

LEGISLATIVE ASSEMBLY LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Responses to Historical Forced Adoptions in Victoria

Melbourne—Wednesday, 24 February 2021

MEMBERS

Ms Natalie Suleyman—Chair

Mr James Newbury—Deputy Chair

Ms Christine Couzens

Ms Emma Kealy

Ms Michaela Settle

Mr David Southwick

Mr Meng Heang Tak

WITNESS

Professor Nahum Mushin.

The CHAIR: We will start the formal proceedings. I would like to acknowledge the traditional owners of the land on which we are meeting. I pay my respect to their elders past and present and the Aboriginal elders of other communities who may be here today.

I declare open the public hearings for the Legal and Social Issues Committee Inquiry into Responses to Historical Forced Adoptions in Victoria. I welcome Professor Nahum Mushin here, and I would also like to introduce the committee members. My name is Natalie Suleyman, the Member for St Albans. To my right is James Newbury, MP, the Member for Brighton. To my left is Christine Couzens, MP, the Member for Geelong, and also Meng Heang Tak, MP, the Member for Clarinda.

All evidence taken by this committee is protected by parliamentary privilege. Therefore you are protected against any action for what you may say here today, but if you go outside and repeat the same things, including on social media, these comments may not be protected by this privilege. All evidence given today is being recorded by Hansard, and you will be provided a proof version of your transcript so that you can check it as soon as it is available. Any transcripts, PowerPoint presentations or handouts will be placed on the Committee's website as soon as it is possible, unless confidentiality has been requested.

The Committee is very much interested in hearing from you about the issue of forced adoption and in particular what outcomes you would like to see from the inquiry. I now invite you to proceed with a brief opening statement to the Committee, which then will be followed by questions from committee members. Thank you for being here.

Prof. MUSHIN: Thank you. May I similarly acknowledge the original and traditional owners. Thank you very much. I am actually no longer a professor. I retired at the end of last year, at least theoretically, although my diary tells me that that is far from actual. Just by way of background, I was a judge of the Family Court for 21 years between 1990 and 2011, and my work in forced adoption started by my appointment by the then federal Attorney-General Ms Roxon in June 2012 to chair the Federal Government's forced adoption apology reference group, followed by the chairing of the forced adoption implementation reference group in 2013 to 2014. I was then a consultant to the Department of Health in 2014 and a consultant to the Australian Psychological Society from 2014 to 2015. I have been an adjunct professor of law at Monash University until the end of last year, teaching ethics at graduate level and supervising theses, mootings and CLCs and that sort of thing. So that is my background experience. I might also say that I have dealt with several overseas countries with regard to the issues of forced adoption, and in particular I am presently dealing with the Republic of Ireland, which is in the process of hopefully going to an apology, and they are interested in the Australian experience. I think it is true to say we lead the world in this, and the fact that this committee is doing this work I think is absolutely laudable.

I was going to not seek to make an opening statement, because I thought I would simply leave it to the Committee to tell me what issues interest you, but given Ms Suleyman's invitation, perhaps if I could just sort of highlight what I see as being the issues. In my view the issues start with concrete measures. There were some that we introduced as a result of the federal apology, but there are others. For example, the government of the day did not agree with the recommendation of the implementation committee for a commemoration day. Now, that is an issue I think which is really worthwhile. The reasoning for that, which I, with the greatest of respect, found difficult to understand, was that 21 March, which was of course the day of the federal apology, is also Harmony Day. For some reason it seemed to be inappropriate to have two commemoration days on the one date. To my mind, as I said, I find that difficult to understand, but if the principle is accepted, perhaps the committee would like to consider another day. I must say I think 21 March is the obvious one, but that is ultimately a matter for you.

The next issue I think is of monetary compensation, redress—all of that. I think this is an important issue for the sector. There have been a couple of Supreme Court cases—one in Queensland and one in I think New South Wales, both of which were unsuccessful—where people affected by forced adoption sued the local state governments and lost. The main reasons for losing were, first of all, that they had waited too long—it is the equitable doctrine of laches, as we know it in the law—and also that the evidence was no longer available after so many years going back into the 1940s and 1950s. My experience is that damages or reparations or redress—whatever you want to call it—is regarded as being very important by a large part of the sector, and I think it would be a significant acknowledgement in concrete terms, which I think would be very well accepted. I invite any questions in due course as you might see them.

