In normal discourse between people, if one person wrongs another it is appropriate to offer an apology. Likewise, when a nation wrongs some or all of its people or those of another nation, it is appropriate to offer an apology. Australia has offered three apologies to its people in recent times. The first of those was to its Indigenous people, the Stolen Generations, for the wrongful removal of approximately 100,000 Indigenous children from their parents over many decades until the 1960s.\(^1\) The second apology was to the Forgotten Australians—approximately 500,000 children, including migrants, who grew up in institutionalised care.\(^2\)

The most recent offer of a national apology was to people affected by forced adoption.\(^3\) This essay outlines the process leading to the apology, elements of drafting of the document itself and issues that needed to be considered. The essential aspect of any public apology—the concrete measures—are examined and some ongoing questions are addressed. Finally, the question is asked: Where to from here?

**Background**

In late 2010, the Australian Senate referred an inquiry into former forced adoption policies and practices to its Community Affairs References Committee.\(^4\) The Committee, constituted by members of the Government, Opposition and the Greens, received a large number of written and oral submissions over a period of approximately 18 months. Its report was tabled in the Senate on 29 February 2012 (“Senate Report”; Senate Community Affairs References Committee, 2012).

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1. This Apology to Australia’s Indigenous Peoples was offered on 13 February 2008.
2. This Apology to the Forgotten Australians and Former Child Migrants was offered on 16 November 2009.
3. The National Apology for Forced Adoptions was offered on 21 March 2013.
4. See the Hansard transcript for the Senate, 15 November 2010, p. 1173.
Adoption

The Commonwealth of Australia has never had jurisdiction over adoption. The only exception to that has been its jurisdiction over the territories, which it ceded in the 1970s and 1980s.\

Adoption is a legal process in which a court orders that a child be removed from the care of his/her parent(s) and placed in the care of other people, who thereupon take on all the parental responsibilities. Thereafter:

the adopted child shall be treated in law as if the adopted child were not a child of any person who was a parent (whether natural or adoptive) of the child before the making of the adoption order, and any such person shall be treated in law as if the person were not a parent of the child.\

As is evident, the essence of such an order is that the adopted child’s relationship with his/her parents comes to an end in every respect. While some relaxation of the termination of the relationship has occurred in more recent times, the essence of the concept of adoption was to effectively eliminate every aspect of the child’s past from the moment of placement with the adoptive parents. The adoption order made by a court gave legal effect to that.

Forced adoption

Particularly given that a court order is, and always was, necessary to formalise an adoption, how could an adoption be “forced”? In order to answer that question, it is necessary to look not at that formal process but rather at the societal attitudes and circumstances in which the children were removed from their mothers.

The Senate Committee found:

Evidence suggests that by 1954, community pressure on single mothers to surrender their babies was intense. An article in “The Argus” newspaper highlighted this pressure stating that in many cases, the young mother may have been subjected to threats and bribes to surrender her baby and left with no opportunity to discuss her feelings with an objective and disinterested professional. (Senate Report, para. 2.29)

First, there was great demand for babies who might be adopted, particularly in circumstances of infertility. Second, the mothers were usually single and large numbers of them were underage. Third, while the law usually requires underage people to be represented by an adult acting in the capacity of a guardian, that did not occur in adoption. These young women were isolated, often interstate, institutionalised and depersonalised. They were literally on their own, required to accede to decisions of others regarding their babies and without the most fundamental access to support and advice.

The Senate Report (in Chapter 3) is replete with evidence of the terrible experiences endured by mothers who found themselves in these circumstances. One of the main issues concerned the legal requirement of their consent to the adoption. When they entered these institutions, it was usually on the basis of an assumption that their babies

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6 Adoption Act 1984 (Vic) s 53(1)(b). There are the same or similar provisions in each jurisdiction.
would be adopted. They were not involved in any consideration of the merits of adoption of their children. The law required that a mother sign a consent to adoption. It could not be signed until at least five days after the birth. They were required to be given a form of revocation of consent to adoption which they could exercise within 30 days of the birth. Many consents were forged, others were signed by mothers prior to the expiration of the five days and then post-dated, and many mothers were not told about their right of revocation or given the form.

