

**Senate Inquiry into
“Commonwealth contribution to former forced
adoption policies and practices.”**

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(Attachment to Submission One)

Arthur v Queensland

In 1997 I remarried and was encouraged by my husband to re-enter education and I enrolled at TAFE to study Community Welfare and as a student I decided to investigate my adoption and incarceration experience.

I made my first phone call to an independent organisation known as Origins Inc Supporting People Separated by Adoption and from the first phone call I was sent into a state of high anxiety from the realization that my experiences had been unlawful. It was then that I decided to take an action against the State for the crimes committed against me as a ward of the state and the theft of my only son.

My first priority was however to find him and tell him the truth of what had happened to us.

This was to be very difficult because all I had was his first name and the threat from the Queensland Government of a 2 year jail sentence and a \$7000 fine for breaching sec39 of the Adoption of Children Act

Given that, the realization of the crimes committed against me by the state, I was not to be deterred by the threat of more abuse. And after several months of searching it was through a sequence of coincidences (and if one believed in a higher power) that I eventually found my son in April 1998

It was also to be long and frustrating exercise trying to find a solicitor to take on the matter, as the majority of them were not only inexperienced in adoption issues as legal/negligence issue and many thought that I would be defeated by the Statue of Limitations.

After at least 2 years of searching I eventually found a solicitor in Queensland by the name of Mary Smith who agreed to take on my case.

I would insert here that all of my evidence, and any other information even relating to the adoption of my son that was needed to mount my case was withheld from me under 1965 Adoption Legislation sec39, and also from my son placing a contact/information objection (‘veto’) on all of his information.

I did not have one piece of paper to even validate my claims, or substantiate that I was even a state ward due to the fact of the State hiding the evidence under its own legislation. This situation changed when my son lifted his 'veto' in 1998 that I was able to obtain limited information but enough to take an action.

It was during this time that I gave evidence at the Forde Inquiry into the Abuse of Children in Queensland Institutions on imparting my evidence to Ms Leneen Forde she advised me to make a complaint of my allegation to the Queensland police which I did and for 18 months my allegations in relation to the "theft" of my child were investigated by the crime squad, as the police could not find the doctor named in the matter they also suggested that I take my case through a civil action (I can provide supporting documentation to my submission)

I entered Macquarie University in 2000 and was accepted into studying law I used this knowledge to out together a better presentation for my claim, and on the 27th April 2001, a Statement of Claim was entered into the Supreme Court of Queensland against the State and the Sisters of Mercy on the basis Breach of Fiduciary Duty of Care

Shortly after the lodgment of the Statement of Claim I was encouraged to go to Queensland to "reconcile" with the Sisters of Mercy after much discussion I was offered \$20,000 as an act contrition by the nuns with their lawyer, advising me that "they the Church" would take the matter to court and tell the Judge that they were told by the State to treat me in the manner that had occurred, and that they would be exonerated and that I would receive nothing.

I was then advised by my Barrister at that time to take whatever you can get and "sick it in your war chest" I settled with the Sisters of Mercy that day, much to the detriment of my later action where the Judge, Mr. John Byrne pondered that they should have also been part of the action

After the settlement of the Sister of Mercy which included a confidentially agreement signed by myself and my whole family including my son and his father, my action laid dormant for over 3 years.

With many attempts to get my solicitor to finally get the matter into court I ended up having to look elsewhere for a new solicitor and found one by accident.

His name was Grant Dearlove and after speaking to him he suggested that we move the matter immediately, as my former solicitor had by one week just about run me out of time to get the matter heard, after much work in writing up affidavits etc, we went to court in November 2004. I submitted over 200 documents of evidence to substantiate my claim

I was represented by Mr Keith Wilson QC and Grant Dearlove and the State Solicitor was Mr Daubney.

As one would expect I was "grilled" by the Defendant in the witness box, and at times, he tried to denigrate not only my evidence, but other instances of my life unrelated to the claims in my case.

The evidence given by me about the theft of my child in the hospital went unchallenged by the State as I had already substantiated it by a letter from the Qld Minister of Health, in other words I had proved that they had stolen my child at birth, the very crux of my claim

In his judgment Justice Byrne concentrated on the consent taking process, what he did not acknowledge was the evidence given that I was not to be approached by a consent taker under guidelines set down by the State, let alone have to justify the unlawful consent taking process

What no-one conceded was the fact that I had been unlawfully arrested in the first instance and whatever happened after that event was at the control of the State of Queensland and the Sisters of Mercy to whom I was "entrusted" and yet I was the one who was having to prove my case

The witnesses called by my defense and the State gave account of a serious breach of duty of care and negligence and at times perjured themselves with their accounts of their practices.

On the afternoon of the second day I was offered a "settlement" option of either walking away and absorbing my own costs which up to that point was around \$100 000 (paid for by myself) or having the judgment (if it went against me) being responsible for the State's cost as I was personally financially destitute at that time, and because I had waited 7 years plus waiting to get into court for justice I was not going to walk away.

