
Medical Issues

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FORCED ADOPTION OF AUSTRALIAN CHILDREN: UNABATED SADNESS, ANGER AND GUILT

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From the 1950s in Australia forced adoptions were commonplace and led to severe consequences for the adoptive mothers and many adopted children. Since 2012 Australian State and Federal Governments have issued formal apologies and only the State of Victoria has an established redress scheme which includes modest financial compensation packages. A particular issue is the constraint imposed by statutes of limitations on actions relating to events which occurred many decades previously. The defendants may no longer be entities capable of being sued, the witnesses and clinical records may no longer be available, and there may be statutory ceilings on compensation for mental harm. This article argues that the statute of limitations should be lifted to deliver adequate justice to Forced Adoption claimants as for historic claims of child sexual abuse. Redress schemes should also be introduced and made uniform throughout Australia.

Keywords: *forced adoption; mental harm; compensation*

“She was 18, she was on her own, she was vulnerable, she had no support. She was given zero options to keep me”.

Abraham Maddison, *Crazy Bastard: a memoir of forced adoption* (Wakefield Press, 2023)

INTRODUCTION

Forced adoption refers to the unethical and often illegal removal of babies from their mothers.¹ Commencing in the 1940s, adoption of Australian children, especially those born to “single” mothers, was seen as a public service to the community and to infertile married couples desirous of having a child.² Public opinion was that unwed young mothers were an embarrassment to their families and that illegitimate offspring should be “disposed” of quickly so that these young mothers could return to their families without the shame and ignominy of illegitimacy.³ This is despite illegitimacy, as a legal category,

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¹ Australian Government, Department of Social Services, *Forced Adoption* (2025) <<https://www.dss.gov.au/forced-adoption>>.

² D Higgins, “Unfit Mothers ... Unjust Practices? Key Issues from Australian Research on the Impact of Past Adoption Practices” (2011) 87 *Family Matters* 56, 59–60 <https://aifs.gov.au/sites/default/files/fm87g_0.pdf>; C Jones, “Adoption – A Study of Post-war Child Removal in New South Wales” (2000) 86(1) *Journal of the Royal Australian Historical Society* 51; Senate Standing Committee on Community Affairs, Parliament of Australia, *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (Report, 2012) 24 [2.21] <https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2010-13/commcontribformerforcedadoption/report/index>.

³ E Martin, “Social Work, the Family and Women's Equality in Post-war Australia” (2003) 12(3) *Women's History Review* 445, 446 <<https://doi.org/10.1080/09612020300200368>>; P Castle, “The Experience of Choice in Voluntary Relinquishment” (2014) 94 *Family Matters* 53, 54.



capturing children born to women who were not “single” but rather in de facto relationships.⁴ Indeed, the label used to categorise women who gave birth to illegitimate offspring might be said to be so broad as to merely capture women who “were in some way in control of their own sexuality”.⁵ Nonetheless, the adoption of children born to “single” mothers was gradually accepted as protecting the child from a life of poverty and delinquency, as well as a means of punishing the mother.⁶ In this sense, a single mother was viewed as a danger to her child.⁷ Dr Suzanne Packer, an Australian community paediatrician, described this phenomenon as the “terrible vitriol of a harsh unforgiving community”.⁸ David Howe et al in their book *Half a Million Women*⁹ explain that the true instigators, albeit unrecognised, were often parents and other family members of the birth mother who failed to include their daughter (or other female relative) in the decision-making process: “[T]heir will prevailed but the pain was hers and for this she may not forgive them.”¹⁰ Christine Coles in her book *Releasing the Past*¹¹ refers to one 14-year-old victim of prolonged incest over five years who once pregnant was kept hidden in disgrace until her delivery. The community condemnation of illegitimacy prompted many girls to seek illegal abortions and occasionally commit infanticide.¹²

Since the late 1920s, it is estimated that 250,000 Australians were affected by policies and practices of forced adoption, with most adoptions occurring between 1950 and 1975.¹³ Unmarried mothers were forced, pressured, or coerced to give up their children rather than bear the shame and social stigma of pregnancy and birth outside marriage.¹⁴

The Victorian Department of Justice and Community Safety found there were 39,357 adoptions arranged in Victoria from 1958 to 1984.¹⁵ It is impossible to know how many of these adoptions were forced.¹⁶ The [Victorian] Welfare Ordinance allowed unwed mothers to be declared as “moral” or “unfit” by welfare officers, allowing forced adoptions on the basis of a mother’s deemed lack of suitability to parent her baby.¹⁷

In the post-war period, the declaration of a mother as “unfit” was based on an assumption that mothers who were unwed, women who could not provide a safe home environment for their children, or women with mental or physical incapacities were unfit to care for children¹⁸ and that such mothers should make a “clean break” from their children on the basis that a child’s characteristics were predominantly formed by their environment.¹⁹ Consequently, removing a child from an unsuitable environment and placing the

⁴ S Swain and R Howe, *Single Mothers and Their Children: Disposal, Punishment and Survival in Australia* (CUP, 1995) 15–16.

⁵ Swain and Howe, n 4, 20.

⁶ Jones, n 2.

⁷ Jones, n 2, 52.

⁸ Senate Standing Committee on Community Affairs, n 2, 39.

⁹ D Howe et al, *Half a Million Women: Mothers Who Lose Their Children by Cdoption* (Penguin Books, 1992).

¹⁰ Howe et al, n 9, 58.

¹¹ C Cole (ed), *Releasing the Past* (Veljanov Printing, 2008).

¹² J Godden, *Crown Street Women’s Hospital* (Allen & Unwin, 2016) 268; Author MO reviewed one such case at the Women’s Hospital (Crown Street) after her request for termination was rejected in 1981.

¹³ P Kenny et al, “Past Adoption Experiences: National Research Study on the Service Response to Past Adoption Practices” (Research Report No 21, Australian Institute of Family Studies, August 2012) 9 <https://aifs.gov.au/sites/default/files/publication-documents/tr21_0.pdf>.

¹⁴ Victorian Government, *History and Timeline of Forced Adoptions in Victoria* (2025) <<https://www.vic.gov.au/forced-adoption-history>>.

¹⁵ Victorian Government, n 14.

¹⁶ Victorian Government, n 14.

¹⁷ Victorian Government, n 14.

¹⁸ D Montgomerie et al, “Single Mothers and Their Children: Disposal, Punishment and Survival in Australia” (1999) 72(1) *Pacific Affairs* 144 <<https://doi.org/10.2307/2672382>>.

¹⁹ Senate Standing Committee on Community Affairs, n 2, [2.16].

child in an adoptive home with an “idealised” family unit, white married couples with secure incomes, was viewed as the best way of safeguarding the child’s welfare.²⁰ If a mother fell outside the prevailing conception of an ideal family unit because of poverty, skin colour, or single parenthood, society viewed her as unfit to raise her child.²¹ This intolerance of families which did not fit the idealised family unit persisted until the early 1970s.²²

Until the introduction of a raft of social,²³ legal,²⁴ and economic²⁵ changes in the 1970s, unwed (single) women who were pregnant were encouraged – or forced – to “give up” their babies for adoption.²⁶ Adoption was the solution in the eyes of many, in particular a practice referred to as “closed adoption”.²⁷ “Closed adoption” involved listing the names of the adoptive parents on the adopted child’s original birth certificate, removing any record of the child’s birth mother in an attempt to firmly establish the child within a new family and with a new identity.²⁸ Such pregnancies were shrouded in secrecy and the mothers hidden away until the post-partum period, when they were expected to return home, forget about their babies and get on with their lives.²⁹ They did not forget. Condon³⁰ stated that the legacy of those years was that “the majority of these women reported no diminution of their sadness, anger and guilt over the considerable number of years which had elapsed since their relinquishment”.³¹ Indeed, Roby Winkler and Margaret van Keppel³² in a study on the long-term adjustment of relinquishing mothers found that 45% reported that their sense of loss had actually increased as time elapsed and only 10% of them overcame their sense of loss. The sense of loss intensified on birthdays of the adopted child particularly on significant milestones such as their 18th birthday and when the mother gave birth to subsequent children. Not knowing the whereabouts of their adopted child, their development and progress exacerbated their sense of loss. Expectations of being reunited with their adopted child heightened their feelings of loss.

