Senate Community Affairs Committees Inquiry into the Commonwealth contribution to former forced adoption policies and practices

The Women's Electoral Lobby Australia

The Women's Electoral Lobby Australia (WELA) is a feminist, not for profit, self-funded, non-party political, lobby group founded in 1972. Its original intention was to inform women who they should vote for in that year's Federal Election but it continues to act as a research/advocacy group for the continuing issues that still disadvantage women.

WEL is dedicated to creating a society where women's participation and potential are unrestricted, acknowledged and respected; where women and men share equally in society's responsibilities and rewards. WEL aims to improve women's access to decision-making bodies in order to give women input into those decisions that affect their lives.

WEL is an active member of the Equality Rights Alliance and Security4Women, two of the funded alliances which give us access to many other national women's groups and the capacity to discuss and debate issues, as well as collaborate on projects and lobbying.

Summary of our case

WELA supports the initiative taken in the referral of this matter to the Community Affairs Committees for inquiry and report. It believes that the Commonwealth has contributed to former forced adoption policies and practices, and that it particular it was responsible for drafting and promoting the use by the States of model ACT adoption legislation which operated when these practices were common and which underpinned them.

WEL also welcomes the opportunity afforded by the scope of the Inquiry to investigate the potential role of the Commonwealth in developing a national framework to assist the States and Territories to address the consequences for the mothers, families and the children subjected to these adoption policies. We are recommending that the Commonwealth follow the example of Western Australia and lead the remaining States and Territories in an apology to unmarried mothers who were pressured into relinquishing their children. We also see an important role for the Commonwealth in supporting inter-jurisdictional information and counselling services for women who are seeking to contact their adopted children.

The Women's Electoral Lobby would like to thank the Committee for the opportunity to provide comment on this significant national issue.

Terms of Reference

(a) the role, if any, of the Commonwealth Government, its policies and practices in

contributing to forced adoptions

In 1984, in response to a number of complaints it had received, and 'in accordance with its general mandate to examine acts and practices of the Commonwealth in relation to human rights,' the Human Rights Commission undertook a study of the Adoption of Children Ordinance 1965 of the Australian Capital Territory.[1] It did this because the 1965 Ordinance was drafted as a Model Uniform Act for State legislation—a common practice in the period before ACT self-government when the Commonwealth wished to influence legislation outside its Constitutional jurisdiction.

The Commission found that in the case of the ACT Adoption of Children Ordinance the Commonwealth's influence had been substantial, and that during the 1960s legislation based on the ACT model had been passed in each State and Territory. The Commission also found that despite some variation in adoption procedures, the assumptions governing the 1965 ACT model legislation remained in place across all States and Territories at the time of its 1984 study (para 14, 17):

> Current Australian adoption law dates, broadly speaking, from uniform legislation enacted in the 1960s. Its explicit function is to enact the principle that the adopted child shall be regarded as having been born in wedlock to the adoptive parents. Its implicit function, then, is to give legislative effect to the assumption that the natural mother, in giving up her child for adoption, wishes to efface herself completely from the child's life. And this assumption is in turn derived from the belief that the birth—presumably illegitimate—of the child is a matter of shame and secrecy for the mother, whose 'natural' wish accordingly is to "put the past behind her" and to "carry on as if it never happened". The very fact of the extra-marital birth was, in the 1960s, viewed as sufficient evidence of the natural mother's moral incompetence to act as a mother. Her practical incompetence was ensured by the absence of social security benefits for single mothers. Accused of selfishness for considering keeping her child, and then accused of selfishness for having given it up, the natural mother was implicitly punished and saved by the law which regulated the adoption of her child in circumstances of strict anonymity. (para 7)

The 1965 model law determined the interests of the child and of the ex-nuptial mother to be served by separation and anonymity. The natural mother was 'encouraged to regard herself as unfit to become a parent and to regard her child as 'not hers' in the same was as the child of a married women' would be (para 57). Thus the 1965 model law accommodated and even fostered policies and procedures that the Commission subsequently found likely to constitute both direct and indirect discrimination on the ground of marital status:

1 Human Rights Commission, 'The Rights of Relinquishing Mothers to Access to Information concerning their Adopted Children', Discussion Paper No 5, July 1984.

