views on issues like birth certificates, the Victorian Government should look to provide multiple options on key issues and consult widely when making decisions.
- Adoption policy should form part of a broader child protection framework that is well resourced and is committed to achieving the best care outcomes for children. It should also be integrated into a family services framework that provides mothers and families with adequate support, including stable housing, adequate income and employment options, family violence intervention and services, access to counselling and support for dealing with the effects of trauma or alcohol and other drug dependencies.

**Adopted by the Legislative Assembly Legal and Social Issues Committee
Parliament of Victoria, East Melbourne
5 August 2021**

²⁶⁶ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. xiii.

²⁶⁷ Royal Australian and New Zealand college of Psychiatrists, *Submission 12*, received 30 January 2020, p. 2; Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, p. xiii.

²⁶⁸ Victorian Law Reform Commission, *Review of the Adoption Act 1984: report*, pp. 296–298.

Appendix A

About the Inquiry

A.1 Submissions

Submission number	Name of individual or organisation
1	Barbara Pendrey
2	Royal Australian College of General Practitioners
3	Gary Coles
4	Yvonne Fix
5	Robin Turner
6	Lauren Howe
7	Name withheld
8	Nancy Johnson
9	Hannah Spanswick
10	June Smith
10A	Supplementary submission
10B	Supplementary submission
11	Lyn Kinghorn
11A	Supplementary submission
12	Royal Australian and New Zealand College of Psychiatrists, Victorian Branch
13	Confidential
14	Jigsaw Queensland
15	Relationships Australia Victoria
16	Confidential
17	Confidential
18	Confidential
19	Elizabeth Edwards
20	Australian Institute of Health and Welfare
21	Confidential
22	Lynette Brown
23	Council of Single Mothers and their Children Inc.
24	Australian Psychological Society Ltd.
25	Crib Mates
26	Independent Regional Mothers National Advocacy Group

Submission number	Name of individual or organisation
26A	Supplementary submission
27	Kerri Young
28	Victorian Aboriginal Child Care Agency
29	Patricia Gall
30	Healing Foundation
31	Confidential
32	Name withheld
33	Cherylyn Harris
34	Name withheld
35	Name withheld
36	Lynda Klingberg
37	Name withheld
38	Name withheld
39	Origins Supporting People Separated by Adoption Inc.
40	Thelma Adams
41	Leonie White
42	Shine Lawyers
43	Adoption Origins Victoria Inc.
43A	Supplementary submission
44	Peter Capomolla Moore
45	Associated of Relinquishing Mothers Victoria Inc.
45A	Supplementary submission
46	Adoptee Rights Australia
47	Name withheld
48	Uniting Vic.Tas
49	Confidential
50	Meryl Carr
51	Name withheld
52	Dr Rosemary Saxton
53	Victorian Adoption Network for Information and Self Help Inc.
54	Confidential
55	CatholicCare
56	Australian Association of Social Workers
57	Julian Pocock
58	Faye Burnham
59	Name withheld

Submission number	Name of individual or organisation
60	Name withheld
61	Marilyn Murphy
62	Isabell Collins
63	Peter Austin
64	Jan Kashin
65	Robyn Flanagan
66	Judy Stiff
67	Emeritus Professor Shurlee Swain
68	Debra Thurley
69	Yvonne May
70	Lynne Williamson
71	Wilhelmina Marshall
72	Judy McHutchison
73	Ann Groves
74	Lee Whelan
75	Confidential
76	Name withheld
77	Lynelle Long
78	Judith Hendriksen
78A	Supplementary submission
78B	Supplementary submission
79	Name withheld
80	Mandy Edwards
81	Confidential
82	Jennifer McRae
83	Name withheld
84	Karyn Williams
85	Bobby Maguire
86	Helen Nicholson
87	Name withheld
88	Benita Rainer
89	Name withheld
90	June Ryan
91	Pat Smith
92	Christine Poulton
93	Confidential

Submission number	Name of individual or organisation
94	Name withheld
95	Kerina Martin
96	Jennifer Howe
97	Michele Hutchins
98	Virginia Frauder
99	Name withheld
100	Sue Miiller-Robbie
101	Name withheld
102	Confidential
103	Name withheld
104	Name withheld
105	Sandra Collins
106	Name withheld
107	Emma Maher
108	Karen Linton
109	Name withheld
110	Martin Rayner
111	Name withheld
112	Name withheld
113	Leonie Horin
114	Wendy Willis

A.2 Public hearings and site visits

Monday, 7 December 2020—Meeting Rooms G7 and G8, 55 St Andrews Place, East Melbourne