From the 1950s until 2012 Australia had the second highest rate of child adoption of the developed world.³³ In New South Wales, the number of registered adoptions between 1950 and 1980 totalled 64,855, reaching a peak of 4,564 in 1972.³⁴ At the Crown Street Women’s Hospital in Sydney, records indicate that between 1964 and 1973 there were at least 11,366 births to single mothers and around 5,026 of those

²⁰ Senate Standing Committee on Community Affairs, n 2, [2.17]–[2.18].

²¹ Senate Standing Committee on Community Affairs, n 2, [2.18]; See also Jones, n 2, 51.

²² Senate Standing Committee on Community Affairs, n 2, [2.22]; See also Australian Institute of Health and Welfare, *Adoptions in Australia Over Time* (2023) <<https://www.aihw.gov.au/reports/adoptions/adoptions-in-australia-over-time/contents/adoptions-in-australia-over-time?>>.

²³ Senate Standing Committee on Community Affairs, n 2, [8.9]–[8.10].

²⁴ Senate Standing Committee on Community Affairs, n 2, [8.9]–[8.10], [8.24].

²⁵ Senate Standing Committee on Community Affairs, n 2, [8.9]–[8.10].

²⁶ Senate Standing Committee on Community Affairs, n 2, [2.29]–[2.30]; Higgins, n 2, 59; Jones, n 2, 54.

²⁷ P Kenny et al, “Past Adoption Experiences; National Research Study on the Service Response to Past Adoption Practices” (Research Report No 21, Australian Institute of Family Studies, August 2012) 1 <https://aifs.gov.au/sites/default/files/publication-documents/rr21_0.pdf>; Higgins, n 2, 59.

²⁸ Kenny et al, n 27, 1.

²⁹ Kenny et al, n 27, 9; Senate Standing Committee on Community Affairs, n 2, [1.47]; Australian Institute of Health and Welfare, n 22.

³⁰ JT Condon, “Psychological Disability in Women Who Relinquish a Baby for Adoption” (1986) 144(3) *Medical Journal of Australia* 117.

³¹ Condon, n 30, 118.

³² R Winkler and M van Keppel, *Relinquishing Mothers in Adoption* (Institute of Family Studies, 1984).

³³ Victorian Government, n 14; Senate Standing Committee on Community Affairs, n 2, 29; The report estimated that there were form 140,000 to 150,000 total adoptions in the period between 1951 and 1975, and potentially as many as 250,000 total adoptions in the period from 1940 to the present day.

³⁴ New South Wales, Parliament, Legislative Council, Standing Committee on Social Issues, *Releasing the Past: Adoption Practices 1950–1998*, Final Report (Report No 22, Parliamentary Paper No 600, 2000) [3.3], App 5.

babies were referred for adoption.³⁵ While the data from Crown Street Women's are constrained by gaps and inconsistencies,³⁶ the available data suggest that approximately one quarter of babies born from 1964 to 1973 were to single mothers (some years were lower at 19%–20%, while others were higher, peaking at 31% in 1968) and on average close to half (44%) of those babies were adopted.³⁷

However, as the social view of illegitimacy changed, the Australian adoptions declined so that by 2014 there were only approximately 3,000 adoptions nationwide and by 2024 the annual number of finalised adoptions had fallen to 207.³⁸

The reasons for the decline in adoptions in Australia included increased availability of oral contraceptives from 1971;³⁹ increased community tolerance of ex-nuptial births and single parenthood⁴⁰ often as a result of feminist activism;⁴¹ access to safe therapeutic abortion⁴² and the introduction of government benefits for single parents.⁴³ The status of “illegitimacy” was abolished in Australia in the 1970's.⁴⁴

However, the legacy of this 40-year program of adoption was a large group of traumatised mothers (and also many adopted children) whose anguish persisted over their entire life and for many this pain still continues today.⁴⁵

TRAUMA SURROUNDING THE PREGNANCY AND BIRTH IN AUSTRALIAN UNWED MOTHERS

The following section describes the trauma suffered by unwed mothers who had their babies adopted.

From the 1950s onwards unwed mothers were “judged, shamed, coerced and in some cases threatened into giving their babies up for adoption”.⁴⁶ During delivery some mothers were physically shackled to

³⁵ Godden, n 12, 280.

³⁶ Godden, n 12, 277.

³⁷ Godden, n 12, 280.

³⁸ A Casamento and A Jeffery, *Forced Adoption in Australia* (2022) <<https://www.finity.com.au/news-and-insights/forced-adoption-in-australia>>; Higgins, n 2, 59–60.

³⁹ Australian Institute of Health and Welfare, *Adoptions Australia 2021–22* (2023) <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2021-22/contents/about>>.

⁴⁰ S Charlesworth, “The Impact of the Victorian Status of Children Act 1974 on the Legal and Social Rights of Children Born to Unmarried Parents” (1985) 8(2) *University of Tasmania Law Review* 195. In 1975 only 10% of births were outside of marriage, compared to 40% in 2023. The rate of births outside marriage stayed relatively steady between about 2008 and 2017, sitting at just over one-third of all births from 2017 there was an upward trend until 2022, holding steady in 2023. Australian Institute of Family Studies, *Births in Australia* <<https://aifs.gov.au/research/facts-and-figures/births-australia-2024>>.

⁴¹ D Cuthbert, “Adoption and Feminism: The politics of Motherhood and Reproduction in Australia” (2012) 27(72) *Australian Feminist Studies* 141.

⁴² B Baird, “Medical Abortion in Australia: A Short History” (2015) 23(46) *Reproductive Health Matters* 169; Surgical abortion became liberally accessible in Australia from the early 1970s.

⁴³ The Supporting Mother's Benefit was a Commonwealth allowance introduced in 1973 by the Whitlam government. It extended equal access to income support to all single mothers. In November 1977, it was replaced by the Supporting Parent's Benefit, with sole fathers becoming eligible for payments. This payment made it possible for many single mothers to keep their children and played a significant role in adoption rates declining dramatically in Australia after 1973. Find & Connect, *Inquiry into Commonwealth Contribution to Former Forced Adoption Policies and Practices* <<https://www.findandconnect.gov.au/entity/commonwealth-contribution-to-former-forced-adoption-policies-and-practices/>>.

⁴⁴ The *Status of Children Act 1974* (Vic) s 12 amended a range of Acts to redefine the status of “illegitimate” to “a child whose parents were not married to each other at the time of birth or at or after its conception”. The *Status of Children Act 1996* (NSW) s 5(1) states: “For the purposes of any law of the State by or under which the relationship between any person and the person's parents (or either of the person's parents) arises, that relationship and any other relationship (whether of consanguinity or affinity) between the person and another person is to be determined regardless of whether the person's parents are or have been married to each other”.

⁴⁵ Senate Standing Committee on Community Affairs, n 2, [4.15]–[4.48]; Kenny et al, n 27, 10–11.

⁴⁶ Queensland, *Parliamentary Debates*, Lower House, 27 November 2012 (Tracy Davis Minister for Communities, Child Safety and Disability Services) <https://documents.parliament.qld.gov.au/speeches/spk2012/Tracy%20Davis%20spk%20Aspley%202012_11_27_33.pdf>.

beds, denied seeing or touching their baby at birth, locked out or physically restrained from entering the holding nursery, or not advised of available child support payments.⁴⁷ Some mothers report prejudicial treatment in maternity hospitals including the Royal Women's Hospital in Melbourne⁴⁸ and the Royal Hospital for Women in Sydney.⁴⁹ Examples have been documented by Christin Quirk⁵⁰ from the Royal Women's Hospital in Melbourne:

D.G. explains how she felt that she was the victim of emotional blackmail at the hands of an RWH social worker ...

