

**Forced Adoptions
Implementation Working Group**



FINAL REPORT TO

THE HONOURABLE SCOTT MORRISON MP

MINISTER FOR SOCIAL SERVICES

December 2014

PREFACE

This is the final report of the Commonwealth Government's Forced Adoptions Implementation Working Group. It makes recommendations on the implementation of the recommendations contained in the Senate Report *Commonwealth Contribution to Former Forced Adoption Policies and Practices* tabled on 29 February 2012 and the former Government's formal response to that report tabled on 21 March 2013. The final report also makes recommendations with regard to policies in the areas of domestic and inter-country adoption and surrogacy.

The National Apology to people affected by forced adoption delivered by the former Prime Minister, the Honourable Julia Gillard MP, on 21 March 2013 and supported across the whole political spectrum has been generally regarded as being a cathartic event by people affected by forced adoption. However, as frequently noted, an apology is "only words" if it is not supported by concrete measures. The recommendations of the Senate Report, the former Government's response and the work of the Working Group together with large numbers of organisations and individuals throughout the community give practical voice and effect to ensuring that the National Apology was not "only words".

This report is the conclusion of more than 18 months' work in the implementation of the concrete measures. That work includes consultations across the country with hundreds of people and organisations who have been instrumental in bringing forced adoption policies to the attention of the community. Pre-eminent in those consultations have been people who have been affected both directly and indirectly by forced adoption. Understandably, they have found it very difficult to speak about their experiences and are to be congratulated for their strength and courage in doing so.

The Forced Adoptions Implementation Working Group worked with the Department of Social Services, the Department of Health, the National Archives of Australia, the Attorney-General's Department and a range of adoption stakeholders to fulfil its role of advising on all matters of the Senate's recommendations and the Government response.

This included extensive consultations with stakeholders across Australia undertaken by the Chair in order to gain their perspectives on how the Senate Report recommendations could be implemented to best assist those affected by forced adoption. It also included advice provided by the Working Group to:

- the Department of Health in relation to enhancing access to mental health services for people affected by forced adoption, the preparation of a fact sheet to assist professionals understand relevant issues, tender documents to seek applicants to develop training and guidelines for professionals and the development and delivery of guidelines and training for mental health professionals;
- State and Territory Ministers regarding the need for an integrated birth certificate to be made available to persons affected by forced adoption and issues affecting access to records;

- the Department of Social Services regarding improving access to specialist services, peer and professional counselling and the development of tender documentation for the scoping study and applications for funding;
- the National Archives of Australia in relation to the development of the Forced Adoption History Project website and upcoming launch of the exhibition;
- the Inter-Departmental Committee on Inter-Country Adoption; and
- the Commonwealth Parliament's Joint Standing Committee on Electoral Matters.

The Working Group's work with the Departments, the National Archives and community stakeholders while collegial, was challenging at times due to the complex range of issues associated with providing effective services to people affected by forced adoption. The Group's input on the whole was well received and contributed to the development of well-targeted resources and services and the enhancement of existing ones. However, despite the best efforts of all involved, it was not possible to achieve desired outcomes in an optimal timeframe in all instances. Recommendations made in this report address timeliness where this is an issue.

This report would be incomplete without acknowledging those people who have been affected by forced adoption who have been members of the Working Group. Some of them were also members of the former Forced Adoptions Apology Reference Group. At every meeting they have been required to consider, discuss and make decisions on forced adoption policies which have been very challenging and, at times, confronting. Their contributions to this work has been exemplary.

The work of the Senators who sat on the Senate Committee, the Forced Adoptions Apology Reference Group and the Forced Adoptions Implementation Group has also been of the highest standard. The collegiality and common purpose which has extended across party lines has been greatly beneficial to all who have been affected by forced adoption. The Report which they and their colleagues produced is an outstanding document and should be compulsory reading for anyone who seeks to understand these terrible events in our nation's history.

The members of the Forced Adoptions Implementation Working Group are proud and grateful to have had the opportunity to make a contribution to the implementation of policies and programs directed to people affected by forced adoption. We look forward to the Government's ongoing commitment to these important initiatives.

RECOMMENDATIONS

The Forced Adoptions Implementation Working Group makes the following recommendations with regard to the implementation of policies and programs for people affected by forced adoption:

Recommendation 1:

That in all Government discussions and writings about adoption, including forced adoption, the terminology used be in accordance with paragraphs 1.9 – 1.14 of the Report of the Senate Community Affairs References Committee *Commonwealth Contribution to Former Forced Adoption Policies and Practices* tabled on 29 February, 2012.

Recommendation 2:

That in consideration of the formulation and implementation of policy relating to domestic and inter-country adoption and surrogacy, mental health be recognised as a fundamental issue.

Recommendation 3:

That in the formulation and implementation of policies in the areas of adoption and surrogacy, regard be had to the provision of information to the community, and particularly people affected by forced adoption, by way of greater transparency with regard to progress and the proposed introduction thereof.

Recommendation 4:

That the program of education and training of mental health professionals in all issues relevant to people affected by forced adoption in accordance with the allocation of funds in March 2013 be implemented as a matter of urgency.