Name
June Smith
Lyn Kinghorn
Nancy Johnson
Marilyn Murphy
Wilhelmina Marshall
Suzanne Scholz
Patricia Gall
Name withheld
Dr Penny Mackieson

Wednesday, 16 December 2020—Meeting Rooms G1 and G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Brenda Coughlan	Chairperson	Independent Regional Mothers
Dr Nilmini Fernando	Research Fellow, Researcher	Griffith University, Queensland, Independent Regional Mothers
Isabell Collins	-	-
Yvonne May	-	-
Name withheld	-	-

Wednesday, 24 February 2021—Meeting Room G7 and G8, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Name withheld	-	-
Bronwyn Pike	Chief Executive Officer	Uniting Vic.Tas
Catriona Milne	Manager, Uniting Heritage Service	Uniting Vic.Tas
The Hon. Nahum Mushin AM	-	-
Marie Meggitt	Founder	Associated of Relinquishing Mothers Victoria Inc.
Jo Fraser	Secretary	Associated of Relinquishing Mothers Victoria Inc.
Julian Pocock	-	-

Wednesday, 10 March 2021—Meeting Room G7 and G8, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Hannah Spanswick	-	-
Elizabeth Edwards	Convenor	Adoptions Origins Vic. Inc.
Name withheld	-	-
Emily Hanscamp	Program Manager, Forced Adoption Support Service	Relationships Australia Victoria
Anastasia Panayiotidis	General Manager, Clinical Services	Relationships Australia Victoria
Charlotte Smith	Manager	VANISH Inc.
Simon Pryor	Chairperson	VANISH Inc.
Netty Horton	Executive Director	CatholicCare
Renu Barnes	Manager, Community Programs	CatholicCare
Marina Pavlovic-Cetkovic	Senior Administration Officer	CatholicCare
Cameron Tout	Senior Associate and Legal Practice Manager	Shine Lawyers

Monday, 22 March 2021—Meeting Room G3, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Peter Capomolla Moore	President	Adoptee Rights Australia
Sharyn White	Secretary	Adoptee Rights Australia
Samantha Barton	Senior Policy Advisor	Australian Psychological Society
Professor Daryl Higgins	Director, Institute of Child Protection Studies	Australian Psychological Society, Australian Catholic University
Leanne Matton	-	-
Lee Whelan	-	-
Dr Trevor Leslie Jordan	President	Jigsaw Queensland

Tuesday, 30 March 2021—Kangaroo Flat RSL, 15/A Station Street, Kangaroo Flat

Name
Name withheld
Robyn Flanagan
Yvonne Stewart
Beverly Sutherland
SallyRose Carbines
Lyn Kinghorn

Wednesday, 31 March 2021—Eastern Hub Geelong, 285a McKillop Street, East Geelong

Name
Emeritus Professor Shurlee Swain
Name withheld
Name withheld
Name withheld
Name withheld
Name withheld

Wednesday, 12 May 2021—Meeting Room G3, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Peter Capomolla Moore	-	-
Paul McDonald	Chief Executive Officer	Anglicare
Rowena Robinson	Adoption Information Service Worker	Anglicare
Dr Robyn Miller	Chief Executive Officer	MacKillop Family Services
Jenny Glare	General Manager, MacKillop's Heritage and Information Service	MacKillop Family Services
Adjunct Associate Professor Annette Jackson	Executive Director Statewide Services	Berry Street
Kylie Mussared	Head of Risk	Berry Street
Libby Hyland	Coordinator, Heritage and Information Service	Berry Street
Adjunct Professor Muriel Bamblett Hon DLitt SW AO	Chief Executive Officer	Victorian Aboriginal Child Care Agency
Connie Salamone	Project Officer	Victorian Aboriginal Child Care Agency

Wednesday, 18 May 2021—The Cube, 118 Hovell St, Wodonga

Name
Helen Nicholson
Yvonne Hunter
Karen Linton
Name withheld
Rosemary Neil
Name withheld
Dr Rosemary Saxton

Name
Name withheld
Merle Kelly
Dawn Smallpage
Margie Broughton
Name withheld

Friday, 4 June 2021—Zoom, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Ian Hamm	Chair	The Board Of Directors at First Nations Foundation and Stolen Generations Reparations Steering Committee
Barbara Pendrey	-	-

Tuesday, 20 July 2021—Zoom, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Lisa Lynch	Acting Chief Executive Officer	Royal Women's Hospital
Leanne Dillon	General Counsel	Royal Women's Hospital

Appendix B

Apologies made by government and non-government organisations relevant to historical forced adoption in Victoria

B.1 Government apologies

Commonwealth Government: the Honourable Julia Gillard MP, Prime Minister, 21 March 2013

Today, this Parliament, on behalf of the Australian people, takes responsibility and apologises for the policies and practices that forced the separation of mothers from their babies, which created a lifelong legacy of pain and suffering.