Of course I was seeing her every week, for so-called counselling, but it was just complete brainwashing to give the child up. I was told that I had no means of support. I had nowhere to live, and that if I loved the child, had any feeling for the child whatsoever, I'd give him up. The social worker stuck to that line right from the beginning to the end.

L.S. wanted to keep her child, but the RWH social worker attempted to pressure her into relinquishing her child ...

The only thing I can remember is that horrible final meeting with her, when she told me that the child would grow up in the gutter and I'd be forced to become a prostitute to support her. Oh, it was quite horrible. And she really did get red-faced. I remember it vividly.

Quirk also describes a labelling system which indicated to staff which babies were to be immediately separated from their mothers. This particular system disproportionately targeted single mothers:

I remember trying to get out of bed and going down the hallway when no one was around – trying to find the nursery. I got caught down there and was immediately taken back and because of that they came and told me that they'd removed the baby to another floor.

My baby was taken from my bedside and placed all alone in a nursery. I was forbidden to see him or go in the nursery. I was then left for several days sitting on a bed in a ward full of married mothers who were allowed to have their tiny babies next to their beds. They were able to hold their babies, cuddle them and feed them whilst I sat and watched and cried.

VD, a social worker at the Royal Women's Hospital in Melbourne, confirmed that there was a routine practice for contact between mother and child to be withheld prior to the signing of consent for adoption:

There is no question that nursing staff were instructed by their director of nursing who had been instructed by the Medical Superintendent that single mothers should not see their babies if they were going to sign a consent to adoption. There was nothing ever produced in writing, but it was practice.

⁴⁷ Senate Standing Committee on Community Affairs, n 2, [1.19], [3.67], [3.71]–[3.72].

⁴⁸ The Royal Women's Hospital Melbourne. Acknowledging our past role in forced separation of mothers from their babies <<https://www.thewomens.org.au/news/acknowledging-our-past-role-in-forced-separation-of-mothers-from-their-babies>>: "The Women's acknowledges its past role in the forced separation of mothers and babies and their subsequent adoption. For more than four decades, single pregnant women were treated poorly at our hospital and forcibly and permanently separated from their babies, who were then adopted. These were often very young women who deserved compassion and care, instead they were shamed and judged at their most vulnerable time. The Women's is committed to listening to and acknowledging the devastating experiences of these mothers and their now, adult children. We recognise the undeniable harm and long-term damage our actions have caused, and we are committed to acknowledging their trauma and experiences".

⁴⁹ A Horin, "Adoption Practices Deeply Flawed", *Sydney Morning Herald*, 2 November 2011; The Benevolent Society, which ran the Royal Hospital for Women in Paddington for 87 years as well as an adoption service in Bondi, has issued a public apology about its adoption practices. It said that it deeply regretted past practices which were now known to have been "deeply flawed and damaging to many unmarried women who gave birth at the hospital". Unmarried women in its care from the 1940s to the 1980s were sometimes "coerced to give up children for adoption" and were not always given the care and respect they needed. The charity "apologises unreservedly for any pain, unresolved grief or suffering experienced by mothers, fathers, adoptees, adoptive parents, and their families" as a result of its past practices, the statement said. It said great damage was "unintentionally" inflicted on people as a result of assumptions adoption was the only option for unmarried women. The policies were influenced by societal attitudes of the time, which stigmatised unmarried mothers and did not provide them with adequate support: The Benevolent Society, *Statement of Apology for Past Adoption Practices* (31 October 2011 – updated 2014) <<https://www.benevolent.org.au/ArticleDocuments/404/Statement%20of%20apology%20for%20past%20adoption%20practices.pdf.aspx%201>>.

⁵⁰ C Quirk, "Never-Married Women Versus the Records: Archives, Testimony and the History of Adoption Practices at the Royal Women's Hospital" (2012) 40 *Melbourne Historical Journal* 169, 176–177, 179–180.

Similar accounts have been documented from the Royal Women's Hospital in Sydney:⁵¹

Jan, a trainee social worker at Sydney's Royal Hospital For Women ...

Basically, my job was to shut them up, stop them crying, get them to realise that giving up their baby was the best thing that they could do and get on with it ... I was one of the people who was involved with telling the girls that if they kept their baby they were being selfish. They were being selfish to the baby and selfish to the adopting parents who really wanted to have a child.

And a personal account from a mother

My third son was born in May 1970 at Crown Street in Sydney ... Everybody just seemed to want to get their claws into you: 'Oh, she's an easy target.' This was written on my papers when I received them 28 years later, by a social worker who had known me for about three months of my life: This is her third confinement and there have been no lasting relationships with any of the Birth Fathers, she is a girl of average to low average intelligence. She seems a sad and directionless girl, lacking ability to make close associations.⁵²

These accounts reflect Judith Godden's history of the Women's Hospital in Sydney reporting that Crown Street social workers betrayed the mothers by not revealing the welfare benefits available to single mothers although these benefits were a meagre 50 cents a week in 1971.⁵³

These discriminatory behaviours and practices by hospital staff, social workers, and others towards unmarried mothers, compared with married mothers, have been acknowledged by some maternity units including the Women's Hospital in Melbourne.⁵⁴

The Australian Institute of Family Studies in 2012 completed the *National Research Study on the Service Response to Past Adoption Practices*.⁵⁵ Those experiences included:

- Mothers being used for the training of medical students;
- Mothers being sexually assaulted by medical professionals;
- Mothers experiencing medical neglect or maltreatment;
- Mothers being tied to beds, forcibly held down, having pillows placed over their faces and having sheets held up to shield the view of their newborn son/daughter during labour;⁵⁶

⁵¹ G Thompson, "Social Worker Tells of Forced Adoptions", *ABC News online*, 27 February 2012 <<https://www.abc.net.au/news/2012-02-27/social-worker-tells-of-forced-adoptions/3855210>>; Standing Committee on Social Issues, New South Wales Parliament, *Releasing the Past: Adoption Practices 1950–1998* (Final Report No 22, December 2000) [8.3]–[8.4]: "The Committee reports that (at the Royal Hospital for Women in 1972) threats were made to women to ensure they gave their consent for their child to be referred for adoption, with some mothers alleging that their discharge from the hospital was refused until they had given their consent in writing"; [7.85], [8.36]: "In 1953, Matron Shaw described the practice of rapid adoption: 'I can ... remember many cases when a married mother had lost several babies through difficult childbirth and wanted to adopt one while still in hospital. In very worthy cases like these we could come to an agreement with the Child Welfare Department that these mothers could immediately adopt illegitimate children still in the hospital and start feeding them. Within a matter of two weeks these mothers could take the baby home as if it were their own. All adoption papers were completed before they left the hospital.'" The Committee provides an account from the Medical Superintendent of Crown Street: "Unmarried mothers may have been given a dose of sedative at or around the time of signing consent for the adoption in particular if they were emotional or tearful at the time".

⁵² Senate Standing Committee on Community Affairs, n 2, [3.83].

⁵³ Godden, n 12, 268.

⁵⁴ D Cuthbert and M Quartly, "'Forced Adoption' in the Australian Story of National Regret and Apology" (2012) 58(1) *Australian Journal of Politics and History* 82, 94; The Royal Women's Hospital Melbourne, *Apology to Mothers and Families for Past Forced Adoption Policies and Practices* (23 January 2012) <<https://www.thewomen.org.au/about/our-history/timeline/timeline-2000-to-now/2012-apology>>.

⁵⁵ Kenny et al, n 27.