The matter continued on for the next 2 days and I was warned by Grant that from the deliberations of Justice Byrne that I was going to lose the case.

On the 22nd of December 2004 Justice Byrne handed down his judgment I was in the court to hear him in a brief matter of probably less than 10 minutes say "In the Matter of Arthur v Queensland this matter is dismissed" The State solicitor then announced that the State would not seek costs and that was the end of my "matter"

After the dismissal I was taken to a room where Grant read out Justice Byrnes scathing decision, he had obviously intended it to deter any other ex-ward or victim of abuse by the State to seek justice.

After all the evidence given to prove my case, the blatant denial of justice and lack of procedural fairness from the efforts of a Judge who did not bother to refer to the evidence and the Common law, was an insult to the Magna Carta formed with the principles of the protection not only of the Kings Wards but to citizens of the Crown where....

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled . nor will we proceed with force against him . except by the lawful judgement of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice."

I was labeled by Justice Byrne as "a bitter angry woman" a shameful description of a woman who was abused so badly by her Guardian and sought justice and accountability

In effect what happened in Justice Byrnes decision was to give license to any State across this country to abuse not only the children in its care, but also defenseless citizens unable to fight the power of the State, and then by the time they realize what had happened to them, their abusers would be able to hide behind the protection of the Courts.

The Commonwealth Government is equally responsible for these acts of genocide for allowing such breaches of the Judiciary to ignore the criminal actions of the State

Although I expected that I would lose the action, what I was not prepared for was the scathing judgment for the entire world to read as a Landmark decision.

Not only had the Court rewritten my life, and my experience through its judgement, they had also allowed the State the right to take away my liberty, my opportunity to marry the man I loved, my child, my health, my ability to succeed but also nearly cost me my life.

After coming home to Sydney that very evening I was prepared to suicide, it was only for the grace that my husband of 8 years watched over me and brought a friend to stay with me that I am alive to tell my story today.

Four years later and over 200 consultations with a psychiatrist I am still compelled to seek the justice that has eluded me for over 40 years.

I have been actively involved in parliamentary inquiries and have called for a national Senate Inquiry into forced adoption on numerous occasions.

I felt as many other mothers do that if the crimes committed against myself and others, was at least exposed, we may get some semblance of peace and justice

I am still a broken woman who has lost most of her own financial security and sense of self. I have little faith in the legal system hence my exit from law studies and do not have faith or trust in society.

I wake up each day with the notion that there has to be justice and accountability feelings that lead me to keep continually striving to bring attention to the issues faced by women like myself.

In April 2008 I lost my best friend and beloved supporter Dian Wellfare, founder of Origins Inc, Dian also took two actions for the theft of her child against the State of NSW, the first in 1996/97 for Negligence the second in 2006 for Fraud and Fraudulent Concealment both of these cases were dismissed as happening too long ago.

She died never receiving a sense of validation. The State demanding her estate for its costs was the final insult

We have proved our cases many times over, evidenced by other actions taken by women such as myself and later dismissed by the courts; this was including an Inquiry by the State of NSW into past adoption practices, which substantiated our allegations of the kidnapping of our children.

Still, we have been denied justice by either the Courts or by the States denial of its crimes against 150 000 women like myself.

Finally, my action was not focused alone on compensation, it was mounted on the premise that even children who were abused by their guardian are entitled to receive the protection of Commonwealth, State and society, and if that protection is in the form of punishment and breaches of the Common Law, delivered only for the sake of its victim being helpless and vulnerable, then that institution is and should be made accountable for its actions regardless of its status

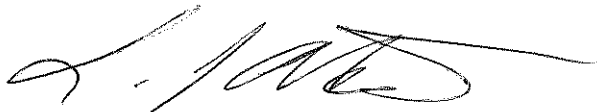
I have attached the transcripts of my court case and other documentation pertaining to my submission and also the judgment of my court case

To this day I have been unable to read the full judgment of this Court, the opening remarks denigrating my father as a drunken lout is despicable given that this man born in Tipperary Ireland served in the British army for the duration of the war in places such as North Africa, France Italy and at Trobruk followed by four years in Palestine. My father suffered major wounds and yet still fought for his "adopted" country and was decorated for it, a shameful denigration by this Court of a man who was prepared to die for the freedom of others

I would also add the disgraceful attempt in the judgment to ridicule my sons father {with whom I still have a very good relationship} and to distort my experience for the sake of letting the State off the hook did not change the fact that I did not imprison myself, nor did I steal my own child at birth a fact that even the court could not deny.

As a fourth year law student the denial of justice and the right to a fair hearing by a Court {who was supposed to uphold the notion of separation of state} convinced me that there is little faith to be found in the legal system that protects the perpetrators, and I subsequently discontinued my studies and concentrate of getting justice for those like myself who have been denied the Australian notion of a "fair go"

Lily Arthur

A handwritten signature in black ink, appearing to read 'L. Arthur', with a long, sweeping horizontal stroke extending to the right.