We acknowledge the profound effects of these policies and practices on fathers.

And we recognise the hurt these actions caused to brothers and sisters, grandparents, partners and extended family members.

We deplore the shameful practices that denied you, the mothers, your fundamental rights and responsibilities to love and care for your children. You were not legally or socially acknowledged as their mothers. And you were yourselves deprived of care and support.

To you, the mothers who were betrayed by a system that gave you no choice and subjected you to manipulation, mistreatment and malpractice, we apologise.

We say sorry to you, the mothers who were denied knowledge of your rights, which meant you could not provide informed consent. You were given false assurances. You were forced to endure the coercion and brutality of practices that were unethical, dishonest and in many cases illegal.

We know you have suffered enduring effects from these practices forced upon you by others. For the loss, the grief, the disempowerment, the stigmatisation and the guilt, we say sorry.

To each of you who were adopted or removed, who were led to believe your mother had rejected you and who were denied the opportunity to grow up with your family and community of origin and to connect with your culture, we say sorry.

We apologise to the sons and daughters who grew up not knowing how much you were wanted and loved.

We acknowledge that many of you still experience a constant struggle with identity, uncertainty and loss, and feel a persistent tension between loyalty to one family and yearning for another.

To you, the fathers, who were excluded from the lives of your children and deprived of the dignity of recognition on your children's birth records, we say sorry. We acknowledge your loss and grief.

We recognise that the consequences of forced adoption practices continue to resonate through many, many lives. To you, the siblings, grandparents, partners and other family members who have shared in the pain and suffering of your loved ones or who were unable to share their lives, we say sorry.

Many are still grieving. Some families will be lost to one another forever. To those of you who face the difficulties of reconnecting with family and establishing ongoing relationships, we say sorry.

We offer this apology in the hope that it will assist your healing and in order to shine a light on a dark period of our nation's history.

To those who have fought for the truth to be heard, we hear you now. We acknowledge that many of you have suffered in silence for far too long.

We are saddened that many others are no longer here to share this moment. In particular, we remember those affected by these practices who took their own lives. Our profound sympathies go to their families.

To redress the shameful mistakes of the past, we are committed to ensuring that all those affected get the help they need, including access to specialist counselling services and support, the ability to find the truth in freely available records and assistance in reconnecting with lost family.

We resolve, as a nation, to do all in our power to make sure these practices are never repeated. In facing future challenges, we will remember the lessons of family separation. Our focus will be on protecting the fundamental rights of children and on the importance of the child's right to know and be cared for by his or her parents.

With profound sadness and remorse, we offer you all our unreserved apology.

Victorian Government: the Honourable Ted Baillieu MP, Premier, 25 October 2012

That this Parliament expresses our formal and sincere apology to the mothers, fathers, sons and daughters who were profoundly harmed by past adoption practices in Victoria.

We acknowledge that many thousands of Victorian babies were taken from their mothers, without informed consent, and that this loss caused immense grief.

We express our sincere sorrow and regret for the health and welfare policies that condoned the practice of forced separations.

These were misguided and unwarranted, and they caused immeasurable pain.

To the mothers and fathers who were denied the opportunity to love and care for your children, and the pain and trauma you experienced, we are deeply sorry.

To the sons and daughters for whom adoption meant continual anxiety, uncertainty and the deprivation of a natural family connection—we offer our sincere apology.

Today, with all members of the Parliament of Victoria gathered in this house, we acknowledge the devastating and ongoing impacts of these practices of the past.

To all those harmed we offer our heartfelt sympathy and apologise unreservedly.

We undertake to never forget what happened and to never repeat these practices.

B.2 Non-government apologies

Royal Women's Hospital: Dale Fisher, Women's Chief Executive, 23 January 2012

On behalf of the staff, past and present, of the Hospital, I apologise to every woman who felt she had no choice but to relinquish her baby for adoption while in our care.

I understand that many relinquishing mothers experienced, and continue to experience, feelings of grief, pain, anger, helplessness and loss, and for this I apologise unreservedly.