> If, for example, a hospital social worker were to put pressure, either directly or indirectly, on single women to consent to an adoption because an assumption is made about the capability of single women (as opposed to partnered women) to support a child, or because of an assumption that a single parent would be unable to provide a stable, happy background for the child, then that pressure could constitute a *direct* discrimination on the ground of marital status.
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> Similarly if, once a mother had indicated her interest in the possibility of relinquishing her child, she became subject to any automatically applied rules which denied her access while in hospital to her child or to information about her child, that denial could constitute *indirect* discrimination on the ground of marital status. That is, if it were found that the great majority of mothers to whom these rules applied were single (which is the case—see paragraph 19) and if the rules themselves were found to be unreasonable in the circumstances, then a case may be made for the imposition of indirect discrimination. The unreasonableness of rules restricting access to children likely to be put up for adoption is arguable on the grounds that such restrictions, rather than helping the mother to make a responsible decision, are in fact designed to make that decision for her. (paras 61 and 62)

The Committee will be aware from submissions that it has received that policies forcing unmarried women to give birth with sheets over their heads or enforcing the removal of newborn children so that new mothers could not see or touch them were commonplace. The coercive nature of these policies is obvious. They assumed that once a new mother was permitted to see her child she would cease to fall in with the legislated assumption that she wished 'to efface herself completely from the child's life'. And indeed, once unmarried women in Western Australia were allowed the same rights as married women to see and hold their babies in 1969, the number of babies available for adoption fell dramatically, from 670 to 99 in 1981 (para 47).

In its subsequent *Review of the A.C.T. Adoption of Children Ordinance* (Report No. 23, 1986) the Commission found that:

> Adoption procedures have largely disregarded the rights of the parent considering relinquishment to be made aware of the alternative options to adoption, and to full and disinterested support in arriving at a decision. The many submissions received from natural mothers who relinquished children for adoption, describing their unresolved grief and sense of loss, bear testimony to the failure of bureaucratic procedures to protect their rights. (page 3)

Despite the Commission's findings on the discriminatory implications of the ACT legislation and the procedures and practices it sponsored, that legislation remained substantially in place until 1993, well after the ACT became self-governing in 1988. This is despite the Commonwealth's continuing responsibility for it as a model Act and despite the passage of the Sex Discrimination Act in 1984.

In addition to drafting and promoting its model legislation, the Commonwealth also had a

significant role in enforcing forced adoptions by denying social security benefits to single mothers. Under the Commonwealth Social Services Consolidation Act (1947-1970), the mother of an illegitimate child (unlike a widow with a child) was defined as a person who ' does not qualify for any other pension, benefit or allowance, who is unable to provide for himself and his dependents without assistance'. The only Commonwealth benefits for which single mothers were automatically eligible were the Maternity Allowance, on the birth of a child, and child endowment, a non-means tested payment to all mothers with dependent children, irrespective of their marital status.

The election of the Whitlam Labour Government in 1972 and the commitment of the responsible Minister, Bill Hayden, led to single mothers being included under the new Commonwealth Widow's Pension Scheme in 1973 on the same basis as all other unsupported mothers. The number of babies available for adoption fell by half in the eight years following this change (para 8).

(b) role of the Commonwealth in developing a national framework to assist the States and Territories to address the consequences for the mothers, families and the children subjected to these adoption policies."

WELA believes that in the light of its role in promoting the legislation, policies and practices supporting forced adoption, the Commonwealth has a responsibility to address their consequences. It understands that adoption law is formally a matter for State jurisdictions, but believes that the Commonwealth should provide leadership in

- making a formal apology to relinquishing mothers, and
- supporting inter-jurisdictional information sharing and counselling services for women who are seeking to contact their adopted children.

On the 13th of February 2008, the Prime Minister specifically acknowledged and apologised to the mothers, children, families and communities of Australia's Indigenous peoples for the actions of successive Parliaments in administering policies that afflicted unnecessary trauma and pain on generations of Indigenous people. On the 19th of October 2010, the Western Australian government set a historic precedent and delivered a formal, unequivocal apology to all unmarried women who were subjected to decades long discrimination by authorities and pressured to have their babies adopted. The Premier, Colin Barnett, acknowledged the extent to which past policies were unsupportive of pregnant, vulnerable, unmarried women. The apology received bipartisan support in Parliament and is viewed by WEL as a long overdue but most welcome initiative by the Western Australian government. We regard it as a necessary step with enormous potential to provide ongoing assistance and support for the mothers, children and families who have been traumatised and adversely affected by past government practice.

The Adoption Alliance currently has in circulation a petition requesting other Australian

governments to acknowledge the damage resulting from past policies and practices and to make a formal apology. WEL believes that such an apology is a critical foundation for any national framework to address the consequences of forced adoptions. Those consequences are ongoing; women are still suffering from the trauma of being separated from their children; and a national apology is the necessary place to begin.

WEL also sees a role for the Commonwealth in supporting the important work of community-based and state-funded agencies that provide information and assistance to individuals coming to terms with the appalling consequences of past government practice. In particular there is a need for improved access to information for mothers and children who are no longer in the same states. The Commonwealth should take the lead in facilitating data sharing, either through a central service or through harmonised state and territory legislation and practices or through both. Importantly, such arrangements should be supported by appropriate counselling services developed in close consultation with community organisations representing relinquishing mothers.