⁵⁶ Physical restraints are mechanical devices that include handcuffs, leg shackles, belly chains, or any configurations of these. They are primarily used by law enforcement and custodial staff to restrict the movement of incarcerated individuals, as well as to reduce the risk of assaultive behaviours and escape among individuals in custody, especially when they need to be taken out of the incarceration facility into public settings, like hospitals. However, despite the extremely reduced risk of assault and escape among incarcerated pregnant people due to their physical condition, especially while in labour, they continue to be shackled during pregnancy, childbirth, and postpartum period. The use of restraints on pregnant and postpartum people has been identified as medically dangerous, a human rights violation, and against national and international standards of care. See K King, *Best Practices in the Use of Restraints with Pregnant Women and Girls Under Correctional Custody* (US Office of Justice Programs, 2014) <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/best-practices-use-restraints-pregnant-women-and-girls-under>>; EA Carson, *Prisoners in 2021 – Statistical Tables* (NCJ 302776) [Data Set] (US Department of Justice, Bureau

- Mothers being administered drugs that caused impaired judgement/capacity to make informed decisions;
- Mothers and fathers deceived that their newborn son/daughter was deceased;
- The unethical and illegal obtaining of consent to adopt (or no consent obtained at all);
- Adoptees as babies being used for medical experimentation;
- Adoptees being placed with abusive adoptive parents;
- Adoptees being deceived regarding the circumstances surrounding their adoption, including the obtaining of consent from their parents; and
- Fathers being excluded from information and decisions about the care of children.

Accounts from other jurisdictions tell a similar story.

For example, the Scoping Study of the Children and Families Directorate of the Scottish Government in December 2023⁵⁷ reported the collusive role of some Scottish social workers in forced adoptions. This included: excluding mothers from decision-making; acting against their wishes; failing to inform them of their legal rights or options; behaving coercively and threateningly; having personal relationships with the mother's parents or adoptive parents; and lying to the mothers about the family that was adopting their child. It was emphasised that the degree to which such practices occurred was unknown nor how widespread examples like these were.

In Ireland, from 1922 until 1998, approximately 56,000 single mothers and 57,000 children passed through the Mother and Baby Homes and County Homes, which were refuges established to rescue and reclaim "fallen" women.⁵⁸ Adoption was a significant exit pathway for the children in these institutions.⁵⁹ Maeve O'Rourke writes that Ireland continues in its refusal to accept the human rights violations that occurred through the systematic and arbitrary detention of women and their children in the Mother and Baby Homes, and the coerced adoption of children born to unmarried women which persisted until the late 20th century.⁶⁰ Irish women detained in these institutions describe illegal detention, coercion to relinquish their children, and the forcible removal of their children without consent.⁶¹ The Mother and Baby Homes were also marked by very high infant mortality, with mass graves discovered in County Galway used to dispose of the remains of deceased infants.⁶² The Final Report of the statutory Mother and Baby Homes Commission of Investigation, however, denied that illegal forced adoption occurred, suggesting that the testimony of the women was "contaminated" due to the women's interaction with other residents and inaccurate media coverage.⁶³

of Justice Statistics, 2022) <<https://bjs.ojp.gov/library/publications/prisoners-2021-statistical-tables>>; *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)*, GA 65/229, UN Doc A/RES/65/229 (16 March 2011, adopted 21 December 2010) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial>>; "AMA Passes Resolution Prohibiting Shackling of Pregnant Prisoners in Labor", *Prison Legal News* (2010) <<https://www.prisonlegalnews.org/news/2010/dec/15/ama-passes-resolution-prohibiting-shackling-of-pregnant-prisoners-in-labor/>>;

⁵⁷ Scottish Government, *Historic Forced Adoption – Scoping Study: Final Report* (14 December 2023) <<https://www.gov.scot/publications/scoping-study-historic-forced-adoption-final-report/pages/4/>>.

⁵⁸ Ireland, Department of Children, Disability and Equality, *Mother And Baby Homes Commission of Investigation Final Report, "Executive Summary"* (2020) 1–2 <<https://assets.gov.ie/static/documents/final-report-of-the-commission-of-investigation-into-mother-and-baby-homes.pdf>> (Ireland, *Mother and Baby Commission of Investigation Final Report*); PM Garrett, "'Unmarried Mothers' in the Republic of Ireland" (2016) 16(6) *Journal of Social Work* 708, 710.

⁵⁹ Ireland, *Mother and Baby Commission of Investigation Final Report*, n 58, "Chapter 32: Adoption" [32.2].

⁶⁰ M O'Rourke, "The Manipulation of 'Vulnerability': State Responses to So-Called 'Historical' Abuses in Ireland" (2021) 43(3) *Human Rights Quarterly* 435, 440.

⁶¹ O'Rourke, n 60, 441.

⁶² Ireland, *Mother and Baby Commission of Investigation Final Report*, n 58, "Executive Summary" 1–2; E Edwards, "Tuam Babies: 'Significant' Quantities of Human Remains Found at Former Home", *Irish Times online* (3 March 2017) <<https://www.irishtimes.com/news/social-affairs/tuam-babies-significant-quantities-of-human-remains-found-at-former-home-1.2996599>>.

⁶³ Ireland, *Mother and Baby Commission of Investigation Final Report*, n 58, 12.

THE “CLEAN BREAK” THEORY

This section describes the justification for quickly removing the adoptive child from her biological mother.

The “clean break” theory, prominent in the 1960s, was based on the premise that both the single mother and her child would benefit economically and socially if they were separated as early and as completely as possible.⁶⁴ The theory was supported by the British psychoanalyst, John Bowlby, whose study of war orphans formed his opinion that early separation from a birth mother would lead to a more secure and healthy development for the child, particularly if they were placed with an adoptive family.⁶⁵ This was based on the assumption that unmarried mothers would inevitably realise they were not equipped to raise their child, whether through poverty or other factors, and would be forced to surrender the child after they had already been damaged by poor parenting and moral contamination.⁶⁶ The clean break theory advanced the idea that white, financially stable married couples constituted the “ideal” family and were uniquely capable of providing an appropriate environment for raising children.⁶⁷ Placing children within “stable” families was, therefore, thought to be a pre-emptive means of reducing the costs to the State caused by delinquency.⁶⁸

Across Australia, changes to State legislation from the 1960s enforced “clean break” practices and secrecy through closed adoptions.⁶⁹ The practice of closed adoptions facilitated the clean break theory by curtailing parties to the adoption from contacting each other.⁷⁰ For example, in New South Wales the original birth certificate of an adopted child was amended with the names of the adoptive parents in place of the birth mother and father, preventing the adopted child from accessing the original birth certificate except by court order.⁷¹ In Victoria, model legislation discussions resulted in the *Adoption of Children Act 1964* (Vic), which prohibited private adoptions but “increased confidentiality and secrecy measures” and ushered in the era of closed adoptions.⁷² While the practice of closed adoption began to change gradually from the 1970s, it was not until legislative changes were introduced in the 1980s and 1990s that adopted children across Australia could access information on their birth parents.⁷³

It has now been recognised that the forced separation of a child from its mother was neither moral nor legal,⁷⁴ a practice for which the nation has offered its apology.⁷⁵ Many of the practices have similarities with those to which Indigenous children of the Stolen Generations were subjected, with children forcibly removed from their families under acts of Parliament and sent either to institutions or adopted by non-Indigenous families.⁷⁶

⁶⁴ Senate Standing Committee on Community Affairs, n 2, [7.30].

⁶⁵ J Bowlby, *Maternal Care and Mental Health: A Report Prepared on Behalf of the World Health Organization as a Contribution to the United Nations Programme for the Welfare of Homeless Children* (World Health Organization, 1952).

⁶⁶ Jones, n 2, 52.

⁶⁷ Find & Connect, *Clean Break Theory* (25 July 2024) <<https://www.findandconnect.gov.au/entity/clean-break-theory/#:~:text=Details-.Details.did%20not%20disrupt%20personality%20development>>.

⁶⁸ Jones, n 2, 53.

⁶⁹ Kenny et al, n 27.

⁷⁰ Standing Committee on Social Issues, Parliament of New South Wales, n 34, [3.46].

