The Father of All Thefts

Father's Rights and criminal acts against fathers
in Adoption Proceedings 1939 to 1992

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This submission is on behalf of
Origins NSW Inc (Fathers)

This submission has the complete endorsement of the board of
Origins NSW & Origins Australia

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Executive Summary

* Natural fathers of children removed for adoption, are the silent dispossessed.

* Many fathers cared and continue to hurt, just as much as dispossessed mothers.

* Fathers are the final scapegoats for adoption workers seeking to cover their crimes.

* Crimes they committed against mothers, were also committed against fathers.

* This paper details the following laws regarding a father's rights that were routinely breached in the adoption process:

    - Approximately 18 clauses in the *Child Welfare Act 1939*, which remained in force until 1987.
    - At least 5 clauses in the *Adoption of Children Act 1965/67*.
    - At least one of the amendments placed into the *Adoption Act* in 1980.
    - Rights granted to the fathers of ex-nuptial children under various *Status of Children Acts* of different states (in NSW known as the *Children Equality of Status Act 1976.*)
    - Rights granted to ex-nuptial fathers by the Federal *Family Law Act 1975* as amended in 1987.
    - Rights granted to fathers by at least 6 legal precedents decided in courts of law.

* Adoption workers also brazenly ignored the writings of their own profession on the subject of proper conduct when acquiring a consent to adoption.

* This paper contends that all this put together, constitutes a criminal defrauding of fathers in order to gain advantage.

* Specifically, that adoption workers are, by their actions in obtaining adoption consents, open to criminal prosecutions under Section 91 of the *NSW Crimes Act*:

> ***"Whosoever: By force or fraud**, … **takes away**, … **or detains, any child under the age of 12 years, with intent to deprive any person having the lawful charge of such a child of the possession of such a child,** … **shall be liable to penal servitude for 10 years."***

The Father of All Thefts

A Guide to Father's Rights and Criminal Acts Against Fathers
in Adoption Proceedings 1939 to 1992

Introduction:

Dispossessed mothers, who lost their children to the adoption industry over the latter half of the 20th Century, have begun to find their voice in the first decades of the 21st Century. Consequently, much of the work now being done to uncover the crimes committed in order to secure an Australian child for adoption, has concentrated on the plight of the dispossessed mother.

Natural fathers of children lost to adoption, however, remain the 'silent dispossessed'.

There has been an interesting progression in the unveiling of adoption criminality. First of all, records were sealed making it nigh on impossible for anyone to uncover the truth about adoption workers' conduct in harvesting children. When adoptees (mostly) made calls for the opening of records **(1)**, it was these same adoption workers who opposed, saying, "The surrendering mothers need privacy."**(2)**

When mothers by-and-large dismissed this as a self-serving adoption worker canard, adoption workers hailed "adopters' privacy" as the excuse to keep records closed.**(3)** When adopters insisted in large numbers that they too wanted records opened for the sake of their adopted children's sanity, adoption workers really had only one remaining scapegoat – the dispossessed fathers.**(4)**

As a result, much of the literature written by adoption workers characterises the dispossessed father as "shadowy"**(5)** at best, and a predator at worst.**(6)** The inference is that these men "got away with it" – that they wantonly impregnated unfortunate and naïve girls with reckless abandon. According to adoption workers, men were either appropriately punished under carnal knowledge laws, or downright lucky to escape with reputations in tact, thanks to the secrecy that enveloped closed adoption.

Latterly however, the mythology of the shadowy impregnator has started to crumble. **(7)** One of the first fathers to "come out" was television presenter, Simon Townsend.**(8)** Later, there was the awkward spectacle of then Federal Health Minister, Tony Abbott, at first, exposed as a surrendering father, then summarily dismissed as the duped boyfriend, when his ex-girlfriend confessed that he was not in fact the father of her new-found son, but that she had led Tony Abbott to mistakenly believe for over 25 years, that he was the boy's father.**(9)** Either way, the grief of a surrendering father got something of a public airing.

Around that time, the NSW Parliament held its Inquiry into adoption.**(10)** While that Inquiry mostly showcased crimes against mothers, a small but vocal group of men took the opportunity to suggest that the publicly accepted image of dispossessed fathers, was not entirely accurate.**(11)** Fathers' testimonies given to that Inquiry, while by-and-large ignored in the final report,**(12)** remain in the interim reports**(12a)** as a very significant expose of adoption workers who treated many young men in an unconscionable, if not downright illegal manner.**(13)**

The emergence of dispossessed fathers, while still gaining momentum, has come as a surprise to those who had swallowed the myth. **(13a)** Slowly, academic and testimonial literature based on 'birth-father' stories has been trickling into the public sphere. Gary Clapton (Edinburgh University),**(14)** Celia Witney (Essex University),**(15)** Michelle Stromberg (Saskatchewan University),**(16)** as well as Australians Gary Coles,**(17)** and Rohan McEnor,**(18)** have all had

strong things to say about the outfall of adoption on dispossessed fathers. 'Birth-father' websites have started to spring up **(19)** as well as support pages and information on general adoption pages, dedicated to first-dads.**(20)** Fathers' voices are growing louder.

So it is timely, in fact overdue, that there should be an examination of relevant laws, adoption industry practice and historical (contemporaneous) social attitudes to these dispossessed fathers, to see if in fact, there is any evidence of indictable behaviour by adoption workers, against fathers in the process of securing a child for adoption.

This paper will look at what the various relevant laws said at the time, how this reflects the social mores of that time, how it was reflected in adoption industry instruction manuals and other adoption worker writings of the time, and compare this to testimonies from dispossessed fathers, dispossessed mothers (regarding the fathers of their children) and adoption workers themselves.

For the most part, this paper will draw on New South Wales (Australian) law, precedents and testimonies for the following reasons:

1. It is the jurisdiction with which the author is most familiar.
2. New South Wales has at its disposal, the transcripts from its Adoption Inquiry and these are useful in assessing whether crimes are likely to have been committed against fathers.
3. The legislation cited herein, has in most instances, identical legislations in other jurisdictions both in Australia and internationally, and so this analysis can be comfortably paralleled with legal frameworks in other jurisdictions.

The New South Wales adoption industry was certainly the largest in Australia and therefore provides the largest sample of practice in this country. The NSW adoption industry was also one of the largest in the world particularly on a *per capita* basis and so provides a good example of what happens when adoption is widely accepted. For example, there were over 4,500 adoptions in NSW in 1972 – that represented 47% of out-of-wedlock live births in the state that year.**(21)** (This compares to 38% nationally and to a mere 4% of total births.) Clearly, ex-nuptial births were being treated differently to nuptial births and it seems that New South Wales's figures show a higher rate of dispossession than the national average.

NSW Crimes Act section 91

The central contention in this analysis will be that workers in the New South Wales adoption industry have consistently left themselves open to criminal prosecution under section 91 of the *NSW Crimes Act*.**(21a)** This has happened in every 20th century adoption decade by way of the nature in which adoption industry workers treated both mothers and fathers of babies earmarked for adoption. However, this paper will concentrate on the application of section 91 as it pertains to the treatment of fathers.

Section 91 states:

> ***Taking child with intent to steal etc: 91: Whosoever: By force or fraud, … takes away, … or detains, any child under the age of 12 years, with intent to deprive any person having the lawful charge of such a child of the possession of such a child, … shall be liable to penal servitude for 10 years."*** **(21b)**

This wording has a very long history with almost identical precedents in law throughout the Commonwealth, including colonial Australia during the 19th century.**(21c)**

There are two modes of illegal removal mentioned in section 91 – "force" and "fraud". The contention of this paper is that, by and large, "force" and/or "coercion"**(21d)** was applied to mothers to extract their signatures on adoption consents. This paper will put forward the case that "fraud" was applied by adoption workers to cut fathers out of adoption proceedings, and therefore, illegally disenfranchise fathers from a rightful say in their offspring's fate.

The Australian legal system defines 'fraud' as:

> ***An intentional dishonest act or omission done with the purpose of deceiving.*** **(21e)**

A successful prosecution of fraud requires a number of elements:

1. That the accused acted deliberately and knowingly. That is, they had knowledge at the time of the act, that what they were doing was dishonest.
2. That they reasonably expected someone else would respond to their fraudulent act in a way that would be advantageous to the person perpetrating the fraud, and injurious to the victim of the fraud.
3. That the act itself involved either dishonesty or a deliberate omission of important information.
4. A reasonable expectation by the fraudulent party that the intended victim would have little or no contrary knowledge about the issue that is subject of the fraud.

It is the contention of this paper that all four of the above elements would be successfully prosecuted beyond reasonable doubt in the vast majority of adoptions in New South Wales.

This analysis will concentrate on adoption practice after 1939 for two reasons: firstly, this was the year the *Child Welfare Act* commenced and subsequently determined adoption law until 1967, and child welfare practice through to 1987. Secondly, most parents dispossessed of their children by adoption before 1939 would have unfortunately passed on, and many of their removed children would be at least 70 years of age with little hope of reunion or even access to meaningful documents and someone knowledgeable enough of the times to interpret them. While I do not for one minute minimise the suffering of that cohort, today they are few in number and much to our shame, may well have passed on without ever knowing the truth regarding the unlawful treatment to which they were subject. Thirdly, the *Child Welfare Act, The Adoption of Children Act* and other subsequent Acts are very much based on principles of law predating 1939, so an analysis of post-1939 legislation is in many ways a *de facto* analysis of laws that went before. However, in deference to those who were both adopted pre-1939 and those who lost children in that era, there is, in this analysis, some reference to legislation pre-dating 1939.**(22)**

Child Welfare Act 1939

The *Child Welfare Act* 1939 governed adoption practice in New South Wales from 1939 to 1967. It is therefore mystifying how Dr Darryl Higgins fails to list it as part of his history of adoption law in the 2009 paper, *Impact of Past Adoption Practices* which he has written on behalf of the Australian Institute of Family Studies.**(23)** This Act which governed 28 of NSW's most controversial 55 years of adoption practice (1935 to 1990) barely rates a mention in Marshall and MacDonald's memoir history as well, which I believe is one of innumerable serious flaws in their book (previously cited – footnote 5).

Between 1939 and 1967, section 167 of *The Child Welfare Act* was the sole legislative framework for adoption practice in NSW. This makes the Act significant enough in itself when considering the possibility of illegal practices in NSW adoption. However, the *1939 Act* was littered with other sections and clauses which dramatically impacted on the rights of children, mothers and fathers, both in wedlock and out. These, in turn, dramatically impact all social work practice, particularly any that would lead to the separation of a child from its parent or in fact, any other relative. While section 167 was repealed in 1967**(24)** to make way for the enactment of *the Adoption of Children Act*, the rest of the *Child Welfare Act* remained as governing legislation in matters to do with the best interests of a child.

The Act was progressively repealed up until 1987.**(25)** This means that up until each section was repealed, it remained as the governing legislation in child welfare practice in New South Wales. This is important because the *Adoption of Children Act* has no jurisdiction over the actions of relevant parties **until a consent has been signed.**

To press the point and make it plain, **nothing in the Adoption Act is of any consequence until after a consent has been signed.** This means all of the process leading up to the signing of a consent is governed by *The Child Welfare Act* and similar acts like custody laws, family law, common law with regards to parental rights and parent/child legal relationships etc. *The Adoption Act* is of nil effect prior to written consent.

Therefore an analysis of the entire *Child Welfare Act 1939* is extremely pertinent to any examination of possible breaches of the law in adoption practice.

As the *Child Welfare Act* was progressively repealed, new acts came into being to govern pre-consent processes. The remaining sections of the *Child Welfare Act* continued to be perfectly compatible with the newly enacted child welfare laws, the *Adoption Act* and various authoritative adoption work guidelines.

As an example, the *Adoption of Children Act 1965* was substantially based on section 167 of the *Child Welfare Act* 1939. So the *1965 Act* was designed to dovetail with the yet-to-be-repealed sections of the *1939 Act*.

The first thing to understand about the *Child Welfare Act* is its definition of "parent" – quote:

Part 1 Section 4: definition of a parent

> *Parent: when used in relation to a child or young person includes step-parent, adopting parent, guardian, and* ***any person who is by law liable to maintain the child or young person****.*

The definition of "near relative" is of equal interest:

Part 12 Section 58

> *Near relative means … (b) in the case of an illegitimate child – (i) a person admitting himself to be or adjudged by a court to be the father; … (c)… any person … who is by law liable to maintain the child.*

Note the inclusion of "a person liable for maintenance" as a 'parent', 'near relative' and 'guardian'. Who would qualify as such a person legally liable to maintain an ex-nuptial (illegitimate) newborn?

Part 12 Section 59 sub-section 2

The order of priority in which near relatives shall be liable … to pay (maintenance)… shall be … in the case of an illegitimate child (i) first, the person admitting himself to be, or adjudged by a court to be the father of such child.

Section 60 subsection 4

*The Minister … may … institute legal proceedings … (b) against the **parents** of illegitimate children for the recovery of maintenance money, and such **parents** shall be liable jointly and severally.* (Emphasis added)

Note: "parents" – plural. This clearly refers to persons other than the mother of the child, alluding to persons under the umbrella of the definition contained in part one of the Act, a definition that includes the biological father, and anyone else liable to maintain the child.

Following, is a list of probable breaches of the *Child Welfare Act 1939*, as related to the removal of ex-nuptial children for the purposes of adoption. In keeping with the theme of this paper, these listed breaches relate to the legal rights and responsibilities of fathers towards their ex-nuptial child. Each item in the list will highlight (a) the clause from the *Child Welfare Act*, and (b) the nature of the legal breach. Documented example of illegal activity an be ascertained from testimonies given by social workers, mothers and fathers to various inquiries, and further examples shall be given in the appendices of this paper.

1. Section 167 (d):

   ***167**: An order of adoption shall not be made unless the court is satisfied: … (d)that the parents of the child … proposed to be adopted … consent to the adoption, or if the child … to be adopted is illegitimate, that the mother consents to the adoption, or if the child … has a guardian, that such guardian consents to the adoption.*

Breaches:

(a) Fraud by omission:

Failure to inform either the mother or the father of an illegitimate child earmarked for adoption, that by marrying, the father becomes a person required to sign the consent and therefore in a position to veto the adoption.

