

Submission to Victorian Parliament Legal and Social Issues Committee

Inquiry into Responses to Historical Forced Adoptions in Victoria

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Overview

This parliamentary inquiry is an important opportunity to listen to those affected by what the inquiry has termed historical forced adoption practices, reach an understanding that these practices included the forced abduction of children and ensure that the forced abduction of children, and its impacts, are acknowledged, aired and receive a just response.

The terms of reference for the inquiry, brief as they are, focus on the support services and responses that have been provided (or not provided) in relation to 'historical forced adoptions'.

For more than two decades I have worked in senior roles with the non-government child and family welfare organisations, including over a decade as Executive Officer with the Secretariat of National Aboriginal and Islander Child Care, (SNAICC), and over nine years as Director of Public Policy and Practice Development with Berry Street.

Through these roles I have had the privilege and opportunity to work along side *Stolen Generations*, Aboriginal and Torres Strait Islander people that have survived the militarised break-up of their families and cultural genocide, *Forgotten Australians*, people who survived systemic deprivation and abuse in Dickensian childhood institutions and people impacted by *Forced Adoptions*, the systemic exploitation of vulnerable young women extending to the abduction of their infant children to fulfil the wish of childless couples to have children.

These 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.

The necessary precursor to any restorative service response to systematic institutional abuses is to publicly acknowledge the truth, and do so in plain English. While there is a great deal more to be done, and keep doing, public understanding and acknowledgement of the human rights abuses and crimes committed against *Stolen Generations* and *Forgotten Australians* has advanced considerably in the past two decades.

In contrast there remains no public acknowledgement from the State or non-government institutions of the forced abduction of children from vulnerable women under the guise of giving them and their children a better future

Children were abducted and their mothers, and fathers, but particularly mothers, left with lifelong debilitating trauma and pain. Children were stolen from the family and life they should have had to fulfil the life ambitions of childless couples.

This is the truth.

The first response to any gross and fundamental abuse of human rights, such as psychologically and physically abusing vulnerable young women and abducting their children, must be acknowledging and telling the truth.

Between 2009 and 2011 I was the Director of Public Policy and Practice Development with Berry Street, a child and family welfare agency formed in 1877 and a registered adoption agency until 1975.

This submission does not represent the views of Berry Street. It represents my views and insights having in the course of my duties worked to shed light on Berry Street's practices as an adoption agency between the mid 1950's and 1975.

Berry Street was prompted to explore its involvement in forced adoptions when, on the day of the Apology by the Victorian Parliament, I received a phone call from Lynette Kinghorn, a former Berry Street client.

Lynette wanted to know when Berry Street changed its practice from supporting mothers to keep their children to forcibly taking their children away and giving them up for adoption with no consent. Lynette made it clear to me that the forced traumatic physical separation of her and her child from each other was abduction.

Her question, when did we change our practice, was a very good question and I made a commitment to find the answer. With the support of the CEO and Board we did.

2010 Senate Inquiry into Forced Adoptions

An early step in the process of building a better picture of Berry Street's adoption practices was reviewing the 2010 Senate Inquiry *the Commonwealth Contribution to Former Forced Adoption Policies and Practices*

Berry Street did not make a submission to the 2010 Senate Inquiry; I think this was a mistake for which I bear significant responsibility.

In 2012 the institutional view at Berry Street was that as a secular agency with a proud history of supporting the rights of the vulnerable women it would not have been involved in forced adoption practices

The Senate Inquiry report made one reference to citing evidence from Lynette Kinghorn:

Para 9.39 Ms Lynette Kinghorn in 1963:

I was taken to the almoner [at Royal Women's Hospital] where it was discussed between my mother and the almoner that my baby would be taken for adoption. I was never given any other option...someone was sent to the hospital from Berry St [a home for expecting mothers] to collect me I ran screaming for help to a sister who had cared for me I was hysterical she put her arms around me and said go home and be a good girl, I was dragged out without my baby screaming it was the worst experience of my life and still is. I still had not signed consent to adoption.

The findings of the Senate inquiry highlighted that these practices were endemic across all adoption agencies, including non-church based agencies such as Berry Street.