⁷¹ Standing Committee on Social Issues, Parliament of New South Wales, n 34.

⁷² Victorian Government, *History and Timeline of Forced Adoptions in Victoria* (2025) <<https://www.vic.gov.au/forced-adoption-history>>.

⁷³ Kenny et al, n 27, 10.

⁷⁴ J Gillard, “National Apology for Forced Adoptions” (21 March 2013) <<https://www.ag.gov.au/About/ForcedAdoptionsApology/Documents/Nationalapologyforforcedadoptions.PDF>>.

⁷⁵ N Mushin, “The Forced Adoption Apology: Righting Wrongs of a Dark Past” in A Hayes and D Higgins (eds), *Families, Policy, and the Law: Selected Essays on Contemporary Issues for Australia* (Australian Institute of Family Studies, 2014) 39–46.

⁷⁶ Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1997).

Shawyer⁷⁷ and Picton,⁷⁸ believed that the only way for a birth mother to resolve her feelings of grief after adopting her baby was to be reunited with her child or at least to have some relationship with that child.⁷⁹ However, testimonies of mothers who were reunited with their adopted children vary. While there are accounts of psychological issues being resolved upon being reunited, many others had difficulties in building a relationship with their child and some experienced further trauma after this relationship disintegrated.⁸⁰

ADVERSE EFFECTS ON ADOPTED CHILDREN

The impact on adopted children from forced separation from their biological mother will now be described.

The trauma that results from the separation of a child from their mother is of great significance as adopted children are very likely to experience challenges in relation with attachment, identity, and abandonment regardless of the nature of their experience within their adoptive family.⁸¹ In addition, not all of the forced removals or separations between parents and children resulted in adoption.⁸² Children who were placed within institutions equally experience ongoing and wide-ranging psychological, physical and social health issues as a result of separation.⁸³

Attachment between the mother and the infant starts in pregnancy and is built upon in the early post-natal period during periods of unrestricted skin to skin contact.⁸⁴ The impact of forcibly separating a mother and infant includes the inability to establish any bonding to the baby, thus preventing any demonstration of love and affection;⁸⁵ reduced periods of breastfeeding;⁸⁶ and poor regulatory responses in the infant.⁸⁷ The 2012 report of the Senate Community Affairs References Committee⁸⁸ also revealed a number of other negative effects resulting from the removal of children from their birth mothers, including exposure to abuse within their adoptive homes,⁸⁹ as well as abuse experienced in institutions,⁹⁰ and the ongoing effects of such abuse.⁹¹

⁷⁷ J Shawyer, *Death by Adoption* (Cicada Press, 1979).

⁷⁸ C Picton, "Outcome of Adoption: The Views of Adoptees and Natural Parents" (1980) 5 *Australian Child and Family Welfare* 4.

⁷⁹ Victorian Government, n 72.

⁸⁰ Senate Standing Committee on Community Affairs, n 2, [4.33], [4.37-4.41].

⁸¹ Kenny et al, n 27, xvi.

⁸² D Higgins, "Past Adoption Practices: Implications for Current Interventions" (2014) 36(4) *InPsych* <<https://psychology.org.au/inpsych/2014/aug>>.

⁸³ Higgins, n 82; Kenny et al, n 27, [4.12]–[4.14].

⁸⁴ G Allen and I Duncan Smith, "Early Intervention: Good Parents, Great Kids, Better Citizens" (The Centre for Social Justice and the Smith Institute, 2008); Centre for Excellence and Outcomes in Children and Young People's Services, "Grasping the Nettle: Early Intervention for Children, Families and Communities" (C4EO, 2010); I Strathearn et al, "Adult Attachment Predicts Maternal Brain and Oxytocin Response to Infant Cues" (2009) 34 *Neuropsychopharmacology* 2655.

⁸⁵ N Bergman, *Parenting Starts at Birth: Kangaroo Mother Care* (Video presentation) (2008); S Gerhart, *Why Love Matters: How Affection Shapes a Baby's Brain* (Routledge, 2004).

⁸⁶ A Cattaneo and R Buzzetti, "Effect on Rates of Breastfeeding of Training for the Baby Friendly Hospital Initiative" (2001) 323 *British Medical Journal* 323: 1358–1362; MS Kramer et al, "The Promotion of Breastfeeding Intervention Trial (PROBIT): A Randomised Trial in the Republic of Belarus" (2001) 285 *JAMA* 413.

⁸⁷ K Christenson et al, "Temperature, Metabolic Adaptation and Crying in Healthy Newborns Cared for Skin-to-Skin or in a Cot" (1992) 84 *Acta Paediatrica Scandinavia* 468; ER Moore et al, "Early Skin-to-Skin Contact for Mothers and Their Healthy Newborn Infants" (2012) 5(5) *Cochrane Database of Systematic Reviews* <<https://pubmed.ncbi.nlm.nih.gov/27885658/>>; H Saloojee, *Early Skin to Skin Contact for Mothers and Their Healthy Newborn Infants: RHL Commentary* (WHO Reproductive Health Library, 2008).

⁸⁸ Senate Standing Committee on Community Affairs, n 2.

⁸⁹ Senate Standing Committee on Community Affairs, n 2, [4.5]–[4.7].

⁹⁰ Senate Standing Committee on Community Affairs, n 2, [4.13].

⁹¹ Senate Standing Committee on Community Affairs, n 2, [4.15]–[4.16].

According to John Bowlby, the difference between children deprived of consistent relationships with parents or loving parental figures and children who experience an intimate and continuous relationship with their mother is significant, the former being at risk for developmental and emotional problems.⁹²

In 1937, David Levy, a psychiatrist, published a paper⁹³ which asserted that adopted children often suffered from an attachment disorder which he termed “primary affect hunger”. Later in 1960, Marshall Schechter, a psychoanalyst, asserted⁹⁴ that adopted children were “100 times more likely” to have a range of serious emotional problems based on a breakdown in the initial close ties between infant and their mother. Schechter reasoned that those ties determined later personhood of the adopted child and suggested that “the immature ego cannot cope with the knowledge of the rejection by their original parent(s) and represent a severe narcissistic injury”.⁹⁵ This, he claimed, placed adopted children at risk for a range of psychotic and neurotic illnesses.⁹⁶ Schechter later published a book⁹⁷ in which he claimed that parents and professionals agreed that attachment and loss are at the heart of what makes adoption a distinctive and difficult experience.

In the 1960s, Dr Benjamin Spock, a paediatrician at Columbia University Medical School, expounded his theories on attachment which profoundly influenced parenting practices in the mid-20th century, shifting away from strict discipline and towards a more understanding and nurturing approach. Spock believed good parenting meant loving and nurturing your child every step of the way.⁹⁸ This shift also affected how adoptions were viewed and approached, fostering a more positive and accepting environment for both children and adoptive families.⁹⁹ In the 1950s and 1960s, fashions in parenting advice changed markedly. In parenting manuals and in talks aimed at parents in parent–teacher associations, local parenting groups and radio broadcasts, parents were also advised to take a more child-centred attitude to the upbringing of their offspring, shaping their care around the particular requirements of their infant rather than following a rigid behaviourist timetable.¹⁰⁰ The bond between mother and child assumed greater psychological significance than ever before.¹⁰¹

Spock believed in honesty regarding adoption: “Eventually he will raise the more difficult question of why his own mother gave him up. To tell him that his mother didn’t want him would shake his confidence in all mothers”.¹⁰² In response to this concern, Spock argued that children should be told of their adoption openly and from an early stage, rather than revealing this reality suddenly or keeping it a secret from the child.¹⁰³ This accords with contemporary research which suggests that the contexts which provide empathy and affirmation to the adoptive process are associated positively with their adoption.¹⁰⁴ Schechter

⁹² J Bowlby, *Maternal Care and Mental Health: A Report Prepared on Behalf of the World Health Organization as a Contribution to the United Nations Programme for the Welfare of Homeless Children* (World Health Organization, 2nd ed, 1952) 11–12 <<https://iris.who.int/handle/10665/40724>>; K Pickert, “The Man Who Remade Motherhood” (21 May 2012) <<https://content.time.com/time/subscriber/article/0,33009,2114427-3,00.html>>.