Recommendation 5:

That the Commonwealth Government establish and chair a consultative committee with State and Territory Governments seeking to implement the following policies across all Governments on a uniform basis:

- a) The integration of birth certificates of adopted people to include the names of the mother and father of the child;**
- b) Access to Commonwealth, State and Territory electoral rolls at minimal cost to enable searching by people affected by forced adoption for the purpose of attempting reunions of families;**
- c) The *Find and Connect* program be expanded to include services for people affected by forced adoption;**
- d) The location and availability of any other records relevant to people affected by forced adoption, including hospital records, be at no cost; and**
- e) For the purpose of achieving these recommendations, the apparent policy of restricting any reform to those which do not require legislation be abandoned.**

Recommendation 6:

That the program to improve access to specialist support services, peer and professional counselling and supported records tracing for those affected by forced adoption, administered by the Department of Social Services, be implemented as soon as practicable.

Recommendation 7:

That the Commonwealth Government implement strategies to achieve greater community awareness of the findings of the Senate Report, the National Apology and wider issues relating to forced adoption.

Recommendation 8:

That 21 March in each year be designated as the memorial date to raise awareness and recognise and show respect to people affected by forced adoption in like manner as shown to the recipients of other government apologies.

Recommendation 9:

That in accordance with recommendation 11 of the Senate Report, the Commonwealth Government lead discussions with States and Territories on issues concerning the funding of financial reparations for people affected by forced adoption.

Recommendation 10:

That grievance mechanisms be established under the leadership of the Commonwealth Government in accordance with recommendation 12 of the Senate Report.

Recommendation 11:

That the Commonwealth lead discussions with the States and Territories to consider the reform of adoption laws in Australia on the basis of their being uniform throughout the nation and based exclusively on the test of the best interests of the subject child in accordance with laws in force relating to relationship breakdown.

Recommendation 12:

That the law relating to inter-country adoption be reformed to provide that:

- **It be conducted as a uniform law of the Commonwealth rather than by the States and Territories; and**
- **Its conduct by way of bilateral arrangements be abandoned in favour of its conduct in accordance with the Hague Convention on Inter-country Adoption.**

Recommendation 13:

That the Government forthwith commit to the funding of services for people affected by forced adoption beyond the expiration of the funding allocated by the Government's Response to the Senate Report.

Recommendation 14:

That this report be tabled in both Houses of the Parliament.

INTRODUCTION

1. On 29 February 2012, the Senate Community Affairs References Committee tabled its report *Commonwealth Contribution to Former Forced Adoption Policies and Practices*.
2. On 21 March 2013, the then Prime Minister, the Hon Julia Gillard MP, in acceptance of recommendations 1 - 7 of the Senate Report, offered an apology on behalf of the nation to people affected by forced adoption. The apology was supported by the then Leader of the Opposition, the Hon Tony Abbott MP and across the full political spectrum.
3. Also on 21 March 2013, the Government tabled its response to the Senate Report. In that response the Government allocated \$11.5 million over the next four years for concrete measures as referred to in the Apology. That allocation was apportioned as follows:
 - \$5 million to improve access to specialist support services, peer and professional counselling and supported records tracing for those affected by forced adoption;
 - \$5 million to:
 - Increase capacity under the Access to Allied Psychological Services (ATAPs) program, for general practitioners to refer those affected by forced adoption practices with a mild to moderate mental disorder to mental health professionals who deliver focused psychological services (\$3.5 million); and
 - Develop guidelines and training materials for mental health professionals to assist in the diagnosis, treatment and care of those affected by forced adoption practices (\$1.5 million); and
 - \$1.5 million for a website and exhibition by the National Archives of Australia to record the experiences of people affected by forced adoption and increase awareness and understanding of those experiences in the community.

FORCED ADOPTIONS IMPLEMENTATION WORKING GROUP

4. In May 2013, the Government established the Forced Adoptions Implementation Working Group (Working Group) to advise on all aspects of the Senate's recommendations and the Government response. The Working Group's Terms of Reference and Protocols are attached at **Appendix 1**.
5. Professor the Honourable Nahum Mushin was appointed as the independent Chair together with the following members:
 - Ms Angela Barra, Adoptee, QLD;
 - Ms Elizabeth Brew, Mother, NSW;
 - Dr Christine Cole, Mother, NSW;
 - Mr Gary Coles, Father, VIC;

- Mr Thomas Graham, Adoptee, ACT;
 - Mr Leigh Hubbard, Adoptee, VIC;
 - Ms Sue MacDonald, Mother, WA;
 - Ms Kathryn Rendell, Mother, QLD;
 - Ms Evelyn Robinson, Mother, SA;
 - Senator Rachel Siewert, Senator for WA;
 - Senator Claire Moore, Senator for QLD; and
 - Senator Sue Boyce, Senator for QLD.
6. The membership of the Working Group changed as follows:
- On 2 August 2013, Ms Angela Barra resigned and Ms Kathryn Scott, Adoptee, QLD was appointed;
 - On 3 October 2013, Ms Elizabeth Brew resigned;
 - On 30 June 2014, Senator Sue Boyce retired from the Senate and was reappointed in her private capacity; and
 - In May 2014, Senator Bridget McKenzie, Senator for Victoria, was appointed.
7. The appointments to the Working Group were originally set to end on 30 June 2014. Minister Andrews extended the term to 31 December 2014. Two members, Mr Gary Coles and Mr Thomas Graham, declined the extension and retired.
8. The Working Group met as follows:
- Face-to-face
 - 9 July 2013;
 - 31 October 2013;
 - 20 March 2014; and
 - 5 December 2014.
 - Telephone
 - 26 September 2013;
 - 18 December 2013;
 - 12 February 2014;
 - 11 March 2014;
 - 20 June 2014;
 - 19 August 2014;
 - 6 November 2014; and
 - 22 December 2014.