I also offer an unreserved apology to any adoptees and other family members who have also experienced, and continue to experience, feelings of grief, pain, anger and loss.

I hope the Hospital's efforts towards uncovering our role in past adoption practices, our sincere apologies and our acknowledgement of pain and loss will bring some comfort to relinquishing mothers and their families, and be accepted as evidence of the regret and sorrow we feel for our involvement in past adoption practices.

**Uniting Church Victoria Tasmania: Isabel Thomas Dobson,
moderator of the Synod of Victoria and Tasmania,
28 February 2012**

On behalf of the Uniting Church in Australia Synod of Victoria and Tasmania, and our agencies, we apologise unreservedly for any physical, psychological or social harm that might have occurred through the past adoption practices and processes of the Church.

We deeply regret that some parents and children were let down while in the care of the Uniting Church and the former Methodist, Presbyterian and Congregational churches.

The Senate inquiry into forced adoptions highlights so many experiences of mothers, especially young mothers, and the adoptees who have been deeply affected by former adoption practices.

The inquiry submissions paint a disturbing picture of the removal of babies from vulnerable young women who were not able to participate meaningfully in the decisions about the care of their children.

The Uniting Church through its agencies managed some of the babies' homes and hostels. We are saddened that we were part of a service system and practices which have caused such long-lasting pain and trauma to people.

We are committed to ensuring that everybody involved in delivering service and care in the adoption process will work together so that the mistakes of the past are not repeated.

We are also committed to provide the support we can to those previously involved with our services and to advocate for the strengthening of specific support services for those who have been so deeply affected.

The Uniting Church welcomes the inquiry. This report will provide a basis on which governments at all levels and providers of adoption services may move forward together by acknowledging past wrongs and addressing them appropriately.

We are committed to working with government to respond to the issues raised during the inquiry.

**Anglican Diocese of Melbourne: Dr Philip Freier, Archbishop of
Melbourne, 17 October 2012**

The story of Melbourne must be open and honest about our faults of the past. We have made mistakes. Mistakes are normal in the story of any organisation, but some behaviour looks very different with the passing of time.

Forced adoption may have seemed right to some people at the time it occurred, though the pain and grief of the victims, parents and children should have been hard to ignore. I am sorry for the hurt inflicted on those involved and the loss they have suffered.

Today, a different understanding of family relationship and of the ability of single parents helps us to see forced adoption as simply wrong.

On the 25th of October, I'll be present at the Victorian Government's apology for past adoption practices. Some behaviour is wrong whenever it occurs. Any instance in the past or present of abuse of a children or adults by a member of the clergy is wrong. Unquestionably wrong. Today we have a robust organisation and infrastructure to deal with allegations of abuse. Professional handling of allegations of abuse is critical, but it can never put right the fact that abuse has occurred.¹

Monash Health on behalf of the Queen Victoria Memorial Hospital: Shelly Park, Chief Executive, 20 March 2013

Monash Health offers a formal apology to every woman who felt she had no choice but to give up her baby for adoption while a patient at the Queen Victoria Memorial Hospital during the period of some 30 years up to the late 1970s. In 1987 the Queen Victoria Hospital joined Prince Henry's Hospital and Moorabbin Hospital to form Monash Medical Centre, which is now part of Monash Health.

I recognise that many women, particularly young single women, experienced grief, pain, anger and loss, some of which have continued to the present time. For this, I apologise unconditionally. On behalf of Monash Health, I acknowledge that many past adoption practices, particularly when considered against today's standards, were clearly misguided; often based on societal attitudes and pressures rather than the best interests of mother and child.

Although this apology cannot change what happened in earlier times, I am hopeful that it will go some way to easing the pain experienced by many relinquishing mothers, their children and their wider family members, as well as assisting them with their healing process. I am truly sorry for the pain and loss so many experienced and continue to experience through past adoption practices.

Berry St: Paul Wappett, President and Sandie de Wolf AM, Chief Executive Officer, 21 March 2013

Berry Street acknowledges and apologises unreservedly for any pain, trauma, unresolved grief or suffering experienced by mothers, children, fathers, adoptive parents and families as a result of any past adoption practices of the Berry Street Foundling Hospital and Infants' Home. We acknowledge and deeply regret any forced adoption practices that took place during a particular period (the mid 1950s to the early 1970s) in our long history as an adoption agency.

We recognise the harm and damage forced adoption has caused to the mothers, children, fathers, adoptive and extended families. We acknowledge the truth—that many young women were not supported to freely decide what was in their child's best

¹ This apology is an extract of Dr Philip Freier's full speech, available at: <https://www.youtube.com/watch?v=Sx05HGzd7Nk>

interests. We face with great regret and considerable shame any involvement of this agency in forced adoptions and we resolve to never allow such a thing to happen again.

