# Response of Origins Inc to the terms of an apology offered in the Western Australian State Parliament 19 October 2010

## OUTLINE OF THE RESPONSE OF ORIGINS INC TO THE WA STATE GOVERNMENT APOLOGY TO UNWED MOTHERS



Regarding upcoming WA State Government Parliamentary motion of 19th October 2010 concerning an Apology for the impact of the removalist policies of past governments on unwed mothers. 'Removalist policies' refers to established hospital practices which occurred across Australia, of marking the offspring of unwed mothers for adoption, leading to the unauthorized taking of their newly born children at birth.

The committee of Origins SPSA Incorporated [1] presents the following objections to the Apology which will be made on behalf of WA State government '…institutions which engaged in these practices', on the grounds of false premises which the Apology will recognise [2] in its offering, including, '…that from the 1940s to the 1980s, the legal, health and welfare systems of the day were unsupportive of pregnant, unmarried women…'[3]

From the outset of any discussion regarding this period, it is important to highlight that the practice of removing at birth, the child of the unwed mother and restricting partially or wholly her access to that child is, first and foremost, a violation of the Common law rather than adoption law because such practice occurred prior to the

point at which adoption law could be effected. That is the reason why Australian babies taken by such an unlawful action at birth are children not adopted but according to Justice Richard Chisholm, 'abducted in a non-technical sense.' [4} Questions of the legality of unsupportive welfare, health and legal systems of the day therefore is first and foremost relative to Common law parental rights rather than adoption law.

### 1.1 The WA State Government Apology will recognise that the welfare system was unsupportive of unmarried, pregnant women

Health Minister Hames' Chief of Staff, Mr Ian Wight-Pickin interpreted the Apology's recognition of an unsupportive welfare systems (1940s-1980s), to a member of Origins Committee on the 7th October 2010, claiming that welfare was unavailable to unwed mothers between the years subject to the Apology.

Yet financial assistance was available to unwed mothers prior to and including between 1940-1980, as verifiable at this link. Rather, by "unsupportive welfare system" the WA State government Apology recognizes that Social workers of WA State endorsed agencies failed to offer alms to unwed mothers (though required under WA legislation), though an action requisite to the taking of informed consent to the adoption of a child should a mother have decided on such course of action.

Moreover, the welfare (to fare well) that only a mother can provide was exchanged for contrived abandonment and the milk of cows, due to the unlawful usurpation of former WA State government endorsed hospitals and adoption agencies. The latter action conveyed especially to younger unwed mothers that the authorities in question had the legal right to remove their children, causing those unwed mothers to sign under duress.

### 1.2 The WA State Government Apology will recognise that the health system was unsupportive to unmarried, pregnant women

While it is true that the health system of the day was unsupportive of the Common law parental rights of unmarried persons, it is more important to note that it was supportive of the Common law rights of married persons. Those "unmarried, pregnant women" should therefore be made aware that in 1984, Human Rights Commission Paper No. 5 found grounds for class action due to discrimination on the basis of marital status:

> Furthermore, discrimination against a single mother on the grounds of her unmarried status may under the Sex Discrimination Act be an infringement of her rights (see paragraphs 61-2), which should be the same as those of any other patient, and specifically those of married mothers.'
>
> That is: She has the right to name her child and the right to see her child with no more restrictions than any other patient in the hospital, and even those restrictions are subject to her final decision. She can sign herself out of the hospital as can any other patient not subject to a committal for psychiatric reasons. She has the right to see anyone she wishes, including the putative father, and he has the right to see the child as much as any other father has the right. Many of these rights are not being recognised, apparently on the grounds that restrictions are in the interest of the mother or her child. Not only is there no evidence to support restrictions on such grounds but there is an abundance of evidence that this type of repression is damaging to mother and child and can seriously jeopardise the realism of the decision that the mother is endeavouring to make about whether or not she should surrender her child...
>
> Policies, particularly in hospitals, have been altered recently, another factor which has contributed to the fall in the number of babies available for adoption. Since, for example, unmarried women have been allowed the same rights to see and hold their babies in Western Australia as married women, the number of babies available for adoption has fallen from 670 in 1969 to 99 in 1981…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 make a responsible decision, are designed to make that decision for her.