I think that there is a really significant problem with the whole of the legislation in forced adoption. I think our jurisdiction is so fractured as to be really unthinkable in the 21st century so that of course a child adopted in Wodonga and a child adopted in Albury are adopted pursuant to two different laws, and that seems to me to be wrong. The laws are not all that much different, but they are different. As, for example, with family law, which obviously I know well, it is a national approach—I think it is strongly arguable that that is what we should have here in Australia. We have got six different laws and they are administered by the respective state courts, and they are not specialists in the area either. I am being entirely respectful to judges; I am not suggesting that there is anything improper or anything else like that. However, I think it is inappropriate.

I think that we should have a uniform law. Now, there are several ways of doing this. The first of them is for COAG to agree that all the states will enact identical legislation and leave it administered by the states. Now, that I think has an easy aspect to it because you are able to leave all the administration, the bureaucratic aspect of it—child services and all of those sorts of things—to remain in the same place, but they would be administered pursuant to one consistent law. On the other more complicated aspect of it, I think I am in a minority of one in Australia on this suggestion, but I will put it up to you anyhow, and that is for the states to refer their powers to the commonwealth and for the commonwealth to give that to—well, with what has happened with the Family Court just in recent days, that is another question—the family law system, which is administered pursuant to the relevant powers under section 51(xxi) and (xxii) of the constitution. It seems to me that that would have a very good resonance with family law because this really ultimately has to be about the best interests of the child, and Family Court and Federal Circuit Court judges working in family law are obviously expert in that field. My view is that this committee, with respect, should consider that. The first decision I suggest you have to make on this topic is whether you agree with the proposition that we should have a uniform law right through the country. From there, what you do with that is another matter. And as I say, there are alternatives to it. So that is my view about the legal structure.

There is one matter in the redress aspect that I did not address, and that is the statute of limitations. There is a good argument, I suppose, to repeal the statute of limitations for actions in respect of forced adoption, and while I support it, it seems to me that it would have no real, practical use, because of what I have said—that there have already been actions which have failed. The most important one is *Arthur v. State of Queensland [2004] QSC 456 (Austlii Series)*. That is the most significant of those actions. So yes, I think there is a good argument to repeal the statute of limitations in forced adoption areas, but I think in practice it has got a very questionable practical use to it.

I think one of the biggest problems is the birth certificates problem. I think that is regarded by the sector as being the most significant. Now, what is proposed and what has been very recently introduced in New South Wales of course is what is called an integrated birth certificate, which shows the parents and the adoptive parents—and I use that language deliberately; that is, you do not put an adjective before the word ‘mother’ for the person who gave birth to the child, and everything follows from that—so that the mother and father and siblings and the adopting family, the adopting parents and siblings, are also shown. I think the process of rewriting the birth certificate upon adoption to exclude the parents—the mother and the father—is wrong for a number of reasons. The most important of them is that adoptees want to know their roots, their background. My experience on the Family Court, for example, is that a child even wants to know a parent who is in jail for murder. It is not what they are like, but it is actually knowing what the background is, whether that be good or bad. So I think that should be abandoned, and I would very strongly recommend to the committee that that should take place.

Then you have got to consider whether you have the integrated birth certificate that New South Wales has introduced, which includes both families, or whether you have two separate birth certificates—one with the original family and one with the adoptive family, and the adoptee has the choice. But there is a third and really quite radical matter which I would like to raise with you, and that is that essentially you do nothing. That is, you start with a birth certificate which has the mother and father on it—and siblings, if it is not a first child—and that is there. That is the child’s birth certificate. Then for a child to establish as an adoptee that he or she is adopted, all that is necessary is to show the adoption order, just like you would show what is called a custody order, a residence order, at the Family Court to show a different status—that somebody else has parental responsibility, and so on. Now, I detect within the sector—and when I say ‘sector’ I mean the forced adoption area, those interested in the area and particularly those affected by it—that the essence now is changing. I think it is changing towards what I described as my last, radical suggestion.

The first thing I would say is you do away with the present system; that is, you do not change the birth certificate upon adoption and leave out the parents. That is in my view—with the greatest of respect—wrong; it is bad policy and it is inappropriate. That being said, where you go from there is another matter. Now I think I have probably addressed the issues.