To the mothers we say sorry. These events were not your fault. Many of you have exposed the lies that had been told about you. We believe you and we deeply regret that these practices of forced adoption ever took place. We are deeply sorry for the untruths told about you and for the trauma, pain and suffering you have endured in being denied the right to stay with and to raise your child.

We apologise to the fathers who, if given the chance, might have cared for, protected, loved and nurtured your child.

To the children denied from infancy the natural bond of mother and family, we apologise and say sorry. We acknowledge that your rightful childhood was replaced with another. We acknowledge the impact of this loss and grief, which is often passed on to next generations as you struggle to find out to whom and where you belong.

To the adoptive parents who offered love, care and support towards the children you adopted, we acknowledge your acts of kindness and the pain and distress the events surrounding forced adoption may have caused.

We acknowledge the partners, children, grandchildren and all who have supported and nurtured the women and their families as they faced the decades of grief and trauma caused by these wrongs. We know that such trauma places great strain on relationships and continues to impact on families.

We deeply regret this period in our history

Australian Nursing and Midwifery Federation: 22 October 2013

The Australian Nursing and Midwifery Federation including its State and Territory Branches joins the Parliament in unreservedly apologising, on behalf of the nursing and midwifery professions, to the mothers and fathers and their children, for the part played by nurses and midwives in giving effect to the unacceptable policy of forced adoptions.

During the period from the 1950s to the 1980s thousands of unmarried mothers were forced, pressured and coerced to relinquish their newborn babies. Midwives and nurses were central caregivers of women during labour and birth, and through such employment, were also involved in the intimate process of separating mothers and babies for the purpose of forced adoptions.

This policy and these practices were ethically and morally wrong, in many cases unlawful, regardless of the social mores of the time. While the ANMF was not actively involved in the policy at the time, however, we acknowledge the organisation did not take a critical view of the practice and did not advocate for policy changes that were in the best interests of the mother and the child.

The ANMF deeply regrets the incomprehensible harm done to everyone affected by forced adoption, and we call upon all other organisations, professions and governments to issue a public apology for the wrongs of the past.

We call on State and Federal Governments to commit resources and services such as free counselling, support, information and family-search services. The ANMF supports further legislative and regulatory reform, such as integrated birth certificates, to make amends for taking away identities and family ties.

We hope the symbolism of a formal apology and acknowledgement that what happened was wrong, together with practical measures to assist those affected, are the start of making amends.

MacKillop Family Services, representing the Sisters of Mercy, Sisters of St Joseph and Christian Brothers: 2013

The Sisters of Mercy, the Sisters of St Joseph and the Christian Brothers have been involved with providing care for thousands of children and mothers in Victoria since 1861. Countless Sisters and Brothers have provided this care through their dedication and tireless efforts in institutions established to look after children and mothers.

Through their welfare institutions, the three religious congregations created a nurturing environment that promoted personal and spiritual growth and development.

The institutions were places where shelter, food and education were provided. Despite the difficult and, at times, painful circumstances that brought the mothers and children into these institutions, the carers, with few exceptions, laboured in the best interests of those who were entrusted to them. Their work and dedication are reflected in the lives of the many former residents who, despite deprived backgrounds, went on to take their place as successful members of Australian society.

As we listen to the accounts of former residents of our institutions, we hear stories of appreciation for the opportunities they were given to create for themselves meaningful and satisfying future lives.

Sadly, this was not the experience of all. We acknowledge the trauma of mothers separated from their children. We likewise acknowledge the pain experienced by children who were separated from parents and siblings.

In hindsight, we have come to understand the bitter legacy for so many who have grown up apart from their family of origin. This is experienced in a loss of identity and sense of belonging. We acknowledge that such pain and dislocation are ongoing.

We apologise unreservedly to those who experienced abuse and neglect while in our care. We express our deep shame and sorrow.

The Sisters of Mercy, the Sisters of St Joseph and the Christian Brothers have responded to residents who have experienced abuse. The congregations will continue to reach out and listen to former residents of our institutions who are still suffering because of their experience in our institutions.

In assisting former residents in the process of addressing the pain of past experience, our hope is that each person will come to a level of healing that will allow them to create a brighter future.

We are aware that we cannot change the past or take away the hurt. We do, however, express our heartfelt regret for the failings of the past and our sorrow for the suffering that still endures.

