To Senate Community Affairs Committees
Supplementary Submission: Commonwealth Contribution to Former Forced Adoption Policies and Practices

Executive Summary:

COMMONWEALTH'S POPULATON POLICY AND ITS INFLUENCE ON STATE ADOPTION LEGISLATION AND POLICY DURING THE 20TH CENTURY (Confidential)

And

The Broken Bond: Stolen Babies Stolen Motherhood Viewed Through a Trauma Perspective

And

Human Rights Abuses in relation to Commonwealth Policy of Forced Removals
October 2011

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chers yesterday carry banners protesting against adoption abuses

Christine Cole and Ristin Nichols leading the Women's Day March 1995

Overview: **Commonwealth- State collaboration in Forced Removal of infants of unwed mothers**

1 Infants of single mothers removed soon after birth to avoid 'contaminating' their infants and encouraging immorality.[1]
2 1903: Population policy – in the context of Europeanising Aboriginal children and reducing white illegitimacy both were part of a common project. Both strategies aimed at increasing number and quality of **legitimate** white population.[2]
3 **Assimilation** as a practice of dispersing the poor and the illegitimate into a class above their own used in Great Britain and adopted as a population policy by the Australian State.[3]
4 1908 Agreement of all Australian States and Territories that adoption is now national welfare policy.[4]
5 State supervision extended to Rescue Homes which become part of a national rehabilitation program of unwed mothers and intended to supplement the work of the Industrial Schools.[5]
6 Co-operation of religious organisation became an essential corollary in the general scheme of reform of unwed mothers.[6]
7 Congruent influence of church and state established to eliminate "**national** decadence physical and moral" of unwed mothers and illegitimate children.[7]
8 Inmates of Rescue Homes – unwed mothers who were discharged reformatory inmates, State ex-apprentices whilst some were referred by Children's Courts – indicates clear State involvement with the monitoring of unwed mothers.[8]
9 1908: Charles Mackellar, President of the State Child Relief Dept, and A. W. Green (Chief Boarding Officer) established three Homes for unwed mothers and babies so that mothers could wean their infants and mortality rates of illegitimate infants would be lowered - assisting mothers to wean their infants did not mean mothers kept their infants.[9]

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[1] Renwick (1887) cited in Annual Report of the Children's State Relief Dept., at 4,
[2] Reekie, G. *Measuring Immortality: Social Inquiry and the Problems of Illegitimacy* UK: Cambridge Press, at 74-75
[3] Reports of Poor Law Inspectors to Poor Law Board on boarding-out of Pauper Children in Scotland and certain Unions in England: 1870, p. 44 (hereafter referred to as the Henley Report).; Mundella (1896). Department Committee to inquiry into Systems for Maintenance and Educatin of Children under Charge of Managers of District Schools and Boards of Gauardians in Metropolis: Report Volume II (Publication Retrieved April 2007 from House of Commons Parliamentary Papers Online [C.8032] at 88-89; Garton, S. (2008). Health and Welfare Retrieved 6th September, 2010 from http://www.dictionaryofsydney.org/entry/health_and_welfare; Walther Bethel, Secretary of the NSW Child Welfare Dept, in the 1925 Child Welfare Annual Report at 5. Annual Report New South Wales State Child Relief Department: Renwick: 1883, p. 4; 1894, p. 1; Annual Report of the Children's Relief Dept: 1908, p. 19; Annual Report of the Children's Relief Dept: 1904, p. 24
[4] Mackellar, C. (1913) *The Treatment of Neglected Children and Delinquent Children in Great Britain, Europe, and America with Recommendations as to Amendment of Administration and Law in New South Wales Report* No 4, 11 September at 206
[5] Ibid at 205-206
[6] Ibid at 203
[7] Ibid at 96
[8] Ibid at 205
[9] The Mother, the Baby and the State: A short Discussion of the question of Infantile Mortality Legislative Council Sydney 10 March 1917, An Open Letter to The Honourable J.D. Fitzgerald MLC Minister for Public Health by Sir Charles K Mackellar 1917, at 13

10 1929: Minister Drummond discusses hostels for unwed mothers where they are expected to wean their infants before being adopted.[10]
11 The WA Child Welfare Dept expected mothers to wean their infants and then be adopted to become useful citizens – it vigorously promoted adoption.[11]
12 Under Part V of the NSW Child Welfare Act lying-in homes, hostels and other places where unwed mothers and children were received were visited by Department's Inspectors … "under the delegated authority of the Minister for the purpose of supervising the children and seeing that the regulations governing the homes are carried out".[12]
13 All Lying–in Homes registered by the Health Department.[13]
14 Departmental Inspectors promote adoption to the mothers when inspecting the Homes.[14]
15 1921 Federal Health Department established to co-ordinate State Health Departments re Infant and Maternal Welfare.[15]
16 The Commonwealth's power to influence and direct States re maternal and infant welfare was undertaken by extension of the quarantine powers given to it by the Constitution. [16]
17 The regulation and control of feeblemindedness designated a Commonwealth responsibility.[17]
18 Mackellar wanted oversight and regulation of unwed mothers as he confounds illegitimacy with feeblemindedness and crime.[18]
19 Mackellar directs unwed mother and baby homes to report to the government on the mental competency of unwed mothers.[19]
20 Mackellar defines Aboriginal mothers with white antecedents as 'racially inferior' whites and gives them the same status as unwed mothers and their infants.[20]

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[10] Drummond, D. H. Minister of Public Instruction, Annual Report of the Child Welfare Department, 1926, 1927, 1928, 1929, p. 5
[11] Kerr, R. (2005). *The State and Child Welfare in Western Australia: 1907-1949*, Unpublished thesis, Curtin University of Technology at 120
[12] Drummond, D. H. Minister of Public Instruction, Annual Report of the Child Welfare Department, 1926, 1927, 1928, 1929, p. 29
[13] ibid
[14] Drummond, D. H. (1933). Minister of Public Instruction, *Annual Report of the Child welfare Department's Work for the Years 1930 and 1931*
[15] Gillespie, P. 1991, *The Price Of Health : Australian Governments and Medical Politics 1910-1966*, Studies in Australia History Series Editors: Alan Gilbert and Peter Spearitt, Cambridge: Press Syndicate f the University of Cambridge; Roe, M. (1984). Nine Australian Progressives: Vitalism in Bourgeois Social Thought 1890-1960 Queensland: University of Queensland Press
[16] Roe, M. (1976). The Establishment of the Australian Department of Health: Its Background and Significance *Australian Historical Studies* 17(67). October, pp. 176-192 at 186
[17] Mackellar, C. (1913) *The Treatment of Neglected Children and Delinquent Children in Great Britain, Europe, and America with Recommendations as to Amendment of Administration and Law in New South Wales Report* No 4, 11 September
[18] Mackellar, C. (1913) *The Treatment of Neglected Children and Delinquent Children in Great Britain, Europe, and America with Recommendations as to Amendment of Administration and Law in New South Wales Report* No 4, 11 September at 88-92; Mackellar, C. & Welsh. (1917). Mental Deficiency: A Medico-Sociological Study of Feeble-Mindedness Sydney: W. A. Gullick, Government Printer, at 25, 34 (book donated to UWS library by NSW Dept of Community Services).
[19] Mackellar, C. (1913) *The Treatment of Neglected Children and Delinquent Children in Great Britain, Europe, and America with Recommendations as to Amendment of Administration and Law in New South Wales Report* No 4, 11 September at 91
[20] Ibid at 91

21 Medical Congress decides that accurate census of feebleminded be kept by the Commonwealth.[21]
22 Children of single mothers should be removed from their "evil" environment.[22]
23 1924 the Commonwealth Serum Laboratories (CSL) is re-organised.
24 Religious unwed mother and baby Homes are made arms of the Tasmanian government and Matrons are given right of loco parentis and can sign adoption consents on behalf of unwed mothers under the *Mental Deficiency Act.* "Unwed mothers moved on to indefinite – and sometimes permanent – institutionalisation at St John's Park, or the Mental Diseases Hospital in New Norfolk … the adoption of babies in this way created another stolen generation".[23]
25 The Federal Royal Commission on Health (1925) endorsed the Federal Health Department's work and promised to give it a broader role via the Federal Health Council.[24]
26 1927 Federal Health Council[25] established to extend the Commonwealth Influence over State Health policy.
27 Federal Health Council ascertained the extent of mental deficiency in Australia and makes recommendations as to the role the Commonwealth could perform in co-ordinating the efforts of the States in solving the problem.[26]
28 In 1935 to commemorate George V's 25 years of kingship a fund was established. It derived from Commonwealth and State governments as well as public subscription. Its aim was to improve natal care. The Federal Health Council offered guidelines for State committees.[27]
29 1937 Federal Health Council[28] evolved into the National Health and Medical Research Council which consisted of the Federal Health Minister and the various heads of State Health Departments. Its mission was to supervise, research and co-ordinate national policies – maternal and infant welfare being the prime concern of the Council.[29]
30 1945-1970 Commonwealth Serum Laboratory in collusion with State Health Departments and Religious organisation administrating Homes for unwed mothers and babies were used to conduct vaccine trials on babies awaiting adoption in five

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[21] Mackellar, C. & Welsh. (1917). Mental Deficiency: A Medico-Sociological Study of Feeble-Mindedness Sydney: W. A. Gullick, Government Printer, at 10
[22] Ibid at 31
[23] Parry, N. (2007). 'Such a Longing': Black and White Children in Welfare in New South Wales and Tasmania, 1880-1940 Unpublished Thesis University of New South Wales Doctor of Philosophy at 199-200.
[24] Mackellar, C. (1913) *The Treatment of Neglected Children and Delinquent Children in Great Britain, Europe, and America with Recommendations as to Amendment of Administration and Law in New South Wales Report* No 4, 11 September at 88-92; Roe, M. (1984). Nine Australian Progressives: Vitalism in Bourgeois Social Thought 1890-1960 Queensland: University of Queensland Press at 140
[25] The council comprised of Cumpston as chairman and the heads of State health officers". Thereby it was possible that he and his colleagues could guide the States on matters such as venereal disease and infant and maternal care". (Roe: 1984, p. 140).
[26] Jones, R. (1999). The Master Potter and the Rejected Pots: Eugenic Legislation in Victoria 1918-1939 *Australian Historical Studies*, 113, p. 333
[27] Roe, M. (1984). Nine Australian Progressives: Vitalism in Bourgeois Social Thought 1890-1960 Queensland: University of Queensland Press at 144
[28] The Council, was to provide a forum for consultations between the Commonwealth and state health departments" (Gillespie: 1991, p.45).
[29] *The Mercury*, Hobart, 2 February, 1937, p. 8, Accessed Oct 9, 2010 http://nla.gov.au/nla.news-article30136874

religious institutions in Victoria[30] – no proper consent for trials acquired.[31] Trials of the triple antigen serum were conducted in the 1940s at St. Joseph's Babies Homes.[32] The vaccine was not introduced by the CSL until 1953.[33] The CSL Serum Laboratory was located in Victoria.[34]

31 Adoption was promoted by Child Welfare Departments for eugenic reasons and to save the State money.[35]

32 1940s: Commonwealth Government co-ordinates the development of reciprocal legislation whereby an adopter in one State can adopt from another State, this is initially initiated by the Prime Minister to assist Australian Capital Territory (ACT) residents legally adopt infants from other States. There are very few babies available for adoption in the ACT. The Federal Government dictates that all States introduce amendments into their adoption legislation to facilitate the movement of babies across borders.[36]

33 Australia ratifies *The Universal Declaration of Human Rights* (UDHR) (1948) and commits itself to provide special protection to mothers and infants, irrespective of birth status, and to desist from committing inhuman and degrading acts against its citizens, freedom against arbitrary detention, provision of adequate wages, security of person and right to legal redress for crimes that violate UDHR principles – the continuation of its policy of forcible removal of infants of unwed mothers violates its obligations and therefore Australia is in violation of the UDHR – Articles 2, 3, 4, 5, 7, 8, 9, 12, 23, 24, 25(2).