⁹³ DM Levy, “Primary Affect Hunger” (1937) 94 *American Journal of Psychiatry* 643.

⁹⁴ MD Schechter, “Observations on Adopted Children” (1960) 21 *Archives of General Psychiatry* 29, 31.

⁹⁵ Excerpt from MD Schechter, “Observations on Adopted Children” (1960) <<https://pages.uoregon.edu/adoption/archive/SchechterOAC.htm>>.

⁹⁶ Excerpt from Schechter, n 95.

⁹⁷ DM Brodzinsky and MD Schechter (eds), *The Psychology of Adoption* (OUP, 1990).

⁹⁸ R Gunderman, “Dr. Spock’s Timeless Lessons in Parenting”, *The Conversation*, 6 September 2019 <<https://theconversation.com/dr-spocks-timeless-lessons-in-parenting-122377>>.

⁹⁹ Gunderman, n 98.

¹⁰⁰ L Tisdall, “Education, Parenting and Concepts of Childhood in England, c. 1945 to c. 1979” (2017) 31(1) *Contemporary British History* 24 <<https://doi.org/10.1080/13619462.2016.1226808>>.

¹⁰¹ Tisdall, n 100.

¹⁰² B Spock, *The Common-Sense Book of Baby and Child Care* (Sloan and Pearce, 1946) 505–507.

¹⁰³ Excerpt from Benjamin Spock, “Adopting A Child” (1946) <https://darkwing.uoregon.edu/~adoption/archive/SpockAAC.htm?utm_source>.

¹⁰⁴ D Brodzinsky et al, “Adoption and Trauma: Risks, Recovery, and the Lived Experience of Adoption” (2022) 130 *Child Abuse & Neglect* 1, 9.

agreed that telling children about their adoption was essential but claimed that careful timing and sensitive revelation could mitigate the adverse effects.¹⁰⁵ Indeed, many late discovery adoptees experience difficulty trusting others and are negatively affected in their ability to form new relationships.¹⁰⁶

Contemporary studies in the United States regarding adoption generally contend that separation of the child from their birth mother does not inherently predispose the child to a unique form of adoption trauma.¹⁰⁷ While recognising that trauma is a common experience among adopted persons, the study concludes that it is early life adversities such as neglect, abuse, multiple caregivers, and institutional rearing that contribute to the ongoing developmental consequences associated with adoption.¹⁰⁸

LEGAL REMEDIES: THE PROBLEM OF THE STATUTE OF LIMITATIONS

This section discusses the legal remedies for Victims of Forced Adoption.

A statute of limitations refers to legislation which sets out a time period in which legal proceedings must be commenced. Each type of legal claim (eg, personal injury, contract disputes, fraud) has its own statute of limitations. Delays can range from a few years to several decades, depending on the jurisdiction and nature of the claim.

The Case for Suspending the Statute of Limitations

Allowing victims to pursue claims outside typical time limits ensures they have access to justice. Many mothers subjected to forced adoption delay for decades any attempt to seek redress in a timely manner due to trauma, lack of awareness, or the stigma surrounding forced adoption.¹⁰⁹ However, attempts to seek redress holds institutions accountable for their actions, compelling governments and agencies involved in forced adoptions to acknowledge and address the harm caused. Removing the statute of limitations encourages individuals to come forward with their experiences without the fear of losing their legal right to seek justice due to time constraints. It allows society to understand better the full scope of the problem, informing future policies and practices to prevent similar injustices.¹¹⁰

An analogy is the situation faced by child sexual abuse victims. Many jurisdictions have already set aside statutes of limitations for cases involving child abuse due to the understanding that victims often take years to come to terms with their experiences.¹¹¹ This precedent provides a strong basis for similar treatment in forced adoption cases.

¹⁰⁵ AL Baden et al, “Delaying Adoption Disclosure: A Survey of Late Discovery Adoptees” (2019) 22(1) *Adoption Quarterly* 1.

¹⁰⁶ L Perl, “Why Wasn’t I Told?” Making Sense of the Late Discovery Adoption, 7th Australian Adoption Conference, Hobart 2000 via Standing Committee on Social Issues, Parliament of New South Wales, n 34, [9.38].

¹⁰⁷ Brodzinsky et al, n 104, 8.

¹⁰⁸ Brodzinsky et al, n 104, 9.

¹⁰⁹ Australian Psychological Society, *New Recommendations to Support Australians Impacted by Forced Adoption* (12 September 2024) <<https://psychology.org.au/insights/recommendations-to-support-forced-adoptions-aus>>; Victorian Government, Department of Justice and Community Safety, *Historical Forced Adoptions Redress Scheme* (11 April 2025) <<https://www.vic.gov.au/redress-forced-adoptions>>.

¹¹⁰ Reconciliation Australia, *Community Truth Telling Pathways* (July 2025) <<https://www.reconciliation.org.au/our-work/truth-telling/>>; Yoorrook Justice Commission, *Yoorrook: Truth Be Told* (Parliament of Victoria, 2025) <https://www.cdn.craftcloud/06ad3276-b3d9-4912-bcbb-37795aade9a8/assets/documents/Yoorrook_Official-Public-Record_Accessible.pdf>.

¹¹¹ B Mathews and E Dallaston, “Reform of Civil Statutes of Limitation for Child Sexual Abuse Claims: Seismic Change and Ongoing Challenges” (2020) 43(2) *UNSW Law Journal* 386 <<https://www.unsw.edu.au/content/dam/pdfs/law/unsw-law-journal/2020-2029/2020/Issue-43-2-01-MATHEWS-AND-DALLASTON.pdf>>; See *Limitation of Actions Amendment (Child Abuse) Act 2015* (Vic); *Limitation Amendment (Child Abuse) Act 2016* (NSW); *Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016* (Qld) and the *Civil Liability and Other Legislation Amendment Act 2019* (Qld); *Limitation of Actions (Child Abuse) Amendment Act 2018* (SA); *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Act 2018* (WA); *Limitation Amendment Act 2017* (Tas); *Justice and Community Safety Legislation Amendment Act 2016 (No 2)* (ACT); *Limitation Amendment (Child Abuse) Act 2017* (NT).

Forced adoption is recognised as a violation of basic human rights, including the right to family life and to be heard.¹¹² A flexible approach to statutes of limitations aligns with the fundamental principles of human rights law, emphasising redress for those whose rights have been violated.

The Australian Senate in its Report entitled *Commonwealth Contribution to Former Forced Adoption Policies and Practices* stated that:

In cases where illegality is alleged in the adoption process the prosecution of those responsible should not be hindered by statutes of limitation. The committee urges all states and territories to examine the limitations for infringements of adoption legislation to ensure that they do not function as a barrier to litigation by individuals who were not made aware of their legal rights at the time that offences may have been committed. The committee does not want people who have been damaged by their experience of forced adoption to be damaged further by having to endure a long and bruising legal journey that may ultimately be unsuccessful due to a legal technicality.¹¹³

Barns and McDonald¹¹⁴ asserted that limitation periods operate to “bar the remedy but not the right” and as such they must be pleaded as a defence (unless inconsistent with the relevant limitations Act when read as a whole).