(b) Fraud by omission:

Failure to inform the father of an illegitimate child, that by declaring through a court that he was the father of the child and therefore the first person liable to maintain the child in all circumstances, he would be declared a guardian of the child as per the definition of 'parent' under the *Child Welfare Act 1939* Part One section 4, definition of "parent" and therefore a person required to consent to an adoption.

(c) Coercion:

By the act of refusing contact between the mother and the father, usually by imprisonment of the mother in a 'lie-in' home and then refusing the father visitation irrespective of the mother's wishes, the option of marriage was forcibly and therefore coercively removed from the prospective parents of the child who was later adopted.**(26)**

2. Section 33/1

   No person shall, without a written order of a court … receive into his care any child under the age of seven years to rear, nurse, or otherwise maintain apart from his mother or other parent.

Breach:

(a) Contempt of court. Unauthorised detention of a minor. Detention with intent to take advantage.

(b) Failure to obtain a properly authorised written order from a court in order to receive a child into care apart from its father (defined as "other parent") under the *Child Welfare Act 1939* section 33/1.

(c) Denial of natural rights as a parent without a court order or due cause. (eg: denying a father's status as a 'relative' when considering his rights to visit his newborn in hospital or during the revocation period.)

On the strength of a mother's signature on an adoption consent form, hospitals, lie-in homes, adoption agencies and foster carers would receive newborns for the purposes of nursing, apart from the newborn's parents. However, under the *Child Welfare Act 1939*, the signing of an adoption consent did not constitute the relinquishment of parental rights over the child. According to the Child Welfare of NSW 1958 Social Work Training Manual:

"In this State the mere signing of a consent does not remove parental rights – which remain until the order is made." **(26a)**

In order to legally house a newborn or any child under seven years, apart from its mother, adoption workers were required to show due reason for the separation in an appropriate court, and receive a proper court order to proceed with the separation.

By not gaining a court order to separate the child from its mother, adoption workers have acted in contempt. This is exacerbated by their refusal to tell the mother the whereabouts of the child during the 30 days revocation period. This is unlawful detention of a minor.

The fact that the agency was being paid by prospective adopters by way of a non-refundable deposit before the adoption and by way of donations ever-after, makes the agency's actions in housing a newborn at designated foster homes, lie-in homes or other similar establishments, unlawful detention of a minor with intent to take advantage. A parallel case can be made against hospitals where newborns were kept in nurseries without the prior knowledge of the mother or the father or any other relative, or a court.

The above section 33 does not just include the mother. It also includes "other parent." As has been seen before, the definition of "parent" in the case of an ex-nuptial (illegitimate) child under the *Child Welfare Act*, includes the father, by way of his responsibility to maintain the child.

In almost all cases of adoption, the father did not sign the consent. So, this "other parent" has never been given any opportunity to express any preference regarding his child being housed apart from its mother or indeed being housed apart from himself. This constitutes contempt of court and is a flagrant violation of the ex-nuptial father's fundamental parental rights. **(33)**

Section 33 remained as law until its repeal in 1987. **(34)**

3. Sections pertaining to a putative father's rights and responsibilities to maintain his own ex-nuptial child:

> *Part 11 section 60 (4)(b):*
> *The Minister … may … institute legal proceedings (a) against any parents for the recovery of moneys expended in the maintenance of their children, and (b) against*

the parents of illegitimate children for the recovery of maintenance money, and such parents shall be liable jointly and severally.

Sections 95 & 96:
Where any single woman is with child by any man who has made no adequate provision for the payment of preliminary expenses, or the expenses of the future maintenance of the child, she … or the Minister … may make complaint in writing on oath … The magistrate or court may thereupon summon the man to appear before the court to answer such complaint …(s96) The court shall hear and determine any such complaint … and may (a) order the defendant (father) to deposit with the court a sum … (b) order that the defendant … be committed to prison … and (c) order the defendant to pay weekly … a sum for expenses of the maintenance of the child…

Section 99:
In any case where the father of an illegitimate child has left such child without means of support, the mother of the child … or the Minister … may make a complaint on oath to a magistrate or court … The magistrate or court may summon the father of the child to … answer such complaint …

Section 102:
The court shall hear and determine any complaint under section 99 of this Act and may (a) make an order for the payment by the defendant (i) weekly … for maintenance of the child or … (b) order that the defendant, in default of payment … be committed to prison…

Section 103:
For the purposes of … section 99 of this Act, any defendant who has failed to pay an adequate sum for preliminary expenses shall be deemed to have left the child without means of support.

Section 105:
1: Where any illegitimate child has been stillborn … and the father of such child has not paid an adequate sum (a) for preliminary expenses; (b) for the funeral expenses of such child, the mother of such child … or the Minister … may make complaint in writing on oath to any magistrate or court that the father of such child has failed to make any such payment … 3: Such magistrate or court may thereupon summon the father of the child to appear before a court to answer such complaint … 4: The court … may make an order for payment by the father … for preliminary expenses (and) … a reasonable sum for the funeral of such child … 10: Where the defendant has been adjudged by any court to be the father of any such child no further proof of paternity shall be required under this section.

Section 106:
If it appears to the court that both the father and the mother of an illegitimate child are able to contribute to any of the expenses referred to in this Part, the court … may direct the payment of such expenses by both father and mother …

Breach:
Refusal to inform the 'putative father' of his rights that pertained to his responsibility to maintain his ex-nuptial child under the *Child Welfare Act 1939*.

All these clauses deal specifically with the putative father as a person liable to maintain the child, and therefore, according to the definition of "parent" under the *Child Welfare Act*, this liability makes the ex-nuptial father a parent/guardian of the child in every sense of the word and therefore among the class of people required to sign an adoption consent. Even when a

father cannot be found but has been identified as the progenitor of the child, he is still liable to maintain the child under *The Child Welfare Act 1939* section 118:

> *(1) If a defendant [liable father] against whom a summons has been issued … does not appear … the court may issue a warrant for apprehension, or may proceed in the case ex parte.*
> *(2) In every case where a warrant has been issued, and the defendant cannot, after strict search and inquiry, be found … the court may in like manner proceed in the case ex parte. The inquiry and search made for the defendant may be proved orally or by the affidavit of the person who made such inquiry and search.*

This proves the liability of the ex-nuptial child's biological father to maintain the child, irrespective of his whereabouts in relation to the child or its mother, or the court. Therefore, under the definition of "parent" in section one part 4 of the Act, the father, or any other person liable for the maintenance of the child, is a person required to sign an adoption consent.**(35)** See also, previously cited section 58 (definition of "near relative").

Breach:
Fraud by omission of essential information to person signing a binding legal instrument.

Breach:
Invalid adoption by failure to secure all necessary consents.

By declaring himself to be the father or by being recognised as the father in a court of law, he is the first person to be called upon to maintain the child and therefore a parent, a guardian and someone necessary to consent to an adoption.

4. Failure to allow a father to submit to a blood test to confirm or disprove his paternity, as required under The *Child Welfare Act* 1939 section 120/3a:

> *(a) A children's court consisting of a special magistrate shall, at the request of any person against whom an order for the expenses of maintenance … have been made … [direct] the mother of the child and the man adjudged or alleged to be the father of the child, [to] submit to blood tests. No such direction shall be given unless the child has been born and the child, its mother and the man concerned are all living. (b) When any such direction is given the magistrate shall … nominate a medical practitioner to take such blood samples … and shall also fix a period within which the child, the mother and the man concerned shall attend such medical practitioner for the purpose of the taking of such samples. … The pathologist so nominated shall be a medical practitioner whose name is on a panel of names of medical practitioners authorised to carry out blood tests under this Part [of the Child Welfare Act].*

Breach:
Under the various sections of the *Child Welfare Act* listed in point 3 of this paper, a number of people became liable for the maintenance of an illegitimate child. In most cases, it was the biological father (see sections 99 and 102 above) – in fact, the putative father was liable for maintenance or 'preliminary expenses' even before the child was born (see sections 103 and 105 above). If adequate provisions had not been made, then the Minister, was to maintain the child and in the meantime, directed by those case-workers involved, institute action against the assumed father and the mother for maintenance. By failing to request the Minister to take such action as required by the law, case-workers have defrauded a father from the opportunity to prove his paternity and to become liable for the maintenance expenses of the child. By defrauding the father of this opportunity, the case worker has also defrauded the father of his right to veto the adoption, as a person liable for the maintenance of the child, defined as a 'parent' and therefore a person required to sign an adoption consent.

These laws apply because the entirety of the *Child Welfare Act* governed proceedings in that period between when a child was born and an adoption consent was signed. Even after the signing of an adoption consent, the father remained liable to pay maintenance during any period where the Minister or the department were maintaining the child.

5. Section 27 sub-section 1(c) (ii).

> *The Minister, out of moneys provided by Parliament may … grant an allowance for the support of a destitute child … to – the father, where such child … is living with him and where such father is incapacitated from following his usual or any occupation … and is … a deserted husband … Payment of an allowance shall not extend beyond the time when the [child] … shall have attained the maximum age to which he is compelled by law to attend school.*

Breach:
Failure to advise the single father of his rights to parent's allowance.

It could have been argued in court under equity or an appeal to natural justice, that full-time care of a child by a single father, incapacitates the father from attending his usual occupation, in the same way as a mother is unable to attend employment for the same reason.

6. Section 42.

> *The person in charge of a lying-in home shall not permit any child to be taken from such home unless in the charge of the mother of such child, without first obtaining the written consent of the Director [of the Department].*

Breach:
Failure to obtain proper written consent from the Director of Child Welfare (or Director of Youth and Community Services) in order to remove a child from a lie-in home or other foster care apart from its mother's custody.

7. Section 81.

> *(1)Where any child … is brought before a court as … a neglected … child … the court may thereupon hear and determine the matter …*
> *(2)Where a child … is brought before a court as … a neglected … child … his parent or guardian may … be required to attend at the court before which the matter … is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.*
> *(3)Where a child … is … taken to a shelter … the person by whom he is taken … shall cause the parent or guardian of the child … if he can be found, to be warned to attend at the court before which [the matter concerning] the child … will appear. …*
> *(5) The parent or guardian whose attendance shall be required … shall be the parent or guardian having actual possession and control of the child … if that person is not the father, the attendance of the father may also be required.*

Breach:
Failure to require the attendance of the father at any court hearing that declares his child to be neglected and that authorises his child to be taken to a shelter or other registered care.

Breach:
Failure to gain a court order dispensing with the need for a father to appear before the court during proceedings that concerned the maintenance and support of his reportedly neglected, destitute or abandoned child.

Breach:
Failure to bring a neglected/abandoned child under the provisions enshrined in Part 14 of the *Child Welfare Act*, which pertain to neglected children. The definition of "neglected child" for Part 14 (which includes sections 72 through to 93 of the *Child Welfare Act*) is as follows:

> *Neglected child means child or young person … who has no visible lawful means of support or has no fixed place of abode, or … whose parents are … dead, insane, unknown … or not exercising proper care of the child or young person … who is destitute, or whose parents are unfit to retain the child or young person in their care …*

This definition of "neglected child" is of extreme importance since every case of adoption is predicated on the assumption that a child is, or is highly likely to be, neglected, abandoned, abused or made destitute by its natural parents and is therefore in need of alternate care.

The central argument surrounding the legitimacy of adoption practice is the question of neglect and abandonment. According to the written standard of social work practice, a mother is supposed to be offered all manner of available helps in order to maintain the child with its biological kin, before the option of adoption was/is even proposed. The written codes of adoption practice as found in social work manuals of the time, will be dealt with in a later section of this paper.

8. section 83:

> *(1) When a … young person is charged before a court with a summary offence … the court may … (a) release the … young person on probation … (b) commit the … young person to the care of some person who is willing to undertake such … terms and conditions as may be prescribed …*
> *(2) Where a … young person is charged with an indictable offence … the court may … (a) release the … young person on probation … (b) commit the … young person to the care of some person who is willing to undertake such … terms and conditions as may be prescribed … or .. (d) … require the … young person to enter into a recognizance … to be of good behaviour and to comply with any conditions the court may specify …*

Breach:
Having young pregnant girls incarcerated under the definition of "being in moral danger" and having fathers under the age of 18, charged with either carnal knowledge or moral endangerment of their girlfriends, rather than exercising the less draconian measures available through the *Child Welfare Act 1939*.

9. Section 82 (c) and section 90 (1) (a):

> *S82. If a court finds that a child …is a neglected … child, it may … (c) commit the child … to the care of some person who is willing to undertake such care … (of) the child … (to) the age of eighteen years.*
>
> *S90(1)(a). Where a child … has been dealt with under paragraph (c) of section 82 … the following provisions shall apply:- (a) the child … shall not be committed to the care of a person of a religious faith to which the father … objects.*

Breach:
Having children committed to the care of persons of a religious faith to which the father objects – contravention of *Child Welfare Act 1939*. Commonly, the person, who in every other legal sense would be deemed the father of the child, was never consulted on any matter, least of all the religious persuasion of those to whom had been granted the ongoing care of his offspring.

10. Section 92/1.

A child or young person on being committed to an institution shall be placed in a shelter pending the Minister's decision as to his destination, provided that no child or young person shall remain in a shelter for more than one month, except by permission of the Minister.

Breach:
Holding the father's under-18 years girlfriend or child in a shelter, foster home or lie-in facility for more than one month without the consent of the girl or the Minister – as required by the *Child Welfare Act 1939*.

11. Section 92/2

When an order is made committing a child or young person to an institution the order shall be sufficient warrant for any member of the police force or any officer or employee of the Child Welfare Department to convey such child or young person to a shelter or to transfer him/her from one shelter to another or to detain him/her in a shelter pending the Minister's decision as to his/her destination.

Breach:
Failure to engage a member of the police force or an employee of the Child Welfare Department when transferring a newborn or an underage pregnant girl or underage mother from one institution to another.

Adoption of Children Act – (NSW) 1965

12. Section 23:

> *The court may permit such persons as the Court thinks fit to be joined as parties to the proceedings for an adoption order for the purpose of opposing the application.*

Breach:
Refusal to acknowledge rights under s23 of the *Adoption of Children Act 1965* for a father to be added to the adoption proceedings for the purpose of opposing the adoption application. It has been standard practice throughout the Australian adoption industry from well before the introduction of the *1965 Adoption Act* until very recently, to not disclose this clear, legal option to fathers of ex-nuptial newborns marked for adoption, even when the consent taker has been directly asked by fathers.