34 1950s: it becomes routine to traffic pregnant women and infants across borders - pregnant women give birth in one State, baby adopted in said State, mother transported back to her home State.[37]

35 1950s: the State Child Welfare Departments begin a second wave of promoting adoption and stigmatising single mothers and advocating the removal of infants away from their family or origin[38] as did social workers.[39] In effect promoting

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[30] The Age Oct 25 2004 Polio vaccine tested at orphanages http://www.theage.com.au/articles/2004/10/24/1098556293576.html?from=storylhs

[31] A report written by the Department of Human Services in November 1997 considered the issue of who had given consent for these children's participation in the medical trials. The report found that 'it is likely that the research institutes gained consent to conduct the research from staff responsible for the institutions and possibly in one case, from a Departmental employee' http://www.pathwaysvictoria.info/biogs/E000503b.htm

[32] Moore, H. (1982). *Better for the Babies: An Interpretive Oral History of the De-Institutionisation of Infant Care at St. Joseph's Babies' Home, Broadmeadows* Department of Social Studies Melbourne University at p. 29

[33] Victorian Department of Health, Health Information, The History of Vaccination Introduction http://www.health.vic.gov.au/immunisation/general/history

[34] The University of Adelaide Clinical Toxinology Resources *Commonwealth Serum Laboratory Ltd* http://www.toxinology.com/fusebox.cfm?staticaction=generic_static_files/avp-csl-01.html

[35] Kerr, R. (2005). *The State and Child Welfare in Western Australia: 1907-1949*, Unpublished thesis, Curtin University of Technology.

[36] Ibid; and see Cole Submission 223: Supplementary Submission to Senate Inquiry on Forced Adoptions: *The Broken Bond: Stolen Babies Stolen Motherhood Viewed Through a Trauma Perspective*

[37] Hon R. J. Hamer Adoption Children Bill, (1964) Vic Hansard, vol 274, p. 3648 ; Staff Correspondent (1950). The Problem of the Unwed Mother, *The Sunday Herald* June 28, 1953, p.12, http://nla.gov.au/nla.news-article18504211 ; Cole: 2011 unpublished thesis

[38] Government to consider Report on unwed mother, *The Sydney Morning Herald*, August 13, 1954, p.4 http://nla.gov.au/nla.news-article18439860 ; NSW Unwed Mothers Report Soon: A Report on the Problem of the Unwed Mother (Committee made up of adoption social, medical & welfare workers *Sydney Morning Herald* August 7, 1954, p. 13, http://nla.gov.au/nla.news-article18429216

unwed mothers to carry infants for married couples was encouraging them to be used as unpaid surrogates or reproductive slaves. The Australian government in no way stopped the campaign or made anyone accountable therefore by its collusion violated the rights of mothers and children and failed to protect its most vulnerable. Australia is therefore in violation of UDHR articles 1, 3, 4, 5, 6, 7, 8, 12, 25(2).

36 Dr Lawson in the *Medical Journal of Australia* advised medical staff not to concern themselves with the law and that they should take the baby from a single mother and give it to a married couple. The Australian government did not rebut the directive given in a national journal therefore by its silence sanctioned illegal acts perpetrated on single mothers and failed in its duty of care to protect its most vulnerable citizens from such violations – therefore the Australian State stands in violation of UDHR Articles 25(2), 1, 2, 5, 6, 7, 8, 12, 25(2).

37 1961-1964 Commonwealth Model Adoption Act developed.[40]

38 1964-1970: Model Act implemented in all States and Territories.[41]

39 Development of Uniform Policy and Regulations Australia wide re Adoption.[42]

40 New Adoption Acts expected to make available more babies for adoption across Australia – thereby rather than finding homes for infants it was sourcing infants for adopters.[43]

41 Australian policy of social workers putting a secret code on the files of unmarried women whilst pregnant that dictated the specific treatment they would receive months later whilst giving birth was based solely on their marital status and was discriminatory.[44]

42 Australian policy not to allow unwed mothers access to their infants at birth.[45]

43 Not informing unwed mothers of the sex of their infant.[46]

44 Policy to sedate mothers with mind altering barbiturates.[47]

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[39] Should Unwed Mother Give Up Her Child *Sydney Morning Herald* July 15, 1953, p. 9 http://nla.gov.au/nla.news-article18388329

[40] Langshaw, W. C. (1978). National Standards, Policy and Law, in *Proceedings of Second Australian Conference on Adoption*, Melbourne, May

[41] ibid

[42] ibid

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[44] Gair, S. & Croker, F. 'Missing Voices About a Foreign Place: Exploring midwifery practice with midwives who cared for single mothers and their babies in Queensland (1960-1990)' *Journal of Interdisciplinary Gender Studies* 10(2), p.60; Farrar, T 1997. 'What We Did to Those Poor Girls! The Hospital Culture that Promoted Adoption.' In *Proceedings of the Sixth Australian Adoption Conference*, 116-127. Sydney; P Roberts, 'Statement of Pamela Thorne, nee Roberts, 30 September, 1994' in the matter of Judith Marie McHutchison v State of New South Wales no. 13428 of 1993; Final Report No. 22 (2000). *Releasing The Past: Adoption Practices 1950-1998*, pp. 94-95

[45] Joint Select Committee (1999). *Adoption and Related Services 1950-1998*, Parliament of Tasmania, at 7- 8; P Roberts, 'Statement of Pamela Thorne, nee Roberts, 30 September, 1994' in the matter of Judith Marie McHutchison v State of New South Wales no. 13428 of 1993; Gregory, G. (1972). What our Community Offers in *The Child of the Single Mother Proceedings of Seminar* held on 3rd and 4th November, 1972 Victorian Council of Social Service, p.45; *Sunday Truth*, Ward I Crowded: Unwed mothers: A special ward, set aside at the Brisbane Women's Hospital for unmarried mothers October 24, 1965; Hon A. Todd, Adoption of Children Bill, (1964). 14 April, Vic Hansard, vol 274, p. 3649; Cunningham, A. (1996). Background Paper for the Minister for Community and Health Services On Issues relating to Historical Adoption 4 December, at 20

[46] Parliament of Tasmania: 1999, p. 7; Borromeo, M. (Sister R.S.M). (1967). The Natural Parents, *Australian Social Work* 1 February, 20(1) at 11

[47] Rickarby, G. *Interim Report on Inquiry into Adoption Practices: Transcripts of Evidence* Report No. 17 November 1998, p. 64

45 "It was 'conspiratorial activity' that included many operatives who comprised a 'well oiled system' whose intent was to abduct newborns".[48]
46 Policy of brainwashing mothers that they were unfit to parent – to facilitate adoption process.[49]
47 By the 1960s-1970s the government justified its policy of coercing a single mother into adoption by stating it was in her child's best interest.[50]

Overview of Key Points of the Commonwealth Population Policy (Confidential Submission)

1. Late 19th to early 20th century the Boarding-out System, which included adoption, became national policy. Unwed mothers without financial support had their infants forcibly removed and fostered out, usually to couples living in the country.[51]
2. 1896 to the 1920s laws were passed to ensure that fostered children could not be reclaimed by their parents.[52]
3. Fostering and in particular adoption were considered cost cutting measures by the State. [53]
4. Once adopters had surety of ownership of the child they came forward in greater numbers - T. D. Mutch, the Minister for Public Instruction announced that "people wanting children are coming forward in greater numbers, and already a great saving to the State has been effected".[54]
5. Australian promoted a White Australian Policy, part of which was based on the elimination of illegitimate children as they were deemed 'racially inferior'[55] by way of assimilating them into families slightly above their class.[56]
6. Australian elite were influenced by Francis Galton and believed that if the Australian nation was to survive the race must be kept pure or it would lead to 'racial suicide'.[57]

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[48] Rickarby, G. *Interim Report on Inquiry into Adoption Practices: Transcripts of Evidence* Report No. 17 November 1998, p. 64
[49] K MacDermott, *Human Rights Commission discussion paper no. 5*, 1984, pp. 3, 41; R Rawady, Open letter to Mary Hood, President/Director Australian Association of Social Workers SA calling for a public apology, 10 April 1997; Mothers' testimonies at the Inquiry 1998–2000 see Report 21.
[50] Willesee, W. F. (1971). WA Hansard, 23 September, p. 1691
[51] Renwick: 1883 cited in the annual Report of the State Children's Relief Dept, p. 23.
[52] Department of Child Welfare and Social Welfare, (1958*). Child Welfare in NSW Training Manual*, p. 13; MacFarlane, Victorian Legislative Assembly, 26 September, 1928, Hansard, vol 177, p. 1869, cited in Dees, p. 1; Hon. R. J. Hamer, Adoption of Children bill 24 March, 1964, p. 3283; New South Wales State Children's Relief Dept. Annual Report For the Year ending 5 April 1883, p. 21; New South Wales State Children's Relief Dept. Annual Report For the Year ending 5 April 1883
[53] New South Wales State Children's Relief Dept. Annual Report For the Year ending 5 April 1883, p. 21
[54] New South Wales Child Welfare Department Annual Report for part of 1921 and the four following years ended 1925, p. 2
[55] Leonard Darwin (1918) cited in Reekie: 1998, pp. 79-80 stated: "illegitimate children are inferior in civic worth. Reducing their number could only improve the race"
[56] Rowe, J. (1966). *Parents Children and Adoption: A Handbook for Adoption Workers*, London: Routledge & Kegan Paul, p. 203
[57] Gillespie, P. 1991, *The Price Of Health : Australian Governments and Medical Politics 1910-1966*, Studies in Australia History Series Editors: Alan Gilbert and Peter Spearitt, Cambridge: Press Syndicate of the University of Cambridge, p. 33, 35
: 1991, p. 33, 35; Edith Waterworth, Unmarried Mothers The Women's View Letter to the Editor *The Mercury* Hobart April 10, 1931, http://nla.gov.au/nla.news-article29904099 - Mrs. Waterworth (a