The Case against Suspending the Statute of Limitations in Forced Adoptions

Statutes of limitations help ensure fairness in legal proceedings by preventing the prosecution of claims that may become stale over time.¹¹⁵ As evidence deteriorates, witnesses may forget details or become unavailable, making it difficult to achieve a fair trial.¹¹⁶ They encourage individuals to assert their rights and seek justice within a reasonable period,¹¹⁷ which helps maintain the efficiency of the legal system. By limiting claims to specific periods, statutes of limitations reduce uncertainty for potential defendants.¹¹⁸ This provides predictability in legal matters and allows individuals and businesses to operate without the fear of indefinite liability for past actions.¹¹⁹ The existence of a time limit motivates individuals to remain diligent in pursuing their claims.¹²⁰ It encourages parties to gather evidence and resolve disputes promptly rather than allowing grievances to fester over time¹²¹ and ensures that cases are brought while evidence is still fresh and dependable, which is crucial for fair adjudication. Legislatures establish statutes of limitations based on the view that limiting the time in which litigation can be pursued serves the public interest, even if this sometimes results in valid litigation not being pursued.¹²² These policy decisions regarding how long it is reasonable to wait before bringing legal claims reflects societal values about justice, accountability, and the need for stability in legal affairs. By imposing time limits, statutes

¹¹² Joint Committee on Human Rights, UK Parliament, *The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976* (UK Parliament, July 2022) <<https://committees.parliament.uk/publications/23076/documents/169043/default/>>; Council of Europe Commissioner for Human Rights, *Adoption and Children: A Human Rights Perspective* (Council of Europe, 2011) <<https://rm.coe.int/adoption-and-children-a-human-rights-perspective-issue-paper-commissio/16806dac00>>.

¹¹³ Senate Standing Committee on Community Affairs, n 2, 258.

¹¹⁴ G Barns and R Macdonald, “Forced Adoption and Legal Redress” (2023) 174 *Precedent* 38.

¹¹⁵ DA Ipp, *Review of the Law of Negligence: Final Report* (Department of Treasury (Cth), September 2022) 85 (limitation of actions) <https://treasury.gov.au/sites/default/files/2019-03/R2002-001_Limits.pdf> (*Law of Negligence Final Report*); Full Report <https://treasury.gov.au/sites/default/files/2019-03/R2002-001_Law_Neg_Final.pdf>.

¹¹⁶ *Law of Negligence Final Report*, n 115.

¹¹⁷ NSW Law Reform Commission, *Community Law Reform Program: Ninth Report – Limitation of Actions for Personal Injury Claims* (Report No 50, 1986) [1.11] <<https://lawreform.nsw.gov.au/documents/Publications/Reports/Report-50.pdf>>.

¹¹⁸ NSW Law Reform Commission, n 117.

¹¹⁹ NSW Law Reform Commission, n 117; *Law of Negligence Final Report*, n 115.

¹²⁰ NSW Law Reform Commission, n 117.

¹²¹ NSW Law Reform Commission, n 117.

¹²² *Law of Negligence Final Report*, n 115, [6.1].

of limitations can also encourage parties to explore alternative dispute resolution methods, such as mediation or settlement, before resorting to litigation.¹²³

Defendants to claims of forced adoption could still seek a permanent stay of proceedings in some cases as too much time has gone by, witnesses have died, or records are unobtainable thus preventing a fair trial.

Identifying the Defendant(s)

For some litigants, the action would be against the State if they were wards of that authority. However, the State might argue that there was a conflict between the statutory duty to care for the adoptive child and any duty to the relinquishing mother (akin to *Sullivan v Moody*¹²⁴). For others the defendant might be a faith-based institution which was an unincorporated association who could not easily be sued (without law reform), or the defendant was a body that no longer existed.

Specifying the Damages

The most common action would be in mental harm for which there might be significant injury impairment thresholds in some jurisdictions such as the State of Victoria.

REPARATION FOR VICTIMS OF FORCED ADOPTION

Schemes of Redress for Forced Adoption Victims

The alternative to legal redress is now described.

The alternative to litigation is schemes which are established to assess claims and determine their validity. This bypasses the legal framework especially because many of the claims concern events which may have happened as long as 70 years ago. It would be unlikely that evidence could be adduced from witnesses to such historic events. In Australia, only Victoria¹²⁵ has implemented a formal redress scheme specifically to compensate individuals who experienced forced adoptions.¹²⁶ Other jurisdictions including the United Kingdom,¹²⁷ Ireland¹²⁸ and Canada¹²⁹ have schemes for redress for victims of forced adoption.

New Zealand recognised the impact of historical adoption practices and has initiated discussions and programs aimed at addressing the rights and welfare of those affected, particularly among Māori communities. Following investigations into past adoption practices, including those in mother and baby homes, the Irish government has committed to providing support to affected individuals, including access to records, mental health services, and potential compensatory measures. However, Maeve O'Rourke states that in Ireland "Basic information, both about one's personal circumstances and about the systems within which individuals were abused, is withheld in numerous other ways".¹³⁰ The UK has seen initiatives aimed at addressing the historical practices of forced adoptions, particularly in England

¹²³ Judicial Commission of New South Wales, *Civil Trials Bench Book: Alternative Dispute Resolution* (2024) <https://www.judcom.nsw.gov.au/publications/benchbks/civil/alternative_dispute_resolution.html>.

¹²⁴ *Sullivan v Moody* (2001) 207 CLR 562; [2001] HCA 59.

¹²⁵ Victorian Government, Department of Justice and Community Safety, Historical Forced Adoptions Redress Scheme, n 109.

¹²⁶ R Ritchie, "Australian-First Historical Forced Adoption Redress Scheme Opens in Victoria", *ABC News online*, 4 February 2024 <<https://www.abc.net.au/news/2024-02-04/victoria-forced-adoption-redress-scheme-opens/103419560>>.

¹²⁷ Department of Health and Social Care (UK), *Payment Scheme for Former British Child Migrants* (26 February 2019) <<https://www.gov.uk/government/news/payment-scheme-for-former-british-child-migrants>>.

¹²⁸ L O'Carroll, "Irish Government Agrees € 800m Package for Mother and Baby Home Survivors", *The Guardian*, 17 November 2021 <<https://www.theguardian.com/world/2021/nov/16/irish-government-agrees-800m-package-for-mother-and-baby-home-survivors>>.

¹²⁹ H Sreenivasan, "Years After Forced Adoptions, Canada to Pay \$600 Million to Indigenous People" (Public Broadcasting Service, 8 October 2017) <<https://www.pbs.org/newshour/show/years-forced-adoptions-canada-pay-600-million-indigenous-people>>.

¹³⁰ O'Rourke, n 60.

and Wales.¹³¹ While not a formalised redress scheme like those in Australia, various support services and acknowledgment programs exist for those affected by past adoption practices. Some provinces in Canada, such as British Columbia and Ontario, have introduced measures to address historical injustices related to forced adoptions, particularly focusing on Indigenous children removed from their families. These initiatives may include access to services, counselling, and support for family reunification. While there is no widespread national redress program for forced adoptions, some States have initiatives focusing on adoption records access, non-identifying information, and resources for those affected by historical adoption practices.

Each jurisdiction's approach varies in scope, funding, and outcomes, reflecting differences in legal frameworks, societal recognition of past injustices, and ongoing discussions about reparative justice and support for affected individuals.

The Forced Adoption Remediation legislation in Victoria was enacted in 2023 to address the historical injustices surrounding forced adoptions that occurred in the latter half of the 20th century. The Victorian government expects more than 3,000 women who were separated from their infants at birth to apply under the Historical Forced Adoptions Redress Scheme.¹³² It offers a one-off maximum payment of \$30,000, access to counselling and psychological support, and an individual apology process.