The final report of the Senate committee recommended, among other things;

- An apology from the Commonwealth Government on behalf of the nation
- That State and Territory Governments and non-government institutions that administered adoption programs issue apologies that acknowledge the illegal and unethical practices that contributed to the harm experienced by parents whose children were removed and adopted without proper consent and the harm experienced by removed children, their mothers, fathers and families
- That governments and institutions establish grievance procedures to allow the hearing of complaints and ensure redress is available and that redress not include a deed of release as a condition of redress
- That apologies issued by governments and non-government organisations satisfy the *UN Van Boven Principles*; ie apologies be accompanied by undertakings to:
 - not repeat past wrongs

- provide detailed information on the practices being apologised for
- raise public awareness of the past wrongs
- assist survivors through access to counselling and support
- provide personal apologies to those that seek them, and
- provide redress payments

It is noteworthy, and disappointing that few agencies involved in these practices have made submissions to this Inquiry. Agencies involved in these practices, abuses, have important information and evidence they could contribute. Equally they have much to learn from those that have suffered the injustices perpetrated against them.

Shame is a strong recurring theme in the events that this current inquiry is examining and can still permeate the lives of those impacted. The shame inherent in these events belongs only with the State and non-government institutions involved.

That agencies from the health and human services sector seem to have ignored this inquiry is also disappointing when one considers that these are the agencies that we might expect to seek funding to offer services, support and assistance to those affected by forced adoptions, including abductions.

Review of adoption practices at Berry Street

In response to Lynette Kinghorn's query Berry Street set out to ascertain any involvement in forced adoption practices, specifically to:

- Meet with Lynette and other women to hear their accounts of Berry Street's impact on their lives
- Review Berry Street adoption records and documented practices from the 1940's until the organisation ceased operating as an adoption service in 1975
- Consider the appropriateness of a public apology from Berry Street and responses for those that may have been affected.

I and a colleague met on a number of occasions in 2012 and 2013 with Lynette Kinghorn and another former client (GR) who had also seen her child adopted out by Berry Street without her free, prior and informed consent.

Lynette and GR's time as inmates in the maternity section of Berry Street¹ overlapped. Inmates was the term used in records and annual reports for women in the maternity wing of the Foundling Hospital.

Lynette and GR advocated that Berry Street develop, with them and their families, a formal apology for the forced adoption practices they experienced; and for the cruel, harsh and emotionally abusive practices they were subjected to while inmates at Berry Street.

Concurrently with the dialogue with Lynette and GR adoption records and Berry Street annual reports from 1940 to 1975 were reviewed by me and staff from the Berry Street Heritage Service.

Our analysis of the recorded data showed that in 1956 a significant change occurred in Berry Street's adoption practices. Prior to 1956 two-thirds of the pregnant women admitted to Berry Street's care

¹ *Note that during this period in its history the agency was called The Foundling Hospital and Infants' Home Incorporated and was located in Berry Street East Melbourne; the agency was commonly referred to as 'Berry Street'*

retained the guardianship and care of their children. However from 1956 onwards this dropped to only one-third with the remaining two-thirds being placed by Berry Street for adoption, usually immediately following birth and prior to any formal signed consent.

Prior to 1956 the predominant practice approach at Berry Street evident in its records was to support young women for up to two years following the birth of their child. This included assisting the mother to access resources, support and guidance to raise their child and the option of shared care arrangements. It could include periods in which children were placed in alternative care prior to them returning permanently to the care and custody of their mothers.

After 1956 the predominant focus on providing support post-birth to enable mothers wherever possible to retain care and custody of their children was replaced by a predominant focus on supporting infertile couples to become parents through 'adoption'. From 1956 Berry Street saw infertile couples as their primary client, not vulnerable young mother.

This change in orientation and practice was modelled on the predominant practice of maternity hospitals and Florence Crittenton Homes (children's homes) in the United States. It was recommended to Berry Street in 1955 by Berry Street's honorary obstetrician, J G Shelton.

This followed Shelton's tour of the US on a Fulbright Scholarship including time spent at the Boston Lying-In Hospital; one of America's earliest maternity hospitals.

Under this approach the prospective adoptive parent was 'the client of the service' not the vulnerable mother and child. The service to the mother was 'relieving them of a burden' through the benevolent work of the agency.

Reports from the same honorary obstetrician extending over a decade highlight the prevailing approach of the agency during this period including the comment below recorded in the Berry Street Foundling Hospital and Infants' Home Annual Report of 1968:

As I stated in my report twelve months ago, the Royal Women's Hospital is attempting to cope with an increasing number of young unmarried mothers seeking medical care. The problem of placing these girls during the latter part of their pregnancy is a constant worry to the Social Services Department of that institution. When the Medical Superintendent addressed the Honorary Medical Staff and the Board of Management of Berry Street Hospital earlier this year, I am confident he convinced the authorities that the best way to fill the nursery, and to satisfy the many requests for adoption, was to accept, and give haven to, the young mother during the third trimester of her ante natal period (Berry Street Honorary Obstetrician, J G Shelton).