9. The Working Group's meetings were also attended by representatives of the Departments of the Attorney-General and Health together with the National Archives of Australia. The Working Group extends its gratitude to those agencies for their involvement in its work.
10. The support given to the Working Group by the secretariat within the Department of Social Services has been fundamental to its achievements. In addition to the necessary and extensive administrative arrangements, the secretariat has provided guidance, advice and emotional support to both members of the Working Group and people affected by forced adoption who have contacted the Department for various reasons.
11. The Chair of the Working Group has consulted widely throughout Australia. At all times he was accompanied by members of the secretariat who showed great sensitivity and compassion to the people who attended those consultations.
12. For most of the Working Group's tenure the following personnel have provided secretariat services:
 - Ms Eliza Strapp, former Branch Manager Families and Children Branch (F&CB);
 - Ms Megan Shipley, former Director Adult Specialist Support Services (ASSS);
 - Ms Margaret Anderson, former Assistant Director ASSS;
 - Ms Jeanette Daniel, former Policy Officer ASSS;
 - Ms Janet Smith, Assistant Director F&CB; and
 - Ms Helen Palma, Executive Assistant, F&CB.
13. Recently, as a result of changes, the following personnel have undertaken this work:
 - Ms Tracy Creech, Acting Branch Manager F&CB;
 - Ms Tracey Bicknell, Acting Director ASSS; and
 - Ms Anne Meuronen, Assistant Director ASSS.

The Working Group expresses its grateful thanks to all the above for the expertise and professionalism afforded us.

14. The Working Group gratefully acknowledges the support of two Ministers. The Honourable Julie Collins MP, former Minister for Community Services, presided over the creation of the Working Group and provided initial advice. For most of the Working Group's tenure, the Honourable Kevin Andrews MP, Minister for Social Services, has taken a keen interest in our work and has demonstrated a deep understanding and commitment to the issues of forced adoption. The Working Group welcomes the very recent appointment of the Honourable Scott Morrison MP as Minister for Social Services.
15. The Chair also expresses his gratitude to Ms Helen Moreland, Senior Adviser to Minister Andrews and, in the early stages, to Mr Ted Lapkin, Adviser to the Minister, for their assistance and support.

ISSUES CONSIDERED BY THE WORKING GROUP

Language

16. At the outset, the Working Group acknowledged the role of appropriate language in discussing forced adoption. The first major consideration of this issue was by the Senate Committee. As recorded in the Senate Report (pp 2 - 3), the fundamental consideration is the manner in which one "... clearly differentiates between the parties to adoption." (para. 1.11) The most controversial question is how to differentiate between the person who gives birth to the child and the person often referred to as "the adoptive mother".
17. The Senate Committee decided to refer to the person who gives birth to the child as the "mother". It is not appropriate to precede that term with words such as "birth", "natural", "biological" or, in particular, "relinquishing". That was determined to be subject to the use of the word "natural" in certain contexts. The appropriate term for the person who is adopted was determined to be "adopted person", subject to the use of "baby" or "child" in certain contexts. Likewise, the terms "father" and "adoptive father" were considered to be appropriate.
18. That terminology was accepted by the Forced Adoptions Apology Reference Group which drafted the National Apology referred to above. Accordingly, the Working Group continued the use of the same language and recommends that it be applied when the terminology of adoption is required, both in forced adoption and adoption generally.

Recommendation 1:

That in all Government discussions and writings about adoption, including forced adoption, the terminology used be in accordance with paragraphs 1.9 - 1.14 of the Report of the Senate Community Affairs References Committee *Commonwealth Contribution to Former Forced Adoption Policies and Practices* tabled on 29 February, 2012.

Mental Health

19. The issue of the mental health of those affected by forced adoption overlays every other consideration. During the Chair's consultations around Australia in all capitals except Darwin for both the Apology and Implementation, mental health was always the primary consideration. The issue is documented in many places including electronic and print media and the steady stream of learned writings now being published. Perhaps the pre-eminent of those is the Senate Report.
20. No matter what else is done in the area of forced adoption, that issue must always be foremost. The Working Group, particularly because of its deliberately representative composition, recognised the pre-eminence of mental health considerations in all its deliberations and discussed it in numerous ways throughout its tenure. It is essential that in the implementation of the various programs described below and in all other considerations of forced adoption, the various agencies are completely

attuned, and give appropriate emphasis, to the issue of mental health. It is imperative that the issue be highlighted at every opportunity.

21. Inter-country adoption and surrogacy are discussed below. The same considerations should apply in those areas.

Recommendation 2:

That in consideration of the formulation and implementation of policy relating to domestic and inter-country adoption and surrogacy, mental health be recognised as a fundamental issue.

DEPARTMENT OF HEALTH

22. As has been noted above, the concrete measures allocated \$5 million, to be implemented by the Department of Health, to be applied in two areas which are discussed below.