7. Single mothers were considered 'racially inferior' and therefore removing their children was justified as protecting them from being contaminated by their "mother's immoral and feebleminded 'taint'".[58]
8. One purpose was to train the children to be industrious citizens fitted for agricultural or domestic service;[59]
9. A second purpose was to resolve social problems such as crime, immorality delinquency and to purify the 'racial germ'.[60]
10. The State was concerned with the falling birth rate and there was a pronatalist push conceptualised as: "Populate or Perish". [61]
11. The Commonwealth was responsible for population policy and introduced policies to regulate reproduction.[62]
12. Those policies included transferring/removing children from 'unfit' to fit parents.[63]
13. Aboriginal mothers with a white antecedent were considered 'racially inferior whites' and positioned in the same social status as unmarried white mothers and their infants and therefore both groups were targeted for assimilation and elimination as societal problem.[64]

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eugenicist) was the President of the Tasmanian Council of Maternal and Child Welfare see: Problem of the Young Unmarried Mothers A Conference, *The Mercury*, Hobart, September 10, 1938, p. 15, http://nla.gov.au/nla.news-article25552104

[58] Mackellar, C. (1904). *Annual Report Child Relief Department* at p. 24; Mackellar, C. & Welsh. (1917). Mental Deficiency: A Medico-Sociological Study of Feeble-Mindedness Sydney: W. A. Gullick, Government Printer, p. 31 (book donated to UWS library by NSW Dept of Community Services). : "Racial imperatives informed these calls to decrease illegitimate and increase legitimate reproduction" (Reekie: 1998, p. 74)

[59] Department of Child Welfare and Social Welfare, (1958*). Child Welfare in NSW Training Manual*, p. 13

[60] Mackellar, C. (1904). *Annual Report Child Relief Department* at p. 24; Mackellar, C. & Welsh. (1917). Mental Deficiency: A Medico-Sociological Study of Feeble-Mindedness Sydney: W. A. Gullick, Government Printer, p. 31 (book donated to UWS library by NSW Dept of Community Services).

[61] Populate or Perish: Mr. Joseph Cook, Leader of the Opposition, *Brisbane Courier*, 15 February, 1913; Lord Northcliffe, newspaper magnate, promoter of British migration into Western Australia, propagandist for the British government and promoter of the white Australia policy generally, used the phrase repeatedly when touring Australia, in relation to Australia' small population and Europe's "hungry populations", *Brisbane Courier*, August 24, 1926, p. 6; The term though became associated with William Hughes, also titled the Minister of Motherhood, as he linked motherhood with defence whilst Minister for Health. He set up a Commonwealth Project: a Citizens Committee to co-ordinate the national jubilee fund for maternal and infant welfare, *Canberra Times*, April 13, 1935, p. 1; Hughes, W. Australia being bled White: Mr Hughes warning Populate or Perish, *The Courier-Mail Brisbane*, July 25, 1935, p. 14: "It was not mere numbers that were wanted, but an increase of strong, vigorous men, women, and children, and the foundation of that was healthy mothers"

[62] Gillespie, P. 1991, *The Price Of Health : Australian Governments and Medical Politics 1910-1966*, Studies in Australia History Series Editors: Alan Gilbert and Peter Spearitt, Cambridge: Press Syndicate of the University of Cambridge, p. 33, 35

[63] Mackellar, C. (1913) *The Treatment of Neglected Children and Delinquent Children in Great Britain, Europe, and America with Recommendations as to Amendment of Administration and Law in New South Wales Report* No 4, 11 September ; Mackellar, C. (1904). *Annual Report Child Relief Department* at p. 24.

[64] Reekie, G. *Measuring Immortality: Social Inquiry and the Problems of Illegitimacy* UK: Cambridge Press, pp 67-70 ; Mackellar, C. (1913) *The Treatment of Neglected Children and Delinquent Children in Great Britain, Europe, and America with Recommendations as to Amendment of Administration and Law in New South Wales Report* No 4, 11 September ; Mackellar, C. (1904). *Annual Report Child Relief Department* at 91 Kline, W. (2001). Building a Better Race: Gender, Sexuality, and Eugenics from the Turn of the Century to the Baby Boom, Berkeley: University of California Press, pp. 121-122;

14. Development of a racially superior white population was supported by the interests of Imperial Britain which wanted a nation of 'good British stock' to call on in times of war.[65]
15. Australian population policy implemented and regulated by the Federal government its agenda being "preservation of racial vitality and the strengthening of the nation".[66]
16. Babies forcibly taken from unwed mothers were advertised as "unwanted". [67]
17. Child Welfare Department used the media, such as popular magazines like *The Australian's Women's Weekly* to promote adoption to ensure a broad selection of adopters in order to eugenically match the baby with the adopter.[68]
18. The campaign promoted adoption as being in the best interests of the child.[69]
19. The External Policy: The Child Welfare Departments and social controllers/social workers used the media to promote adoption, stigmatise single motherhood and continue to remind the public that the infants were 'unwanted' when they knew that to be blatantly untrue.[70]
20. The Internal Policy: Social work literature that guided social work practice stated that mothers were not autonomous and the mother was too "immature to make her own decision".[71] The literature informed social workers that it was they who would be the deciders.[72]
21. Sterility clinics were operating in hospitals and there was a belief that if a woman adopted a child she would be more likely to conceive one of her own. Adoption therefore had the added bonus of acting as a fertility device and was used in a way that has been termed positive eugenics: increasing the production of children by the section of the population assumed fit.[73]

Odem, M. E. (1995). Delinquent Daughters: Protecting and policing adolescent female sexuality in the United States, 1885-1910, North Carolina: University North Carolina Press

[65] Reekie, G. *Measuring Immortality: Social Inquiry and the Problems of Illegitimacy* UK: Cambridge Press, p, 79

[66] Gillespie, P. 1991, *The Price Of Health : Australian Governments and Medical Politics 1910-1966*, Studies in Australia History Series Editors: Alan Gilbert and Peter Spearitt, Cambridge: Press Syndicate f the University of Cambridge, p. 33

[67] Perkins, K Power of the law protects the fatherless *Daily Telegraph* 27/1/1967; Dupre, A. Unwanted Babies and their New Parents *The Sun* 28/11/1973; Gilbert, C. (1968). 'These children need parents (But adoption's a slow business)' 500 unwanted babies in Background *Sunday Telegraph* Feb 18, 1968, p. 41

[68] Heffron cited in the NSW Child Welfare Department Annual Report at 13-14; Perkins, K Power of the law protects the fatherless *Daily Telegraph* 31/1/1967; Kennett, J. (1970) The losers in the babyboom: For some mothers an agony of mind and heart lies ahead *Sunday Telegraph*, 12 December; Staff Reporter The unmarried mother's problem should she Surrender her Baby? *The Australian Women's Weekly* September 8, 1954, p. 28

[69] *The Australian Women's Weekly* September 8, 1954, p. 28

[70] Kerr, R. (2005). *The State and Child Welfare in Western Australia 1907-1949* Unpublished Thesis Curtin University ,

[71] M McLelland, *Proceedings of a seminar: adoption services in New South Wales'*, Department of Child Welfare and Social Welfare, 3rd February, 1967, p. 42. Since it was the mother, who was the legal guardian of her child, and only the mother that was to make any decision with respect to relinquishment, what Mary McLelland is advocating: (that social workers either make the decision or help a mother to a decision), is clearly unethical and unlawful; JH Reid, 'Principles, values and assumptions underlying adoption practice', *Social Work*, vol. 2, no. 1, 1957

[72] Cole, C. (2008). Releasing the Past: Mothers' stories of their stolen babies Sydney: Sasko Veljanov; Staff Correspondent (1950). The Problem of the Unwed Mother, *The Sunday Herald* June 28, 1953, p.12, http://nla.gov.au/nla.news-article18504211

[73] McHutchison, J. (1984). *Adoption in NSW an Historical Perspective* p. 14 citing *Progress* (a quarterly publication of) the NSW Public Service Board (1964). 3(2), p. 17; Staff Reporter. (1977).

22. Babies taken from their single mothers were used as guinea pigs in vaccine trials without obtaining consent. The institutions used in the trials were St Joseph's Home in Broadmeadows, Berry Street Foundling Home, Bethany Babies Home in Geelong, Methodist Babies Home and the Children's Welfare Department at Turana, run by the Victorian government…. CSL research records in the National Archives show that 56 babies under the age of 12 months were used in the Victorian vaccine trials. [74] One baby died of meningitis in August 1960, less than three months after completing a course of three quadruple antigen injections.[75]
23. 1964: *Progress*, a quarterly magazine published by the Public Service Board of NSW provides evidence of the pressure from people wanting to adopt: "In the post war years when the waiting list of adopting parents grew longer, and couples desperately wanting to adopt a baby felt they could not wait the requisite period (then up to five years), it was inevitable that money should change hands".[76]
24. A 1954 Report[77] stated: "No doubt the increased interest [in adoption] is partly due to the natural desire of childless couples to have children, which has been reinforced by the possibility of legal adoption, and partly to the greater awareness of the plight of children deprived of a normal home life, to which much publicity has been given in recent years" (p. 4).
25. During the 1950s and 60s the pressure from those who wished to adopt further escalated and the Federal and State Attorney General's in 1961, began discussions to formulate a model adoption bill to further protect the interests of adoptive parents whilst reducing the rights of natural parents.[78]
26. The Australian government expanded and extended further its population policy which culminated in 1964 with the Commonwealth in conjunction with the States drafting a Uniform Model Adoption Bill which all states and territories implemented (1964-1970). The draconian legislation combined with the implementation of a punitive internal Health Department Policy which dictated inhuman and degrading treatment of unwed mothers in hospitals meant that by the late 1960s more babies were available for adoption than at any other time in history.
27. The adoption legislation introduced around Australia was enacted to protect the rights of adoptive parents and to facilitate the adoption process. This resulted in an ever increasing number of applicants applying to state governments for infants.[79]
28. A review of Hansard in Western Australia, Victoria and New South Wales indicates that adoption legislation was never formulated to protect the rights of the

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Adoption as 'a fertility charm' Dr. Krauss cited in *Daily Telegraph* Sept 3

[74] The Age Oct 25 2004 Polio vaccine tested at orphanages http://www.theage.com.au/articles/2004/10/24/1098556293576.html?from=storylhs

[75] http://www.pathwaysvictoria.info/biogs/E000503b.htm

[76] Progress, (1964). published quarterly by the Public Service Board of NSW, 3(2), p. 14, cited in McHutchison, p. 13

[77] Fyfe, D. & Stuart, J. *Report of the Departmental Committee on the Adoption of Children 1953-1954* [Cmd 9248] London: Her Majesty's Stationery Office p. 9

[78] Langshaw, W. C. (1978). National Standards, Policy and Law, in *Proceedings of Second Australian Conference on Adoption*, Melbourne, May, p. 47.