Birth experiences were often dreadful. Mothers were drugged and/or tied to their beds. Most were prevented from holding their child. Sheets were put up to stop them from even seeing their babies. Some mothers were falsely told that their babies had died.

In many instances, the relationship between the baby’s mother and father had long since ceased. To the extent that fathers sought to maintain an ongoing role, they were usually excluded from involvement. Likewise with grandparents. While many did not support their daughters and often actively supported adoption, others wanted to be involved but were not permitted to be. In at least one instance the grandparents were escorted from the hospital and not permitted to visit their daughter.

While the word “forced” has been utilised to describe these incidents, it is suggested that it is not an adequate word to cover everything that occurred. It is beyond challenge that mothers were effectively given no choice. They were placed in a position where they had neither the strength nor the ability to resist. They were put under enormous pressure. In those senses they were forced. But there is more. We cannot escape the proposition that much of what occurred was illegal. Lack of informed consent, ignorance of the right of revocation, no independent advice, the use of drugs and restraints and like matters were outside the law. The above matters also raise fundamental issues of society’s moral and ethical conduct.

The result of these circumstances is that the nation has a large number of people with physical, and particularly mental, health problems, many of them profound. It has been revealing and most distressing to witness the extent of the damage that has been done to so many people in our society, damage with which they have lived for decades.

The argument in justification of these practices asserts that they represented society’s values or “mores” at the time. Whether rightly or wrongly, society viewed single mothers bringing up babies as unacceptable. It was not in the babies’ interests and there were large numbers of infertile couples in stable relationships who were able to provide much better homes for them.

Even if the argument were valid in principle, which is not accepted, the circumstances in which these adoptions occurred must invalidate it. That flows from the concepts of “force” and “illegality” described above. Even ignoring the issue of the best interests of the child for the moment, if mothers had had access to independent advice, those who were underage had had guardians, consents had been executed in accordance with the law and other legal requirements including the right of revocation had been observed, and mothers had not been institutionalised and dehumanised and had had support from their families and other loved ones, the argument is tenable. But that was not what happened. Accordingly, the argument is untenable.

The Senate’s recommendations
The Senate Report made 20 recommendations, the first seven of which were relevant to the apology (pp. ix–xii). The other 13 related to the concrete measures discussed further below.
The Committee recommended:
1. The establishment of “a national framework to address the consequences of forced adoption … by the Commonwealth, states and territories through the Community and Disability Services Ministers’ Conference”.
2. “That the Commonwealth Government issue a formal statement of apology that identifies the actions and policies that resulted in forced adoption and acknowledges, on behalf of the nation, the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.”
3. “That state and territory governments and non-government institutions that administered adoptions should issue formal statements of apology that acknowledge practices that were illegal or unethical, as well as other practices that contributed to the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents.”
4. The apologies be in accordance with the principles in a Canadian report (discussed below).
5. The apologies “should include statements that take responsibility for the past policy choices made by institutions’ leaders and staff, and not be qualified by reference to values or professional practice during the period in question”.
6. Formal apologies should “be accompanied by undertakings to take concrete actions that offer appropriate redress for past mistakes”.
7. The Commonwealth apology should “be presented in a range of forms, and be widely published”.

In accordance with recommendation 3, prior to the offering of the Commonwealth apology, all state and territory parliaments, with the exception of the Northern Territory, offered their own apologies.

The Forced Adoptions Apology Reference Group
The Government accepted the Senate’s recommendations for an apology and gave the primary responsibility for its implementation to the then Attorney-General, the Hon. Nicola Roxon MP. Ms Roxon established the Forced Adoptions Apology Reference Group, which was charged with the task of drafting the apology. The reference group was also invited to express views on other relevant issues, in particular the concrete measures.

The reference group met on four occasions between August and November 2012. Its report containing the draft of the apology was delivered to the Attorney-General in December 2012. The reference group’s deliberations were assisted by consultations by the chair with interested people in every Australian capital city other than Darwin. The views expressed at those consultations were consonant with those expressed within the group, thereby giving confidence to the group in its decisions.

The reference group also had the benefit of advice from the Human Rights Commission.