Access to Allied Professional Services (ATAPS)

23. The announcement that \$3.5 million was allocated to ATAPS to increase its capacity to refer those affected by forced adoption to health professionals able to deliver focused psychological strategies services was well received by affected persons. It was anticipated that, unlike the poorly informed and ineffective health service responses of the past reported in the Senate Report, a communication strategy or similar would be implemented to ensure health practitioners would have increased awareness of the effects of forced adoption and be able to sensitively facilitate referral to appropriate helping professionals. It is acknowledged that the allocation of funds was made on the basis of a reasonably expected spike in need for psychological services following the Apology.
24. The Working Group's understanding of this program is limited because of the lack of statistical and like material from the Department of Health. The monitoring of the program has been less than optimal, resulting in an inability to assess whether the funds were actually applied to the needs of people affected by forced adoption as intended. Anecdotal evidence obtained by members of the Working Group strongly suggests that the existence of the program was inadequately publicised to the extent that many health professionals were unaware that it had been established. That, together with a lack of information to professionals about even the basics of forced adoption, has resulted in widespread dissatisfaction within the forced adoption sector. Members of the Working Group have received large numbers of complaints to that effect.
25. The problems have been recently exacerbated by the apparent clawing back of remaining funds following the completion of the program in June 2014, at least in the State of Victoria. While the Working Group recognises that the allocation of funds was for the period finishing on that date, the withdrawal of those funds has not been well received by the forced adoption sector.

Guidelines and training for mental health professionals

26. The Department of Health is in the process of completing the tender process for the appointment of a tenderer for the creation and delivery of guidelines and training of mental health professionals. The Working Group was given several opportunities to express views on various issues, which were reflected in the tender documents, for which it expresses its gratitude.
27. The issues being addressed in this project are at the forefront of the concerns and needs of people affected by forced adoption. One of the most frequent complaints from the sector about the delivery of mental health services to people affected by forced adoption is the degree of ignorance of even the most basic issues of forced adoption amongst mental health professionals. In that context, the fact that it appears that the program will not commence for at least another several months, which will be in excess of two years after the allocation of the funds, is most concerning. The tenders were not advertised until over a year after the allocation. The delays have resulted in considerable disquiet in the forced adoption sector as to whether the program will ever be implemented.
28. The Working Group regards the lack of provision of information by the Department of Health to both the Working Group and the wider community as being a significant part of the problem. The Working Group recommends that the Department publish information about the progress with implementation of the program and ensures that it be completed as soon as practicable.

Health fact sheet

29. Early in the Working Group's work, the Department of Health informed us that they were preparing a "health fact sheet" to provide health professionals with basic information to enable them to understand issues relevant to people affected by forced adoption. The Working Group made a significant contribution to that document, ably assisted by the secretariat. Upon completion, the document was forwarded to the Department of Health for distribution. At the Working Group's last meeting, some doubt was cast on the extent to which the fact sheet had been distributed as intended. Further, there did not appear to be any mechanism put in place for reporting and evaluation of this important initiative.
30. Notwithstanding the critical comments made above, the Working Group acknowledges and thanks officers of the Department of Health for their work in forced adoption. In particular, Ms Fiona Nicholls, Assistant Secretary Mental Health Services Branch and Ms Lana Racic, Director Primary Care Services Section, have attended meetings of the Working Group and discussed relevant issues with us.

Recommendation 3:

That in the formulation and implementation of policies in the areas of adoption and surrogacy, regard be had to the provision of information to the community, and particularly people affected by forced adoption, by way of greater transparency with regard to progress and the proposed introduction thereof.

Recommendation 4:

That the program of education and training of mental health professionals in all issues relevant to people affected by forced adoption in accordance with the allocation of funds in March 2013 be implemented as a matter of urgency.

Harmonisation of records

31. The need for reform in relation to how parentage information is recorded on adopted persons' birth certificates and the ability to search official records was recognised in the National Apology, which committed the Government to enabling people affected by forced adoption to have "the ability to find the truth in freely available records and assistance with reconnecting with lost family." At the outset it is acknowledged that the jurisdiction in these matters rests in the States and Territories and in particular, is outside the power of the Commonwealth.
32. The introduction of an "integrated birth certificate" including the names of both the adopted person's mother and father and his or her adoptive family is at the heart of the first issue. As a result of correspondence between the Chair of the Working Group and the responsible Ministers of the states and Territories, it is clear that approaches differ. It is not proposed to canvass those differences here. However, it is suggested that there should be uniformity of laws, practice and process throughout the country with the principles of integration referred to above being regarded as best practice.
33. While the records referred to above are held by the States and Territories, the Commonwealth is the custodian of one of the most important documents, namely the electoral roll. Until recently, it was possible to search the roll to assist in locating people for the purpose of reunion. Recently, that changed and the Commonwealth's roll was closed for the purpose of searching. However, equivalent rolls are held in each State and Territory by the respective Electoral Commissioners and it has been possible to conduct such a search, but apparently only of the Victorian roll.
34. The Working Group made a submission on this issue to the Commonwealth Parliament's Joint Standing Committee on Electoral Matters. At the time of writing the Committee had not reported on the issue. The Working Group urges favourable consideration of this reform to allow searching the roll to locate family of parents and adopted people for the purpose of reunions, always subject to issues of safety and security.
35. While the Commonwealth does not have any jurisdiction to require the States and Territories to open their rolls for searching and inspection, it should exercise leadership in the interests of people affected by forced adoption. The States and Territories have taken the approach that they are prepared to consider reforms which do not require legislation, a proposition which the Commonwealth appears to have accepted. The Working Group respectfully recommends that that approach be further investigated in the interests of achieving the full implementation of the concrete measures referred to in the apology and the Government's response. Ruling out legislative amendment is contrary to the needs and interests of people affected by forced adoption. If

those needs and interests require legislative amendment, that is what should occur.