13. Section 32a:

> *The Court, on application of the Director or of the principal officer of a private adoption agency may … dispense with the consent of a person … where the Court is satisfied that (a) after reasonable inquiry, the person cannot be found or identified; (b) that person is … not capable of properly considering the question whether he should give his consent; (c) that person is, in the opinion of the Court, unfit to discharge the obligations of a parent or guardian by reason of his having abandoned, deserted, neglected or ill-treated the child; (d) that person has, for a period of not less than one year, failed, without reasonable cause, to discharge or to make suitable arrangements to discharge, the obligations of a parent or guardian, as the case may be, of the child; (e) there are any other special circumstances by reason of which the consent may properly be dispensed with.*

Breach:
As previously seen, various clauses under the *Child Welfare Act* made the biological father of an ex-nuptial child a guardian of that child. These clauses were not repealed by the *Adoption Act 1965*. If anything, they extended the rights under the *Child Welfare Act*, beyond the time a consent was signed. Equally, it shall be seen that a biological father's status as a guardian, was even more firmly established under the *Children (Equality of Status) Act 1976*.

Therefore, adoption workers have engaged in complete failure under section 32 of the *Adoption of Children Act 1965*, to:

(a) make reasonable inquiry of the father,
(b) carry out psychological assessment of the father to ascertain his mental fitness to sign the consent,
(c) gain a court order stating that the father was unfit to discharge the obligations of a

parent/guardian by reason of abandonment, desertion, neglect or ill-treatment of the child,

(d) prove that the father had for a period of one year, failed, without reasonable cause to discharge his obligations as a parent/guardian or made suitable arrangements for the child,

(e) prove in a court of law that there were special circumstances by which his consent should be dispensed with.

It is also of great interest to note the use of the male pronouns "he" and "his" in the above section 32.

14. Section 22/4:

> *Where it appears to the Court to be necessary in the interests of justice to do so, the Court may direct that notice be given of an application for an adoption order be given to any person.*

Breach:

Failure to formally and in writing, notify a father of the application for an adoption order under section 22/4 of the NSW *Adoption of Children Act 1965* and as specifically amended in 1982. In the interests of natural justice this should have happened as a matter of course before 1982, and was mandated by law after 1982 when the amendment to this section was gazetted, specifically legislating for the notification of fathers.

This provision to notify the father in writing about the impending adoption, existed in the legislation from 1965, not, as stated by McDonald, something added in 1980. The 1980 amendment made notification mandatory, but the provision was always available.

The importance of this notification cannot be under-estimated. Such notification would:

(a) alert an unknowing father of his paternity,

(b) alert a father who did not know his child was to be adopted, that the adoption of his flesh-and-blood child to strangers, was about to take place, and

(c) perhaps reinvigorate a father, either exhausted from battling the adoption industry or defrauded of his rights by the adoption agency, to oppose the adoption, as per his rights under section 23.

This notification may well have been the first the father knew that (a) his child had been born, or (b) that he may be in a position to oppose the adoption – in contradiction of advice he may have previously been given by the adoption industry.

15. Section 26/2:

> *… The Court shall not make an order for the adoption of a child unless consent … to the adoption has been given by the appropriate person or persons … (2) In the case of a legitimate child … the appropriate persons are every person who is a parent or guardian of the child."*

Breach:

Failure to advise the father of the child's change in status with respect to an adoption consent, should mother and father marry before an adoption consent is signed.

16. Section 26/3:

> *… The Court shall not make an order for the adoption of a child unless consent … to the adoption has been given by the appropriate person or persons … (3) In the case of an illegitimate child … the appropriate persons are every person who is the mother or guardian of the child."*

Breach:
Herein is the crux of the defrauding of fathers under the *Adoption Act*, by adoption workers. While at the time most consents were signed, fathers were not court-declared guardians of their ex-nuptial child, it was very easy for a father to gain that declaration either under the *Child Welfare Act* or the *Children Equality of Status Act*.

Furthermore, under the wording of the *Child Welfare Act* and the *Children Equality of Status Act*, a strong case can be made that an ex-nuptial father's guardianship over his illegitimate child was automatic and did not necessarily need to be court-declared when considering issues of natural justice. A father's guardianship did not need court-declaration for the sake of obtaining maintenance from him – his *obligation* was assumed by his mere identification as putative father until otherwise disproved. Therefore, it naturally follows that his *rights* were also assumed by this same identification as putative father, until otherwise disproved. This identification could be made by either the mother of the child in question or the father himself, or indeed, anyone else who may have knowledge of the child's paternity.

Adoption workers' failures to inform a father of his clear rights in the matters of adoption consent, even when directly asked by fathers for legal means to stop the adoption, would in most cases meet the legal definition of fraud. Putting this together with the clear wording of the *Adoption of Children Act*, the conclusion is unambiguous. Sections 26/1 & 26/2 state:

> *The Court shall not make an order for the adoption of a child unless consent … has been given by … in the case of an illegitimate child … every person who is the mother or guardian of the child.*

The *Adoption of Children Act* s31/(1a & 1b) states,

> *The Court may refuse to make an adoption order … if it appears to the Court that … (a) the consent was not given in accordance with this Act; (b) the consent was obtained by fraud.*

Since no adoption worker has ever testified that they have as a matter of normal practice, included fathers in the adoption consent process – in fact, quite the opposite: they actively or 'accidentally' excluded him, **(36)** – and since the vast majority of adoption consents do not contain the father's signature, and since those fathers who have given evidence consistently testify that they were actively removed from the adoption process, it seems very reasonable to presume that adoptions in the state of New South Wales, procured under *the Adoption of Children Act 1965*, have been procured in complete contradiction of the law, when regard is given to an ex-nuptial father's legal rights.

Family Law Act 1975

17. The Family Law Act 1975 section 63F(1)

> *"… each of the parents of a child who has not attained 18 years of age is a guardian of the child, and the parents have the joint custody of the child."*

The Family Law Act 1975 is Federal legislation dealing exclusively with matters within marriage. The fact that this Act quite categorically enshrines fathers with the rights of guardianship over their children within marriage becomes extremely significant when the next piece of legislation is considered.

Children Equality of Status Act 1976

18. Section 6:

> "*Whenever the relationship of a child with his father falls to be determined under the laws of New South Wales, that relationship shall be determined irrespective of whether the father and mother of the child are, or have ever been married."*

Breach:

- Denial of father's guardianship under *Children (Equality of Status) Act 1976*:
  Section 6 (above) acted in tandem with *The Family Law Act 1975* section 63F(1) to grant full guardianship rights to ex-nuptial fathers, and therefore the necessity for an ex-nuptial father to sign any adoption consent, under section 26 (3) of the NSW *Adoption of Children Act 1965*.
  Precedents: G v P (Victoria 1977), Gorey V Griffith (NSW 1978), Youngman v Lawson (NSW 1981), C v Dept Youth & Community Services (NSW 1982), F v Langshaw (NSW 1983), Hoye v Neely (NSW 1992).

The initiator of the NSW *Children Equality of Status Act*, Attorney-General Frank Walker, stated right from the very beginning of the process, that this Act would be all-encompassing, and would apply:

> *"for **all** purposes of the law in New South Wales"* and *"for the purpose of construing **any** instrument"*. (Emphasis added).**(37)**

This appeared on page one of the Discussion paper circulated to all interested/affected parties before the enactment of the law. On the same page, the Attorney-General stated his intention that the proposed *Status of Children Act* would grant a legal relationship between fathers and children *"irrespective of whether the father and mother are or have ever been married."*

Exactly what legal relationship was the Attorney-General referring to? The legal relationship which until that moment had been affected by the marriage status of the child's parents – the legal right of guardianship given to a married father in the *Family Law Act 1975* was now quite clearly being extended outside of marriage *"to remove the legal disabilities of ex-nuptial children."***(38)**

The Attorney-General's opening statement in his Discussion Paper was that his new law would apply "to the greatest possible extent."

Putting all these statements together, there can be no possible ambiguity regarding the intent of the *Children Equality of Status Act 1976* and its ramifications for adoption consent practice.

To make it plain, The *Children Equality of Status Act 1976 (NSW)* was intended to:

(i) remove all legal inequalities that existed between nuptial and ex-nuptial children.
(ii) remove all legal inequalities that existed between nuptial and ex-nuptial parents.
(iii) bestow those rights that pertained to nuptial children, onto ex-nuptial children.
(iv) bestow those rights and responsibilities that pertained to nuptial parents, onto ex-nuptial parents.
(v) apply *"to the greatest possible extent"*.
(vi) apply *"to every legal instrument"*. Clearly, an adoption consent is a legal instrument. Clearly, an adoption order is a legal instrument.
(vii) apply *"for **all** purposes of the law in New South Wales."*

(viii) apply *"**whenever** the relationship of a child with his father falls to be determined under the laws of New South Wales …"* That is: "**whenever"** - meaning **every single time – no exceptions**, whatever the circumstances or the issue in dispute.

Clearly, it was the NSW Attorney-General's stated intention, that the legal relationship granted between married fathers and their children by the *Family Law Act,* should be extended to ex-nuptial fathers and their ex-nuptial children, in every single case where a legal instrument or legal decision was involved. This clearly includes adoption decisions and it clearly includes situations where the father had been recognised in statutory information forms like birth registration documents filled out by the mother, or other documentation recognising the paternity of the child (eg: adoption preparation documents etc).

The intention of the *1976 Act* is crystal clear. It granted guardian status to ex-nuptial fathers over their children. However, to prove a case of fraud against individuals in the adoption industry, it needs to be shown that they had knowledge of the intent of the law, and that they deliberately set about deceiving fathers on the matter of their rights. Does such evidence exist?

The evidence of fraud or otherwise, resides in four lines of enquiry:

(i) Statements from the McLelland Committee
(ii) Briefing statements from Frank Walker
(iii) The 1980 Amendment
(iv) Legal precedent – *F v Langshaw*

To take each in its turn …

<u>Statements from the McLelland Committee</u>

In 1974, the NSW Government commissioned a number of adoption industry representatives under Mary McLelland, to review the operation of the *Adoption of Children Act 1965/67.* This committee reported to the Government in 1975/6.**(40)** On page 43 of the McLelland Report, the committee states that it …

> *"considered the discussion paper recently circulated by the Attorney-General relating to the Status of Children."*

The McLelland Report then discusses the effects of granting an ex-nuptial father the same rights as a married father and concludes that

> *"The putative father who is responsible for the birth of a child as a result of a casual relationship should not be accorded any right to consent to adoption ..."*

Remember – this is only the Committee's opinion, in reaction to the Attorney-General's discussion paper. The McLelland Committee then goes on to give its own definition of a 'non-casual' relationship:

> *"immediately prior to the mother of the child giving her consent to adoption, the putative father had had the actual care of the child for a period of 12 months or alternatively, if he had cared for the child for a similar period himself without the assistance of the natural mother."*

On page 45, the McLelland Committee then goes on to describe circumstances whereby, in their opinion, a putative father might have the right to consent or veto the adoption, one of those circumstances being:

> *"the putative father had been declared the father of the child by declaration under the proposed Status of Children Act."*

Here, the committee, made up of prominent adoption workers, states without equivocation, that they knew the full effect of the *Children Equality of Status Act.* That it would be a mechanism to grant fathers full veto/consent rights over a proposed adoption. Why, then, did a member of that committee, Ms Margaret McDonald, state to the NSW Adoption Inquiry, that fathers had no rights?

Combining these above statements from the committee, this shows that the members of the McLelland Committee immediately recognised upon reading the Attorney-General's discussion paper, that it would grant consent and veto rights over adoption proceedings to ex-nuptial fathers even when they did not meet the committee's definition of non-casual relationship with the child's mother.

The pertinent clause (Section 6) of the *Children Equality of Status Act 1976* passed into law without change from its form in the discussion paper.

Therefore, by their own statements, the members of the McLelland Committee were fully aware of the legal effects the proposed *Status of Children Act* would have once it was enacted.

The McLelland Review gives a further opinion on page 44 of its report:

> *"Until the community is prepared to concede putative fathers equal rights before the law with fathers, then putative fathers should not, in adoption legislation, acquire the right to consent unless he has, under an order of a court, also become the child's guardian."*

Note here, that the committee is seeking to perpetuate the misconception that there existed a distinction in law between 'putative father' and 'father'. As was seen in the discussion of the *Child Welfare Act* there was no distinction in law. As far as child welfare law is concerned, as soon as a person becomes the 'probably', 'possible', 'self-confessed', 'identified' or 'putative' father, then the law regards him as the

father until proven otherwise. So the committee is wrong to state that the community needs to position the "putative father" in law equivalent to "father." Equal rights and equal responsibilities already existed under the still-active *Child Welfare Act.*

However, the writers of the *Children Equality of Status Act* seemed determined for adoption workers in particular, to get the message, that in law, "father" and "putative father" meant the same thing. On page 37 of the *Children Equality of Status Act,* the new legislation lists the necessary amendments to other laws that were simultaneously enacted, to incorporate the new legal relationships brought about by the new *Children Equality of Status Act.*

In this section, one reads the following:

> *"Amendment to Acts – continued. Year: 1965. No. 23. Adoption of Children Act 1965. Section 6, definition of 'Father' – omit the definition, insert instead: 'Father' includes a putative father."*

At the same time the *Children Equality of Status Act* was passed into law, an amendment, quoted above, was made to the *Adoption of Children Act,* to alter the definition of "father" in that Act such that it would now include "putative father" – thus equating in law, 'putative fathers' with 'fathers'. And not just any law: the adoption law. The very law under which all members of the McLelland Committee, operated – in fact, the law under which all adoption workers operated. The law with which they were professionally expected to be most familiar. The law that had been expressly formulated to govern their everyday practice.

The conditions set by the McLelland Committee (representing the adoption industry) for fathers to have rights of veto or consent to an adoption are quite explicitly – in fact, exactly – met by the writers of the *Children Equality of Status Act*, and have reflected that in an explicit amendment to the *Adoption of Children Act.* The McLelland Committee's conditions are so exactly met by the writers of the amendment, it is almost as if those writers have seen the McLelland Committee's report and replicated what they have had to say in amending the *Adoption Act.*

To make it excruciatingly obvious, once the *Children Equality of Status Act* came into effective law in December 1976, a putative father gained the same standing in law as "father" in all instances, and in particularly, within the *Adoption Act.* Adoption practitioners had their own conditions met by the writers of the *Children Equality of Status Act.* Adoption workers therefore are without excuse should it be found that they did not avail putative fathers with the same rights as any other father in adoption proceedings in NSW after 1976.

