



Adoptee Rights **Australia**

Adoptee Rights Australia (ARA) Inc. is a volunteer run organisation that was established in 2018 by adopted persons to advocate for the rights of adopted people in Australia and to give a national voice to the lived experience of adoption. We advocate for reform in adoption legislation, policy and services in all Government jurisdictions in Australia, so that the human rights and wellbeing of adopted persons are restored, protected and promoted.

Adoptee Rights Australia thanks the Standing Committee on Environment and Public Affairs for the opportunity to make a submission to the “Inquiry into past forced adoptive policies and practices in Western Australia”.

Who is part of the Past Forced Adoption population?

We first wish to draw attention to the fact that the past practices that were apologised for in State and Federal “past Forced Adoption” apologies, including in Western Australia, were centred around the question of mothers’ consent and illegal practices in obtaining infants for adoption. This approach relies on the premise that the existence and practice of adoption is acceptable in itself, and that adoption is to be condemned only when a mother has not willingly agreed to it.

But while most adult adopted people were adopted *because of* the disgraceful and often illegal past practices of acquiring and abducting infants from their mothers, it is clear from previous inquiries, and from the already published submissions to this one, that the majority of issues being raised by adopted people about the damage they have suffered from *living* adopted, have not been adequately acknowledged. Among a myriad of other common lifelong effects, many adopted people suffer from identity loss, psychological damage, attachment and health issues, feelings of non-belonging and lack of true acceptance in either family, while at the same time being the subject of draconian, anachronistic and arbitrary legislation.

As of writing, approximately 30% of the submissions already published in this enquiry are by mothers, while around 46% of the submissions are from adopted people. The majority of submissions by adopted people are about the damage that living as an adopted person has caused them. While the difference in numbers - sadly, partly reflects the declining living

population of mothers, the fact that adopted people are still trying to be heard indicates that much more needs to be done for us.

The discriminatory treatment, human and civil rights violations and psychological damage that adopted people continue to endure were originally caused by *past removal practices*, but they are also the product of *current* adoption policies and practices, and *current* adoption legislation.

This is why ARA is calling on the Western Australian government to be the first to stop the pretence that the treatment and issues of the people who were removed under Forced Adoption practices have ever been properly investigated and acknowledged. We call on the Western Australian government to undertake an inquiry into *adoption itself*, (as a continuing issue, encompassing all adoptions in Western Australia, and including intercountry adoptions), and to support, nationally, ARA's continued call for an Adoption Royal Commission.

The claim that 'adoption was considered at the time to be in the best interests of the child'.

ARA would also like to bring to the Standing Committee's attention the claim made in the Western Australian Parliament ["Removal of Children from Unmarried Mothers Apology"](#) on Tuesday, 19th October 2010, which was repeated in this inquiry's [Background to the Inquiry document](#): that "from the 1940s to the 1980s the system then operating in Western Australia, in many instances, did not strike the correct balance between the goal of minimising the emotional and mental impact of the adoption process on unmarried mothers, with the goal of achieving *what was considered at the time* to be in the best interests of the child". Both of these claims to goals being about the wellbeing of the victims of adoption are dubious, especially given the later findings of the 2012 [Commonwealth Contribution to Former Forced Adoption Policies and Practices](#) Senate Inquiry, but it is the claim of what would have been "considered at the time" by those working within it which is most problematic.

Much of the available research on the outcomes of adoption *at the time* showed significant psychological damage and other negative effects of adoption on adopted people. The supposed experts involved in "the system" either knew – or *should have known* - that the evidence-base supporting adoption was at best highly controversial, and at worst, indicated that adoption was likely to provide a negative outcome for the child then adult. They would also have been well aware that adopters were encouraged to return the child/infant if it did not meet their standards, and often this meant the returned child ended up growing up in institutions.

Other reasons for the widespread practice of adoption during that period need to be considered and included in any claims about why adoption was pushed, especially in an introduction to an inquiry of this kind. Some reasons are: the punitive nature of the practice, the high demand for – and perceived entitlement to - babies by infertile couples, the power and income obtained by those who could distribute babies, and the welfare savings. Many of these reasons are still driving the trafficking of newborns today.

Changes urgently needed:

Most of the following points are just asking for equal treatment, so that adopted people can be allowed to exercise the same human and civil rights as every other Australian. In some cases restorative measures are suggested.

There also needs to be recognition in policy and legislation that the advances in DNA technology, and the existence of the internet have opened up other ways for adopted people to access their rights. The [Adoption Act 1994](#) makes no reference to this, and still reflects that the Department and authorised agencies are the sole gatekeepers of the adopted person's history. The need for change to incorporate the reality that adopted people now have other options applies to several of the points below.

