

Adoption in New South Wales

c. 1923 –

Details

The Australian Institute of Health and Welfare defines adoption as “The legal process by which a person legally becomes a child of the adoptive parent(s) and legally ceases to be a child of his/her existing parent(s)”. In Australia, each state or territory has its own adoption legislation and its own policies and processes. In the 1960s, the Commonwealth government led a model legislation project to harmonise the various adoption acts in Australia, and to ensure that the states recognised each others’ adoption laws.

In New South Wales, the first adoption legislation was passed in 1923. Before a legal system of official adoption was introduced in the state, adoptions took place unofficially and were arranged by advertisements in the press, private arrangements, through churches and the State Children’s Relief Department. Adoptions during this period before legislation existed are referred to as “de facto” or “informal” adoptions.

The Department used the term “adoption” to describe placing a state ward in a foster home, without paying fees for the child’s care. One notable non-government agency involved in unofficial adoptions prior to 1923 was the Sydney Work Rescue Society, whose leader George Ardill arranged adoptions from his children’s Homes. The Sisters of St Joseph also arranged informal adoptions from their orphanages, requiring adoptive parents to sign a contract and be subject to home visits by the nuns (Burford, 1991).

These unofficial and unregulated adoptions in NSW before 1923 unfortunately were not properly recorded and few records survive. Clues about adoption and a child’s name changes can be found in sources like records of state wardship, registers of institutions, court records and Police Gazettes. Some non-government organisations, such as maternity and infant homes and churches, may hold information – for instance, a note on a register that a child was “adopted”.

After the passage of the *Child Welfare Act 1923* to formalise adoptions, an adopted child in New South Wales still did not have the right to inherit from their adoptive family. This did not change until the passage of the *Adoption of Children Act 1965*.

In Australia, there was a boom in the adoption industry after World War Two. Nationwide adoption data is not available prior to 1969, however the Senate inquiry into forced adoptions used figures in files held by the National Archives of Australia to estimate that around 150,000 adoptions took place in Australia between 1951 and 1975. Policies and practices resulting in forced adoptions were widespread throughout Australia during this period (Senate, 2012, pp.4-5).

Adoption rates increased in NSW from the 1940s, partly in response to growing numbers of children born out of wedlock as a result of World War Two. Adoptions in NSW rose from 982 in 1939 to 2037 in 1946 (NSW govt, p.18-19). From the mid 1950s until the early 1970s, the number of ex-nuptial births in NSW increased steadily. In 1955 there were 3024 births to single mothers, and by 1969 the number had risen to 6860, or almost 8% of all births.

Adoptions in New South Wales reached a peak in 1972 at 4,564. By 1975 there were only 1,889 adoptions and by 1984 the number had dropped to 741. In 1999, there were only 178 adoptions including overseas born

children (Releasing the Past, 2000).

Before the passage of the *Adoption of Children Act 1965*, private adoptions (where the parties organised the arrangements with the help of an intermediary such as a solicitor) were increasingly popular in NSW. The Department was concerned that private adoptions came with a potential for abuse, and the trafficking of infants, and also that they took place without the involvement of social workers. Social work was an emerging profession from the 1950s, which coincided with the professionalisation of adoption practice – indeed one book states that “Social work and legal adoption practice grew alongside each other” (Cuthbert et al, *The market in babies*, p.3). Increasingly, there was interest in processes to assess the suitability of adopting parents and their households, and match adopting parents to infants.

One legal case in the 1950s had a significant influence on adoption practice in NSW, as well as other Australian jurisdictions. *Mace v Murray* involved a single mother who initially said that she wished her baby to be adopted, and signed the consent documents a few days after giving birth. The mother ended up withdrawing her consent within the legal period, and the adoptive parents were requested to return her baby to her. Although the adoptive parents had signed an undertaking agreeing to do this should the mother revoke consent, they refused to return the child. The adopting parents applied successfully to the Supreme Court for an order of adoption, which was granted in June 1953 despite the mother’s opposition. This judgement was appealed and overturned, but the original judgement was reinstated in the High Court of Australia.

This case was of considerable public interest, and raised issues relating to maternal consent as well as the interstate applicability of adoptions (the adopting mother took the baby to the Australian Capital Territory in an attempt to escape a NSW court order compelling her to return the child to the mother (Senate, 2012, p.126).

Growing concerns about adoption processes in Australia were behind a move by the Commonwealth government from the early 1960s to lead a process for all jurisdictions to pass uniform adoption legislation, often referred to as model legislation. As well as the lack of recognition of interstate adoption laws, there was also growing concern at this time about issues including the notion of the rights and welfare of the child, and the importance of mothers being fully aware of the legal consequences of giving consent for their child to be adopted. During the development of model laws, many expressed concern that there was a tendency creeping in which almost could amount to buying and selling of children, and recommended against the use of private adoption agencies to counter this.

In 1961, the Under Secretary of Child Welfare, Richard Hicks, wrote a report for the Commonwealth Attorney-General about the “Principles and Practice of Adoption” in New South Wales. It provides information about the adoption practices in NSW as well as detailing some of the concerns about adoption that were starting to be expressed by people in the child welfare sector. Hicks wrote his report during a time when the Australian Commonwealth government was taking the lead on the states and territories passing model adoption legislation.

Hicks’ report noted that in NSW, the majority of adoptions were arranged by the Department, rather than by private adoption agencies. However, the percentage of total adoptions arranged by agencies in NSW had grown from 13 per cent in 1947 to 44 per cent in 1960. Long waiting lists for adoptive children were driving couples towards private agencies that Hicks felt operated without public scrutiny. He considered that, while there may have been merit in private adoptions in some cases, adoptions arranged by private agencies had greater potential for “trafficking and other malpractice”. Hicks claimed in his report that in NSW, there was a “definite activity in regard to disposing of babies for considerations”, that is, money changing hands during private adoptions (Senate, 2012, p.146).