Catholic Health Australia: Martin Lavery, Chief Executive Officer

Statement at public hearing for the Senate Community Affairs References Committee's Inquiry into Commonwealth contribution to former forced adoption policies and practices, 28 September 2011:

There are some women across Australia who live with broken hearts; who, because of practices of the past, had their babies taken from them and placed up for adoption. There are some children, now adults, across Australia who also live with broken hearts because they were taken from their mothers and placed in adoption. There are some fathers, siblings and other family members who, over the course of their lifetimes, have lived with broken hearts because of past adoption practices. Indeed, there are many parents who have cared for their adopted children who also have different experiences as a result of their roles in caring for adopted children.

I today represent Catholic hospitals and health services, some of which played, in years past, different roles in promoting and implementing the widespread community and public policy of placing the children of some unmarried young mothers into the care of adoptive parents. To those present today and to those across Australia who carry broken hearts as a result of the role that some Catholic organisations played in this widespread, common public policy practice of years past, I say sorry. I have come to this inquiry willingly, with no intent to justify past adoption practices in Catholic hospitals. The practice of placing some babies of young unwed mothers in adoption was the policy of governments across Australia over many decades, in reflection of a common community practice. It was carried out in some government hospitals, in some Catholic hospitals and in other formal and informal organisations around Australia for many years. With some Catholic organisations having played a part in this public policy of the past, I again say sorry.

Appendix C

Ownership of past adoption records

The Department of Justice and Community Safety provided the Committee with the following list of adoption records held by the Department and other organisations.

C.1 Adoption Services (Department of Justice and Community Safety)

All adoptions arranged by The Department of Community Welfare Services, Community Services Victoria, Department of Human Services or Department of Health and Human Services:

- Hartnett House (aka Melbourne City Mission)
- Church of England—Gippsland
- Echuca Hospital
- Aboriginal Welfare Board
- The Haven—Salvation Army (mainly Birth Register, some Adoption Files)
- Children’s Protection Society
- Wangaratta Hospital
- Queen Victoria Hospital
- Church of Christ
- Box Hill Hospital
- Royal Women’s Hospital
- Mercy Hospital
- Seventh Day Adventist
- Social Welfare Department—Morwell
- Melbourne Family Services
- Lutheran Social Services/ Melbourne Stake Relief Society
- Mission to Streets and Lanes
- Bethany babies Home

- Mission to the Streets and Lanes - Brighton Children's Home, Darling Children's Home
- Footscray/Western Hospital
- Berry Street adoption records

C.2 Berry Street

Please note that while Berry Street adoption records are held by Adoption Services, records related to adoptions held by the following are held by Berry Street:

- The Victorian Infant Asylum
- The Victorian Infant Asylum and Foundling Hospital
- The Foundling Hospital and Infants' Home
- Berry Street Babies' Home and Hospital
- Berry Street—Child and Family Care

C.3 Catholic Care

(Formerly Centacare, Catholic Family Welfare Bureau and St Joseph's Adoption Information Service).

- Catholic Family Welfare Bureau (CFWB)
- Sisters of St Joseph's
- St Joseph's Home—101 Grattan Street Carlton
- St Anthony's Children's Home—Kew
- St Joseph's Babies Home—Broadmeadows

C.4 Uniting

(Formerly Copelen Child and Family Services and Uniting Care Connections).

- Methodist Babies' Home
- Methodist Department of Child Care
- Girl's Memorial Home—Fairfield (aka Georgina House /Fairfield Girl's Home)
- Cheltenham Children's Home
- Orana Methodist Peace Memorial Home for Children
- Presbyterian Babies' Home
- Presbyterian-Scots Church Children's Aid Society

- Kildonan Home for Children
- Presbyterian Sisterhood
- Presbyterian Department of Social Services
- The Child Care Service of the Methodist and Presbyterian Churches
- Child Care Service of the Uniting Church
- Copelen Street Adoption and Permanent Care Programme

C.5 Anglicare

(Formerly the Mission of St James & St John—Anglican).

- Kedesh Maternity Home—Stevenson St, Kew
- St Gabriel's Babies' Home
- St Luke's Babies' Home
- St Paul's Boys Home
- Andrew Kerr Memorial Homes
- Ellen Connell Memorial Homes
- St Nicholas' Boys Home
- Blackburn South Cottages
- Altona Cottage—Blackshaws Road, Altona North
- Buckland House—Newport
- Arms of Jesus Memorial Homes
- Buller House
- School of Home Crafts