36. The Working Group has canvassed the possibility of the *Find and Connect* program being expanded to also provide services to people affected by forced adoption. *Find and Connect* is administered by the Department of Social Services as one of the programs to assist Forgotten Australians and Former Child Migrants and may also benefit people affected by forced adoption. It is noted that that would be in accordance with Recommendation 17 of the Senate Report.
37. Non-government organisations are believed to continue to hold records relevant to people affected by forced adoption. The Working Group regards Recommendation 18 of the Senate Report as vital in that context. In consultations for both the Apology and implementation the Chair was constantly informed of the need for records to be identified and made available to Find and Connect services, together with the provision of “free access to individuals seeking their own records.”
38. Finally on the issue of the harmonisation of access to records, the Working Group recommends that the Commonwealth convene discussions with and between the States and Territories to bring about reforms to give effect to the above matters and particularly that of uniformity.

Recommendation 5:

That the Commonwealth Government establish and chair a consultative committee with State and Territory Governments seeking to implement the following policies across all Governments on a uniform basis:

- a) The integration of birth certificates of adopted people to include the names of the mother and father of the child;
- b) Access to Commonwealth, State and Territory electoral rolls at minimal cost to enable searching by people affected by forced adoption for the purpose of attempting reunions of families;
- c) The *Find and Connect* program be expanded to include services for people affected by forced adoption;
- d) The location and availability of any other records relevant to people affected by forced adoption, including hospital records, be at no cost; and
- e) For the purpose of achieving these recommendations, the apparent policy of restricting any reform to those which do not require legislation be abandoned.

DEPARTMENT OF SOCIAL SERVICES

39. The Working Group has already recorded its admiration and gratitude for the role which the Department of Social Services has undertaken in our work. This report now turns to the policy aspects of the Department's role.
40. The Department is the lead agency in the Working Group's work. In that capacity, the Working Group has been included in every aspect of the development of policy to the fullest extent possible always subject to the Department's probity and like requirements. Of necessity, the Working Group's Chair has been in very frequent communication with the Department's officers. All dealings have been inclusive and professional. In particular, all officers have demonstrated a high degree of compassion and empathy which has been most admirable.
41. As has been recorded above, the essential brief received by the Department arising out of the Apology and the Government's response was "... to improve access to specialist support services, peer and professional counselling and supported records tracing for those affected by forced adoption." To that end, the Department contracted the Australian Institute of Family Studies (AIFS) to undertake a scoping study from which the policy settings might be determined. AIFS consulted with the Working Group and separately with the Chair, involving everyone in the details of the process.
42. The scoping study was prepared within an appropriate timeframe and provided to the Working Group for consideration. The Working Group discussed the study over several meetings and made detailed recommendations to the Department with regard to formulation of the policy. The Working Group was pleased to note that the policy which was ultimately determined by the Government and the subject of the Invitation to Tender was in accordance with the recommendations in nearly all respects.
43. The Department informed the Working Group at the latter's last meeting that the tender process was under way and it was hoped that successful tenderers would be announced in coming months. While the Working Group is pleased with the development of the process, the timeline raises similar issues to those referred to above with regard to the Department of Health. The Working Group recognises the preliminary work which needed to be completed prior to going to tender but nevertheless records its concern that the program delivery will not commence for at least two years after the apology and the allocation of funds. The Working Group has had communications that indicate people affected by forced adoption feel that following the Apology, they have no better access to specialist support and counselling despite the allocation of funds for this purpose.
44. Finally in this section of the report the Working Group wishes to acknowledge the outstanding work undertaken by AIFS in its scoping study and the two other reports relevant to forced adoption. On behalf of the forced adoption sector the Group expresses its gratitude and admiration to the Director of AIFS, Professor Alan Hayes AM, the Deputy Director Research, Dr Daryl Higgins and all staff members who have been involved in this work. AIFS has consulted widely throughout Australia and has constantly involved

the Working Group in its work. The Institute has made a most significant contribution to forced adoption, a fact which is widely recognised both within the professional sector and those affected by forced adoption.

Recommendation 6:

That the program to improve access to specialist support services, peer and professional counselling and supported records tracing for those affected by forced adoption, administered by the Department of Social Services, be implemented as soon as practicable.

NATIONAL ARCHIVES OF AUSTRALIA

45. The allocation of the sum of \$1.5 million to the National Archives of Australia has already borne considerable fruit. The website of the Forced Adoption History Project was launched on the first anniversary of the National Apology in March 2014 and the exhibition will be launched on the second anniversary. The work of the Archives is of the highest standard and fittingly documents the history of forced adoption. The Working Group believes that the NAA's principled delivery of high-quality, timely work provides a role model for all other bodies charged with the responsibility of acting arising from the apology and the Government's response. The Working Group expresses its gratitude to the Director General of the Archives, Mr David Fricker, Mr Shaun Rohrlach Director, Access Programs, Ms Caroline Webber Assistant Director, Access Programs and all other staff who have brought this project to fruition for the manner in which they have involved the Group in their work including their attendance at meetings and their consultative approach to their work.