[79] Import Babies *The Argus* Melbourne March 29, 1947, p. 18; Babies for Adoption in Demand The *The Mercury* Hobart, January 26, 1949, p. 21, http://nla.gov.au/nla.news-article26495765 ; More babies wanted for adoption Advertiser and Register South Australia, July 25, 1931, p. 18, http://nla.gov.au/nla.news-article35674843 ; Should Unwed Mother Give Up Her Child *Sydney Morning Herald* July 15, 1953, p. 9 http://nla.gov.au/nla.news-article18388329

child or the natural parents, but to keep the numbers of adoptable children up and to save the state money. During the 20th century any loop holes by which natural parents could reclaim their children were met with even tougher legislation to close that loop hole.[80]

29. Theories such as all single mothers would neglect and reject their children,[81] or ridiculous assumptions that single mothers did not have the same feelings towards their children as married women,[82] that they would forget they ever had a child were postulated and used to justify the forcible removal of their newborn.[83]
30. Unwed mothers were expected to sign consents to adopt before leaving hospital and only 5 days after giving birth.
31. Unwed mothers were not permitted to leave hospitals until they signed adoption consents.
32. The research that was available stated that mothers would not be in a fit state to make any decision about the long term interests of the baby too soon after the trauma of giving birth.[84]
33. Inhuman and degrading treatment such as not allowing mothers' access to their infants was used to facilitate the adoption process – a traumatised, isolated mother was less likely to resist the forced removal of her infant.
34. In the late 1960s several legal cases were launched where mothers accused hospital staff of gaining their consent by coercion.[85]
35. The public was duped, and the illegal and unethical treatment of mothers' and their infants was consistent across Australia both in public and private hospitals as well as in religious and government institutions such as unwed mother and infant Homes.[86]
36. By 1971 there were more babies taken than available adoptive parents to rear them, hence it was a buyer's market and adopters could pick and choose from the many babies available. A situation then arose that babies were discriminated on hair colour or nose shape if not appealing, or those who were of mixed race or had minor health defects. Many babies languished in institutions for years. [87]

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[80] Adoption of Children: Matter before Cabinet, *Sydney Morning Herald*, Oct 2, 1953, p. 3, http://nla.gov.au/nla.news-article18391156 ; Appeal by mother in baby case almost certain *Sydney Morning Herald September*, September 24,1953, p. 6, http://nla.gov.au/nla.news-article18379333 ; Fate of adopted child: Need for uniform laws *The Courier Mail*, Brisbane, April 20, 1934, p. 14, http://nla.gov.au/nla.news-article1191370; Girls fight for baby goes on *The Argus*, Melbourne, February 6, 1954, p. 6, http://nla.gov.au/nla.news-article26589409

[81] Bowlby, J. (1951) *Maternal Care and Mental Health*. Word Health Organisation Monograph, Series No 2, World Health Organisation, Geneva New York: Columbia University Press; Hon A.D. Bridges, NSW Legislative Assembly, 1965, p. 3065;

[82] Hon. A. D. Bridges, NSW Legislative Assembly, 1965, p. 3065

[83] Lancaster, K. (1972). The Child Placed for Adoption, in *The Child of the Single Mother: Proceedings of seminar held on 3rd and 4th November*, Melb: Victorian Council of Social Service, p. 63

[84] Fanning, M. (1950). Should we Deprive an Unmarried Mother of her baby's love, *The Argus*, Melbourne, July 18, p. 8. http://nla.gov.au/nla.news-article22913146

[85] Cunningham, A. (1996). *Background Paper for the Minister of Community and Health Service On Issues relating to Historical Adoption Practices in Tasmania*, 4 December, p. 28.

[86] Staff Correspondent (1950). The Problem of the Unwed Mother, *The Sunday Herald* June 28, 1953, p.12, http://nla.gov.au/nla.news-article18504211 ; discusses women coming from interstate and overseas, hidden in the maternity home, used for labour, and when one young woman gets married the couple are told their baby died. The hospital where the mothers deliver is connected to the unwed mother's home. The mother is expected to make a decision before entering the home and is not given the same access to her baby as married mothers.

[87] Berryman, N. So you want to adopt a baby *Sunday Herald* 8/4/1979

37. 1971: Because of the difficulty in placing infants labelled: deferred adoptions, the government suggested "Every effort should be made by a good adoption agency to find adoptive homes for 'hard to place' babies, special recruitment schemes through magazine, radio and television publicity be used to boost the supply of such homes from time to time, providing Departmental approval is granted".[88]
38. After the new adoption legislation was implemented the numbers of babies taken increased so that by 1972 there were nearly 10,000 babies taken from mothers around the country. The methods used to remove the infants were the same in all States and Territories. Internal policies that facilitated adoption by such means as not allowing mothers' access to their infants at the birth, drugging and forcing them to sign consents before allowing them to leave hospitals were Australia wide.[89]
39. In 1971 the Australian Association of Social Work Adoption Manual stated that it was morally indefensible not to allow mothers the same access to their infant as married mothers. Groups supporting single mothers that began forming around 1970 spoke out about the coercive practices within the adoption industry that forced mothers to relinquish.[90]
40. In 1982 the Health Commission sent around a circular informing staff that they were breaking the law by putting objects in the way of mothers so they could not view their babies at the birth. It clearly stated that unwed mothers had the same rights as married mothers before the adoption consent was signed.[91]
41. Government was using adoption as a service for the infertile.[92] In 1984 a government selected committee[93] advised it that adoption could no longer be used to 'cure' infertility and the government would have to introduce measures to assist infertile couples with mental health issues such as depression, grief, anxiety and other problems associated with the trauma of infertility.

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[88] The Australian Association of Social Workers, New South Wales (1971). Manual of Adoption Practices in New South Wales, p. 13 ; Playing God with a Child's Life Insight Report on Adoption *Daily Mirror,* 17 October, 1967: Because of the shift in supply beginning, older children not preferred, and "recruiting parents who are by no means ideal"

[89] Gair, S. & Croker, F. 'Missing Voices About a Foreign Place: Exploring midwifery practice with midwives who cared for single mothers and their babies in Queensland (1960-1990)' *Journal of Interdisciplinary Gender Studies* 10(2), p.60; Farrar, T 1997. 'What We Did to Those Poor Girls! The Hospital Culture that Promoted Adoption.' In *Proceedings of the Sixth Australian Adoption Conference,* 116-127. Sydney; P Roberts, 'Statement of Pamela Thorne, nee Roberts, 30 September, 1994' in the matter of Judith Marie McHutchison v State of New South Wales no. 13428 of 1993; Final Report No. 22 (2000). *Releasing The Past: Adoption Practices 1950-1998,* pp. 94-95; Cunningham, A. (1996). *Background Paper for the Minister of Community and Health Service On Issues relating to Historical Adoption Practices in Tasmania*, 4 December; Joint Select Committee, (1999). *Adoption and Related Services 1950-1988*, Parliament of Tasmania

[90] Hickman, L. (1972). Mothers Who Do It Alone *The Australian Women's Weekly* April 5, pp. 2-3,6, 86; Report 22, (2000). P. 39

[91] Health Commission Circular No 82/297

[92] Marshall, A. (1984). *Review of Adoption Policy and Practice NSW Report*, December NSW Dept. of Youth and Community Services, at 8; Harper, P. & Aitken, J. (1981). A Child is not the 'cure' for infertility: Workshop on Infertility a report of the proceedings of a national workshop. Melbourne University of Family Studies; The Australian Catholic Social Welfare Commission, (1991). Intercountry Adoption: Discussion Paper. Prepared for the Australian Counsil of Social Welfaree Ministers, August, at 19.

[93] Marshall, A. (1984). *Review of Adoption Policy and Practice NSW Report*, December NSW Dept. of Youth and Community Services

Key Human Rights Instruments Considered

- The Universal Declaration of Human Rights (UDHR) (ratified 1948)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (ratified 1989)

UDHR Violations of Articles: 1,2, 3, 4, 5, 7, 8, 9, 12, 23, 24, 25(2)
Article 1 – All citizens afforded equality in dignity and rights
Article 2 – Free from discrimination based on sex, birth or other status: marital
Article 3 – Right to liberty and security of person
Article 4 – No-one should be held in slavery or servitude; e.g. reproductive slavery
Article 5 – Free from torture or cruel inhuman and degrading treatment
Article 7 – Free from discrimination
Article 8 – Everyone has the right to effective remedy for acts violating their fundamental rights granted by constitution or by law
Article 9 – No-one shall be subjected to arbitrary detention
Article 12 – Free from arbitrary interference with their family
Article 23 - Right to work in favourable conditions, without discrimination with equal pay for equal work
Article 24 – Everyone has right to reasonable working hours, rest and leisure including periodic holidays with pay
Article 25(2) – Failure of the State to provide special protection to mothers and children

CAT Violations of Articles: 1, 4, 6, 10, 12, 13, 14, 16
Article 1 – torture: severe pain or suffering, whether physical or mental, intentionally inflicted on a person for purposes of punishment, intimidation, coercion based on discrimination of any kind, when such pain is inflicted by consent or acquiescence of a public official or person acting in an official capacity
Article 4 - Each State party shall ensure that all acts of torture are offences under its criminal law and shall apply to any person who is complicit in or participates in acts of torture
Article 6 – The State must inquire into the facts alleged re torture and take into custody persons alleged to have committed any offence referred to in article 4
Article 10 – Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in training of law enforcement personnel, civil or military, medical personnel, public officials who are involved in the detention of individuals
Article 12 – Each State Party shall ensure that its competent authorities proceed to prompt and impartial investigation, where there is reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction
Article 13 – Each State Party shall ensure that any individual who alleges he had been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by competent authorities.
Article 14 – Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation

Article 16 – Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12, and 13 shall apply with the substitution for references to torture of reference to other forms of cruel, inhuman or degrading treatment or punishment.

Violations of Human Rights: Cathleen Sherry

Cathleen Sherry[94] provides a succinct overview of the systematic violations of human and civil rights of mothers forcibly separated from their infants.

Sherry states that the treatment of mothers by doctors, social workers, charitable organisations and government departments violated their right to be free from cruel, inhuman and degrading treatment,[95] free from discrimination,[96] free from arbitrary interference with their family[97] as well as their right to be entitled to special protection as mothers.[98] Single mothers were treated differently to married mothers – they were less deserving of pre-natal care, less deserving of proper medical care during birth and their ante-natal needs were non-existent. The differential treatment is a violation of their human rights because their treatment was discriminatory particularly in the delivery room where it amounted to cruel, inhuman and degrading treatment. The regime incorporating abusive treatment during pregnancy, the brutality inflicted on mothers during delivery, lack of services afterwards and the consequent severe mental and physical health problems were the outcome of a regime of torture.

Unmarried mother and baby Homes run by State and charitable institutions provided no pre-natal care, women were worked extremely hard and were "treated as domestic servants – doing very heavy cleaning work inappropriate for their pre-natal needs". Unmarried mothers were not informed of procedures around the birth, in particular that they would be denied access to their infants. Therefore their birth experience was far more traumatising and distressful because of being discriminated against because of their marital status. Sherry states that differential medical treatment on the basis of marital status amounts to a violation of article 25 (2) of the UDHR.