This comment provides a clear insight into the intent of the work, or the task as Berry Street saw it - fill the nursery and satisfy the many requests for adoption by providing haven to young vulnerable pregnant women and securing their infants for adoption. It might be wrong to see this intent as sinister, but it would certainly be wrong to see it as benign and benevolent.

Development of Berry Street Apology for Forced Adoptions

In November 2012 Berry Street agreed that the agency should develop a statement of apology for forced adoption practices. It had done so for other past injustices including apologies for any part in the forced removal of Aboriginal and Torre Strait Islander children, apology to the *Stolen Generations*, and an apology to *Forgotten Australians*.

The Berry Street apology for forced adoption practices was drafted through a series of discussions with Lynette Kinghorn, GR and their families.

Lynette Kinghorn and her children, including the child abducted from her care, and Lynette's grandchildren were very actively involved. Drafts were also provided to the surviving adoptive parent to give them the opportunity to comment. The adoptive parent was grateful that Berry Street was seeking to recognise the impact on adoptive parents who were blind to the coercive, abusive and illegal practices that preceded adoption.

Prior to finalisation of the Berry Street apology:

- Drafts were considered through Berry Street's governance structures and the final version endorsed by the Board
- Legal advice was obtained on drafts of the apology and the extent to which a general public statement of apology from Berry Street might be relied upon under the *Victorian 1953 Wrongs Act* in litigation
- An explanatory statement on forced adoption practices was developed to sit alongside the apology, this statement was endorsed by the Berry Street Board to be made freely available to people seeking information on Berry Street's past adoption practices, particularly past clients and their families

Copies of the Berry Street Forced Adoptions Apology and explanatory statement are attached.

Berry Street Apology Event

Berry Street held a public event at Central Office on March 21st 2013, the day of the National Apology from Prime Minister Gillard, to launch the Berry Street apology. The event was attended by Lynette Kinghorn, GR and their extended families.

The Berry Street apology was read and launched by a member of the Berry Street Board on behalf of the Board and the explanatory statement distributed. Lynette Kinghorn spoke at the event and after the event I accompanied Lynette and GR back to the original site of the Foundling Hospital, the first time GR had ever been back to that site and the first time for Lynette in some years.

While the Berry Street apology was well received at the time I am conscious that for Lynette any initial positive impact faded. Lynette can and does speak for herself. I am grateful to her for all she shared with me and Berry Street. We have developed an enduring friendship since meeting to explore Berry Street's past adoption practices and I am hopeful her tireless advocacy for mothers and children subjected to forced abductions is recognised for its truth.

My sense is that 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, their children were abducted.

Child abduction is the unlawful removal of a child from their parent or guardian to a place and with people not known to or authorised by their parent; it can involve force, deception and persuasion.

Lynette, GR and I advocated that such a sentence be included in the Berry Street apology, not worded as an admission by Berry Street or an accusation; just as a simple reminder of what abduction is. The intent was to bring the reader of the Berry Street apology to consider if certain adoption practices of the 1950's, 60's and 70's could reasonably be described and acknowledged as abduction.

Past client experiences with Berry Street

As part of formulating the apology, and Berry Street being clear about what it should apologise for, Lynette, GR and another former client residing interstate gave detailed accounts of the environment in the Foundling Hospital where they resided for the last trimester of their pregnancy.

They all described:

- the emotionally abusive and unsympathetic disposition of staff towards 'inmates'
- repeated interactions with the most senior staff member in which they were scolded, talked down to and reminded that they were 'unfit' to be mothers
- that the only staff member who gave emotional support or sought to console them was the cook
- the assertions from staff that if girls did not give up their child at birth and things didn't work out it would be harder for Berry Street to place an older child for adoption and their children may then spend their childhood in an orphanage
- the highly institutionalised environment, menial tasks and domestic service they had to provide for the Mothercraft Nurses and Matron, cooking and cleaning their quarters – they had to earn their keep while resident at Berry Street
- the lack of focus on supporting them for a parenting role or any discussion of the possibility that they would retain their children

Lynette Kinghorn has reported on multiple occasions to multiple people, organisations and processes:

- the way Berry Street staff physically dragged her out of the Royal Women's hospital, separating her from her baby
- that she had no knowledge that she was going to be removed from the hospital without her baby
- that following her removal from the hospital her baby was placed in the locked infants and toddlers wing at Berry Street to be cared for by Berry Street Mothercraft Nurses (the same people Lynette had had to work for as a domestic servant)
- the name of the Berry Street worker who 'took consent' and that this happened after her baby had already been taken out of her care, while she was herself a minor, without her parents being present and with no advice or support
- that the details of the consent form were physically covered and she was told to sign the signature block without being able to see the details of what she was signing (other past Berry Street clients independently described the same process)
- that despite providing details of her partner/the father on her admission papers to Berry Street, Berry Street did not furnish these details when liaising with the Royal Women's Hospital for the birth registration and consequently the birth certificate has no details of the father listed
- she has provided copies of intra-hospital memos from the Royal Women's Hospital which
 - refer to women from Berry Street and other welfare agencies as "A" patients; patients who are likely to have their babies adopted
 - instruct that from birth these "A" babies are to be cared for separately in the hospital nursery and not go out to the mother until the Almoner (hospital social worker) is contacted (by the welfare agency) regarding the future of the baby
- her efforts to make contact with her child over a period of two decades starting with returning to Berry Street on several occasions soon after the birth wanting to access and see her child

Access to Independent Redress

No non-government agency or hospital in Victoria has established a redress or reparations scheme to respond to the harm and maltreatment experienced by people through past adoption practices including child abductions.

The lack of a redress response and the statute of limitations in relation to possible civil claims leaves to pathway to justice for affected mothers, fathers and children.

Berry Street has operated an independent redress scheme for past clients who experienced any form of child maltreatment while in Berry Street's care for a number of years.

The Berry Street scheme was developed in 2015 to replace past abuse complaints processes with a more comprehensive set of redress arrangements that aligned with the *Van Boven Principles* and responded to the 2015 interim recommendations of the Royal Commission into Institutional Child Sexual Abuse. The Royal Commission recommended, that in advance of any National Redress Scheme for institutional child sexual abuse, institutions should establish interim redress schemes with the highest levels of independence possible.

Berry Street established its independent redress scheme to give effect to the Royal Commissions recommendations. Information on the scheme is available here:

<https://www.berrystreet.org.au/contact-us/feedback-and-complaints/lodging-complaint>

It is important to note that the vast majority of young pregnant women who were admitted to Berry Street's care during the 1950's, 60's and 70's would have been under the age of 18. Legally they were children.

While the Berry Street scheme responds to all forms of child maltreatment including physical, psychological, cultural and sexual abuse; and child neglect it is not intended and does not reference past adoption practices.

Research on lifelong impacts of forced adoption practices

The Australian Institute of Family Studies has played a leading role in researching forced adoption practices and their lifelong impacts on mothers, adoptees and fathers. Their research has documented the common and prevailing practices and their lifelong detrimental impacts on the health and well-being of Mothers.

*Mental health and wellbeing measures used in the survey indicate a higher than average likelihood of these mothers suffering from a mental health disorder compared to the general population, with close to one-third of the mothers showing a likelihood of having a severe mental disorder at the time of survey completion. Mothers rated lower quality of life satisfaction than the Australian norm, and over half had symptoms that indicate the likelihood of having post-traumatic stress disorders*² (AIFS 2012)

A summary of the AIFS 2012 study published by the Australian Psychological Society³ documents the common practices Mothers were subjected to including the following:

- Mothers being used for the training of medical students
- Mothers being sexually assaulted by medical professionals
- Mothers experiencing medical neglect or maltreatment

² Kenny, P., Higgins, D., Soloff, C., & Sweid, R. (2012). *Past adoption experiences: National Research Study on the Service Response to Past Adoption Practices* (Research Report No. 21). Melbourne: Australian Institute of Family Studies.

³ Higgins, D (2014). *Past adoption practices: Implications for current interventions*. In Psych Vol 36. Issue 4. Australian Psychological Society; accessed at <https://www.psychology.org.au/inpsych/2014/august/higgins>

- Mothers being tied to beds, forcibly held down, having pillows placed over their faces and having sheets held up to shield the view of their newborn son/daughter during labour
- Mothers being administered drugs that caused impaired judgement/capacity to make informed decisions
- Mothers and fathers being informed that their newborn son/daughter was deceased when they were not
- The unethical and illegal obtaining of consent to adopt (or no consent obtained at all)
- Adoptees as babies being used for medical experimentations
- Adoptees being placed with abusive adoptive parents
- Adoptees being lied to regarding the circumstances surrounding their adoption, including the obtaining of consent from their parents
- Fathers being excluded from information and decisions about the care of children.

Expectant mothers resident in child welfare institutions, including Berry Street, commonly experienced harsh, emotionally abusive and degrading treatment, were constantly made to feel unworthy and unfit to be mothers. The message that the best thing they could do was give-up their child to a family was hounded into them.

Conclusion

It is inescapable that the practices this and other public inquiries have variously referred to as forced, past or historical adoption practices included the practice of child abduction. It is clear that such abductions occurred at a system level through the planned and coordinated efforts of State based and/or regulated non-government agencies and institutions, in particular maternity hospitals and child and family welfare agencies.