Even a cursory examination of adoption practice shows that adoption workers were not implementing the rights of fathers as they existed under the 1939 *Child Welfare Act* and the 1965 *Adoption of Children Act*. It also shows they were not interested in allowing fathers their rights under the 1976 *Children Equality of Status Act.*

Even if the adoption industry was ignorant of the 1976 amendment to the definition of father in their own legislation, based on the presumed attitude in the above quoted opinion from the McLelland Committee, the adoption industry should have been prepared to avail fathers of their rights in NSW, as of November 5, 1977, when the Federal Government granted parenting allowance to single fathers. This was the sort of social recognition of single fathers that the Committee said it was looking for, in order to gauge whether society was ready to grant ex-nuptial fathers rights of consent or veto over an adoption.

It is a constant refrain from adoption workers accused of fraudulent or coercive practices, that they were 'beholden to the mores of the time.' Yet, here is a circumstance where the 'mores of the time' are obvious, but these same adoption workers steadfastly refuse to reflect those mores, in fact, actively oppose them.

Rather than embrace the change as they had foreshadowed it, these same Committee members were responsible for pressuring the NSW Government in 1980, to wind back fathers' rights in adoption proceedings. This will be shown in the section on the 1980 Amendment.

Briefing statements by Frank Walker:
While ignorance is no excuse before the law, can the adoption industry claim to have been uninformed of this law?

Before enacting the *Children Equality of Status Act 1976,* Attorney-General Frank Walker listed in Hansard **(41)** numerous interested parties to whom he granted personal specific briefings. The McLelland Committee was one of those groups.

In his speech to the New South Wales Legislative Assembly on 16th November 1976, the Attorney-General, Frank Walker MLA stated that in the process of enacting the *Children (Equality of Status) Act:*

> *"A broad cross section of interests were consulted and asked for their views. The views of agencies such as the* ***Catholic Adoption Agency,*** *Burnside Presbyterian Homes, Lifeline and the Church of England Counselling Service were also* ***actively sought."*** (Emphasis added)

With Burnside Presbyterian, Church of England Counselling, the Council of Social Services, the National Council for Single Women with Child and all the law societies, being actively briefed by the New South Wales Government, it is hard to believe that the adoption industry has been accidentally ignorant of the operation of the *Children (Equality of Status) Act 1976* and its superseding law, the *Status of Children 1996,* for the past 20 years. Just because they may have opposed the thrust of the new law when they were being briefed on it, does no mean they can ignore that law when it comes into effect.

And it is hard to believe that having been briefed by the Attorney-General, the adoption industry would still have been ignorant of the effect of the new law regarding an ex-nuptial father's position in terms of adoption consent.

[redacted]

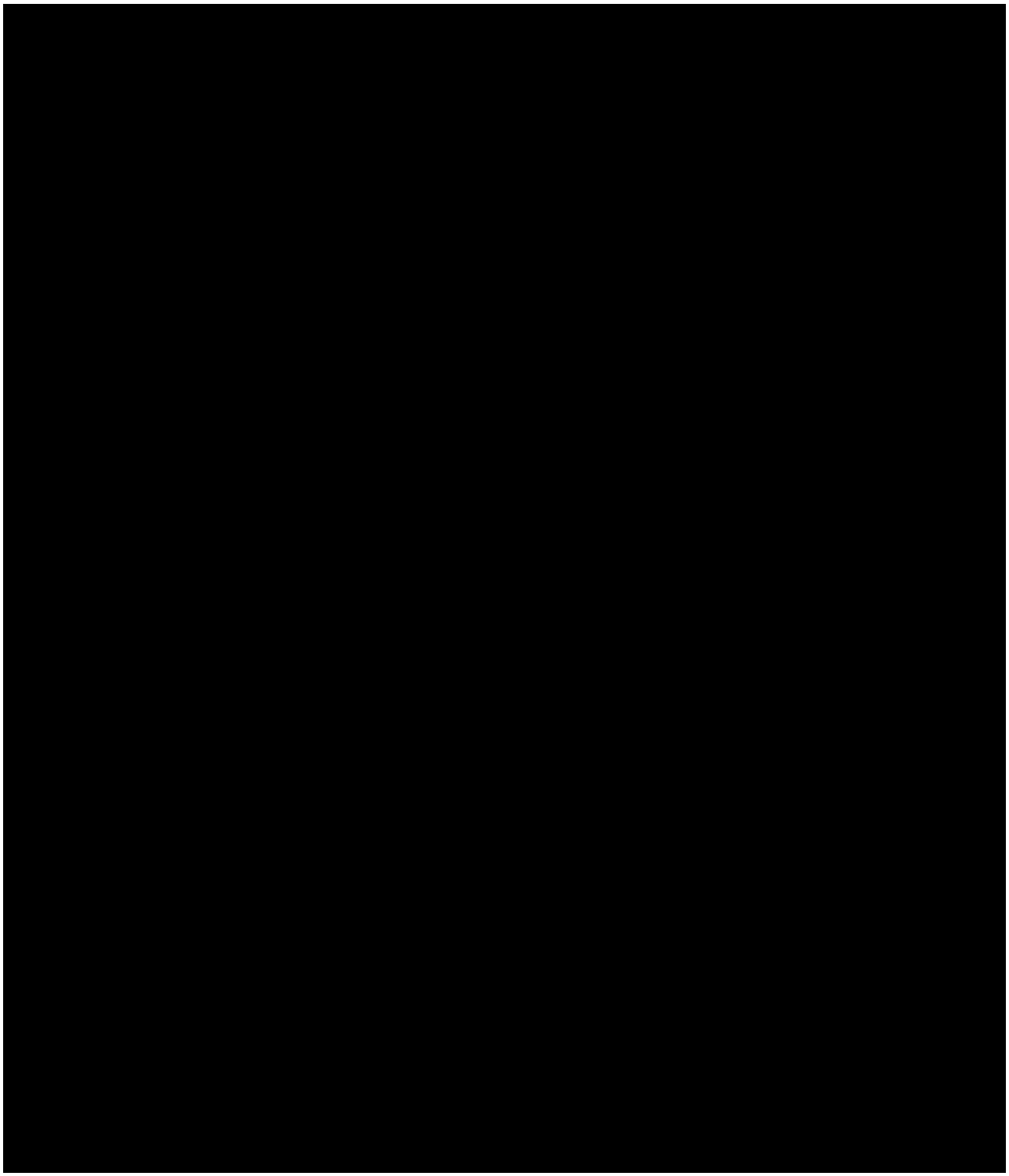
Section 26(3A) did not come into force until January 1, 1982.**(43)** Its effect appears to have been reversed in 1984 by the *De Facto Relationships Act*, which declared NSW fathers as guardians of their children outside of wedlock. This is how courts seemed to have interpreted challenges after 1984. So, a father's right of veto/consent was only

effectively wiped away for at most, three years in the history of NSW adoption – 1982, 1983 and 1984.

F v Langshaw

This 1982 court case was one of the precedents that established an ex-nuptial father's right to veto or consent to an adoption. The father brought action against the agency which had already placed his child in an adoption. The father used the *Children Equality of Status Act* to successfully argue that he should not have been excluded from the adoption consent, which he formally opposed.

Justice Waddell agreed and awarded custody of the baby to the father, despite the fact that the child had been placed and had spent some time with the proposed adopters.



[redacted]

Commonwealth culpability

[redacted]

Other issues to arise from the *Children Equality of Status Act*
The Act had the following as its subtitle:

> *"An Act to remove the legal disabilities of ex-nuptial children; to facilitate the establishment of the paternity and maternity of children; and to amend the Registration of Births, Deaths and Marriages Act, 1973, and certain other Acts. [Assented to, 17th December 1976]"*

However, as we have already seen, practitioners failed to regard the Act at all and in breach of the legislation, maintained the legal disabilities of ex-nuptial newborns in practice. Following is a non-exhaustive list of ways in which the legal rights and responsibilities of newborns and ex-nuptial fathers under the *Children Equality of Status Act* were summarily dismissed by adoption workers and others in the adoption industry:

(i) Failure to give the newborn the father's surname
(ii) Failure to record the father's name on the birth certificate
(iii) Failure to notify the father of the child's birth
(iv) Failure to pursue a maintenance order from the father
(v) Failure to treat the father as a relative of the child for purposes of hospital and other visitation – particularly foster care visitation
(vi) Failure to allow the father normal access to both the new-born child and the mother of that child
(vii) Failure to notify the father that an adoption request had been signed
(viii) Failure to notify the father of the child's whereabouts during the 30 day revocation period

All the above are rights of the child or the father under either the *Children Equality of Status Act* (in combination with the *Family Law Act)* or the *Child Welfare Act.*

Test Cases – G v P; Gorey v Griffin; Youngman v Lawson; F v Langshaw, C v Dept Y&CS

There are numerous precedent cases, named above, which are pivotal in establishing the right of unwed fathers to be regarded in law as guardians of their out-of-wedlock children. In each case, statements have been made in the judgements which shed great light on the issue. These judgement statements are examined in the following section.

G v P (1977)

In regards to the conferred guardianship of an ex-nuptial father over his ex-nuptial child, there is little that can be added to improve on Justice Kaye's judgement in the case of G v P:

> *"The law relating to illegitimate children has more recently undergone further and more fundamental changes. These were brought about by the Status of Children Act 1974 (Vic) {aka The Children [Equality of Status] Act 1975 NSW}.*
>
> *... For all purposes of the law ... a child's rights and duties are the same irrespective of whether he was born in wedlock or out of it ...*
>
> *As a consequence ... by parental right, a father of an infant is endowed with the guardianship of his infant, until the latter attains the age of 21 years, notwithstanding that custody might have been granted to the mother ... By s136 of the Marriage Act 1958, the mother of an illegitimate infant has the power to appoint a guardian of her child. This right was abolished by s12 of ... The Status of Children Act. ...*
>
> *It follows therefore that, by operation of s3(1), the father of an illegitimate child is his guardian. ... An order for custody ... does not deprive the father, who is not given custody of the child, of all his rights and obligations in respect of his child. He remains, subject to the rights conferred upon the person to whom custody is given by the court,* ***the natural guardian of the child*** *..."* **(51)**

Justice Kaye had no hesitation in accepting the argument derived from the Victorian *Status of Children Act* that an ex-nuptial father is a guardian of his ex-nuptial child. Note that Justice Kaye stated, custody or lack of custody, does not change this right. The child did not have to reside with the father in order for the guardianship relationship to exist.

Note also, that a mother had the power to appoint a father as guardian of her child. This right existed before the *Children Equality of Status Act* and its equivalents in other states. Had any mother done this, it would have legally stopped the adoption in its tracks. Was this alternative ever offered to mothers or fathers earmarked to lose their babies to adoption?

Note also that this right was abolished with the passing of the various *Status of Children* Acts in the various states of Australia. Why was this right abolished? Because the guardianship right of fathers over ex-nuptial children was automatically established by the *Equality of Status* act in the particular state. There was no longer any need for the father's guardianship to be declared by the mother, or anyone else.

This is how Justice Kaye has interpreted the guardianship rights of fathers as they flow from the *Status of Children Act* in Victoria. The NSW *Children Equality of Status Act* carried the same relevant clauses which had the exact same effect.

Justice Kaye was quite explicit about how far the rights of the guardian-father should go:

> *"I am, therefore, of the opinion that the applicant (ex-nuptial putative father) because of the consequence flowing from s3(1) of the Status of Children Act, is the natural guardian of 'V' (the child), and that, by changing her surname, without his consent, the respondent (mother) infringed his rights as the child's natural guardian."* **(51)**

If changing the child's surname is an infringement of an ex-nuptial father's rights as a consequence of the *Status of Children Act*, then how much more is it an infringement of a father's legal rights, to (i) register the birth of his child without due acknowledgement to the father (ii) to register the birth under the mother's name & (iii) to then sign an adoption consent, without the father's consent.

Justice Kaye states that in circumstances where two parents or guardians exist, then

> *"A parent who wishes to take some step importantly affecting a child should seek the decision of the court."* **(51)**

Is not the signing of an adoption consent by the mother a circumstance which would be described as "A parent who wishes to take some step importantly affecting a child" and that such an act, before it is carried out, should have gained "the decision of the court" ? Equally, an order of custody to the Director General, by way of an adoption consent being signed,

> *"does not deprive the father, who is not given custody of the child, of all his rights and obligations in respect of his child."*

So the very real possibility exists that fathers' rights of guardianship continued even after the signing of an adoption consent by the mother. Justice Kaye is certainly hinting at this with his pronouncements on custody.

Gorey v Griffin (1978)
Again *in Gorey v Griffin*, the magistrate, Justice Hutley, stated:

> *"by section 6 of the Children (Equality of Status) Act, 1977 … a child born out of wedlock, so far as the 1977 Act is concerned, is no longer a nullus filius; but is, per contra, in the eyes of the law, the child of its natural parents."*

> *"Upon its true interpretation, section 6 alters the status of the father in the same way as it alters the status of the child."*

Furthermore, the various justices involved in the appeal in this case, consistently interpreted Custody and Maintenance legislation as defining guardian-father-parent to include ex-nuptial 'putative' fathers. They based their reasoning on the fact that putative fathers were persons liable to be called upon to maintain the child. Therefore, if these earlier Acts put a father in such a position, then the *Children Equality of Status Act* most certainly did when it came to interpreting the *Adoption Act* and the need for guardians to sign the consent. This judgement and the appeal, is very consistent in this among the four judges: Ward, Hutley, Moffit and Mahoney.

Mahoney also maintained that

> *"section 6 of the Status Act … is, in my opinion, intended to be applied generally to legislation in which the relationship of a child with its father or mother falls to be determined and to alter the operation of that legislation accordingly. Having regard to the evident purpose of the Status Act, it should, in my opinion, be given a wide and beneficial operation."*

In other words, Mahoney interpreted the *Children Equality of Status Act* to have wide and liberally application, whenever legislation touched upon the legal relationship between a parent and an ex-nuptial child. In fact, he went further to say that legislation enacted before the *Children Equality of Status Act* should be henceforth interpreted in light of it. This should be done irrespective of any decision made prior to the *Children Equality of Status Act.*

This clearly includes deciding matters surrounding adoption, liberally in favour of fathers' rights.