FURTHER SENATE RECOMMENDATIONS

46. This report now turns to a consideration of those of the Senate recommendations that have not been considered above.

Senate Recommendation 9

47. Senate Recommendation 9 states:

The committee recommends that the Commonwealth fund peer-support groups that assist people affected by former forced adoption policies and practices to deliver services in the areas of:

- *promoting public awareness of the issues;*
- *documenting evidence;*
- *assisting with information searches; and*
- *organising memorial events;*

And that this funding be provided according to transparent application criteria.

The Working Group regards the funding of peer groups as a vital feature of the concrete measures. The issue is highly relevant to the tender process being conducted by the Department of Social Services and referred to at paragraph 43 above. There are two features of the recommendation which

must be emphasised. The first of those is “promoting awareness of the issues” of forced adoption. The whole of the forced adoption sector was appalled that other political events overshadowed the day of the National Apology and significantly curtailed the anticipated extensive media coverage of the Apology and issues of forced adoption. Public awareness of forced adoption and its significance to large numbers of people in the society is extremely low. It is recommended that strategies to achieve greater awareness of the Senate Report’s findings, the National Apology and its purpose be led by the Government as a matter of urgency.

Recommendation 7:

That the Commonwealth Government implement strategies to achieve greater community awareness of the findings of the Senate Report, the National Apology and wider issues relating to forced adoption.

48. The second feature is the organisation of memorial events to raise awareness of the effects of forced adoption. It is understood that a national memorial day is to be recognised on the second anniversary of the Apology. It is recommended that this should be an annual event to ensure that people affected by forced adoption are shown the same respect as that shown to the recipients of other apologies proffered by the Government.

Recommendation 8:

That 21 March in each year be designated as the memorial date to raise awareness and recognise and show respect to people affected by forced adoption in like manner as shown to the recipients of other government apologies.

Senate Recommendation 10

49. Senate Recommendation 10 states:

The committee recommends that financial contributions be sought from state and territory governments, institutions, and organisations that were involved in the practice of placing children of single mothers for adoption to support the funding of services described in the previous two recommendations.

The Working Group regards this recommendation, with regard to seeking financial contributions from State and Territory governments and others, as a matter for government and does not seek to make any comment on it.

Senate Recommendation 11

50. Senate Recommendation 11 states:

The committee recommends that the Commonwealth should lead discussions with states and territories to consider the issues surrounding the establishment and funding of financial reparation schemes.

The issue of financial reparations was raised occasionally during the Chair’s consultations. There does not appear to be as great a demand for reparations as there is for other concrete measures. However, there are people affected by forced adoption who would greatly benefit from reparations. For those

people, reparations would assist them in the healing process and also compensate them for expenditure in receiving support which might not be otherwise included within a government benefit.

51. Without expressing a legal opinion, it is difficult to identify any liability on the part of the Commonwealth as distinct from the States and Territories. Further, the experiences of forced adoption suggest that a large part of any responsibility must lie with the institutions which actually arranged the adoption. By way of example reference is made to the decision of the Supreme Court of Queensland in *Arthur v State of Queensland* [2004] QSC 456 (Austlii).

Recommendation 9:

That in accordance with recommendation 11 of the Senate Report, the Commonwealth Government lead discussions with States and Territories on issues concerning the funding of financial reparations for people affected by forced adoption.

Senate Recommendation 12

52. Senate Recommendation 12 states:

The committee recommends that institutions and governments that had responsibility for adoption activities in the period from the 1950s to the 1970s establish grievance mechanisms that will allow the hearing of complaints and, where evidence is established of wrongdoing, ensure redress is available. Accessing grievance mechanisms should not be conditional on waiving any right to legal action.

The Working Group strongly supports the establishment of grievance mechanisms to hear complaints which should, in appropriate circumstances, result in redress. There are many people affected by forced adoption for whom this process would bring about closure, thereby assisting in alleviating their suffering which has endured for many decades.

Recommendation 10:

That grievance mechanisms be established under the leadership of the Commonwealth Government in accordance with recommendation 12 of the Senate Report.

THE FUTURE OF ADOPTION

Domestic adoption

53. The National Apology recognised the inherent injustice to all who were affected by forced adoption, and particularly the children, in the following terms:

We resolve, as a nation, to do all in our power to make sure these practices are never repeated. In facing future challenges, we will remember the lessons of family separation. Our focus will be on protecting the fundamental rights of children and on the importance of the child's right to know and be cared for by his or her parents.

The Working Group regrets having to record its view that the development of certain policies does not accord with that resolution. This report proceeds with a development of that proposition.