In all points below with co-design and inclusion of lived experience stakeholders, there should be a requirement that they are not providing services on a voluntary basis, but are paid consultants. Employment in any Western Australian adoption programs and services should have a requirement for a percentage of positions to be filled by lived experience stakeholders.

1. **Statute of Limitations.** Remove the statute of limitations as a defence in all adoption claims – ARA's call to remove the statute of limitations is [here](#)
2. **Compensation.** Develop a redress scheme which includes all "Forced adoption" victims. This should have financial contributions from the Western Australian government, and also sought from institutions and organisations in Western Australia that were involved in adoption.

In the redress scheme, do not leave one group out, or make divisions within the groups – see ARA's response [here](#) to the redress exclusions in the Victorian Government Response to the Recommendations of the Inquiry into historical forced adoptions. Unfortunately, despite significant acknowledgement of the lived experience, trauma and suffering of adoption for adopted people in the Victorian report (see pages 133 to 179 [here](#)), the [Government Response](#) virtually ignored adopted people – see [here](#).

Please do better, Western Australia!

3. **Access to information.** Release adoption information to adopted people under the same protections as those of the [Freedom of Information Act 1992](#), so that adopted people have the same rights to access information, appeal decisions, and to receive information in a timely manner as anyone else.

Currently, some of the most important information in a person's life (with huge consequences to their mental health) can be delayed indefinitely, or even completely denied, and there are no protections around this because adoption information is exempt. Yet applications for often trivial information that is released under FOI is subject to stringent standards and strict monitoring of timeframes. All adoption information applications are processed well over the 30 day standard required under the FOI Act, and there is no reason for adoption to be in this exemption category except for the "Past" – but obviously still current – practices requiring Witness Protection level secrecy in adoptions.

- Because the adoption information to be provided is known ahead of time, and there is a finite, known population who want it (unlike all other FOI requests), ARA calls on the Western Australian government to provide one off funding for a team to be put together to prepare this information for every adopted person who has not yet applied for it.
- This will also identify those who have not already requested their information, and leads to 4 below.
- We ask that the Western Australian government require that non-government organisations with responsibility for former adoption service providers (such as private hospitals or maternity homes) establish projects to identify all records still in their possession, make information about those institutions and records available to the state and provide free access to this information.
- We ask that the Western Australian government in consultation with non-government organisations that had responsibility for adoption services and hospitals, and with co-design by lived experience stakeholders agree on and commit to a statement of principles for access to personal information, that would include a commitment to cheaper and easier searches of, and access to, organisational records. Ideally, a document like the statement of Access Principles for Records Holders & Best Practice Guidelines: the 2015 [Forgotten Australians and Child Migrants document](#) produced with DSS, would be a good model.
- We ask that the Western Australian government in consultation and with co-design by lived experience stakeholders create an online website which preserves the true history of adoption in Western Australia, and also acts as a resource for those investigating their personal history (obviously without personal details). This would include legislation, forms, oral and written history, photographs etc, and could be modelled on the existing Find and Connect website for other victims of past practices. It could potentially link with other state websites.

4. Notification of adoptive status.

An unknown number of Australians don't know they are adopted and the Western Australian government has a duty of care to notify them of their adoptive status, and to take responsibility for implementing comprehensive support, so that they don't receive the life altering shock of this information with no support, and to ensure they have a right to seek reunion if they wish. The later someone finds out they are adopted, the more likely they will find only graves.

Adopted people (and subsequent generations) have limited access to knowledge of family health issues at best. Those who don't know they are adopted have the added potentially life-threatening risk of believing their family medical history is that of genetic strangers.

- If point 3. above, is implemented, then those who have not yet applied for their information can be contacted and if they are not aware of the adoption, can be advised in a sensitive manner, and offered support and resources.

5. Removal of contact vetoes.

- Contact vetoes are yet another example of the legislative over-reach inherent in adoption.
- This treatment of adults is discriminatory and erodes fundamental rights and freedoms, like equality before the law, due process, freedom of movement and freedom of association.
- What other group of people is treated as a threat before they even do anything?
- Restraining or Intervention Orders are already available: "other accessible, state based legislation provides for restraining contact between individuals" Lorna Hallahan p49 [Adoption Act Review](#) South Australia, 2015.
- Relationships between adults should not be policed by government departments.
- Ancestry is showing up non-expected parentage everywhere, and the government does not interfere. If they did get involved in policing these relationships, there would be an outcry – but the adopted person is treated as a threat.
- In the 5 to 10% of cases where mothers signed adoption consents but there was no adoption and the mother wasn't notified that the child grew up in foster care, no contact or information vetoing mechanism exists! If this was really about what some mothers supposedly wanted and were supposedly told, shouldn't vetoes be available in these cases too?
- Who, or what, are vetoes really about protecting?
- Do family members of gay people have special legal protections available to prevent their family connections being known about? Surely these people thought they were protected from the "embarrassment" of others knowing they were related to a gay person back when homosexuality was illegal, so, as with contact vetoes in adoption, shouldn't these people be protected still?