Youngman v Lawson (1981)

Much of the Youngman v Lawson case rested on the operation and application of the *Child Welfare Act* – indicating that this statute was still operative in the early 1980s. The judges involved in the Youngman v Lawson appeal, Masters Reynolds and Glass, formed the opinion that

> *"to qualify the guardianship as excluding a guardian who has no custody and bestows no care does not represent the true construction of the paragraph."*

In other words, the *Child Welfare Act* should not be construed to exclude a non-custodial parent from guardianship of a child, based merely on the fact that the parent is non-custodial. The opinion given here by Reynolds and Glass, is that a parent's guardianship over a child is automatic in common law, whether the parent is custodial or non-custodial and that guardianship can only be removed by a court upon the presentation of evidence giving good reason to do so. Otherwise, guardianship extends even to non-custodial parents.

This judgement quotes an 1897 precedent:

> *"At common law the rights of a father to the guardianship and custody of his children were absolute."*

Reynolds and Glass go on to say (page 8)

> *"in the case of an illegitimate child, all of the rights that are customarily incidents of technical legal guardianship in the case of a legitimate child, inhere in the mother. These rights are shared by the putative father …"*

They also give reason why the legal 'tradition' came about to assume the mother as sole guardian of an illegitimate child:

> *"the child being illegitimate, the mother is usually the only parent known or on the scene and hence usually has been recognized as having, in her sole capacity, the status to enforce such rights as customarily inhere in guardianship."*

Reynolds and Glass make it clear that the tradition of assuming a mother to be sole legal guardian of an illegitimate child, was a matter of operational convenience should the father be absent, but that the tradition had never had any basis in law.

The *Youngman v Lawson* appeal is then decided by the judges on the basis that section 6 of the *Children Equality of Status Act*

> *had the effect of "equating the relationship between an ex-nuptial child and its parents to that of a nuptial child and its parents". Their Honours quoted, with approval, a statement by Kaye J in G v P [1977]."*

And again, the judges determine

> *"Accepting that s 6 equates the relationship between an ex-nuptial child and its parents to that of a nuptial child and its parents, it would follow that the natural father of an ex-nuptial child would be regarded as its guardian."*

And in case it had not been made plain enough, Reynolds and Glass conclude their assessment of section 6 of the *Children Equality of Status Act:*

> *"The effect of s 6 is to constitute both parents of an illegitimate child its joint guardians … it translates that guardianship into full legal guardianship within the technical legal sense of that term … Those strict legal rights now inhere jointly in the parents of an illegitimate child."*

C v Dept of Youth & Community Services (1982)

One of the criticisms of the above case law is that the cases cited are not essentially adoption cases. The case of *C v Dept of Youth & Comm. Services* is the first of two cases cited here, that involve decisions to be made regarding adoption placement. The curious thing about the two cases is that while they are judged upon by the same judge, Waddell J, and come to the same result, the reasoning is completely different in each case.

The difference in the reasoning behind the two cases underlines the multiplicity of legal possibilities a father had at his disposal to halt an adoption, even after a consent had been signed, and incidentally, even after the child had been placed into the care of the proposed adopters.

In *C v Dept* the case in favour of the father was as put in the previous cases – that he was a guardian of the child and therefore had right of veto or consent to the adoption of his ex-nuptial child, by operation of the *Children Equality of Status Act.*

The Director-General of the Department put up a unique case. The Director-General of the Department agreed that in a real and legal sense, the father was in fact, a full guardian of the child. But the Director's contrary reasoning was that since the *Adoption of Children Act* makes a distinction between a nuptial child and an ex-nuptial child, and since the *Adoption Act* makes distinction between a married father as a parent and a putative father, then the guardianship gained by the putative father under the *Children Equality of Status Act,* did not apply to the day-to-day operation of the *Adoption Act.*

Justice Waddell agreed with this interpretation put forward by the Director-General, saying that had the legislature wanted to include ex-nuptial fathers in adoption consents, then it would have been easy for the legislature to amend the *Adoption Act,* to reflect that.

The ex-nuptial father in this case, also put up the argument mentioned earlier, that since the *Adoption Act* at the time, was in the process of being amended to remove the necessity of an ex-nuptial father's consent to adoption, then the *Adoption Act* must at the time of the court action, necessitate the consent of the ex-nuptial father as guardian.

Justice Waddell agreed that the amendment certainly had that appearance, but that it was only an appearance, and the guardianship a father had by way of the *Children Equality of Status Act* did not apply to the operation of the *Adoption Act.* **(52)**

Justice Waddell then made a series of extraordinary statements in his summing up, which highlight just how many possibilities were open to a father who opposed an adoption, even after a consent was signed and after the child had been placed with the proposed adopters. In the context of answering the question as to whether fathers had any rights in adoption proceedings, it is worth looking at Justice Waddell's reasoning at length, without interjected commentary:

The plaintiff (father) has at all times been anxious to assume responsibility for the child and to have his care and custody. However, contrary to the wishes of the father the mother executed a consent to the adoption of the child …

The court is, of course, required by law in making its decision to have regard to the welfare and interests of the child as the paramount consideration … While many adoptions appear to be completely successful not all are and the knowledge of the adoptive parents and the child that he or she is not related by blood to the parents does seem to be a factor which is capable of causing problems.

If the child is placed with the father there will certainly be the disadvantages already mentioned. However, it seems to me that it is more important to have regard to the father's capacities and dedication to looking after the child than to his immediate plans. …

From the time when he learnt that the mother was pregnant he has shown his interest and concern to assume responsibility for the child. He commenced these proceedings within a few days of learning that the mother wished to proceed with the adoption of the child. He applied for an interim order for access to the child which was granted and he has taken advantage of every opportunity he has had to see the child and to establish his identity with it.

In my opinion it is a very important consideration that the father wishes to bring up the child and has shown himself to be strongly committed to assuming such a responsibility.

Having regard to the whole of the evidence the conclusion which I have reached is that each of the two courses which are open to the court, permitting an adoption to proceed or placing the child with the father, has both advantages and disadvantages.

Looking purely to the balance of advantage over disadvantage so far as the child is concerned it seems to me that it cannot be concluded that either course offers assured prospects which are superior to the other.

In these circumstances the wishes of the father are, I think, a consideration which must result in a decision to place the child with him.

Putting the matter in another way, the prospects of either course being evenly balanced ***there is no justification for depriving the father of the opportunity of bringing up his child****."* (Emphasis added)

Justice Waddell herein is attempting to reflect the mores of the time – a social norm that would seem to be obvious to all but those working in the adoption industry. And that is, if one is to inflict upon a child the disadvantage of being raised by persons other than its conscientious natural parents, then those proposing the removal of the child, should have some **justification** for the removal. In the absence of any justification, the mere wishes of the mother, the Director-General, the adoption social worker, or the adoptive parents take a distant second place to the desires of the conscientious natural parent to raise his own child.

Waddell made this decision in Equity, **considering the best interests of the child as paramount.** Waddell recognised the disadvantages of removal and decided against it, in the interests of natural justice, even in the absence (in Waddell's opinion) of a legal mechanism to grant the father guardianship rights in respect of the signing of an adoption consent.

This shows the extent of a natural parent's rights:

- that a father could overturn an adoption and receive custody, without the court recognising his guardianship.
- that a father had the possibility of being granted his parental wishes, with or without the *Children Equality of Status Act.*

Justice Waddell applied legal reasoning in equity, in the face of a hostile governmental department **without invoking** the disputed rights that flowed from the 1976 statute. This implies that those rights existed for ex-nuptial fathers **before** the proclamation of the *Children Equality of Status Act.*

[redacted]

F v Langshaw (1983)

As with the previous case cited, *F v Langshaw* represents a situation where:

(i) The mother had signed an adoption consent, which had not been revoked in the due time, and

(ii) The child had been placed in the care of the prospective adopting parents. In fact, the child was three months old when the father lodged his Supreme Court appeal against the adoption and it was another two months before the case was heard.

[redacted]

In the end, as with the previous case, Justice Waddell could only conclude that prospects for successful adoption were reasonably good, and prospects for the father raising a well-balanced child, were also reasonably good. Thus, in the interests of natural justice in equity, Waddell awarded custody to the father.

In other words, all the father had to show was that it was likely the child would receive a caring, reasonably competent upbringing, for him to win custody. Clearly, the 'mores of the time' in the general community, were such that adoption workers should have been involving fathers in exercising their right to custody as part of the adoption worker's pursuit of the father for maintenance. Only after a father indicated he was comfortable with the prospect of adoption and had been counselled in alternatives, should an adoption have proceeded.

Even in the negative material atmosphere that constituted the father's background in this case, especially when compared with the affluence and experience of the proposed adopters, the judge still had to conclude that

> *"Entrusting the child to the father seems to me to offer a greater overall prospect of benefit than does adoption."*

Case closed.

<u>Hoye v Neely (1992)</u>
By 1992, ex-nuptial father's guardianship rights in adoption had swung from a complete lock out under the 1980 amendment, to complete freedom under the previously examined precedents and changes to Federal family law and state *de facto* law.

The 1992 case of *Hoye v Neely* was an opportunity for the Supreme Court to examine the question, this time in the light of these legislative changes. In many ways *Hoye v Neely* represents the final word on a father's right to consent or veto an adoption, as it makes comment on legislation before the *Children Equality of Status Act*, Justice Waddell's reasoning in *C v Dept* and *F v Langshaw*. It invokes *Frankie & Frankie*, and identifies Federal amendments to the *Family Law Act* which eradicated the 1980 *Adoption Act* amendments. It also references the *Child Welfare Act*, and so gives an exceptional overview of the full history surrounding this issue. In *Holy v Neely* Justice Mullane held that

> *"the father of 'S' [child proposed for adoption] was her guardian for the purposes of s26(3) [consent requirements] of the Adoption Act and his consent to an adoption was required."*

[redacted]

Justice Mullane continues his summing up of the *Hoye v Neely* case:

> *"The Commonwealth had expressly granted the father guardianship by section 63F(1) of the [Family Law] Act and that was a situation clearly within the express terms of the definition of 'guardian' in s6 of The Adoption Act. Moreover, the child's father was not excluded by [the 1980 amendment] s26(3A) of The Adoption Act from [being a] person whose consent was required."*

Here Mullane explains the legislative goings-on in the time since *F v Langshaw* and the proclamation of the 1980 amendment (26/3A) to *The Adoption Act.* He explains that a Federal amendment to the *Family Law Act* superseded the 1980 *Adoption Act* amendment. That amendment is known as Section 63F(1) and was enacted in 1987:

> *"Each of the parents of a child who has not attained 18 years of age, is a guardian of the child and the parents have the joint custody of the child."*

No distinction is made to legitimate or illegitimate, nuptial or ex-nuptial, in wedlock or out-of-wedlock. The amendment is all-encompassing, the word 'parent' being given its normal, and natural, biological meaning. Thus the Federal legislature declared all parents as guardians, and therefore within the scope of persons required to sign an adoption consent under the wording of the NSW *Adoption Act.*

In terms of Commonwealth interest in this subject, Justice Mullane referred to a variety of precedents from different states to reinforce his judgement: *Re H (an infant) (Qld), Frankie & Frankie (NSW, Youngman v Lawson (NSW), C v Dept (NSW), G v P (Vic)* and *L v B (Vic).*

Justice Mullane described the position of an ex-nuptial father in relation to his right to consent or veto an adoption as follows:

> *"On the issue of whether "guardian" in the … State Adoption legislation included the father of an ex-nuptial child … the combined effect of Commonwealth legislation … and State legislation concerning the status of children … are such clear legislative provisions granting guardianship and also bringing such guardianship within that expression in the State adoption legislation."*

Furthermore, Justice Mullane considered Justice Waddell's reasoning in rejecting a father's claim to guardianship under the *Adoption Act* in *C v Dept.* Mullane restates Waddell's reasoning then says:

> *"That argument is not valid … [and] arises from an incorrect reading of subsections 2 and 3[of the Adoption Act] … and the definition of "guardian" in section 6 [of the Adoption Act]."*

Justice Mullane's final paragraph makes the finding:

> *"The result … is that 'S's father's consent to adoption is required under section 26 of the Adoption of Children Act 1965."*

So, where does that leave the NSW Adoption Inquiry Report's insistence that "the father of the baby had no legal rights with regard to an adoption consent" **(54)** … "They still do not have that right" **(55)** (in 1999)?

Registration of Births, Deaths and Marriages Act 1855
(Registration of Births, Deaths and Marriages Act 1899)
(Registration of Births, Deaths and Marriages Act 1973)

> *"The purposes of registration then, as now, were both public and private: providing statistical data to government and the public, and* ***authentic legal records for proving descent and identity****."* (Emphasis added) **(56)**

The stated purpose of Births, Deaths and Marriages (BDM) is

> "***Preservation of all original records relating to births****, deaths and marriages in New South Wales"*. **(57)**

The operant words from the above stated aims of BDM are "authentic" and "original". BDM is most interested in the authentic detailing of people and events. It would follow that knowingly providing information to BDM that is less than authentic, would be a serious criminal offence. The statements also make plain that the objective of BDM is to ***preserve*** original information regarding births. It therefore follows, that any tampering with the original, and any attempt to thwart the preservation of original information, is again, a serious offence against the office of BDM.

As far as any search can find, for all intents and purposes, no ex-nuptial newborns subsequently adopted between the years 1939 to the late 80s, had the name of the father recorded on the original birth certificate.**(57a)** There does not seem to be the same problem with ex-nuptial newborns who were not adopted. This is puzzling because most birth registrations were filled out well before the adoption consents were signed. Birth registration documents are normally completed on day one or two, sometimes day three – adoption consents by law, should not be signed before day five after birth. **(58)** Yet, despite birth registration details being collected numerous days prior to the commencement of adoption proceedings, full and correct birth details, particularly pertaining to the father, were not recorded – moreover, they were being actively expunged. **(58a)** Clearly, some newborns were being earmarked for adoption and treated differently, well before any adoption consent was signed.

There has been *en masse* destruction of information regarding the fathers of newborns, somewhere in the process between the mother filling out birth registration forms in the hospital and that information being entered into BDM's registration bank. This equates to *en masse* systematic information fraud against a government department and defrauding of individuals of their constitutional access to information about themselves – adoptees and fathers, in particular, but also other interested and entitled parties.