The case of Berry Street is but one example of this institutionalised abhorrent violation of the rights of children, their mothers, fathers and their families.

Berry Street is particularly noteworthy given its secular status and its practices dating back to 1877 of giving priority to the maternal-child relationship and assisting the communities most vulnerable mothers and children. That Berry Street chose to depart from that mission of supporting the most vulnerable to exploiting that vulnerability to supply children to childless couples is utterly shameful. It was wrong then and it is wrong now.

Acknowledging the truth of child abductions is the precursor to a restorative and healing response for the mothers, fathers children and subsequent generations affected.

It should not be lost on the committee that while the State Government has (rightly) been critical of non-government organisations for not joining the National Redress Scheme for institutionalised child sexual abuse, it has hitherto refused to establish a redress scheme for forced adoption practices or waive the statute of limitations.

We need to respond to all systemic abuses in which the State is implicated.

Access to reparations and removing the statute of limitations on civil litigation should follow as key elements of the response for all those affected by child abductions and other historical practices.

Recommendations

1. Truth and Acknowledgment

That the Legal and Social Issues Parliamentary Committee explicitly recognise and acknowledge that:

- a) the forced removal of children from their mothers and placement of those children for adoption, without the freely given, prior and informed consent of mothers constitutes child abduction, forced abduction
- b) the general use of the expression 'forced adoption' masks the truth of the (forced) abduction of children
- c) the practice of child abduction was common place during the 1950's, 60's and 70's and undertaken with planning and cooperation between State regulated and funded agencies including Victorian maternity hospitals and child and family welfare organisations including church and non-church based agencies
- d) State regulated and funded agencies conspired to routinely provide false and misleading statements, documents and information to the Victorian County Court in relation to their compliance with with consent requirements for the legal adoption of children under Victorian legislation including Section 3 of the Victorian Adoption of Children Act 1958⁴,
- e) The Hospitals and Charities Commission⁵, the State regulatory body during this period, had a duty of care to mothers, children and fathers to ensure that the practices of agencies including maternity hospitals and child and family welfare agencies were legal and benevolent
- f) There is significant evidence that the Hospitals and Charities Commission failed in its duty of care to mothers, children and fathers subjected to child abduction, and
- g) That these practices involving the psychological abuse, physical abuse and exploitation of pregnant women and abduction of their children were unlawful and remain a gross violation of human rights

⁴ The 1958 Victorian Adoption of Children Act, Section (3) An adoption order shall not be made except with the consent in writing of **every person** or body who or which—

- (a) is a parent or guardian of the infant in respect of whom the application is made; or
- (b) has the actual custody of the infant; or
- (c) is liable to contribute to the support of the infant—

⁵ 1958 Hospitals and Charities Act - Section 20. It shall be the duty of the Commission –

- (a) to make or cause to be made careful inquiry into the administration (including the keeping of accounts) and management of every subsidized institution or benevolent society
- (b) to cause every subsidized institution to be inspected from time to time; and
- (c) whenever the Commission deems it necessary to make or cause to be made such inquiry as the Commission thinks proper into the administration (including the keeping of accounts) management and activities of and the relief afforded by any registered benevolent society

The Commission had powers under sections 25 and 26 of the Act to recommend the closure, amalgamation or withdrawal of funding from agencies for serious mismanagement or for applying funds to purposes other than providing the relief for which the institution existed.

2. Accountability

That the Legal and Social Issues Parliamentary Committee recommend to Parliament and the State Attorney General that the Victorian Parliament;

- a) make a further apology to that made on October 25th 2012 and apologise for the forced abduction of children noting that abductions were facilitated by State regulated and funded agencies, and
- b) bring forward the necessary legislative amendments to exempt civil claims for damages from people directly impacted by the forced abduction of children from the statute of limitations

3. Just and Fair Reparations

That the Legal and Social Issues Parliamentary Committee acknowledge that since the 2012 apology successive State Governments have failed to provide reparations consistent with the *Van Boven Principles* for the gross violation of human rights, noting that these principles outline five elements for just and fair reparations including:

- a) *Acknowledgement* – public recognition and community education regarding the abuse of rights
- b) *Apology* – unequivocal apology to all those impacted including being clear about the wrongs being apologised for
- c) *Provision of support* – providing access to support services to address the harm caused
- d) *Financial Redress* – providing access to a form of financial assistance or compensation
- e) *Undertakings* – making undertakings not to repeat past wrongs

Attachments:

- Berry Street Apology for Forced Adoption Practices (2013)
- Berry Street Background Information on Forced Adoptions (2013)