Shouldn't they be given the legal option to veto their family members to stop them from coming out as gay and people finding out? Or have times changed, and do we no longer persecute or make discriminatory laws targeting specific groups of people?

- Moving to a “wishes” register or similar is also cruel, inhuman, degrading, unnecessary, patronising, infantilising and a resource drain where the money could be better used.
- The work of Kipling Williams (Professor of Psychological Sciences, Purdue University) has shown that [ostracism or exclusion](#) causes pain in human beings that matches or is stronger than physical pain. Vetoes just compound the effects of adoption on the adopted person.
- To have rejection and ostracism between adults enabled by bureaucrats for crimes not yet committed is Kafkaesque.
- Governments should be focused on healing the past, not continuing and encouraging the damaging practices of the past. If they are still occurring they are not “Past Practices”!

As other submissions have suggested, there should be a short interim period in which to prepare, advise anyone that needs to know, and access counselling if required, then all contact vetoes should be removed.

6. Removal of gag laws.

An adopted adult telling their story – or even identifying as an adopted person – online or in a magazine or newspaper, exposes themselves to the risk of potential criminal charges, fines and a jail term.

There seem to already be some redactions in the published submissions to this inquiry, but they are nowhere near the scale which would be required by adherence to the gag laws in the Adoption Act:

[ADOPTION ACT 1994 - SECT 124](#)

[Publishing identity of party to adoption etc.](#)

(1) A person must not publish material that identifies or is likely to identify a person who...

The following is an attempt to briefly summarise it, but the actual entire 14 clauses and sub-clauses can be read by following the link above. The censorship applies to anyone who is a party to an adoption, or who was but is no longer a party to an adoption or proposed adoption, or a person whose consent to an adoption was required (whether or not that consent was dispensed with), or who is or is likely to be affected by an adoption order or an adoption plan, or who is a RELATIVE of any of the above except someone whose consent was dispensed with, or who is likely to be affected by an adoption order or plan. And this applies to any adoption in Australia...

But it can be published if the people concerned consent in writing (and are over 18).... etc

- If this law was adhered to, it's unlikely that anyone could ever publish anything that stated they were adopted, or add a name to anything about adoption without risking prosecution.
- The Penalty: a fine of \$10 000 and imprisonment for 12 months.
- Yes, they could get a few permissions in writing, but this is so wide that even relatives of anyone who was or is a party to an adoption must not be identified! So anyone who recognises a name and then knows a relative, or might know a relative, could prosecute!
- ARA is certainly not sharing this information to have all names and information that could identify anyone redacted from the submissions to this inquiry, but instead to show the extreme and draconian secrecy which is still fundamental to adoption, and the fact that there is no call for scrutiny of this from the usual watchdogs for other marginalised groups.
- Gag laws for sexual assault victims have been publicly highlighted and repealed.
- Any adult who was in foster care as a child can publish their story, and identify anyone who may have been their carer, etc without fear of prosecution.

Adopted people, again, are discriminated against. The basic right to freedom of expression for an adopted person and to impart information is violated.

We call on the Western Australian government to lead the way in Australia and:

- immediately repeal Section 124,

7. Birth and death certificates

Fathers' names need to be able to be added to an adopted person's birth certificate using a straightforward administrative process, without a requirement for a court order:

- A framework for using consumer DNA to establish parentage needs to be developed and formalised in consultation with lived experience stakeholders, and with co-design.
- There needs to be recognition in policy and legislation that the DNA landscape has changed completely, and parentage can be determined on the balance of probabilities with the use of DNA from not two individuals, but thousands.

- Relying on NATA DNA for a one-on-one match for a father who is deceased is not fit for purpose for adopted adults. This method suits Family Law, which establishes parentage for children.

Fathers' names on birth certificates are not the only issue. Straightforward administrative processes for the correction of mothers' names, names on death certificates, and the addition of siblings' names are needed.

Integrated Birth Certificates are something only a minority of adopted people want. Discussion of this arose in the Commonwealth Senate Inquiry, [Chapter 12](#), where it was reported that many submissions stated they wanted to use their true, original birth certificate. According to the summary, there were no submissions that actually requested an IBC. It was only suggested as a compromise as a means to prevent fraud – again suggesting a culture of more distrust of adopted people than the general public.

ARA supports any choice by adopted people about what type of certificate they want, but emphasises that Integrated Birth Certificates do **not** solve any of the issues in the addition to or correction of names on certificates. Integrated Birth Certificates are also seen as insulting by many adopted people because they have the adopters names on them (who had no involvement in the birth), and also do nothing to restore the severed connection to family – see [here](#).