This is astounding because at the time of birth, every newborn is supposed to have their descent recorded in the same way, whether nuptial or ex-nuptial. This is the stated objective of BDM. A newborn is a newborn is a newborn. At the time of birth and even beyond the signing of an adoption consent, the newborn is descendant from its natural parents – in the eyes of the law, in the eyes of the birth registrar, in the eyes of even the most callous social engineer.

Details of the baby's birth are recorded by the mother or other suitable person, at a time when the newborn is still legally under the direct guardianship of its natural parents. There is no reason – legal, social or biological, why the identity of one of the child's parents, should be withheld. If the mother was withholding, legislation was in place to force her disclosure. If the father was not available, the witness of any other person who had knowledge of his identity, was permissible as evidence to register him as the father.

Generally, mothers of ex-nuptial babies, gave the identity of the father – where did that information go, why was the standard adoption work-practice set up to corrupt official birth registers, and why was court action not pursued to bring these records into line with registry law?

Why is there a penalty to apply if a mother fails to give full particulars of the child, yet when social workers interfere with the proper recording of the father's particulars they have done so with immunity? Why is it that a father can be identified and pursued for maintenance, yet that same identification is insufficient for him to be named on the child's birth certificate?

It is equally alarming, that there was never any alert sent to these affected parties – again, particularly the fathers – that this information was being ignored, destroyed or removed from records.

Adoption workers and others, were very pro-active in harassing fathers out of the adoption process. They regarded this as an essential part of their day-to-day work. Surely, they should have been equally pro-active in the application of all relevant laws regarding the official recording of birth details pertaining to newborns whose lives they were drastically altering. Surely, some zeal in accuracy of birth records is the least that should be expected from adoption professionals. Yet, they appear to have been extremely pro-active once again, to ensure fathers were completely eradicated from records, to create the illusion of abandonment. However, in most cases, their own process notes make a lie of the adoption worker's contention that fathers were remote and unidentifiable. Father's names and details are generally plentiful in adoption worker notes – ostensibly to enable some sort of "matching" with the prospective adopters.

It is a fraudulent disgrace that fathers did not appear as a matter of course, on the original birth certificates of newborns. This is another indication that these newborns were being identified for adoption prior to birth or in the very early days after birth, before an adoption consent was signed.

Equally, there is some culpability incumbent on the office of Birth, Deaths and Marriages itself. Upon receiving incomplete or unusable information regarding the father of an ex-nuptial child, the law placed an onus on the Registrar to pursue that missing information:

> *3.25 "To effect registration of a birth, death or marriage, he (the Principal Registrar) may make such inquiries as he thinks fit - to ascertain particulars, and* ***require*** *any person he believes conversant with the facts to furnish relevant particulars. He may alter, correct, supplement or cancel a registration, acting upon such evidence as appears to him to be sufficient and if he is satisfied that in the circumstances it is proper to do so".* **(59)**

Note the compulsion: the registrar is to "require" persons holding information to furnish relevant particulars. So the registrar should have been pursuing the social workers, the mothers and the fathers for the relevant information to complete these aberrant birth registrations. **(60)**

Furthermore, until 1973, BDM was required to notify the police if a child had been born to a girl younger than 16 years and 9 months. **(61)** Was this ever done? If not, why not? And if so, why did that pursuit not result in correction of the original birth record? Moreover, if the father was to be pursued for purposes of justice (responsibility under the law) then why was he not equally availed of his corresponding rights under that law?

It has also, always been an offence to knowingly falsify a record of birth. **(62)** Therefore, for anyone, mother, social worker or officer of Births Deaths and Marriages, to put "father

unknown" on a registry of birth document while knowing the identity of the father, is an offence against the *Act*. In fact, the *Act* provides for penalties against BDM employees **(62a)** and contains numerous provisions for the Registrar to place a putative father into the record without the father's acknowledgement, should the Registrar see fit in the interests of maintaining accurate records. **(62b)** It would seem obvious in a situation where a father has admitted on other documentation to being the father, is being named on documentation by the mother as being the father, is identified by case workers as being the father, and appears on documentation that is delivered to BDM for the purposes of registering the birth, as being the father, then for all intents and purposes of registration, he ***is*** the father. To place "father unknown" on the birth certificate under such circumstances, is fraud.

Why is the original heredity of a newborn of such importance if it is to be altered anyway upon adoption? The answer to that question would seem obvious, but clearly it is important to every person to know something about their biological antecedents, even if just for medical reasons. However, the office of Births Deaths and Marriages regarded the original birth details of every adopted person as paramount.

To this end, the office of BDM ***registers*** the true biological birth, but then merely adds only a ***memorandum*** to that registration to note an adoption. Thus, in the eyes of the official collector of records, the original birth is the officially registered event, while the adoption is regarded as a lesser 'add-on' to that initially record. **(63)** Also of interest in this regard, was the practice in some eras by BDM, to note the adoptive status of any previous children in the family on the birth certificates of any subsequent siblings. Many a sibling has received a surprise upon accessing their birth details to see the word "adopted" next to their older sibling's name.

Therefore, any incorrect, misleading or fraudulent information passed onto BDM for purposes of official registration of birth and origin, is an offence against the relevant legislation that should take on the highest importance. If the truth cannot as best is possible, be reflected in our most basic information, if the records kept by government departments cannot be relied upon to prove who we are, then the constitutional system under which we live is meaningless. This is not Soviet Russia or fascist Argentina, where personal identity is up for sale, manipulation or annulment. This is supposed to be Australia where we pride ourselves on the universal 'fair-go' – unless one is unfortunate enough to have had an ex-nuptial child in the back half of the 20th century.

Social Workers' Practice Manuals

As can be seen thus far, there are many lines of legislation that put into serious question the legality of adoption practice. But of course, adoption workers are not lawyers. They certainly have a duty to be well-conversant with the laws governing their practice, but perhaps they can be forgiven the occasional fall from legal grace due to a natural ignorance of the law's minutia.

So it is worthwhile considering what the social worker's advisory manuals and textbooks were saying at the time **(64)** – to ascertain if the adoption worker's general cry of being "beholden to the mores of the time" has any basis in written fact. **(65)**

> *"Where the mother has indicated that she does not desire to keep her child … the mother is visited in hospital by a specialist Lady District officer who explains to the mother the facilities (assistance) which the Department can offer to affiliate the child. These include:*
> *1. To assist with monetary allowance (section 27 aid. Child Welfare Act).*
> *2. Or by admission to State control until the mother is better place to resume custody and control of the child.*
> *3. Assistance to retrieve maintenance etc*
> *When all of these aids have been rejected and the mother still desires to surrender the child for adoption the full import of surrendering her child is explained (this included warning the mother of the risk of dire future regret if she should decide upon adoption).*
> *Only when the mother still INSISTS does the department's officer prepare a form of surrender … Advice is tendered in many cases, before birth. Assistance is given in regard to waiting time, arranging confinement, employment of the mother in such capacity as will enable her to retain and care for the child, financial assistance, admission of the child to a home or to state control, surrender of the child for adoption, and reference to the Affiliation Officer."* (Underlining added)
>
> **Child Welfare of NSW 1958 Social Work Training Manual**

Suffice to say that at the NSW Adoption Inquiry, not one woman who lost a child to adoption prior to the 1990s, was able to say that she received any information on alternatives to adoption. The accused social workers themselves admitted that alternatives were not canvassed: rather there was an unspoken understanding that

> *"when they came to the adoption agency and we presumed they were going ahead with it the options were not routinely offered, discussed or brought up."* **(66)**

Note the underlined portions from the Social Work Training Manual above:

- note 1: the mother must indicate of her own free will that she is considering adoption.
- note 2: the mother must **desire** the removal of her child – I am yet to meet a surrendering mother (and I have met hundreds, probably thousands) who desired the removal of her child.
- note 3: a district officer is mandated to visit and offer alternatives.
- note 4: among those alternatives is to instigate proceedings against the father for maintenance – action that would immediately place him under law, as a guardian/parent of the child by the definitions in the *Child Welfare Act.*
- note 5: all these aids must be rejected by the mother. How can she reject them if they were never offered? How can any adoption worker know that she has rejected them if they don't ask?
- note 6: all this must happen ***before*** an adoption worker even prepares papers!
- note 7: the above advice on work practice for adoption processes, states that every assistance must be given to enable the mother to retain and care for her child.

This advice was tendered to all adoption workers by the Department in the 1950s and was never changed. These writings represent the "mores of the time". So the excuse put about by adoption workers that it was 'the mores of the time' that drove their cruelty in obtaining adoption consents, and drove them to defraud fathers out of proceedings, is completely at odds with the writings of the time, even among their own profession.

Furthermore, this same practice manual made it plain that the law required the social worker to instigate proceedings leading to the identification and whereabouts of the father of the child, in order to extract maintenance:

> *"When a deserted wife, or the mother of an illegitimate child, receives an allowance under Section 27 of the Child Welfare Act, she is required to give control of any maintenance order against the father of the child to the Department. If such orders are not complied with, application is made to the Court for enforcement. At the Metropolitan Children's Court an officer attends daily to present evidence in support of such applications. At Courts other than the Metropolitan Children's Court this work is undertaken by a Field Officer."*
>
> **Deserted Wives and Children Act 1958**

So, putting together the *Child Welfare Act* with these work practice guidelines the law required social workers to go through the following process:

(i) Seek monies from the father of the child to cover pregnancy and hospital expenses.
(ii) Grant the mother assistance in finding gainful employment, accommodation or other helps while she is pregnant, in order to facilitate the retention of the child with its mother post-pregnancy.
(iii) Notify the courts that a request is being made for maintenance from the father of the child.
(iv) Organise with Government Departments, the payment of parental allowance to the mother if she is unable to find employment.
(v) Liaise with Government departments to determine control of parenting allowances should maintenance be successfully sought from the father.
(vi) Assist in finding suitable accommodation for the mother and child should this be an issue.

Nowhere in social work manuals is it mandated that any social worker should pursue adoption as an option unless it is clear that

(i) the mother expressly requests this
(ii) the mother has rejected all alternatives
(iii) after rigorous search it is discovered that there are no other available near relatives of the child who can offer assistance to maintain the child either with its mother or within the biological sphere – including the father and his family.
(iv) the father has indicated his desire to see his child adopted.

It follows, that only after all reasonable steps had been taken to find a 'near relative' and to alert them to the plight of the child, should any non-biological adoption be even considered. Adoption proceeded upon notification to the Minister and the Department Director, that a child had either been abandoned or was in all reasonable likelihood, going to be neglected. How could this be so, if reasonable steps to find next-of-kin had not been taken?

Furthermore, adoption workers were mandated to find "a match" for the child, according to the biological and social information given to them by the mother. What better place to look

for such a match than among the mother's and the father's biological kin? So why were adoption workers sniffing around among strangers trying to find dubious match-ups for the child's natural-born circumstances, when a whole range of probable match-ups were readily available without much search, among the child's peripheral biological kin?

Adoption workers are quick to claim overwork as an excuse for sloppy record-keeping, and other less-than-optimal work-practices: here is an obvious short-cut for the tired overworked adoption consent-taker, avoiding all the drudgery attached to the difficult task of matching a child to prospective adopters. Yet adoptioneers never availed themselves of this obvious option, despite the problem of 'overwork'. In fact, numerous documented examples exist, where the adoption worker did everything they could to oppose a 'near-relative' adoption. **(67)**

The entire controversy around adoption centres on this single point: did those children who were adopted meet the legal definition of 'neglected' and 'abandoned' by their extended biological kin, or were adoption workers artificially creating the appearance of neglect and abandonment, through coercive and fraudulent work practices?

If a child be not authentically neglected and abandoned, with all the evidence of that neglect meeting the requirements of a court, then that child should never have been adopted outside the sphere of its legally defined "near relatives."

Surely, it is one of the most basic functions of a civilised society, to do everything in its power to ensure children are, all things being equal, kept together with the womb that bore them. Nothing is more basic than maintaining lineage. Nothing is more primal to a human being than truth in identity.

Conclusion

The deduction to be drawn from this paper is fairly straightforward.

(1) All the evidence indicates adoption workers, as a matter of standard workplace practice, cut fathers out of the process when procuring consents for adoption.
(2) *The Child Welfare Act, The Adoption Act, The Children Equality of Status Act* and *The Family Law Act* certainly appear to confer onto fathers guardianship status.
(3) This status should have been taken into account by adoption workers, when procuring consents for adoption.
(4) On those occasions when a father has challenged the adoption of his child in a court of law, he has been able to invoke those laws listed in point 2 above, and won. He has also been able to apply to the court, in equity, and win custody of his child.
(5) Fathers have therefore been defrauded of their rights and responsibilities over their children.
(6) Evidence indicates that adoption workers knew, or should have known that the law required fathers to sign adoption consents by way of their guardian status under the law.
(7) Therefore, adoption workers who have defrauded fathers of their rights are culpable under section 91 of the *NSW Crimes Act*.

Adoption workers have offered nothing by way of explanation for their behaviour apart from the repeated distraction argument that they were "beholden to the mores of the times" – it is the same sort of excuse often raised by Adolf Eichmann and others who commit crimes against humanity.

Ultimately however, Australia is governed not by social mores, but by the rule of law. In fact, often concrete laws are put in place to keep a check on fluid social mores.

The litmus test here is this: if by any inquiry, a case can be found where an adoption worker has failed to comply with all that is required for the best interests of the child, as legislated under *The Child Welfare Act, The Adoption of Children Act, The Family Law Act, The Children Equality of Status Act,* or any other relevant statute, then that adoption worker has a case to answer, irrespective of the passage of time.

If by Parliamentary Inquiry or any other investigation, it is found that the adoption industry has systematically failed its duties under those relevant acts, then the adoption industry has a case to answer.

With innumerable case studies laid open in the NSW Adoption Inquiry and other state parliamentary inquiries, with (at time of writing) almost 300 submissions to the 2011 Senate Inquiry detailing abuse of parents by adoption workers, it would seem the evidence is unassailable: multiply adoption workers of the past century have a case to answer under section 91 of the *NSW Crimes Act.* The evidence would certainly suggest that coercion, force and fraud were frequently used in the process of removing babies from their parents for the purposes of on-selling that child to a prospective adopter.