54. The Working Group recognises that there are circumstances in which a child is unable to live with and be cared for by his or her parents or another family member. That particularly relates to children in foster care and other long term placements. However, the issues are the nature of the alternative care and the basis on which it should be determined.
55. The Senate Report recorded that the first adoption legislation in Australia was enacted in West Australia in 1896 (Senate Report para. 1.42). Similar legislation was enacted by each State in later years. That introduced what is now known as “closed adoption”, which erected a virtual brick wall in the child’s upbringing and history and deliberately severed any relationship between the child and his or her parents and other family. It was as though that background did not exist. That is what is at the heart of the portion of the apology quoted above and a significant part of the reason for the mental health problems experienced by affected people.
56. More recently, in recognition of the proposition that closed adoption was contrary to the best interests of the child because of the severance of the relationship, various statutes have introduced amendments to their adoption laws providing what is known as “open adoption.” That gives the Courts power to maintain at least some relationship between the child and the parents and other family members. However, the move towards open adoption leads to questioning whether adoption remains the answer to the placement of children who cannot be cared for by parents or other family.
57. There is no doubt that any development of pro-adoption policy traumatises many people affected by forced adoption. In that light and on the basis that the Australian Institute of Health and Welfare has recently reported that the number of adoptions is at its lowest in the last 50 years, there is a question as to whether it is time to consider a move away from historic adoption altogether. Significantly, removing a child from his or her family is premised on very different grounds today than in the era of forced adoption and the delineation of past forced adoption and a more open arrangement based on a best interests principle should be made apparent in the language used. It is recommended that in place of “adoption”, “parenting orders” is more appropriate and less traumatising to survivors of forced adoption.
58. It is suggested that the primary basis on which there should be a determination of the placement of a child must be that the child’s best interests are paramount. Factors such as the asserted “right” of prospective parents to adopt a child must be no more than a secondary consideration if that. Many would query the existence of such a “right”. A best interests test would be at least similar to, if not the same as, that which presently applies in other issues of child placement.
59. A further consideration is the fact that domestic adoption in Australia is a State responsibility, each State having enacted its own laws. An instance of the unsatisfactory nature of the individual jurisdictions is that a child

adopted in Albury and a child adopted in Wodonga are subject to different laws. It is submitted that that is indefensible as being contrary to the best interests of each child. There are two alternatives for overcoming that situation. The first of those is for all States and Territories to enact the same legislation. The second and more radical alternative is for the States and Territories to refer their powers in adoption to the Commonwealth to be exercised in the same or similar manner as applies to the placement of children arising out of relationship breakdown.

60. No matter which alternative is preferred, the Working Group recommends that the Commonwealth play a leadership role with the States and Territories in rationalising a legislative regime which is presently contrary to the best interests of the children who are in need of care and nurture.

Recommendation 11:

That the Commonwealth lead discussions with the States and Territories to consider the reform of adoption laws in Australia on the basis of their being uniform throughout the nation and based exclusively on the test of the best interests of the subject child in accordance with laws in force relating to relationship breakdown.

Inter-country adoption

61. The Working Group appreciates the invitation to make a submission to the Inter-Departmental Committee on Inter-Country Adoption. While strictly outside the Working Group's Terms of Reference, the opportunity was taken to emphasise the consequences of an extension of adoption policy on people affected by forced adoption. The Working Group understands that protocol prevents any more detail of that submission in this report.
62. The Senate Report demonstrates the consequences of the removal of a child from his or her parents and particularly the mother. These consequences are exacerbated by inter-country adoption which removes the child from his or her family as well as his or her culture, ethnicity, race, language and religion and will often be even more damaging to the child's best interests.
63. The Working Group also expresses its concern with regard to the processing of inter-country adoption by way of bilateral arrangements rather than in accordance with the Hague Convention on Intercountry Adoption which Australia has ratified. It is suggested that the Convention provides better safeguards to protect children's best interests.

Recommendation 12:

That the law relating to inter-country adoption be reformed to provide that:

- **It be conducted as a uniform law of the Commonwealth rather than by the States and Territories; and**
- **Its conduct by way of bilateral arrangements be abandoned in favour of its conduct in accordance with the Hague Convention on Inter-country Adoption.**

Surrogacy

64. While recognising that surrogacy is outside the Working Group's Terms of Reference, the Group takes this opportunity to express its misgivings about surrogacy and, particularly, international surrogacy. It is suggested that surrogacy raises very similar questions with regard to children's best interests as are raised by adoption. It is further suggested that the matter known as "Baby Gammy" is the ultimate illustration of the lack of proper safeguards protecting the best interests of children born as a result of a surrogacy relationship.

ONGOING FUNDING

65. The Working Group expresses its concern that the allocation of funds for the concrete measures discussed in this report is finite. The cessation of funding at the expiration of the four year period for which it has been allocated will seriously re-traumatise many people affected by forced adoption. It is strongly recommended that the Government commit to ongoing funding and that the commitment be made now rather than wait until the allocation is about to expire.

Recommendation 13:

That the Government forthwith commit to the funding of services for people affected by forced adoption beyond the expiration of the funding allocated by the Government's Response to the Senate Report.

THIS REPORT

66. The documenting of forced adoption commenced with the Senate Report and continued with the State and Territory apologies and the National Apology. AIFS has provided outstanding underpinning in its reports and particularly its scoping study referred to above. The Working Group suggests that this report is another step along the way to that documentation and raising the nation's awareness of forced adoption. On those bases the Working Group recommends that this report be published by tabling in Parliament.

Recommendation 14:

That this report be tabled in both Houses of the Parliament.