If the Australian State provided married women with adequate pre and post natal care, allowed them access to their infants at and after the birth, did not use pillows or sheets to block eye contact with their infants, did not give them injections without their permission, did not move them from the hospital to an annex without their baby, did not promote adoption to them, then unwed mothers who were expected to suffer these indignities because of their marital status were discriminated against. According to

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[94] Sherry, C. (1982). 'Violations of women's human rights: birth mothers and adoption', Unpublished paper (stimulated by research Sherry undertook whilst working at the Law Reform Commission with Justice Richard Chisholm)

[95] UDHR art 5; ICCPR art 7; Declaration on the Protection from Torture, art 1; **ECHR art 3; IACHR art 5 Charter of African Unity art 3.** Sherry states the relevance of the latter three treaties is to show that the acceptance of this prohibition is such that it has been elevated to the status of customary international law.

[96] UDHR art 7; International Covenant on Economic, Social and Cultural Rights (ICESCR) art 3; International Covenant on Civil and Political Rights (ICCPR) art 2

[97] UDHR art 12; ICCPR art 17

[98] UDHR art 25(2); ICESCR art 10(2)

Sherry (1982 p. 6) the Australian State is responsible for the acts of its organs and for the acts of entities empowered to exercise elements of government authority.[99] She states (1982, p. 7) the treatment of unwed mothers by medical staff constituted inhuman, cruel and degrading treatment in violation of art 5 of UDHR and concludes that the violations unwed mothers were subjected to were "Not necessarily exceptional" (pp. 7-8).

They did more than constitute cruel and inhuman treatment they constituted torture that was justified by medical and social work staff on the basis of the women's marital status. Public hospitals are organs of the state, private hospitals, often church run were monitored by State authorities therefore may be considered the responsibility of the Australian State as were mother and baby Homes.

The practise of denying a mother access to her infant at the birth was punitive, unnecessarily cruel and served no medical purpose.[100]

> It is also further evidence of cruel, inhuman and degrading treatment that caused 'intense physical and mental suffering [leading] to acute psychiatric disturbances (inhuman treatment) and arousing feelings of fear, anguish and inferiority capable of humiliating and debasing … and possibly breaking … physical and morel resistance' (degrading treatment). It was also contrary to domestic law (Sherry: 1982, p. 12).

According to Sherry (1982, p. 14) charitable and private organisations that run unmarried mother Homes and adoption services perform acts for which the State is responsible, either because they are empowered by internal law to exercise government authority (art. 7(2) on State Responsibility) or because they are in fact exercising government authority in the absence of the official authorities and in circumstances which justify the exercise of those elements of authority (art 8(b)).

The Australian State's Responsibility

The Australian government has been complicit in acts of torture, degrading and inhuman treatment for most of the 20th century. It encouraged the removal of the infants of unwed mothers by various inhuman and degrading acts. The removal of infants was a Commonwealth sanctioned policy that served various purposes:

- To increase 'racial' purity and strength in order to establish a virile white British outpost to oversee the motherland's interests in the Pacific
- To assimilate 'racially inferior' infants with married couples
- To "raise their IQs"[101] and
- To train them to be industrious citizens
- To rid society of illegitimacy
- To save the State money

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[99] International Law Commission's Articles 5, 6, 7 and 8 on State Responsibility (1975) 2 YBILCn60 Cited in Sherry: 1992, p.10

[100] Wessel, M. A. (1960), The paediatrician and adoption, *New England Journal of Medicine*, 262, 441-450; Wessel, M. A. (1963). The unmarried mother: A social work – medical responsibility, *Social Work* (ISA) 8(1), 66-71.

[101] DF Lawson, 'The R. H. Fetherston Memorial Lecture: the anxieties of pregnancy', *The Medical Journal Of Australia*, vol. II, 1960, pp. 161–166

In order to achieve the above goals an internal Health Department Policy was developed that was enforced in hospitals Australia wide

- To 'brainwash' mothers during their pregnancy that providing a child for an infertile couple was in their infant's best interests
- To degrade and dehumanise mothers during their pregnancy via methods of isolation, counselling and repeatedly informing them they were unfit to parent their own infants
- To degrade and dehumanise mothers in the maternity ward by using them as teaching specimens without their consent
- To degrade and dehumanise them by not treating them as they would married mothers, such as unnecessary internal examinations, unnecessary episiotomies, pushing the baby back up the birth canal because the doctor had not arrived or it was being born at an inconvenient time, overuse of drugs or not using any pain relief, making degrading remarks to the mother such as forcefully pushing her legs open and stating: "She didn't have a problem with opening up her legs before, otherwise she wouldn't be here". Degrading the mother by making her "a thing of humour".[102]
- To administer mind altering barbiturates that interfered with the higher cognitive functions of decision making prior, during and after the birth
- Not allowing mothers to see their infants at the birth
- Placing a sheet or pillow to obfuscate her view
- Tying women's arms to the sides of the bed during labour
- Tying women's legs to the stirrups during labour
- Not allowing women to leave the hospital until they signed an adoption consent
- Telling mothers to "Shut up" during labour because they "Might disturb the married mother in the next bed"
- Isolating mothers during their labour
- Inducing labour even though baby was not ready to be born
- Isolating mothers in mother and baby Homes
- Holding women down so they could not view their infants
- Injecting lactating inhibiting drugs without permission
- Bullying mothers by not responding to her requests to see her baby, or not informing her of her baby's sex
- Telling women their infant had died when they had not
- Women who tried to reclaim their babies during the 30 day revocation period were told "Sorry your're too late, your baby has been adopted". To find out years later their baby had been in the hospital at the time.
- Mothers were not informed of the correct procedure to revoke the consent
- Not informed their was a revocation period
- No post-natal services provided other than medical check ups
- No assistance with mourning or psychiatric services post loss of infant
- No research conducted on the long term effects of not allowing mothers to see their infants
- No research conducted on the effect of interrupting the birth process

[102] Kate Inglis, Living Mistakes (1984) at 9 Sherry (1992 at 5, 8, 10

- No research done on the effects on the infant of removing it from its mother at birth.[103]

Continued Violations of Human Rights

The human and civil rights violations suffered by mothers and their infants are elaborated in Submission 223: *Proposal for Mental Health Services, The Broken Bond: Stolen Babies Stolen Motherhood Viewed Through a Trauma Perspective*.

The Australian State was complicit in the forced removal of infants from their unwed mothers. Forced removal involved the use of torture as defined in the Convention on Torture which came into force on 8 August, 1989.

Torture as defined in Article 1 of the Convention means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as … punishing him for an act … or intimidating or coercing him … for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

In particular having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Australian State, enacted a population policy via State and Territory Institutions, both religious and secular, public and private that involved the control and regulation of illegitimacy from 1902[104] until 1982. It is estimated that during the 20th century approximately 250,000 women were affected by a policy of forced removal of their infants, were falsely imprisoned in unwed mother and baby Homes and hospitals,[105]

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[103] All of the abuses have been made known to the Australian State via books from the 1980s: Inglis (1984); Cole: 2008; Proceedings from Adoption Conferences: 1978; 1994, 1997, 2008, newspaper articles from the 1980s onwards, articles such as Sherry (1992), statements made by Justice Richard Chisholm (1991), Human Rights Commission (1984), radio and television interviews. State Inquiries: NSW (1998-2000) and Tasmanian (1999). Background papers prepared for government Cunningham: 1996. Mental Health Conferences, 1994 – a myriad of women's testimonies both oral and written. Academic thesis: The author provided a list of the abuses to every parliamentarian in NSW in 1997 in the lead up to gaining the NSW Inquiry see Christine Cole(2008) Releasing the Past: Mothers' stories of their stolen babies, Sydney: Sasko Velijanov, p. 217; ABC Radio National Interview:
http://www.abc.net.au/pm/content/2010/s3042713.htm?site=Melbourne
http://www.radioaustralia.net.au/connectasia/stories/201010/s3043302.htm
http://www.news.com.au/wa-government-apologises-to-unwed-mums/story-e6frg14c-1225940839634?from=public_rss
http://au.news.yahoo.com/thewest/a/-/newshome/8162322/govt-apologises-to-unwed-mothers/
http://au.news.yahoo.com/thewest/a/-/mp/7902233/plea-for-national-adoption-apology/
'A stolen white generation. *The Seven-Thirty Report* ABC, 8 December 2000

[104] Removal of babies from those deemed unfit began with the forced removal of the infants of convict women in the early 19th century. In 1902 Sir Charles Mackellar stated that boarding-out had been adopted as a national welfare policy. This was formalised in 1908 at a meeting of welfare workers in Adelaide.

[105] Chisholm R. (2000) Report 21 on Adoption Practices: Second Interim Report, Transcripts of Evidence 16 June 1999 0 25 October 1999 at 178

some were forced to labour unpaid for long hours for a token amount whilst all were subjected to severe psychological and physical maltreatment.[106]

The women subjected to various forms of torture were girls and women, the average age being 19 years, with some mothers being as young as 13 or 14 whilst others in their late 20s or early 30s. The common denominator was that the women were unsupported and had no witness to ensure their rights were upheld. They were non-Indigenous, came from various socio-economic backgrounds, some were orphans and migrants.

The Australian State was complicit with acts of commission and omission in its treatment of unwed, unsupported mothers in the carrying out of its policy of forced removal of illegitimate infants. These acts of abuse meet the requirements for the definition of torture or cruel, inhuman or degrading treatment under Article 1 and Article 16, of the CAT.

The women and their families continue to suffer from the theft of their infants and the torture and/or cruel, inhuman or degrading treatment to which they were subjected. Despites calls from mothers, adoptees, fathers, subsequent siblings and affected family members, civil society organisations, local and national government representatives, the Australian State has failed to address the abuse by acknowledgement of unethical and illegal practices by issuing a Federal apology.[107] Therefore the Australian State continues to be in violation of Articles 1 & 16 CAT.

> The Importance of apology is not just in the words. The importance of apology is that it is the gateway to forgiveness. And forgiveness is the gateway to reconciliation (Mike DeGagne of the Aboriginal Healing Foundation).[108]

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[106] Sherry (1982) at 6; Cole: 2008 at 153

[107] Pat Rogan called on the NSW government in 1997 to acknowledge the human rights abuses perpetrated on mothers when calling for the NSW Inquiry into these past practices (Cole: 2008 at 206-207. The latest call for a Federal apology came firstly from Alison Xamon MP, in the WA Parliament on behalf of the Greens on 19/10/2010 and again from Senator Rachel Siewert 27/10/2010 who made a motion that she was going to move on the next day for a National Apology and would be calling for a Senate Inquiry on 15/10/2010 http://www.openaustralia.org/senate/?id=2010-10-27.55.2&s=forced+adoptions#g55.3 Senator Siewert's call for an apology was not passed the excuse being that there was a need to wait for the handing down of research being done by the Australian Institute of Family Studies (AIFS) in 2012. Unfortunately the AIFS study was the outcome of one small group objecting to receiving a National apology and the general consensus of mothers and adoptees across Australia is that the government is now using this as a delay tactic in issuing that formal acknowledgment of the abuses perpetrated against them http://www.openaustralia.org/senate/?id=2010-10-28.33.2 Senator Siewert was successful in calling for a Senate Inquiry on the back of the West Australian Apology to unwed mothers and their stolen sons and daughters http://www.openaustralia.org/senate/?id=2010-11-15.50.2&s=forced+adoptions#g50.3 Martin Laverty as issued a national apology on behalf of the Catholic Church and at the recent Senate Inquiry held in the Federal Parliament on 28/9/2011 he re-issued that apology and called on other organisations and the Federal government to issue an apology to mothers and adoptees for its policy of forced removals.