We have come to a point in our nation's history, where we recognise the immorality of forced Aboriginal removal of children, and the forced child migration policies of the 40s, 50s and 60s.

Yet, these things were at the time legal.

It seems incongruous that we continue to tolerate flimsy excuses from those who broke the law while building their careers as Australian baby-traders.

Mothers were coerced. Fathers were defrauded.

The passing of time does not diminish the requirement for justice. This issue has gone far beyond a mere apology. "Sorry" just does not cut it any longer. These people are ***not*** sorry. This is evident by their continued re-abuse of their victims each time these baby-traders attempt to minimise their illegal actions and the debilitating effect those actions have had on their victims – the estimated 300,000 removed children, the 300,000 dispossessed mothers, and approximately 150,000 dispossessed fathers who actively sought to intervene during the stealing of their offspring.

At the time of writing, this issue is in the hands of the Senate, a study at Monash University, the Australian Institute of Family Study, and others. Each will receive a copy of this analysis.

The question remains, will these institutions continue the abuse and re-abuse of Australian victims of adoption, or will these institutions use their power to lay open publicly, once and for all, the truth of what is probably Australia's worst human rights abuse – the stealing of over 300,000 mostly white babies for the sake of a handful of adoption worker careers?

The evidence is in. The victims have waited long enough.

One final word …

In 1998, while working as a researcher at NSW Parliament House, I chanced upon the *Animal Welfare Code of Practice No. 2*, a document that regulates the housing and trade of pets. It is an interesting code to look at for comparison:

> *"11.1: Puppies and kittens under 8 weeks of age should not be offered for sale …"*
> *"7.3: Juvenile birds unable to feed themselves should not be traded …"*
> *"7.2: Birds traded should not be misrepresented as to origin or breeding history …"*
> *"7.5: Birds known or suspected of being obtained illegally should not be traded."*

You wouldn't do it to a dog.
You wouldn't do it to a cat.
You wouldn't even do it to a bird.

So why did you do it to me?
Why did you steal my daughter?

Footnotes

1. Adoptees for open records are an absolute internet phenomenon. Just google "Adoptees for open records" and your search page will light up like a Christmas tree. It seems one of the things that makes adopted people most angry is the sealing of records. The phenomenon is most noticeable in the USA where the majority of states still have closed records. The Bastard Nation website seems to be indicative of the anger that is prevalent among adopted people on this issue.
2. The Sydney Post Adoption Resource Centre (PARC) perpetuates the "birth-mothers need privacy" canard at www.bensoc.org.au/uploads/documents/writing-to-birthmother-nov20061.pdf . A strong counter-argument from a first-mum in the USA is given at: http://birthfamily-search.adoptionblogs.com/weblogs/title-702
3. www.adopting.org/pastpolls.html has some very interesting poll results – especially for a website that is mostly frequented by prospective adopters and especially for a country where records are by-and-large closed. Example poll results: *Should Adoptions be open?* – only 4% voted 'no'. *At what age should adoption be discussed with adoptee?* Only 9% said an age beyond 5 years old. 44% agreed a child should be reclaimed if fraud was involved. 79% said the media's coverage of adoption was below-average or unacceptable. *Should Baby T be returned to birth-mother?* 45% Yes, 29% No, 26% don't know. 39% actually agreed that a birth-father always has a right to his child even after loss through adoption, if fraud is proven. (Remember, these are adopters answering these polls!) Only 4% of respondents believed Social Service professionals had the ability to make competent adoption decisions. 80% of respondents agreed that contact between adoptive families and natural families is a positive thing. Only 5% felt contact was not needed. 42% agreed that contact should be mandatory! 47% believed the title "Birth-mother" was not the best description of the relinquishing mother. 43% preferred 'Biological Mother' or 'Natural Mother' – while 43% liked 'birthmother' – again, remember, this is adopters speaking here. 54% believed families of birth and/or adopted people are not sufficiently respected in adoption circles. 67% wanted open records regarding donor sperm.
4. For example, the best that McDonald and Marshall could do was describe fathers as "a presence, however insubstantial", "the man who impregnated the birth mother", "birth father: the term implies a presence leading up to the birth – often this was not the case". *The Many-sided Triangle* Melb University Press 2001, pages 78 and 79.
5. For example: Macdonald and Marshall; *The Many-sided Triangle* Melb University Press 2001. page 78 – chapter 4 entitled 'The Shadowy Fathers.' Also Mason 1995: *Out of the Shadows – Birth Fathers' Stories.*
6. From *The Many-sided Triangle* Melb University Press 2001. page 78: "The father of the ex-nuptial child could just disappear." Also quoted in the same section, Mary Mason from *Out of the Shadows* page 10, where fathers are referred to as "roving inseminators". Further descriptions of fathers include "uncaring, disinterested and perhaps even using women". (McDonald/Marshall page 80, quoting Meggitt).

7. Cicchini (1993) found that 77% of the Australian fathers in his study had taken active steps to seek information about their offspring lost to adoption. Gary Clapton, in his book, *Birthfathers and the Adoption Experience*, reports the following on pages 34 and 35: "My own extensive (worldwide) inquires have discovered only one other study (regarding birthfathers) – Cicchini 1993 carried out in Australia. … A central finding was that a desire to search was a common feeling … The findings … represent the first insight into not only the behaviour of birth fathers but also their thoughts and emotions … A large majority of the men in [this] Australian study had experiences of both the pregnancy and adoption. A majority had minimal or no say in the adoption and in relation to this, their feelings of exclusion were strong. 83% did not see or touch the baby but 60% said they would have liked more contact with the baby. In the weeks and months immediately after the birth and adoption, many reported thinking about the child frequently … Over 75% of the men endorsed the statement: 'There is part of me missing.' … 77% had taken active steps to search for the child. Nearly all the men in this latter group said the reason for searching was to 'ease my mind my child was ok.' Most of those who were searching did so because they wanted to know what the child looked like. … Cicchini … concluded that, 'The most significant finding is that the relinquishment experience does not end at the time of the adoption but has enduring effects throughout life … These effects arise most clearly decades later in a desire to be reunited with the child and seek assurance that the child is alright. (Cicchini 1993, page 18) … There is much in this work that parallels the emotional and psychological experiences of birth mothers, eg: the persistence of feelings of distress and loss." Above extended quote is from Gary Clapton, *Birthfathers and the Adoption Experience*, published 2003 by Jessica Kingsley Publishers London. Pages 32 – 36.
   This study by Cicchini was published in 1993. It was an Australian study. So it is an utter disgrace that almost 20 years after these men were interviewed the Australian social work fraternity, would be still putting out the myths that fathers didn't care for their removed offspring, that they 'got away with impregnating their girlfriends', that they were predatory upon the girls that fell victim to the Australian adoption industry, and so on. That the Australian adoption fraternity is still dismissing these obvious findings from studies like that of Cicchini, is indicative of an industry that has not a sliver of respect for the truth, being only interested in finding scapegoats for the industry's unconscionable behaviour.
8. The following interview from the ABC program 'Talking Heads' features Simon Townsend and his lost daughter talking about each other – transcript from http://www.abc.net.au/talkingheads/txt/s1430162.htm
   PETER THOMPSON: Well, as time marched on, there was to be another quite dramatic moment in life. We're going to take a look at that now.
   SIMON TOWNSEND: I remember the first night in Long Bay jail and I opened a big box of letters. And one letter was from a former girlfriend, who said, "I am pregnant." And that was my daughter Lisbeth's mother. I knew she was a girl. I did not know her name. Her mother adopted her out. And then in 1992, the laws changed about adoption. I said to my new second wife, Rosanna, "I'd like to meet her if she's around." So, eventually I met my daughter, a daughter I had not seen in 24 years, and she turned out to be fabulous. And Lisbeth became integrated into our family.
   LISBETH: I'm so lucky and just blessed that the experience has been so happy, so positive from the very beginning.
   PETER THOMPSON: Let's reflect on Lisbeth for a moment, Simon. It must have been one of the high points of your life to meet her.
   SIMON TOWNSEND: It was unbelievable. I met her for the first time through a letter and we agreed to meet in a restaurant. And I chose a very, very expensive restaurant because I'd never bought her a meal in her whole life. So, I thought, "At least, I owe her a nice meal." So, we met in a really classy restaurant and the moment she walked in the door, I knew who she was.

PETER THOMPSON: And ironically, she had been on 'Wonder World'.
SIMON TOWNSEND: Yes, it was amazing. She told me, she said, "You wouldn't remember this, but I've actually been on your show." So, we searched back through the old tapes and actually found it. It was only, it was a story about her being in a Miss Beauty contest at age 14 or something. And there's this shot of her for about 15 seconds.
PETER THOMPSON: So, nothing occurred to you at the time?
SIMON TOWNSEND: So, one day I was sitting there watching my own show, and I see my own daughter and she's sitting at home watching herself on television. Neither of us know that we are related.

9. For an article on Tony Abbott adoption travails, see: http://www.familykb.com/Uwe/Forum.aspx/adoption/3909/OZ-Abbott-isn-t-a-birth-father-after-all

10. New South Wales Legislative Council Standing Committee on Social Issues, Inquiry into Past Adoption Practices 1950 to 1998. Final Report entitled *Releasing the Past.* Report No. 22 published December 2000. There are also numerous interim reports, most notably, *Report Number 17: Interim Report on Inquiry into Adoption Practices – transcripts of evidence from 27 August to 19 October 1998.* Printed November 1998. Other notable interim reports include *Report Number 21: Interim Report Number 2 on Inquiry into Adoption Practices – transcripts of evidence from 16 June to 29 October 1999*. Print order June 2000.

11. Apart from myself, Peter Stebbing, a Mr James Wade and a witness named Steve, all gave oral testimonies to the NSW Inquiry.

12. [redacted]

12a. At the back of the NSW Adoption Inquiry report, many men are listed as having put in submissions – Cameron Horn, James Wade, Peter Stebbing, P Quinn, S Barnes, J Thomson, S Bender, A Bodman, K Limby, J Wimble, P Carroll, S Porter, W Hyland, W Christian, S Knowles, E McMahon. Admittedly not all would be fathers of children lost to adoption, but a good many of them would be. A number of men in the submission list who are known to the author to be either adoptees or spouses of mothers have not been included in this footnote.

13. The NSW Parliamentary report *Releasing the Past*, pages 111 and 112 documents numerous accounts of fathers being shunned by adoption officialdom. These examples are fairly representative of the treatment fathers received.

13a. Adoptee and former Principal Officer at the Post-adoption Resource Centre, Sarah Berryman-Armstrong, testified to the NSW Adoption Inquiry (*Releasing the Past* page 113,paragraph 7:103) that, “For these fathers, the discovery that their name was not recorded on the birth certificate despite the request of the … mother was very upsetting. It is distressing for these men to discover that they were not named on the birth certificate … Sarah told the committee that many men are contacting PARC to get information about their child.” So – if fathers didn’t care, if fathers were just happy to “get away with it”, why are they upset they are not identified on the birth certificate? Why are they contacting PARC trying to find out about their removed child? It is not guilt. It is not morbid curiosity. It is grief – pure and simple. Fathers are people too.

14. Gary Clapton’s study & writings include: *Birth Fathers and their Adoption Experiences* (Ph.D for Edinburgh University); *Adoption and Fostering in Scotland.*

15. Celia Witney’s study on fathers of adoptees, formed the basis for her Ph.D (unpublished) at Essex University. Title: *Issues of Fatherhood: a sociological exploration into the experiences of men whose children were lost to adoption.* See also: *Over Half a Million Men – an exploration into the experiences of fathers involved in adoption in the mid-20th century in England and Wales.* Published through

the Journal of Social Work. See their website: www.jsw.sagepub.com/content/5/1/83.full.pdf

16. Michelle Stromberg writings include: *Birth Fathers and the Adoption Experience.*
17. Gary Coles writings include: *Ever After – fathers and the impact of adoption; Invisible Men of Adoption*, and *Transparency: seeing through the legacy of adoption.*
18. Rohan McEnor – A Father Speaks, Origins NSW website. Also, *Rebecca's Law – sojourn of a stolen father.* Also: *God's Will or God Swill? A Biblical perspective on adoption.*
19. Having made this statement believing it to be true, a subsequent google search turned up only one site dedicated to so-called 'birth-father': http://groups.yahoo.com/group/Birth_Fathers_United/
20. See, for example, the pages dedicated to "A Father Speaks" at the originsnsw and Origins Australia websites.
21. Statistics for this portion have been taken from the *Aust Bureau of Statistics. Yearbook 1974*. See: www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/1301.01974?OpenDocument
21a. In the mid-90s section 91 was repealed and the law now relies on section 87 to prosecute such occurrences that happened beyond 1995.
21b. The full text of section 91 is as follows:

> "*Taking child with intent to steal etc:*
> *91: Whosoever: By force or fraud, leads or takes away, or entices away or detains, any child under the age of 12 years, with intent to deprive any person having the lawful charge of such a child of the possession of such a child, or with intent to steal any article upon or about the person of such a child, to whosoever such articles may belong, or receives or harbours any such child, knowing such child to have been so led, taken, enticed away or detained, shall be liable to penal servitude for 10 years, provided that this section shall not extend to any person who shall in good faith, have claimed a right to the possession of such child."*

21c. The principles enshrined in Section 91 of the *NSW Crimes Act*, seem to be universally recognised. Almost the exact same wording can be found in the following statutes and legal commentaries from around the world:

- *Canadian criminal cases – annotated. Vol. 9 by W.J. Tremeear 1905.*
- *The Public General Acts: Vol. 1898, page 55 – Great Britain 1827.*
- *The Irish Jurist: Vol. 15 – page 327, 1863.*
- *A Treatise on crimes and indictable misdemeanours: Vol. 1 – page xxxvii by Sir William Oldnall Russell – 1826.*
- *The Statutes of the United Kingdom of Great Britain and Ireland page 199 by Sir George Kettilby Richards 1828.*
- *A Collection of the Statutes of Practical Utility, Colonial and Imperial in Force in new South Wales Embracing the Local Legislation from the year 1824 to the Date of Publication, by Alexander Oliver – Sydney Government Printer 1879, available through the National Library of Australia, record number 668110.*

21d. The word "coercion" was inserted into the opening phrase of section 91 by an amendment prior to the 1950s.
21e. *Encyclopaedic Australian Legal Dictionary*. Lexis Nexis resource.
22. The NSW Inquiry Final Report, has a reasonable summary of Australian adoption legislation from the pre-1939 period. See *Releasing the Past*, pages 9 – 12.
23. *Impact of past adoption practices – summary of key issues from Australian research. Final report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs* by Dr Daryl Higgins. Section 1.2, page 7.
24. Repeal of ***Child Welfare Act*** section 167 is referenced in *The Adoption of Children Act 1965*, section 1 and in the final portion listing amendments and repeals.
25. The progressive repeal of the *Child Welfare Act* is documented at:

http://www.legislation.nsw.gov.au/sessionalview/sessional/act/1987-58.pdf

26. ***Child Welfare Act 1939*** section 167 (D) was repealed in 1967 and replaced by the ***Adoption of Children Act 1965*** s26 which has very similar wording. The case for paternal guardianship within marriage was enshrined in 1975 by the Commonwealth ***Family Law Act 1975*** s63F(1), which unequivocally declared all fathers of legitimate children as legal guardians of the children within that marriage. The amendment to the NSW ***Adoption of Children Act 1980*** s26(3A) which commenced in 1984, referred specifically to the Commonwealth legislation to clarify that fathers married to the child's mother were indeed guardians and therefore required to consent to adoption. The ***De Facto Relationships Act 1987*** broadened this definition to fathers in *de facto* (non-married) relationships.