The CHAIR: You certainly have.

Ms COUZENS: That is great.

The CHAIR: That is fantastic, thank you.

Prof. MUSHIN: I do not know whether you are interested—it is probably done and dusted—but there is the training that we did through the Australian Psychological Society. Are you interested in that?

The CHAIR: Yes, that was one of the questions that we were actually going to give you, but no, you are good. Go ahead.

Prof. MUSHIN: Well, is it useful for me to tell you about that?

The CHAIR: Yes, go ahead.

Prof. MUSHIN: Okay. Following the apology, there were concrete measures. One of the concrete measures was to apply money—and I cannot remember the details of it, but I do not think it matters—for the setting up of an education regime for mental health professionals for people affected by forced adoption.

This was done by the health department. They got me to—I think I was called a technical consultant for it; I think that was the right term—consult on it, but I needed to be very careful that I did not put myself in a situation where there was any conflict of interest. Particularly working in the sector, it is something one had to be quite cautious of.

So the APS was contracted by the health department to do this and they engaged me as a consultant to this project. Now basically it was, I think, three modules, all online. It was optional but it gave continuing professional development points, CPD points, so that was the attraction, and I know several psychiatrists who have actually done it and were very impressed with it. The first module was about forced adoption, to tell people about what forced adoption was like, and that was a compulsory first step. You had to pass; you had to answer questions at the end of it. You could not go to the next module unless you had completed the earlier one.

Then there were—forgive me, I cannot remember the detail; I could get it but I cannot remember the detail—I think two modules for different types of mental health professionals. I think psychologists and psychiatrists had their own module, and I think perhaps social workers and others another module. But that was the nature of the training. I think about 700 people—700 mental health professionals—completed it, and the feedback from it was very favourable. I was not involved in the part of the modules which required the expertise of mental health professionals. I was only there in the forced adoption aspect of it to ensure that that was faithfully regarded; that was my role. So that is basically it. I would welcome any questions.

The CHAIR: Thank you, Professor Nahum. Committee members, do we have any questions? Christine?

Ms COUZENS: Yes.

The CHAIR: Thank you.

Ms COUZENS: Can I just congratulate you on the work that you have been doing. It is quite extraordinary, and we really do appreciate your expertise coming into this inquiry. So thank you very, very much.

Prof. MUSHIN: Thank you.

Ms COUZENS: You answered a lot of my questions, but there was one that you were just talking about: the number of people that completed; you know, there were 700 that completed the education online. One of the things that we have continually heard is the lack of, I suppose, skilled counselling in this particular area. A lot

of women have gone to counselling but felt that the counsellor did not really have an understanding of the trauma and the experience that they had had, so I thought that was interesting, that if 700 took up that offer—

Prof. MUSHIN: I think that is right.

Ms COUZENS: that that sort of has not reflected—and I know we are hearing a limited number of stories, but it was just interesting.

Prof. MUSHIN: It is very interesting you should say that. During my various roles in forced adoption, I have been to every capital city either three or four times—there were a lot of points involved in it—and consulted with hundreds and hundreds of people. If there was one thing that came through in this area, it was precisely that, that the health professionals, the GPs—in fact in anticipation of this I was at my GP 10 days ago and I asked him. He knew something about it, but he had not done it—I hope he does not read this!

Ms COUZENS: He might now.

Prof. MUSHIN: I think he was typical. There was one big thing about that apology, that day on 21 March 2013, and that is that there was this leadership coup. That took all the air, all the oxygen, out of publicising it, and I think if there is one thing that has been a real problem here, it is that it has not been made—the whole area full stop—sufficiently public. It is not sufficiently out there. The statue which this government set up—it was about 18 months ago, I think, wasn't it?

Ms COUZENS: Yes, roughly.

Prof. MUSHIN: First of all, it is a magnificent statue. Secondly, the whole concept is absolutely admirable, and everybody should be doing that. I was told that there was a problem in Western Australia. They wanted to set up a commemorative seating bench in Kings Park, but they could not agree where to put it, and it did not happen. I do not know whether that has been corrected.

Ms COUZENS: I think it was resolved. There is a statue. It is not a bench, it is an actual statue, but yes.