The Final Report of the NSW Parliamentary Inquiry into Past Adoption Practices (1950-1998) regarded removalist policies such as those established and practiced by WA hospitals to be “unlawful and unethical” no matter "the rationale for the practice." [5]

In 1986, the Review of the A.C.T. Adoption of Children Ordinance" Report No. 23, Human Rights Commission, stated on page 3:

'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.'

**1.3 The WA State Government Apology will recognise that the legal system was unsupportive of unmarried, pregnant women**

Is the WA State government implying that the legal system was corrupt or that adoption law permitted such removal in contravention of Common law?

The removal of the child at birth constituted first and foremost an action contravening Common law parental rights because they occurred prior to the point at which adoption law could come into effect, leading authorities to warn that such practice could readily be interpreted as duress if the validity of adoption consent was being contested [6].

Warnings went out to Social workers employed by state and private institutions, causing a sudden decline in the number of babies 'available' for adoption across Australia as unwed mothers subsequently were increasingly granted their Common law parental rights: their babies were no longer removed at birth and access to them denied or restricted. The WA State Apology, however, recognizes that such removalist policies by former WA government endorsed hospitals and agencies were "adoption practices", attributing the decline in the number of babies available for adoption after 1980 to changes in adoption law despite that their incline was due to contravention of the Common law.

In a letter to Ms. Lily Arthur, the coordinator of Origins Inc, Minister Kim Hames wrote (Ref 25-11676, see copy of letter at end of this document): 'Adoption practices today are very different. Now, in Western Australia there are no more than five or six adoptions a year. This is the result of significant changes in both law and policy, in recognition of the best interests of the child and the rights of parents to support and raise their children.' [7]

Mr Wight-Pickin confirmed on the 7th October 2010 that the WA Apology will not recognize the illegality of removing the offspring of unwed mothers at birth by stating words to the effect that lack of finance gave them no other choice. Nevertheless, hospital staff were then as now not permitted to remove the babies of any mothers nor

refuse or limit parental access to them.

According to ABC journalist David Weber:

“Dr Hames says he's never found evidence that the removals were an endorsed government policy. He says it was simply an accepted practice”[8] and yet such practices were committed by former WA State government endorsed State and private institutions via versions of the medical code (marked on the files of unwed mothers) “BFA” (Baby for Adoption). It was established by the NSW Parliamentary Inquiry into Past Adoption Practices that : The marking would affect the procedures surrounding the birth in three ways. First, as to the contact the mother would have with the child. Secondly, as to accommodation of the mother and child after the birth. Finally as to the medication that would be administered to the mother." [9]

Though the WA State Government Apology to Unwed Mothers will recognise that such a practice was accepted, one cannot consent to an unlawful act (legal maxim). That is, regardless of whether the unwed mothers believed they were freely consenting to the adoption of their offspring at birth – irrespective of the fact that hundreds have given evidence to the contrary to the Human Rights Commission and the NSW Parliamentary Inquiry into Past Adoption Practices (19950-1998) - the unauthorized removal of the child at birth was and is an action which can readily be interpreted as duress if the validity of an adoption consent is being contested.

Health Minister Kim Hames speaking on behalf of the WA State government has reportedly stated: “There are some who think we shouldn't apologise. Those were the practices of the day. That's why it was done. It was done in the best interests of the mother.” [10]; however, only judicial authorities have the power to consider how or if intention exonerates or minimizes penalty for criminal action; furthermore, ignorance of the law is no excuse. Nevertheless, the WA State Government Apology will recognise that the actions surrounding the unauthorized taking of the child at birth were simply “practices of the day;”[11]

The social mores argument may be used by governments of any criminal persuasion in repeating and exonerating similar crimes and abuses on their citizens. Nevertheless, both wed and unwed citizens of our liberal democracy are subject to Rule by Law, not rule by social forces/mores. The Common law forbids the unauthorized taking of a child, which the WA State apology calls “adoption practices” justified on the basis of social mores. The judicial power, not the ministerial power has the authority to judge the legality of acts. There should be Separation of the Powers in a liberal democracy. If the WA State government wishes to give a sincere apology, its ministers must first reject their own inquiry and commission a WA State inquiry, or support a Senate inquiry, into past adoption practices.