[108] James V. Scott, The United Church Canada, The Importance of Apology in Healing and Reconciliation *Calgary Truth and Reconciliation Conference Presentation*, University of Calgary, june 14-17, 2007 Retrieved 27 October 2011 from http://www.united-church.ca/files/aboriginal/schools/resources/importance.pdf

Since Australia ratified the Convention on 8 August, 1989, it has failed in its duty under Article 14 to ensure women's right to rehabilitation and redress
Since there has been no apology and no acknowledgment by the Commonwealth of its abuse of mothers and their taken sons and daughters there has been no steps taken in assisting the survivors in rehabilitation by the Australian State. Constantly delaying giving a apology with the excuse that more research needs to be done when it is known that many women are now elderly and are likely to die before ever receiving even a modicum of justice is further abuse and constitutes inhuman and degrading treatment. Australia therefore is in violation of its obligations under Article 14, CAT – Each State Party should address the needs of victims of torture to gain redress and as **full rehabilitation** as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

The failure of the Federal Government to acknowledge and validate those affected by the inhuman and degrading treatment inflicted in order to obtain infants for adoption has affected women's psychological and physical health. Many mothers and adoptees suffer from poverty because of the inability to work because of ongoing psychological and physical injury caused by the abuse. Mothers have not received healthcare or education to assist them in overcoming their trauma and abuse. Many women continue to feel constrained by silence and a deep sense of stigma and shame over the removal of their infant and the brainwashing they suffered at the hands of State representatives: social and medical workers, child welfare officers and others involved in the forced removal policy. Because of the continued denial of justice and lack of acknowledgment that they were not at fault for what they suffered but instead had a grave abuse perpetrated upon them Australia continues to be in violation of Articles 1 & 16 of the CAT.

According to Judith Herman mourning is not completed until we give up the hope of getting even. Revenge does not compensate for or change the harm that was done. It is important that the offender is brought to justice. For this to happen those who perpetrated crimes against mothers and their sons and daughters must be made accountable and the State offer an apology and Redress for its part.[109]

Domestic remedies have been engaged to seek redress for the abusive treatment and the forcible removal of an infant without consent but because of the *Statute of Limitations* none have been successful[110]. Recommendation 15 of the Final Report of the Inquiry into Past Adoption Practices (2000) was that the NSW Attorney General consider the need to review the *Limitation Act 1969* to allow claims to proceed. This has not been done. Many women suffer from severe Post Traumatic Stress Disorder, Dissassociative States and amnesias. Many women are unable to speak about their abuse because of their psychiatric sequelae. Many women were never informed of their rights, many women are still unaware of their rights, the Standing Committee on Social Issues (Report 22: 2000) made Recommendation 20 that the Minister for Community Services establish a public education campaign of the effects of past

[109] Trauma and Recovery
[110] Wellfare v The State of NSW; *Cooke v State of NSW & Anor* [2006] NSWSC 655; *Arthur v. State of Queensland* [2004] QSC 456 State of Queensland

adoption practices. This has not been done. Therefore it has also violated articles 1 and 16 of the CAT.

The Australian State has been consistently informed of the torture and inhuman and degrading acts perpetrated on mothers and their infants also that these acts were illegal but it has never made investigations into individual acts of criminality or made anyone responsible accountable. Therefore it is in violation of Articles 12 and 13 of the CAT.

The Australian State and the Church were clearly involved in a policy to remove infants from unwed, unsupported mothers. The Australian State regulated State institutions such as hospitals, unwed mother and baby Homes and Rescue Homes. Population policy and infant and maternal welfare were under the proviso of the Commonwealth

The Federal Health Department provided guidelines to State entities on matters relating to infant and maternal welfare.[111] The Federal Health Department was focused on what it termed 'Preventative Medicine". That meant intervening in the private lives of unwed mothers and forcibly taking their infants. An internal policy formulated by the State Health Departments with respect to the way unmarried unsupported mothers were to be treated in the maternity wards was implemented.[112] The policy was formulated on the basis of discrimination because of marital status and included acts of torture and/or inhuman and degrading treatment such as forbidding mothers access to their infants at the birth. Not only did the Commonwealth fail in its duty of care to protect the legal and human rights of its most vulnerable, but it promoted the policy of forced removals. This its evidenced by the Ministers of Health who stated on no account was a mother to see her infant and she and her family must be encouraged to adopt it out.[113]

Women were placed in unwed mother and baby homes by parents and the court. The Commonwealth initiated and organised reciprocal legislation so that women could be transported across State borders to interstate mother and baby Homes, give birth isolated from family and friends, and after their baby was taken transported back to their home State. Adopters from one State could make application to adopt a newborn from another State. There was clear collaboration and collusion between the Commonwealth, the States and Territories and religious institutions in the movement of pregnant women and newborns across borders. Adoption was a national policy enacted by the States and Territories that was monitored by the States in order that the Commonwealth was apprised of the number of illegitimate infants born,[114] their mortality rate, and to regulate and control those deemed feebleminded.[115] There was

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[111] Gillespie, P. 1991, *The Price Of Health : Australian Governments and Medical Politics 1910-1966*, Studies in Australia History Series Editors: Alan Gilbert and Peter Spearitt, Cambridge: Press Syndicate f the University of Cambridge; Roe, M. (1984). Nine Australian Progressives: Vitalism in Bourgeois Social Thought 1890-1960 Queensland: University of Queensland Press

[112]; P Roberts, 'Statement of Pamela Thorne, nee Roberts, 30 September, 1994' in the matter of Judith Marie McHutchison v State of New South Wales no. 13428 of 1993

[113] Cunningham (1996) and Parliament of Tasmania (1999) Hon A D Bridges cited in Judy McHutchison (1985) Adoption in NSW: An Historical Perspective, University of NSW

[114] Willesee, W. F. (1971). WA Hansard, 23 September, p. 1691

[115] Jones, R. (1999). The Master Potter and the Rejected Pots: Eugenic Legislation in Victoria 1918-1939 *Australian Historical Studies*, 113, at 333; Roe, M. (1984). Nine Australian Progressives:

clear involvement of the Commonwealth in the forced removal of infants from unwed mothers. The Commonwealth failed in its duty of care to ensure the human and civil rights of its most vulnerable citizens and it violated articles of international treaties to which it was a signatory. In light of the foregoing facts mothers, adoptees and their families affected by the Commonwealth government policy of forced removal should receive an apology from the State and a distinct redress scheme for survivors should be established.

Non-indigenous mother and their infants were brutally separated under the same laws, in the same institutions by the same adoption workers as 17% of the Aboriginal stolen generation who have been apologised too.[116] Mothers who had their infant forcibly taken and placed in an institution, the taken child has been apologised to, as a Forgotten Australian, but not his or her mother. White mothers of Indigenous stolen infants have not been apologised to whilst their partner and their taken child has. This exclusion is discriminatory. For some reason the Federal government has been reluctant to apologise to white mothers and their stolen children. Whose interests are the Commonwealth protecting? In the past the interests of adoptive parents has been given precedence over mothers and infants – is this still the case?

Australian State in violation of CAT prior to ratification (1989)

In the case of A. A. v. Azerbaijan[117] it was established that events of torture and inhuman and degrading treatment that happened prior to the ratification of the treatment, but continue to have effects after the State party's acceptance of the Convention and if the effects constitute themselves a violation of the Convention, are violations of the CAT Articles as if they occurred after ratification.

Continuing cruel, inhuman or degrading treatment or punishment (Article 16 CAT)

Since the Australian State has failed in its duty under the CAT to alleviate the effects of the policy of forced removals this of itself amounts to the continuation of degrading and inhuman treatment in contravention of Article 16. The State has a duty to prevent ongoing inhuman treatment by giving assistance to fully rehabilitate victims and to investigate and provide redress under Articles 13[118] and 14 of the CAT.[119]

The State has failed to ensure rehabilitation for the continuing psychological and physical effects of the forced removal policies, effects which continue to severely impact upon the women and their taken children, now adults, lives. For example

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Vitalism in Bourgeois Social Thought 1890-1960 Queensland: University of Queensland Press at 144-145

[116] Personal communication with Mary-Ellen Miller, Indigenous Departmental Liaison Officer, Jenny Macklin's Office, Minister for Families, Housing, Community Services and Indigenous Affairs, 2/11/2008; Personal communication, Kimberley O'Brien, Indigenous Department Liaison Officer, Jenny Macklin's office. Minister for Families, Housing, Community Services and Indigenous Affairs, 6.6.2008. She stated: :All Indigenous mothers were apologised to, so that would include those women who had their babies taken from hospitals for adoption and all Indigenous children removed – Confirmed by email 6/6/2008.

[117] Communication No. 247/2004, U.N. Doc. CAT/C/247/2004 (2005) Retrieved 25 October 2011 from http://www1.umn.edu/humanrts/cat/decisions/247-2004.html

[118] Art 13 CAT: Have case promptly, impartially examined and to assist in full rehabilitation

[119] Art 14 CAT: Right to redress, compensation, full rehabilitation and dependants entitled to compensation

women and adoptees have received no assistance from the State in overcoming their resulting poverty, psychological trauma, including post-traumatic stress disorder and depression. The women and their taken sons and daughters have not been acknowledged by the State as survivors of a grave injustice. A particular stigma and sense of shame still attaches to the women's experiences in the unwed mother and baby Homes and as a result of their mistreatment in the hospitals, which the State has taken no steps to relieve. Many adoptees did not have the 'perfect' lives promised by adoption professionals but suffered sexual, physical and emotional abuse. In the absence of official acknowledgment that what happened to them was wrong, many women feel compelled to remain silent about the injustices perpetrated upon them; this constitutes an additional, ongoing abuse. Many adoptees who speak out are accused of being 'ungrateful' and hence silenced so their grief at the loss of their original family and identity remains invisible. The Australian State in its failure to provide acknowledgment by way of an apology and rehabilitation by way of educating the community and mental health experts of the policy of forced removals and its serious mental health impacts is in violation of Articles 1, 14 and 16 of the CAT.

The Australian State failed to comply with Article 10 of the CAT to train law enforcement, medical personnel, social workers, matrons of unwed mother and baby Homes to know what amounted to inhuman and degrading treatment of women they forcibly detained in their Homes and hospitals. It has been established that women were falsely imprisoned in hospitals and unwed mother and baby Homes until they signed consents a policy that was never challenged by the Australian government.[120]

The Australian State failed to monitor the methods and practices that were used on persons detained, even though these institutions were acting in accordance with internal government policy, with a view to prevent torture. It is therefore in breach of Article 11 of the CAT.