The Commonwealth’s role in forced adoption
While the Commonwealth had only very limited jurisdictional responsibility for adoption (through the territories), it must take at least some responsibility for other aspects of

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7 The reference group was chaired by the author and included six people affected by forced adoptions (three mothers, two adoptees and one father), three members of the Senate Committee (the Chair, the Deputy Chair and a Coalition Senator), and a Member of the House of Representatives.
forced adoption. The first issue was the lack of government funding available to mothers. By way of summary of its conclusions on that issue the Senate Committee wrote:

Regardless of the quality of information [with regard to the availability of social security benefits], however, the committee concludes that there was not appropriate government funding available to mothers prior to 1973 that would have provided the ongoing financial support necessary for mothers to keep their babies if they lacked any private source of income or family assistance. (Senate Report, para. 5.70)

The second area of the Commonwealth’s involvement was in the area of the enactment of model legislation on adoption. Between 1961 and 1964 the Commonwealth and the state governments discussed enacting the proposal. The states and territories passed such legislation between 1964 and 1968. The Commonwealth was directly involved in those enactments in the two territories (Senate Report, para. 6.1 and Chapter 6) and coordinated meetings and correspondence with the states (Senate Report, para. 6.6).

Language
Language is important in everyday discourse, but nowhere more so than when emotions are raw and so many people have suffered profoundly for decades. The Senate Report noted the importance of language (paras 1.9–1.14), and the reference group agreed.

The reference group’s first task was to determine how to refer to the person who gave birth to the baby. “Mother” would appear to be the obvious answer. But society uses a number of adjectives with that word when the baby has been adopted by others. They include “birth”, “life”, “natural”, “biological” and “relinquishing”. The reference group decided that they were all unnecessary and inappropriate. In addition, “relinquishing” conveys to many people the concept of some act or decision on behalf of the mother to agree, or at least not disagree, with the adoption. In forced adoption that certainly did not occur.

Having decided upon “mother”, the terms “father” and “adopted person” or “adopted people” followed. At the beginning of the apology the word “babies” was used. Also, “grandparents”, “siblings” and “extended family” required little discussion.

There were other aspects of language which were also decided upon. “Experiences” is preferable to “stories”, the latter connoting fiction or over-statement for some people. Words such as “betrayed”, “kidnapped” and “abducted” were avoided as being too emotive. “Illegal” was considered to encompass all those concepts as well as conveying, in one word, one of the fundamental features of these events.

The anatomy of an apology
In common parlance, we speak about “giving” or “making” an apology. In fact, we “offer” an apology. We cannot demand that the person or people to whom the apology is offered accept it. The offeree must determine for her or himself whether the apology is to that person and whether it should be accepted.

In that context, a public apology is significantly more complicated. It is necessary to define the category or categories of people to whom it is to be offered. In the context of this apology, that raised the difficult issue of whether there should be any limit on the period of time to which it applied.

While the numbers of adoptions cannot be precisely determined, the Senate Committee determined:
Combining the data above with an assumption that adoption numbers increased at a uniform, steady pace from 1962 to 1969, suggests that the number of adoptions between 1951 and 1975 was between 140,000 and 150,000. Total adoptions from 1940 (the first year the committee found records) to the present day would be well in excess of 210,000 and could be as high as 250,000. (Senate Report, para. 1.35)

It will be seen that the numbers of adoptions peaked in the 24 years to 1975. Some mothers urged us to restrict the apology to that period or even a little less (late 1950s to early 1970s). At the outset, the reference group decided that the apology should be based on the twin pillars of diversity and inclusiveness. If the apology were offered to as wide a group of people as possible within the confines of the evidence, it would have the greatest prospect of being accepted by the community. Accordingly, to restrict it to a specific time period, while validating people’s experiences within that time period, would invalidate experiences outside it. Therefore, the apology was not offered in a confined period.