The arguments for establishing a forced adoption redress scheme in Victoria were grounded in various social justice, moral, and psychological considerations. Some of the prevailing arguments included:

- (1) **Acknowledgment of Historical Injustices:** Advocates emphasised the need to recognise and address the historical injustices faced by mothers who were forced to relinquish their children. This acknowledgment was seen as a critical step in healing and reparative justice.
- (2) **Psychological Impact:** Many mothers experienced significant trauma, grief, and loss as a result of forced adoptions. The scheme aimed to provide these individuals with some form of recognition and support for the psychological impact of these experiences.
- (3) **Support for Victims:** The redress scheme would offer financial compensation and support services, helping affected individuals cope with the lasting effects of their experiences, such as mental health issues, relationship difficulties, and social isolation.
- (4) **Moral Responsibility:** Proponents argued that the State and society have a moral responsibility to provide support and redress for those harmed by policies and practices of forced adoption. This responsibility was rooted in the acknowledgment of the role of systemic factors in these adoptions.
- (5) **Preventing Further Trauma:** Establishing a redress scheme was seen as an initiative-taking measure to prevent further trauma for individuals affected by forced adoption, ensuring that future policies are more compassionate and respectful of parental rights.
- (6) **Public Awareness and Education:** The scheme would raise awareness of the issues surrounding forced adoptions, educating the public about the historical context and the ongoing impact on families. This could foster more supportive attitudes toward affected individuals.
- (7) **Encouraging Reforms:** The redress scheme could function as a catalyst for broader reforms in adoption practices and child welfare policies, promoting a more child-centred approach that respects parental rights and family integrity.
- (8) **Restorative Justice:** The arguments also emphasised the principles of restorative justice, wherein the focus is not just on compensating for harm but also on acknowledging the pain and suffering experienced by those affected and working towards healing.

Overall, the Forced Adoption Remediation Legislation in Victoria represents a broader movement towards addressing historical injustices and ensuring that the voices of those affected by forced adoption are heard and respected.

¹³¹ See, eg, Department for Education (UK), *Government Issues Apology for Historic Forced Adoptions* (7 March 2022) <<https://www.gov.uk/government/news/government-issues-apology-for-historic-forced-adoptions>>; Family Action, *NORCAP Contact Register* (April 2020) <<https://family-action.org.uk/news-insight/family-action-now-holds-the-norcap-contact-register/>>; Adoption Search Reunion, *Tracing Your Adoption Records* (July 2020) <<http://www.adoptionsearchreunion.org.uk/default.htm>>; *Adoption and Children Act 2002* (UK); *Children and Families Act 2014* (UK); General Register Office, *Adopted Children Register* (nd) <<https://www.gov.uk/adoption-records/the-adoption-contact-register>>.

¹³² Victorian Government, Department of Justice and Community Safety, *Historical Forced Adoptions Redress Scheme*, n 109.

The Case for Suspending the Statute of Limitations in Cases of Forced Adoption

The differing treatment of child sex abuse cases and forced adoption cases regarding the statute of limitations typically stems from the nature of the offenses and the legal frameworks surrounding them. Some key factors include:

- (1) **Nature of the Offense:** Child sex abuse is often seen as a particularly heinous crime, involving significant trauma and long-term psychological effects on the victims. There is a strong societal and legal push to ensure that survivors can seek justice, regardless of the time that has passed since the abuse occurred.
- (2) **Awareness and Discovery:** In many child sex abuse cases, victims may not disclose the abuse until many years later due to fear, shame, or psychological trauma. Laws that allow for the suspension or extension of the statute of limitations recognize that victims may need time to come forward.
- (3) **Public Interest and Advocacy:** There has been significant advocacy for survivors of child sex abuse to have their voices heard in the legal system. This activism has led to changes in laws aimed at providing justice for survivors, including the suspension of statutes of limitations.
- (4) **Nature of Forced Adoption:** Forced adoption cases, while also serious, typically involve different legal and social dynamics. These might include the rights of biological parents, the adoption process itself, and the best interests of the child. Legal frameworks may prioritise stability and the welfare of adopted children, limiting the possibility of reopening these cases after an extended period.
- (5) **Legislative Differences:** The laws regarding child sex abuse and forced adoption are created and amended through different legislative processes, which can lead to variances in how statutes of limitations are applied.

In summary, while both child sex abuse and forced adoption are serious issues, the legal context, societal perceptions, and advocacy efforts surrounding them have resulted in different approaches to statutes of limitations (see Table 1).

TABLE 1. A Comparison of Forced Adoptions and Child Sexual Abuse

Argument	CSA	Forced Adoption
Nature of the Offense	Egregious	Serious
Impact on Victim	Violation of trust and bodily autonomy; profound psychological and physical trauma; post-traumatic stress disorder (PTSD), anxiety, depression, and difficulty forming healthy relationships.	Trauma related to loss, coercion, and societal stigma, grief, guilt, and feelings of inadequacy. May be dependent on prior childhood experiences.
Child development	Shapes personality formation & trust.	Shapes personality if young teenagers
Betrayal of Trust	Yes.	Maybe.
Social stigma	Survivors of child sex abuse might struggle with stigma around their experiences, affecting their willingness to seek help.	Unwed mothers may face societal judgment and lack of support.
Psychological effects	The trauma from child sex abuse is often compounded by the betrayal and exploitation involved. Survivors may struggle with deep-seated feelings of shame and violation.	Unwed mothers might grapple with loss and rejection, impacting their sense of identity and self-worth.
Awareness and Discovery	Often delayed by many decades.	Often delayed by many decades.
Public Interest and Advocacy	Strong legal activism.	Poorer activism.

TABLE 1. continued

Competing interests (the child; the adoptive parents, the adoption system)	N/A.	Legal frameworks may prioritise stability and the welfare of adopted children, limiting the possibility of reopening these cases after an extended period.
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CONCLUSION

The *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly in 1948, explicitly prohibited cruel, inhuman or degrading treatment. Protection from such treatment is recognised as a fundamental human right.¹³³ Yet, from the 1950s onwards, forced adoption practices in Australia were cruel, inhuman and degrading, leaving a legacy of trauma that has endured for decades.

Mothers who were coerced into relinquishing their children often experienced profound and enduring shame which pervaded their life experience – beginning from the discovery of an unplanned pregnancy and persisting long after the adoption.¹³⁴ The consequences of these practices were serious and far-reaching, affecting both the mothers and many adopted children. These actions were justified at the time by the misguided belief that forced removal was in the best interests of the mother, the child, and society.

While Victoria has taken the lead in establishing a redress scheme, similar initiatives have yet to be implemented across other Australian jurisdictions. Suspending the statutes of limitation would allow long-term victims of forced adoptions to seek justice. There is an urgent need for a nationally consistent redress framework for Forced Adoptions.

The *Australian National Research Study on the Service Response to Past Adoption Practices*¹³⁵ recommended workforce training for mental health and welfare professionals, the development of post-adoption support services, and the integration of lessons learned into current child welfare practices. However, legal redress remains a critical form of recognition – acknowledging that wrongs were committed by individuals and institutions. Human rights law specifically affirms the right to family life,¹³⁶ a right that was violated by forced adoption practices.

As one reflection poignantly states:

A mother's love is the most profound and enduring force in life. It shapes who we are, how we love, and how we navigate the world. It is a love that asks for nothing in return yet gives everything. It is the foundation of all that is good, kind, and compassionate in this world.¹³⁷

¹³³ *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR UN Doc A/810 (Adopted 10 December 1948) Art 5 <<https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>>.

¹³⁴ Joint Committee on Human Rights, UK Parliamentary Inquiry, *The Right to Family Life: Adoption of Children of Unmarried Women 1949-1976* (House of Lords Paper No 43, House of Commons Paper No 270, Session 2022–2023, 15 July 2022) <<https://committees.parliament.uk/publications/23076/documents/169043/default/>>; Link to Professor Gordon Harold's Evidence <<https://committees.parliament.uk/oralevidence/3219/html/>>.

¹³⁵ Kenny et al, n 27.

¹³⁶ F Aolain, "Rethinking the Concept of Harm and Legal Categorizations of Sexual Violence During War" (2001) 1(2) *Theoretical Inquiries in Law* <<https://www.philpapers.org/rec/AOLRTC>>. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) Art 17 states: "No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation".

¹³⁷ S Awan, "A Mother's Love: The Unbreakable Bond" (Write Your World, 16 February 2025) <<https://medium.com/write-your-world/a-mothers-love-the-unbreakable-bond-fdff769567c>>.