There has been no inquiry of any one person responsible for acts of torture. During the 1998-2000 Inquiry into Past Adoption Practices there were hundreds of submissions that named perpetrators of inhuman and degrading treatment and treatment that constituted torture. Not one person was made accountable and/ or investigated, but because perpetrators were identified the Committee refused to make the submissions public, as the mothers had intended. An integral part of healing from severe trauma is telling one's truth. Having that truth put on the record and society being made aware of the truthful account of the abuse that was perpetrated is crucial to overcoming complex PTSD:[121]

> The conflict between the will to deny horrible events and the will to proclaim them aloud is the central dialectic of psychological trauma When the truth is fully recognized, survivors can begin their recovery. But far too often, secrecy prevails and the story of the traumatic event surfaces not as a verbal narrative but as a symptom. Denial exists on a social as well as an individual level ... We need to understand the past in order to

[120] Chisholm R. (2000) Report 21 on Adoption Practices: Second Interim Report, Transcripts of Evidence 16 June 1999 0 25 October 1999 at 178
[121] Herman, J. (1992). *Trauma and Recovery*, New York: Basic Books

> reclaim the present and the future. An understanding of psychological trauma begins with rediscovery the past.
>
> The fundamental stages of recovery are:
> 1. Establishing safety
> 2. Reconstructing the traumatic story
> 3. Restoring the connection between the survivor and his/her community.
> It is very tempting to take the side of the perpetrator. All the perpetrator asks is that the bystander do nothing. He appeals to the universal desire to see, hear, and speak no evil (A tendency to render the victim invisible; to look the other way). The victim asks the bystander to share the burden of the pain. The victim demands action, engagement, and remembering (Herman: 1992)

Many women have asked: "Why are the perpetrators still being protected by the government"? Article 12 of the CAT stipulates that authorities should proceed to prompt and impartial investigation wherever there is reasonable ground to believe an act of torture has been committed. This has not happened therefore the Australian State is in violation of Article 12 of the CAT.

Many women have still not been paid for the work they were forced to carry out while illegally detained in Homes. The State has not brought to task the religious orders for their punitive treatment of the women and girls they forcibly detained.

Many of the women are aware that they are nearing the end of their life, and the State's ongoing failure to acknowledge the injustice that they suffered causes them to believe that the Australian State, society and church are simply waiting for them to die.

On 16 November 2009 Prime Minister Rudd on behalf of the Australian government gave an unqualified apology to Forgotten Australians and Child Migrants who suffered abuse or neglect in care. Mothers and infants separated because of the past removalist policy were supposed to be included. Once again we were rendered invisible.

Overview of an apology promised and then take away: Violates art 12 of CAT
A media release stated that mothers who had suffered forced adoptions would be apologised to under the umbrella of The Forgotten Australians. Mothers contacted the office to receive a survey that was being distributed to elicit information of the most appropriate apology for survivors. Members of the Apology Alliance received a survey and participated in the arranged teleconference. The Apology was withdrawn and the survey was changed to exclude mothers who had their children taken.

The Teleconference
In early 2009 members of the Apology Alliance, which is made up of a number of support groups from around Australia, attended a telephone conference where we thought we were to discuss an apology to mothers and infants effected by past removalist policies. Many of those attending the teleconference had submitted a number of oral and written testimonies to a variety of forums that had been involved in collecting data of their experiences over the decades. The members of the

teleconference, discussed the importance of their receiving an apology and the need to individualise their particular issue separately from that of The Forgotten Australians. We were told that one organisation rejected the apology and therefore the Federal Government could no longer guarantee that we would receive one in the near future. To placate this one small group, it was suggested that an Inquiry would be conducted to gather more research to better address the needs of survivors of past forced removals. We were collectively devastated at the withdrawal of the offer of an apology, in fact it was traumatising. Minister Macklin and her representatives showed an inordinate lack of sensitivity by getting our hopes up just to be dashed. We felt the rejection of one group was used as a delaying tactic by the Australian government. Why would they take on board the rejection of a few and dismiss the request of the majority if it was not politically expedient?

Members of the teleconference believed that there was substantial evidence already on the record of inhuman and degrading treatment and that this treatment had been identified as unethical and illegal during the NSW Inquiry into past adoption practices (1998-2000). Certainly there was substantial research conducted in this country and overseas that showed the severe mental and physical damage caused by forcibly separating a mother from her newborn.

Some members had provided testimony to the Law Reform Commission in the early 1990s when it was conducting a review of Adoption Legislation. Justice Richard Chisholm, head of the NSW Law Reform Committee, when reviewing the State's adoption laws went public and stated that illegal practices had taken place and that individuals were suffering trauma because of being severely abused. A newspaper article stated:[122]

> Chisholm had heard harrowing stories from many of the hundreds of women who had made submissions to the committee … mothers being drugged and tricked into signing away their children. These stories have been backed up by experienced adoption workers … forms were given to sign with the bulk of the writing covered over. They had no idea what was happening and then their baby just disappeared.

In 1991 when the laws began to change to allow mothers and their now adult children to find each other many women began to "wake up" from the disassociative states they had suffered since having their infant taken. Some members of the teleconference had been interviewed on television and radio around this time. Some had participated in a number of articles run in major newspapers in NSW and Victoria that discussed forced adoptions, illegal removals, the pain and trauma women were suffering and identified inhuman and degrading treatment that amounted to torture.[123] Members of the teleconference were painfully aware that very little had been done by the government to address what had happened. Even though two State Inquiries had catalogued crimes against humanity there had been no investigation, no-one was made

[122] Fife-Yeomans, J. (1993). Judge decries adoption trauma, *The Australian.* 1 October
[123] A sample of these headlines and campaigns of mothers is included in Christine Cole (2008) *Releasing the Past: Mothers' stories of their stolen babies*, Sydney: Sasko Valenjov

accountable and no apology from any State government had been forthcoming at the time.[124]

Janice Benson who participated in the teleconference was a human rights activist who had organised the Sixth Australian Conference on Adoption in Brisbane in 1997.[125] She conducted a survey of those wanting an apology, and this was prior to the NSW and Tasmanian Inquiries. 73% wanted an apology whilst 60% wanted an Inquiry.

Activism from mothers, some of whom were involved with the teleconference, resulted in the two State Inquiries. The Tasmanian Inquiry (1999) and the NSW Inquiry into Past Adoption Practices (1998-2000). Ann Cunningham was commissioned prior to the Inquiry by the Tasmanian government to investigate mothers' allegations that they had been told their babies had died only for them to turn up on their doorsteps two or more decades later. Ann Cunningham's Report and the Tasmanian Inquiry both exposed inhuman and degrading treatment meted out to unsupported unmarried mothers and their infants. Both exposed collusion between the Minister of Health and the Department of Child Welfare Department in promotion of adoption and the use of torture to facilitate the removal of infants from their mothers.

The NSW Inquiry received written and oral submissions that revealed inhuman and degrading treatment that amounted to torture in the forced separation of mothers from their infants. Justice Richard Chisholm identified the crimes of kidnap and false imprisonment of both infants and their mothers.[126] Dr. Geoff Rickarby described a number of abusive practices inflicted on mothers to obtain their infants. Such as drugging women with high levels of mind altering barbiturates and injecting them with stilboestrol immediately after birth to prohibit them from breast feeding. The use of pillows and sheets to prevent mothers from having eye contact with their infants to break their will[127] and purposely traumatise them into silence. The use of "brain washing" techniques to cause disassociation and traumatise women into silence.[128]

Dr. Rickarby has detailed the serious mental and physical health problems that women have suffered from inhuman and degrading treatment that amounted to torture to obtain their infants. Dr Rickarby's evidence builds upon and supports previous research undertaken by Winkler and van Keppel in 1984[129], Dr. John Condon[130] and

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[124] Since that meeting there have been a number of apologies such as the WA State government and the one on behalf of the Catholic Church and a number of hospitals. The first apology received came from Professor Ian Jones and it started a wave of apologies. He apologised to members of the Queensland group ALAS on behalf of the Royal Brisbane Hospital in Queensland 9/6/2009. This was followed by what we believe is the first apology issued to adoptees: the group WASH, again by Professor Jones on behalf of the Hospital 12/11/09

[125] Janice Benson (1997) *Separation Reunion Reconciliation: Proceedings from the Sixth Australian Conference on Adoption*, Brisbane, June, at 541

[126] Chisholm, R. (2000 June), *Report on Adoption Practices Second Interim Report: Transcripts of Evidence 16 June 1999 – 25, October 1999*, Report 21, at 184

[127] A regime of inhuman and degrading treatment according to Sherry (1992) to break the mother's will

[128] Rickarby, G. (1998*). Interim Report on Inquiry into Adoption Practices: Transcripts of Evidence from 27 August 1998 to 19 October 1998*, Report No. 17, Standing Committee on Social Issues, at 62-73

[129] Winkler, R. & van Kepple, M. (1984). *Relinquishing Mothers in Adoption: Their long-term adjustment*, Institute of Family Studies, Melbourne, Monograph No. 3

Judy McHutchison[131] in 1986. All of the studies detailed serious mental health problems and pathological grieving that intensified with time because of the abusive treatment these women received and the torture of having their infants forcibly taken and the interruption of the birth process.

Mothers also gave evidence at the Inquiry of the Senate Community Affairs References Committee in 2004 which resulted in *The Forgotten Australians Report*. They once again suffered the re-traumatisation of bringing back painful memories of the abuse they received whilst pregnant, horrific experiences around the birth and the days after being bullied and pressured into adoption. Some mothers had to relive their babies being pulled from their arms, others of screaming to see their infant only to be denied and told this was punishment for getting pregnant out of wedlock. Unfortunately for these mothers, as it was the case for the mothers who gave evidence in Tasmania and NSW there was no acknowledgment of their pain, there was no apology. The Australian State therefore is in violation of Articles: 1, 12, 13, 14 & 16 of the CAT,

The author when writing to members of parliament was advised by the former Labor MP, Ms Franca Arena, that the government had heard testimony of extreme abuse perpetrated on mothers during the time just prior to the 1991 laws being changed to allow mothers and their adult children to have access to information about each other.

> I am well aware of the terrible things that happened in our past with children being illegally removed from their mothers. I heard first hand evidence from women who were never allowed to see their babies or who had a pillow or a sheet covering them … I was horrified by these procedures.[132]

The Commonwealth and State government have been aware of these atrocities and known that they were illegal before the NSW Inquiry substantiated that fact. Another instance of the government's awareness of illegal practices is the statements by two politicians as far back as 1964: Hon A. J. Hunt: "Consents were often signed even before the birth of the children" … Hon R. J. Hamer: "That should not have been done, but it has been".[133]

Yet the Inquiry was not initiated by the Australian State as would be required under Article 12 of the CAT. The Inquiry came about because of intense lobbying by various mothers' groups and the support of Mr. Pat Rogan MP for East Hills and his personal assistant Ms Margaret Como. The author worked for months with Rogan and Como to gain the NSW Inquiry. Further no action was undertaken to establish a redress scheme for survivors of past removalist policies, no apology was given.