Those subject to the unlawful hospital practices in question cannot seek justice if it is perverted by WA State recognition of falsehoods such as those upon which the formal Apology will be based if moved by WA State Parliament on the 19th October 2010. Such an Apology can only be the cause of unwed mothers continuing to believe that hospital administrators of the day had a right under adoption law of the day to mark and remove their children for adoption. If this Apology goes ahead, the victims of crime will be caused to take blame for crime. Hence, the Apology will appear as a plea for pity on their behalf as those misrepresented as responsible for the crimes perpetrated against them.

### 1.4 Finally, the WA State government is planning a memorial for living mothers where they can "reflect"

Memorials are places to reflect on past persons or things. Unacknowledged crimes are not past but ongoing things, while the living mothers and fathers whose children were taken without their authority are not passed either, but existent persons (though many suicides of both mothers and their stolen children have occurred). What is existent is not subject to memorial. The memorial is a macabre and inappropriate proposal; therefore, it may even cause the surviving victims to lose hope, leading to further pain and suicide.

### 1.5 Conclusion

A sincere apology is contingent upon recognition of that for which it is being made; the WA State Apology recognizes not facts but falsehoods; The WA Apology is insincere as it places the blame on those impacted by the culpable actions of past governments by clearly implying that the unwed mothers freely relinquished their children. If that is the case, then they are responsible for the impact of the practices for which the WA State Government will apologize on behalf of past governments rather than those past governments themselves.

As based on falsehoods, the WA Apology may pervert the course of justice and decay Australia's criminal justice system. Origins Committee therefore calls on all ministers of the Western Australian State Government to reject the motion for the WA State Apology to Unwed Mothers, recognizing the false premises upon which it is based as, should this motion be passed and the Apology proceed, it will be seen as absolving the State of their responsibility for the crimes committed;

A caution also in regard to the second injury [12], which occurs when a victim's response to a criminal incident is questioned; the removalist policies already deemed

unlawful, should not be retrospectively legalized by ministers of State. Origins Inc has the largest library of information related to the period in question, including extensive primary and secondary sources to substantiate all claims should that be required.

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Another article is soon to be published defining "Australians Separated by Forced Adoption"

**References**

[1] Origins SPSA Inc is the only non-government-funded, incorporated organization in Australia supporting people separated by the practices in question

http://www.originsnsw.com/

[2] Recognize: To acknowledge the existence, validity or legality of. (Oxford American Dictionaries)

[3] The Liberal Party of Australia, Western Australian Division, accessed 7th October 2010 from,

http://www.wa.liberal.org.au/index.php?option=com_k2&view=item&id=2799%3a&itemid=172

[4] Transcripts of Evidence, Report on Adoption Practices: Second Interim Report, 1999, P. 152, accessed 10th Oct 2010 from

http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/ef420d086362b77fca256cfd002a63c1/$FILE/Interim%20Committee%20Report%2021%20June%202000%20-%20Inquiry%20into%20Adoption%20Practices%20in%20New%20South%20Wales.pdf

[5] Releasing the Past, Final Report of the NSW Parliamentary inquiry into Past Adoption Practices (1950-1998), 2000, paras. 7.61-63

http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/56E4E53DFA16A023CA256CFD002A63BC

[6] The Health Commission distributed Policy Circular 1082 (in 1982) to warn all medical staff that the practice of preventing unmarried mothers from seeing their babies, or putting obstacles in their way of asserting that right was in breach of the

mother's common law rights as a parent. The Health Department's policy circular was served as a warning to hospital staff that they faced the risk of litigation by continuing those practices if a mother should contest the validity of her consent.

[7] For source: see correspondence from Minister Hames, accessed 10th Oct 2010 from

http://gift-not-choice.tripod.com/letter-from-minister-hames.html

[8] ABC News, "WA to Apologize for Lost Children", accessed 9th October 2010 from

http://www.abc.net.au/pm/content/2010/s3005280.htm

[8] Releasing the Past, Final Report of the NSW Parliamentary inquiry into Past Adoption Practices (1950-1998), 2000, p. 95

http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/56E4E53DFA16A023CA256CFD002A63BC

[10] ABC News, "WA to Apologize for Lost Children", accessed 9th October 2010 from

http://www.abc.net.au/pm/content/2010/s3005280.htm

[11] ibid

[12] The National Center for Victims of Crimes, accessed 7th Oct 2010 from

http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32371