26a. *Child Welfare of NSW 1958 Social Work Training Manual* – as cited at www.dianwellfare.com/id14.html

This principle was established under the *Child Welfare Act*, by precedents set in the well known case of *Mace v Murray (NSW 1952)*. As a result of this court action, 17 regulations were attached to the *Child Welfare Act* to govern adoption worker practice in the 1960s and to guard against the possibility of unwed mothers being exploited by the adoption industry.

In law, the signed consent merely acted as the legal instrument by which the Director of the relevant Government Department or the Principal of the relevant private adoption agency could be authorised to find suitable adopters. Under the *Child Welfare Act* up until 1967, the mother remained as the parent, until suitable adopters had been found.

This was the reason why a 30 day revocation period was introduced in the 1965/67 Adoption Act – it reduced the time the mother had to revoke her consent from the numerous months it took for the Adoption Order to go through the Supreme Court, down to a mere 30 days.

33. A second clause in the *Child Welfare Act* that may well have been breached in similar circumstances to Section 33, is Section 42 (1):

> *The person in charge of a lie-in home shall not permit any child to be taken from such home unless in the charge of the mother of such child, without first obtaining written consent of the Director (of the Department of Child Welfare).*

The fact that the mother may have signed a consent and left the lie-in home does not entitle the lie-in home to move the newborn to a hospital or foster home without the mother's permission and/or without the father's knowledge, within the 30 day revocation period, since the mother remains the primary guardian of her child and the father remains a "parent" as defined in the *Child Welfare Act* (prior to 1967).

Cases of such breaches are rife in the testimonies to the various State Government inquiries into adoption. For example, see pages 111 to 131 of *Releasing the Past* Report No. 22 published December 2000.

34. Repeal of section 33 of *The Child Welfare Act* is documented at: http://www.legislation.nsw.gov.au/sessionalview/sessional/act/1987-58.pdf

35. Clauses and definitions here cited from The *Child Welfare Act* show that a biological father of an illegitimate (ex-nuptial) child was liable to pay maintenance for the child (section 59 previously cited) and therefore within the definition of a 'parent' (section 4 above) and a 'near relative' (section 58 previously cited). Therefore the biological father of an illegitimate (ex-nuptial) child falls under the definition of persons who must sign an adoption consent (section 167 previously cited). Section 167 of the *Child Welfare Act* was the only portion to be repealed by the new Adoption of Children Act which passed through the NSW Parliament in 1965 and was proclaimed in 1967. Both the maintenance clauses from the *Child Welfare Act* and its definition of 'parent', remained in force until the 1980s. Even after 1967, the Adoption Act was of nil-effect until an adoption consent had been signed. Therefore, adoption workers acted illegally by ignoring the ex-nuptial father's rights and responsibilities towards

his ex-nuptial child when conducting proceedings leading up to an adoption consent being signed. Once an adoption consent had been signed by the mother, the ex-nuptial father still remained a person required to sign an adoption consent even under the Adoption Act section 26, by virtue of the fact that prior to the mother's signed consent he had already attained the status of 'parent' by force of the definition contained in the *Child Welfare Act*. Indeed, after the declaration in 1976, of the NSW *Children Equality of Status Act*, section 6, the necessity of the father to sign an adoption consent was even less ambiguous, as will be discussed later in this paper. Other states and New Zealand had already proclaimed legislation identical to the NSW *Children Equality of Status Act* – Victoria for example, had enacted such a law in 1974.

36. 

37. *Status of Children Discussion Paper 1975* page 1.
38. *Children Equality of Status Act 1976* – secondary title: "An act to remove the legal disabilities of ex-nuptial children."
39. 
40. The McLelland Committee Report is critically evaluated at: http://www.originsnsw.com/nswinquiry2/id15.html
41. Attorney-General Frank Walker in NSW Legislative Assembly Hansard 16 November 1976. Debate for second reading of the *Children Equality of Status Act 1976.*
42. Specifically Mr Clough, (*NSW Assembly Hansard* 18 March 1980 page 5387), Mr Maher, (*NSW Assembly Hansard* 18 March 1980 page 5389 and notably page 5392) Mr MacIlwaine, (*NSW Assembly Hansard* 18 March 1980, page 5402) and Mrs Grusovin (*NSW Council Hansard* 26 March 1980 page 5918) all report extensive lobbying from Margaret McDonald.
43. http://www.legislation.nsw.gov.au/fullhtml/inforce/act+23+1965+cd+0+Y#pt.4-div.2-sec.26

44. Analysis of the McLelland Committee, including their attitude and response to the *Children Equality of Status Act* was given in writing to the NSW Inquiry. The transcript of that submission in its entirety, can be found at: http://www.originsnsw.com/nswinquiry2/id15.html

45. The author's oral submission to the NSW Adoption Inquiry can be found at: http://www.parliament.nsw.gov.au/prod/parlment/Committee.nsf/0/ef420d086362b77fca256cfd002a63c1/$FILE/Interim%20Committee%20Report%2021%20June%202000%20-%20Inquiry%20into%20Adoption%20Practices%20in%20New%20South%20Wales.pdf
Or Google search: "Cameron Horn" "Stolen White Generation" – using the inverted commas. Scroll to document page 120 or pdf page 130, allowing for 10 pages of introduction.

46. Full transcript of the author's submission to the NSW Adoption Inquiry, outlining father's rights in adoption practices, can be found at: http://www.originsnsw.com/nswinquiry2/id16.html

47. The author gave a personal briefing of his own case, and the case for father's rights, in a one hour face-to-face meeting with Jan Burnswood, in her office, while working at NSW Parliament in 1998/99.

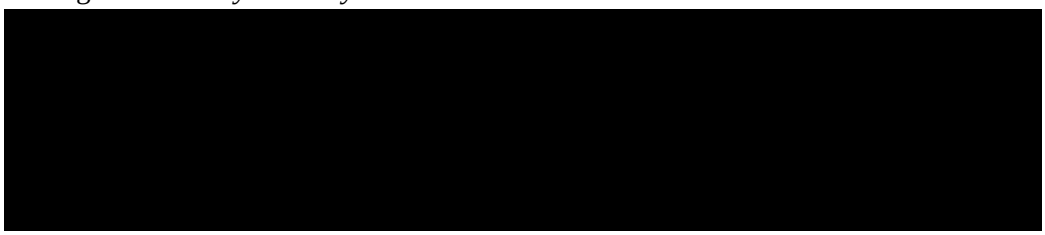
48. 

50. *Releasing the Past* – NSW Legislative Council Standing Committee Report 22, December 2000, Inquiry into Adoption Practices, page 131, paragraph 8.44. The footnote to this, states that the principle derives from Finlay and Bisset-Johnson, *Family Law in Australia,* Butterworths, 1972, page 264. This predates the *Children Equality of Status Act* and the Commonwealth *Family Law Act,* which together, secured an ex-nuptial father's legal relationship with his ex-nuptial children. It therefore follows, if the legal principle by which a father can apply for custody of his ex-nuptial children existed prior to the 1975 *Family Law Act* and the 1976 *Children Equality of Status Act,* then the principle is firmly established and is only made stronger by the two subsequent laws. If an ex-nuptial father has a position in law where he is able to apply for custody, then he is in a position in law, to apply for custody as an alternative to adoption, and therefore is in a position in law, to oppose the adoption – thus making him a class of person with an interest in the future well-being of the child and therefore under the *Child Welfare Act,* a guardian of the child, necessitating his signature on an adoption consent according to Section 26 of the *Adoption of Children Act.*

51. Victorian Reports/Judgments/1977 VR/G v P - 1977 VR 44 - 13 August 1976. Page 4 of judgement summary.

52. Justice Waddell's reasoning in limiting the general guardianship of an ex-nuptial father such that the guardianship does not apply in the signing of adoption consents, has never been tested or challenged, since in the case Waddell awarded custody to the father anyway. Should Waddell's reasoning be challenged, it could be easily

contended that the Attorney-General's statements when passing the *Children Equality of Status Act* indicate that a father's guardianship should be applied to the interpretation of **every** legal instrument, including an adoption consent. The distinction being made in the *Adoption Act* is merely there as a matter of convenience in those cases where an ex-nuptial father is not available, cannot be identified or for some other reason is unable to be consulted. In these cases, the *Adoption Act* has created a provision where the mother can act singularly. But in cases where any guardian is available, even if that guardian is the natural father, then that guardian is to be included in the signing of the consent. The statements of Attorney-General Frank Walker in declaring the *Children Equality of Status Act* as all-encompassing, have never been presented as evidence in court, that an ex-nuptial father must sign an adoption consent. Had such statements been presented, I feel Waddell's opinion would be found to be in error. Such an opinion was reinforced in the summing up during the case *Hoye v Neely 1992.*

53. 

54. *Releasing the Past* NSW Legislative Council Standing Committee on Social Issues, Report 22, December 2000, page 121.

55. *Interim Report on Inquiry into Adoption Practices: Transcripts of Evidence*, NSW Parliament Legislative Council Standing Committee on Social Issues, 27 Aug 1998 to 19 Oct 1998, Report Number 17 November 1998, page 88.

56. http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R61CHP3

57. http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R61CHP3

57a. *Releasing the Past* NSW Legislative Council Standing Committee on Social Issues, Report 22, December 2000, page 121, proposes a figure of less than 2% of fathers who lost children to adoption, were ever recorded on the birth certificate, despite his desire to be recorded and despite the mother supplying his particulars. In 1996, with the advent of the new *Adoption Information Act* BDM were inundated with fathers getting their names put onto the original birth certificates of their removed child.

58. In the case of the author, there was a ten day gap between the birth of my first daughter and the signing of the adoption consent by her mother. Consequently, there were ten days when I was legally, biologically, socially and officially registered as the father of my child. My name appears all over various documentation. My identity was no secret. My presence and opposition to the adoption loom large over all proceedings. Even so, it was an immense shock to both me and the mother of the child, to find out 16 years later, that my daughter's original birth certificate stated "Father Unknown". This is a lie. It is abusive. It is an inaccurate record. It cost over $100 out of my pocket to rectify. It would have resulted in untold trauma had my daughter seen this record before I was able to correct it. The reason given to me that I was not put on the birth certificate was because I had not signed the adoption consent. This is preposterous. Because I was opposing the theft of my daughter, we are both further abused and disabled from any possible future reunion, by jackbooted officialdom. Furthermore, if anyone cared to look, there is only one line available for a signature on the adoption consent form. So a second signature cannot be added even if one had wanted to sign! And in all cases, the adoption worker was out of the room with the baby, like a rat up a drain pipe once the adoption consent was signed. They certainly were not going to go and prepare a second document for the second required signature. So when a father is trying to be a father and protect his offspring from this blatant theft, he is further abused and disabled by these pusillanimous practices that do not in any way square with the laws that are supposed to govern the system.

58a. In my own case of loss through adoption, the details of my fatherhood over the child were most definitely recorded in the birth details paperwork filled out by the mother of our child. Therefore, my identity has been actively expunged from the record by persons unknown. This is an act of vandalism towards an official government record, an indictable offence against the Registrar and a personal civil offence towards myself, the mother and my child.

59. http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R61CHP3

60. http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R61CHP3

61. See: Hon J C Maddison, Minister of Justice, *New South Wales Parliamentary Debates, (Hansard)* 5 December 1973 at 17 1. Cited in http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R61CHP3 - paragraph 3.26.

62. *Registration of Births Deaths and Marriages Act 1899*, section 37b.

62a. *Registration of Births Deaths and Marriages Act 1899*, section 38 and 39.

62b. For example, *The Child Welfare Act 1939*, section 105/10 states that if a court adjudges a person to be the father, no further proof is needed. Section 121/8 states that "the onus shall be upon the applicant to prove that he is not the father of the child." See also footnote 59.

63. As noted at: http://www.lawlink.nsw.gov.au/lrc.nsf/pages/R61CHP3

64. The following analysis and expose of social worker writings is gleaned from the work of mostly Di Wellfare and Origins Inc website. I do not pretend for one moment that any of this portion of the analysis is original, but merely placed in the new context of considering a father's rights. While this portion of the analysis has been covered by others, it has received scant acknowledgement in political and media circles and so bears repeating.

65. Thus far in this paper, I believe it has been established that adoption worker practice diverged a long way from them being "beholden to the social mores of the time" as those social mores are reflected in the law, the Hansard and the court decisions of the times. This analysis now moves on to see if the authoritative writings within the profession itself have anything to say about the accepted mores of the time, about thought within the profession on these subjects, and whether there was a sub-culture exclusive to adoption workers, that created a set of mores out of step with general culture.

66. *Interim Report on Inquiry into Adoption Practices: Transcripts of Evidence*, NSW Parliament Legislative Council Standing Committee on Social Issues, 27 Aug 1998 to 19 Oct 1998, Report Number 17 November 1998, page 84, last paragraph.

67. The Teri Hay documentation in appendix 5 indicates a mother and father trying to retain custody of an ex-nuptial child and the adoption worker's tactics in trying to prevent it.