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[130] Condon, J. (1986). Psychological Disability in Women who Relinquish a Baby, *The Medical Journal of Australia*, 144

[131] McHutchison, J. (1986). Relinquishing a Child: The Circumstances and Effects of Loss, Unpublished Honours Thesis, University of New South Wales

[132] Correspondence from Franca Arena to author 1/12/1998 cited in Cole (2008) at 220

[133] Hon. R. J. Hamer, Adoption of Children bill 24 March, 1964, p. 3288

There is now decades of evidence that has been presented to the government via Inquiries, Legislation Reviews and women speaking out repeatedly to the media, via print, television and radio interviews. There is now substantiated evidence that mothers were falsely imprisoned, drugged, abused, used as medical specimens, infants were illegally used to test vaccines, mothers used as unpaid or sweat shop like labour all with the knowledge and collusion of the Australian State.

The Australian State is aware of the gravity of the abuse suffered by women and girls in maternity hospitals and unwed mother and baby Homes and in private employment arranged by public hospitals. The abuse of being used as cheap labour, used as teaching specimens, not being allowed to complete the birth process, illegally drugged, illegally transported to an institution away from the main hospital, the baby being illegally transported to another institution away from the main hospital, being used to provide babies for infertile couples, not being given adequate pre and post-natal services. Not given any support to mourn the loss of their infants. Not being warned of the mental health problems that they and their children could suffer as a result of separation, not being offered any assistance – such as being informed of what financial, accommodation, temporary foster care or any other assistance to keep their infant.

A married mother and adoption

The practice of removing newborns from their unwed mothers being an outcome of discrimination based on marital status is evident when it is contrasted with the treatment meted out to a married mother who 'chose' adoption in 1969. She gave birth in the notorious NSW Crown St Women's Hospital. The mother participated in the research project I undertook as part of my doctoral thesis. She had an affair and decided it was best for her infant to be placed in another family. Her treatment was not based on punishment and/or discrimination nor was she degraded or treated inhumanely. The mother was not told she must adopt because she was unfit to parent her own child. Unlike her unmarried sisters she was given a pamphlet, whilst still pregnant, on the steps to revoke her consent if she changed her mind about adoption after signing the consent. She was not drugged and had unfettered access to her baby at the birth and in the days after. No sheet or pillow was used to block her view of her infant at the birth, she could choose to feed her infant if she so desired. After the birth she was distressed about the thought of losing her daughter so the social worker refused to take her consent. She was encouraged to leave the hospital and to take more time to consider her decision. Being discharged from the hospital was not contingent on signing the consent. She did not have the term NOT SOCIALLY CLEARED written on her medical file because she left hospital without signing any consent. Her treatment was based on the external policy or the policy advertised by adoption workers as per the guidelines in Child Welfare Manuals and articles published in newspaper and magazines. The mother made her decision without being drugged, tied to a bed or suffering any duress or coercion. If the use of the drugs or the sheet was done because it was supposed to alleviate our distress why was it not used on this married mother?

The Dynamics of Torture by Government Representatives

Punishment

In 1960 Dr. Wessel[134] warned adoption workers that not allowing women access to their infants was punitive and cruel and served no medical purpose. In 1965 Mary Lewis[135] warned social workers that not allowing mothers' access to their infants was punitive and illegal. In 1967 Sister Borremeo[136] warned that not allowing mothers to access their infants was illegal. In 1982 a Health Department Circular[137] stated that women who were being denied access to their babies not only had their legal rights violated but were subjected to coercion and duress by social and welfare staff. Social and child welfare workers were employed by the government and as representatives of the government had been subjecting unwed mothers to bullying, coercion, punitive, inhuman and degrading treatment.

In a review of adoption procedures conduced by the Human Rights Commission (1984) Dr. Kath MacDermott[138] accused the Australian government of committing acts of inhuman and degrading treatment in its attempt to procure infants for adoption. MacDermott concluded that women suffered punitive treatment at the hands of government representatives because of discrimination based on marital status. In 1992 the Australian Government was advised by Cathleen Sherry that the treatment of unwed mothers was punitive, inhuman and degrading and Australia was in violation of a number of International Treaties to which it was signatory. Both MacDermott and Sherry concluded that the inhuman and degrading treatment was not isolated but was systemic, organised and inflicted on women by those imbued with governmental authority.

Imprisonment

Inmates of unwed mother and baby Homes did not feel free to leave. They were threatened with having the police hunt them down if they did. This was not necessarily an idle threat, a mother who grabbed her baby and ran had the police called to bring her back.[139] Women after given birth were not permitted to leave the hospital until they signed an adoption consent.[140] The Lady Wakehurst, annex of the NSW Women's Hospital at Crown Street, to where unwed mothers were spirited away without their babies, was kept locked, women had their clothes taken and had no access to them until they were permitted to leave. The author sighted a page from a Crown St mother's medical file which stated: 'Not Socially Cleared, Do not notify police mother has promised to return to hospital on Monday and speak with social worker'.

The Australian State was not only aware that mothers were expected to sign consents before being allowed to leave the hospital it was through their collaboration with hospital staff that keeping a mother in hospital until she signed an adoption consent was orchestrated. For instance the minimum time agreed upon by the

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[134] Wessel, M. A. (1960). The paediatrician and adoption., *New England Journal of Medicine*, 262, 441-450

[135] Lewis, M. (1965). *Unmarried Mothers*, Paper presented at the Australian Welfare National Conference

[136] Borromeo, M. (1967). The Natural Parent, *Australian Journal of Social Work*, 20(1), 11-13

[137] Health Commission Circular No 82/297

[138] K MacDermott, *Human Rights Commission discussion paper no. 5*, 1984

[139] Cole (2008) at 247

[140] Chisholm, in Report 21 (2000) at 178

Commonwealth and State Minister when drafting the *Commonwealth Model Adoption Act* was to fit in with hospital procedures. The government was informed by senior hospital staff that mothers generally remained in hospital for 5 days after birth. So the government inserted into the *Act* that consent could be taken on the 5th day, therefore prior to discharge, so women "would not have to be chased down" to get their consent.[141] In other words, to ensure that mothers did not have a chance to garner support and keep their infants. So it seems the Commonwealth and State governments conspired with adoption workers to ensure as high as possible the number of adoption consents obtained

Women's testimony at the NSW Inquiry convey extreme mental suffering because of being incarcerated and forced to sign consents. Some were promised a glimpse of their infant if they signed, others thought if they got out of the hospital they could come back and reclaim their infant. If they were unable to get support from a strong advocate they were told when trying to reclaim their baby – even only after a few days "sorry your too late, your baby had already been adopted".[142]

Forced Labour

Women were used exploitatively as cheap or free labour in the Homes and in private domestic employment usually arranged by the hospital social worker.[143]

Physical maltreatment.

Some women have complained that in the Homes and private employment they were expected to work long hours whilst pregnant, were abused by their employer, or by the Matron in the Home. They were constantly reminded either by the Matron or the social worker, depending on where they were employed, that they had committed a sin by getting pregnant and/or they were carrying an infant for a married couple who were more deserving than they to be its parent. The constant belittling caused many women to suffer life-long identity problems, poor self image and lead many to self harm.[144]

Isolation

Pregnant women were not encouraged to form friendships in the Homes, they often felt isolated. They were transported across borders were cut off from their partners, friends and family. Many were given false names and their mail was interfered with so that their whereabouts were hidden. Family visitation was usually denied to mothers in Homes and mothers working in private employment. Verbal abuse was common as was the constant belittling because of being pregnant out of wedlock. In the maternity wards they were often left for hours without assistance and when they spoke to nursing staff were ignored. One trainee midwife informed the author that she was instructed by her superior that staff were not allowed to speak to the mothers. In general the women recall feeling continually denigrated, humiliated and isolated.[145]

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[141] Hon R. J. Hamer Adoption Children Bill, (1964) Vic Hansard, vol 274, pp. 3647-3648

[142] Testimony from the NSW Inquiry: *Releasing the Past Adoption Practices 1950-1998,* (2000). Final Report, Report 22; Sherry: 1982

[143] Cole (2008) at 153

[144] Sherry (1992); Cole (2008)

[145] Cole (2008); Cole (2011) Unpublished thesis; Sherry (1992)Lorne-Johnson, S. (2001)Betrayed Forsaken: The Official History of The Infants' Home Ashfield, Sydney: The Infants Home Ashfield

Conclusion

The interference of the birth process and the brutal separation of the mother-infant dyad has caused life-long pain, distress, predisposed the mother and infant to post traumatic stress disorder and pathological grieving, dissociative and amnesia states, which has been passed on to subsequent generations. The Australian State by failing to acknowledge or validate their suffering by accepting responsibility and offering a heartfelt apology continues to violate their rights under the Universal Declaration of Human Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

APPENDIX

I would like to thank the group Justice for the Magdalenes for the inspiration to produce this document. The Magdalene Survivors have been ignored by the Irish State in their call for acknowledgement and an apology

> The previous … government hardened its heart against these women. The fear was that an apology, inquiry and redress might open the financial floodgates. … there is a fundamental issue of justice for the women, which can only be addressed by an unconditional apology from the government. There has been considerable optimism that the more liberal Fine Gael/Labour party coalition would confront the past and make amends for what has become a shameful and very public injustice. Many of its individual politicians have in the past made public calls for apology and redress. Their response over the coming weeks to the United Nations Committee Against Torture (UNCAT) conclusions will be an important measure of whether this government's promises to turn Ireland into a better, more honest and caring society represent anything more than hollow sentiment.[146]
>
> Women have long been seeking official recognition of their ordeals, asking for an apology from the government. … In its report, UNCAT says it is "gravely concerned at the failure by the State party to protect girls and women who were involuntarily confined ... by failing to regulate their operations and inspect them."
>
> Justice for the Magdalenes (JFM) has welcomed the news but cautions that the government needs to act quickly given the age of many of the Magdalene survivors: "The women need help now," says James Smith, a Boston College English professor who sits on JFM's advisory committee. "They have suffered in silence too long, and many of them feel that the government has pursued 'a deny til they die' policy." JFM wants the government to issue an apology— and quickly, while the women "are still alive …" says Smith.[147]

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[146] Ireland's Magdalene laundries scandal must be laid to rest http://www.guardian.co.uk/commentisfree/2011/jun/08/irealnd-magdalene-laundries-scandal-un

[147] Will Ireland apologize to the women of the Magdalene Laundries? http://www.time.com/time/world/article/0,8599,2081008,00.html

A support group for survivors has demanded a state apology …
The Justice for Magdalenes (JFM) group said the State must follow through on the UN Committee against Torture's recommendations –

Maeve O'Rourke stated:
"Having suffered torture or ill-treatment, in which the State directly participated and which it knowingly failed to prevent, the women have the ongoing right to an investigation, an apology, redress and treatment with dignity", she said.[148]

[148] UN Committee against Torture's (UNCAT) Demand for probe on Magdalene Laundries http://www.global-sisterhood-network.org/content/view/2602/59/