Reference was made above to Senate recommendation 4, which proposed that the apology be in accordance with a particular set of principles. In 1999, the Law Commission of Canada published research that set out five criteria on which an apology such as this should be based (Law Commission of Canada, cited in Senate Community Affairs References Committee, 2004). While the Senate Report quotes them in full (para. 9.15), they may be summarised as follows:

1. Acknowledgement of the wrong done or naming the offence.
2. Accepting responsibility for the wrong that was done.
3. The expression of sincere regret and profound remorse.
4. The assurance or promise that the wrong done will not recur.
5. Reparation through concrete measures.

The apology was drawn in accordance with those criteria.

Two difficult issues
The first, and probably most complicated, issue in the whole apology process was the role of adoptive parents. The offer of the apology did not include them. That has angered many people. Adoptive parents assert that they were at least innocent of any wrongdoing and saw themselves as doing the best for the children. They had no role in the circumstances leading to the adoptions. On the other hand, mothers see adoptive parents as active parties in the forced removal of their children.

It is not proposed to discuss that issue here. No matter what the logic of the arguments might suggest, on any view, the emotional issues for people affected by forced adoption would not permit of any other outcome. Nevertheless, it is a question that will need to be addressed in due course.

The role of adoptive parents leads to the second difficult issue. Adoptees have suffered, and continue to suffer, enormous grief, anger and like emotions. Many adoptions have been successful, some have been unsuccessful. But large numbers of adoptees have, at some time, blamed their mothers for “giving me away”. Reconciliation of relationships between adoptees and particularly their mothers, but also their fathers, siblings and extended family members, has often been highly fraught. During the consultations, adoptees often described themselves as “the meat in the sandwich” between their parents and their adoptive parents. This issue is considered further below.
The concrete measures
In its response to the Senate Report, the Commonwealth Government pledged certain concrete measures in accordance with Senate recommendation 6 and the Canadian Law Commission’s recommendation 5, both quoted above (Australian Government, 2013). They were:

- $3.5 million for the then Department of Health and Ageing (now Department of Health) to increase the capacity of the Access to Allied Psychological Services program until the end of the 2014 financial year;
- $1.5 million to the same department for the development of guidelines and training materials for mental health professionals to assist in the diagnosis, treatment and care of those affected by forced adoption practices;
- $5 million to the then Department of Families, Housing, Community Services and Indigenous Affairs (now the Department of Social Services) for improved access to specialist support services, peer and professional counselling and records tracing support; and
- $1.5 million to the National Archives of Australia to deliver a website and exhibition.

At the time of writing, implementation of those concrete measures has commenced, with the appointment and first meeting of the Forced Adoption Implementation Working Group.8

While not specifically included in the concrete measures, it is vital that the nation be better informed about these events. A process of education should be undertaken for that purpose. There are two particular points which should be made, both to mothers and adoptees on the one hand and the wider society on the other.

First, the facts irrefutably establish that mothers were forced to give up their babies in circumstances described above and in the Senate Report. That has now been officially affirmed by the apology.

Secondly, the facts also conclusively establish that the procedures by which adoptees were adopted did not involve abandonment, betrayal or any other such concept by their mothers. The events occurred as a result of a gross failure of public policy involving moral and ethical impropriety and, in many instances, illegality.

The future of adoption
Taking the consultations referred to above as a guide, the vast majority of people affected by forced adoption would like to see the total abolition of adoption. The fundamental argument is that it cannot be in a child’s best interests to have all aspects of his or her past obliterated from the record.

It is not the place of this essay to express a final view on that issue. However, from the vantage point of 21 years as a Judge of the Family Court of Australia, people’s backgrounds—including culture, ethnicity, forebears, ancestry and many other like matters—are an important part of who each of us is within the society. There are developments in adoption law that attempt to achieve a better balance in that regard. Whether they are the complete answer to the problem must be left for another time.

8 The Forced Adoption Implementation Working Group is constituted by the writer as chair, five mothers (three of whom were members of the reference group), three adoptees (including one from the reference group), one father from the reference group, and the three Senators who were on the reference group.
Conclusion
The offering of the apology by then Prime Minister Gillard on 21 March 2013 was an important event in Australia’s history. It is appropriate for us to stop to think about these matters. They are relevant to the moral status of the nation.

The next step is to put the words into actions. That process has started. The degree of its success will determine the overall success of our efforts in acknowledging a very dark part of our national history.

References


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