Prof. MUSHIN: In any event, I think we have an ongoing major problem of ignorance in the community with regard to forced adoption. For example, the stolen generation is much better known than forced adoptions. Now, I can see the argument that that is more universal. My experience tells me that forced adoption has affected hundreds and hundreds of thousands of people. The influence of forced adoptions is enormous, and people do not understand the significance of it. Look, any means that you can find to further people knowing about it, I think, is really good.

It leads me, if I may, to one other point, and that is the role of adoptive parents. I do not know whether you have heard from adoptive parents.

Ms COUZENS: Yes, we have.

Prof. MUSHIN: I am putting on my family law hat here, and my family law hat tells me that in order to overcome dispute and resentment and all of those sorts of things, you have got to bring people together around a table and have everybody talk to each other. This is heresy, what I am about to say, in a significant part of the forced adoption sector, but until adoptive parents are brought into the tent and are part of this discussion, in my view, you will not resolve all of the generational issues that there are with regard to adoption. I know that a lot of mothers whose children were taken in awful, terrible circumstances have real resentment, but I think it is equally clear that the adoptive parents did not know what was going on. They were not party to this. They were innocent, and I think the evidence for that is overwhelming. All you have got to do is read the Senate report. It is a point that I have not raised, and I thought I would mention it. Does that answer your question?

Ms COUZENS: Yes. And going on from that, the annual commemoration of 'forced adoption day' or whatever it would be called, I think that is a great idea personally. How do you see that playing out, though? If the Committee makes a recommendation that we should have that day specifically set aside, whether it is 21 March or whatever, how do you see that playing out in the community and then how do you draw people to acknowledging this day and what it is for?

Prof. MUSHIN: It just occurred to me that with regard to the date, if you were doing it only in Victoria, you might do it on the day of the Victorian apology. I cannot remember that date. It is October or November, I think. It does not matter, but that date.

Ms COUZENS: I think it is October.

Prof. MUSHIN: One of the difficulties this committee has got of course is that you are restricted to the Murray River, and you cannot go beyond that. If an appropriate submission can be made to COAG and other states be brought in, that, it seems to me, is the only way that it can happen. I think it should be national and I think it should be on 21 March, and I think the fact that it is Harmony Day in fact is a good thing, which is what I raised at the time that I was being knocked back for that.

Ms COUZENS: Just say Victoria is the only state that is doing it. Do you think there still value in that?

Prof. MUSHIN: Yes, I do, and the reason that I do is, look, you might even create a tidal wave of people coming on board. I do not want to get party political here, but I think there are prospects of a couple of other states doing it. The positive way in which that would be received by the sector is quite fantastic, and they would be singing in the streets, I think.

Ms COUZENS: Great, thank you very much.

The CHAIR: Just on a final question.

Prof. MUSHIN: Please.

The CHAIR: What do you think a redress scheme might look like?

Prof. MUSHIN: I think it might look like the Royal Commission into Institutional Child Abuse, the same sort of thing. I mean, one of the difficult things is that the actual forced adoptions were not—and I use the word ‘perpetrated’ deliberately—perpetrated by government. It was government who had the legislation, but it was the way in which babies homes and various other players outside of government applied it. That is what caused the ‘forced’, because they were the ones who acted illegally, and I think the word ‘illegal’ is absolutely fundamental. This is, I have to say, outside my field of expertise, but a question of contributions by people—I mean, some of the churches regrettably have things to answer for. I should also note here that one of the outstanding issues, and it is in the Senate report and I think it might be one of their recommendations, is for other organisations—NGOs, doctors, nurses, babies homes, people involved directly in forced adoption—to also apologise. Now a redress scheme, I would suggest, might be able to be done coincident with that, but as far as the detail is concerned I think you would need to ask others.

The CHAIR: Lovely. No further questions? No.

Thank you very much for your in-depth evidence today. It has certainly been quite interesting to hear from you. Of course we thank you for taking the time to be here. The next steps for the Committee will be to deliberate all the evidence. We will be putting forward some strong recommendations to the Victorian Government and we hope to table a report before 1 July this year. Our secretariat will keep you updated with the progress and obviously the outcome of the Victorian Government response to our report. Thank you so much for being here.

Prof. MUSHIN: Thank you very much.

Witness withdrew.