CONCLUSION

67. As noted in this report, while much has been achieved in bringing this issue to the attention of the nation, the work remains incomplete. It requires significant ongoing commitment in raising the nation's awareness and finalising the implementation of programs. Most importantly, it is essential that the Government commit to the continuation of funding of services for people affected by forced adoption beyond that promised in the former Government's formal response.
68. The Working Group commends the Government for its ongoing commitment to assisting those affected by forced adoption and appreciates having been able to contribute to improving the support and services available to help those who have suffered.

Professor the Honourable Nahum Mushin,
Chair, Forced Adoptions Implementation Group.
December, 2014.

APPENDIX 1

FORCED ADOPTIONS IMPLEMENTATION WORKING GROUP TERMS OF REFERENCE & PROTOCOLS

1. Background

In response to the recommendations in the Senate Community Affairs References Committee report, *Commonwealth Contribution to Former Forced Adoption Policies and Practices, February 2012*, (the Inquiry report), the Australian Government (the Government) has proposed a range of service responses for those affected by forced adoption policies and practices. This includes the establishment of a national consultation group involving people affected by forced adoption practices.

The Department of Social Services (DSS), the Department of Health, the Attorney-General's Department (AGD) and the National Archives of Australia each have responsibility for delivering key elements of the Government response as follows:

- DSS is the lead agency coordinating the Government response and improving access to specialist services, peer and professional counselling and supporting records tracing.
- Department of Health is providing support through the Access to Allied Psychological Services (ATAPS) program and will develop guidelines and training materials for mental health professionals.
- National Archives will deliver a website and an exhibition to increase awareness and understanding of the experiences of individuals affected by forced adoption practices.
- AGD will progress resolution of issues relating to integrated birth certificates and investigation of harmonisation and access to jurisdictional Births, Deaths and Marriage registers.

2. Purpose of the Forced Adoptions Implementation Working Group

The Forced Adoptions Implementation Working Group (the Implementation Working Group) will perform a key advisory role to the Government on services and projects related to the implementation of the Government's response to the recommendations of the Senate Inquiry into forced adoption policies and practices.

The Implementation Working Group may not be the only forum for Government consultation and communication, and may be complemented by other stakeholder engagement processes.

3. Role of Implementation Working Group Members

The role of the Implementation Working Group members is to:

- Participate in meetings and preparation for meetings (reading papers);
- Participate in sub committees/working groups if appropriate;
- Provide input into the meeting agenda;
- Provide input in meeting discussions; and
- Contribute feedback on projects when requested.

As a guide, Implementation Working Group members are asked to:

- Attend meetings (either face-to-face or via tele/videoconference);
- Read and respond where necessary to minutes, information and other reports circulated by the Chair or Secretariat in a timely fashion;
- Respond to requests by the Chair or Secretariat for verbal or written input into discussion papers and reports;
- Represent the Implementation Working Group at other meetings if agreed; and
- Work in accordance with the Protocols described in 9 below.

4. Implementation Working Group Meeting frequency

It is anticipated there will be approximately three meetings a year, which may be face-to-face or via telephone or videoconference.

The National Archives and the Department of Health may arrange additional meetings with the Working Group to progress the website and exhibition and guidelines for professionals.

5. Term of appointment

Implementation Working Group members are appointed until 31 December 2014. The Implementation Working Group will not extend beyond the roll out of the Australian Government service system response.

6. Membership

- Professor The Honourable Nahum Mushin (Chair)
- Parliamentarians
- Representatives of mothers affected by forced adoption
- Representatives of fathers affected by forced adoption
- Representatives of adoptees

Note: Membership of the Implementation Working Group may be expanded to include other stakeholders as required.

7. Secretariat

Secretariat support for the Implementation Working Group is provided by the Family Support Program Branch, Department of Social Services.

8. Support for members

DSS will make all bookings and will meet all reasonable costs associated with transport and accommodation to facilitate participation in the DSS-organised Implementation Working Group meetings.

9. Protocols

Implementation Working Group members should:

- Work in the spirit of cooperation to provide advice on a way forward;
- Perform their role impartially;
- Not allow the pursuit of their private interests to interfere with the conduct of this group;
- Be frank and honest and deal with members in an appropriate manner;
- Not use information obtained in the course of Implementation Working Group membership to gain directly or indirectly, a pecuniary or other advantage for themselves or for any other person;
- Raise any conflict of interest at the beginning of each Implementation Working Group meeting;
- Adhere to the confidentiality guidelines outlined in 10 below, and
- Adhere to the media guidelines outlines in 12 below.

10. Confidentiality

Confidentiality covers all the work of the Implementation Working Group members and the Secretariat. Information which is deemed confidential, including minutes of the Implementation Working Group is to be kept within the realm of the Implementation Working Group. Members are encouraged to clearly indicate if any information they bring to the meetings is confidential. Information which is not confidential may be available to the wider community through communications which the Government may have.

11. Communiqué

A statement or communiqué will be prepared after each meeting of the Forced Adoptions Implementation Working Group. This will then be posted on the Forced Adoption page of the DSS website.

12. Media

Media statements on behalf of the Implementation Working Group are to be communicated by the Chair only. Individual opinions are not to be attributed to the Implementation Working Group without the express permission of the Chair.