8. No-fault Discharges

Western Australia is currently leading Australia with policies that enable straightforward discharges of adoption.

But this is a matter of policy only and is not reflected in the legislation. A transparent process and criteria for discharge written into the legislation itself would shift the focus from requiring some form of exceptional circumstances (and the need to assign blame), to support for the rights and autonomy of the adopted person, and the facilitation of a smooth transition back to their original identity.

ARA calls on the Western Australian government to further lead Australia and take the next step to embed the right to 'No- Fault Discharges' in legislation itself.

9. Funding for research on outcomes for adopted people

There has been minimal research in Australia on outcomes for adoptees over their lifetime, yet overseas studies suggest that people who are adopted are over-represented in suicide, suicide attempts, alcoholism, substance abuse, homelessness and incarceration.[1] In one of the few Australian studies, the Australian Institute of Family Studies (AIFS) found that adopted people are more likely to experience

“mental health disorders, poorer wellbeing, higher psychological distress”; that they encountered “problems with attachment, identity, abandonment and parenting their own children”; and, “almost 70 percent” of the adopted individuals who participated in the study agreed that, “being adopted... had a negative effect on their health, behaviours and/or wellbeing while growing up”, regardless of whether the experience with their adoptive families “was positive or negative”.^[2] This study shows there is a great need for further research on this vulnerable Australian population. No further research was done, and this study has been archived.

[1] Petersen et al., Excess Mortality Rate During Adulthood Among Danish Adoptees, (2010); Keyes et al., Risk of Suicide Attempt in Adopted and Non-Adopted Offspring, (2013)

[2] Kenny, Higgins, Soloff and Sweid, Past Adoption Experiences: National Research Study on the Service Response to Past Adoption Practices: Final Report, (2012)

- Currently, decisions around adoption policy and service provision are not evidence based.
- Data about the thousands of adopted people who approach government and non-government service providers every year is not collected.
- Outcomes over the lifespan are not linked to adoptive status.
- Data collection, data linkage, and further research needs to be carried out to provide an evidence base for decisions on service provision and policy around both past and current adoptions.

ARA requests that the Western Australian government:

- In consultation with adopted people commits to funding various forms of research and the inclusion of data collection in all aspects of contact with adoptees, including a commitment to undertaking current and retrospective data linkage projects; and
- Provides incentives which encourage the study of adoption in Western Australia (with provision for affirmative action like scholarships for those with lived experience of adoption).

10. Funding for support for adopted people

- Adopted people often have limited to no access to their family health history, and should be provided with the option of free, comprehensive, genetic DNA testing if they wish to take it up.
- Funding should be provided for adopted people (and other Forced Adoption victims) so they can choose a private professional for counselling and mental health support services,
- Funding should also be available to assist with search and family connection services, and criteria to receive it should be transparent, and not dependent on service provider discretion.

- A framework for what is needed should be informed by and developed in consultation with lived experience stakeholders, and also informed by the data collection and research called for above at point 9.

11. Inclusion of Australian Intercountry adoptees. Adoptee Rights Australia has always included Australian Intercountry adoptees, who are subject to the same inconsistent and draconian Australian Adoption Acts as domestic adoptees. We consider that issues of consent, coercion, mistreatment, and stigma surrounding single motherhood are also embedded in intercountry adoption practices. We urge the Western Australian Government to recognise that Intercountry adoptees also can face, along with their domestically adopted peers, lifelong struggles with identity, belonging, uncertainty, and loss.

12. Adoption awareness training and education campaigns (co-design)

- training in adoption issues for crisis services is needed.
- Development of adoption and adoption trauma informed competence training is needed for government employees, e.g.: employees of Births, Deaths and Marriages, and employees of non-government services.
- ARA calls for a concerted education campaign to raise awareness of the reality of adoption, and to combat the stigma and misunderstanding that adopted people face.

13. Advocacy / Ombudsman

- ARA calls for the inclusion of and funding for adoption lived experience advocacy representative organisations and individuals in all adoption issues.
- An advocacy framework needs to be developed to ensure our voices are heard.
- The fundamental guiding principles need to be Accountability, Transparency, Consultation and Inclusion.
- There needs to be recognition of the lack of access to justice for those under the Western Australian Adoption Act, and the creation of a state Ombudsman or similar to advocate for individuals and to collect information to drive systemic change.

ARA requests that the Western Australian Government encourages the federal government to follow through on the promises made after the Federal Apology for Forced Adoption, and commits to following through on the promises relating to State involvement.

Adoptee Rights Australia (ARA) Inc.

Postal address: PO Box 976
Toronto NSW 2283

Email: admin@adopterightsaustralia.org.au

Website: www.adopterightsaustralia.org.au

This submission was prepared by Sharyn White for Adoptee Rights Australia (ARA) Inc.