NSW passed the *Adoption of Children Act 1965*. Like the adoption acts passed in other Australian jurisdictions in the 1960s, this legislation was informed by the clean break theory which held that it was best for the mother and soon-to-be adopted child if they were separated as early and as completely as possible.

However, attitudes to adoption and thinking about what was in a child’s best interest were starting to shift. NSW established the Standing Committee on Adoption in 1967, under the auspices of the NSW Council of Social Services, to assist with the implementation of the new Adoption of Children Act. According to a 2000 report, this Committee was pivotal in changing adoption practices in NSW, and raising awareness about the rights of birth

parents to see their child in hospital (NSW govt, 2000, p.7). This group still exists in 2024, known as the [NSW Committee on Adoption and Permanent Care](#).

Adoption reached a peak of 4564 in NSW in 1972. Adoptions steadily declined at a national level from the early 1970s, largely because of changing social attitudes towards single mothers and the introduction of the Supported Parents Benefit in 1973.

In NSW, the *Adoption Information Act 1990* ended the era of closed adoptions and reversed much of the secrecy relating to adoptions. It improved people's rights to access information and created a system of registers that adoptees and parents could use to express interest in contact, or vetoing contact. This legislation was updated in 1995 and in 2000 the *Adoption Act* overhauled again to incorporate social and community attitudes.

In 2000, the Legislative Council completed an Inquiry into Adoption Practices in NSW, handing down the report *Releasing the past: adoption practices 1950-1998*. The Committee considered adoption practices from 1950 to 1998, particularly practices occurring before the introduction of the Adoption Information Act 1990.

In 2011, the Australian Senate began the inquiry into Commonwealth Contribution to Former Forced Adoption Policies and Practices, and its report was handed down in February 2012. The inquiry heard testimony and evidence about the pressure and stigma experienced by pregnant single women and how many were forced to put their child up for adoption. The negative and life-long effects of forced adoptions continue to affect adopted people, mothers and fathers.

On Thursday 20 September 2012 both Houses of the New South Wales Parliament apologised for forced adoption practices. The NSW Parliament Apology for Forced Adoption Practices was part of the NSW Government's response to the Inquiry into Adoption Practices in NSW.

On 21 March 2013, the former Prime Minister Julia Gillard apologised on behalf of the Australian Government to people affected by forced adoption or removal policies and practices.

In 2018 the Australian Government's House of Representatives Standing Committee on Social Policy and Legal Affairs conducted an Inquiry into local adoption. This inquiry considered how to establish a nationally consistent local adoption framework in Australia and the viability of using adoption as an alternative to out-of-home care to create stability and permanency for children. The inquiry discussed that adoption rates in Australia are the second lowest in the developed world, but Australia simultaneously has a growing number of children in out-of-home care. The report identified a key barrier to increasing adoption in Australia is the "fear of repeating the mistakes of past forced adoption policies and practices" (History and timeline of forced adoptions in Victoria).

The history of adoption in NSW for Aboriginal and Torres Strait Islander peoples is unique. Historian Shurlee Swain writes that Indigenous adoptees have been marginalised, both in the story of the Stolen Generations and in the history of adoption in Australia (Swain, 2013). Adoption was particularly damaging in the context of the Stolen Generations and was one means of removing Aboriginal and Torres Strait Islander children from their families. The Senate report describes how adopted Aboriginal and Torres Strait Islander people experienced cultural loss, and were also subject to "a layer of official secrecy: not only a denial of their original individual parents, but an additional official desire to suppress racial and cultural identity" (Senate, 2012, p.80).

Just as adoption numbers have decreased in the overall population, there has also been a reduction in the adoption of Aboriginal and Torres Strait Islander children. The introduction of the Aboriginal Child Placement Principle has meant the majority of Indigenous children are adopted by Indigenous families. This principle is specifically enshrined in NSW's *Adoption Act 2000* (which remains in force in 2024).

Adoption legislation in NSW

NSW passed its first legislation to regulate adoption in 1923, with the [Child Welfare Act 1923](#). Prior to this, the *State Children's Relief Act 1881* did refer to "adoptions" but did not outline any processes or regulations. De facto adoptions arranged before 1923 were effected by a written agreement signed by the adoptive parents, but natural parents could remove the child at any time.

The 1923 law gave the Supreme Court of NSW the power to make or refuse an adoption order. Parental consent could be dispensed with if the Court believed the mother or guardian had abandoned the child. The provisions relating to adoption were an attempt to encourage couples to adopt children by removing the insecurity of previous arrangements (NSW govt, 2000, p. 12).

A revised [Child Welfare Act](#) was passed in 1939. Section 171 of the act provided that it was illegal for any payment to be made in respect of adoption. It did not prohibit private adoptions, which were “extremely common” in NSW under the 1939 legislation. By 1961, private adoptions represented 48% of adoption orders made by the NSW Supreme Court (NSW govt, 2000, p.13).

With the Commonwealth government encouraging all states and territories to pass updated, model adoption laws, NSW enacted the [Adoption of Children Act](#) in 1965. This legislation introduced a number of reforms and led to changes in adoption practice. The Act required courts to regard the child’s welfare as the paramount consideration when making orders. It banned people from arranging their own adoptions, and it tightened secrecy around adoption, enabling adopted children to assume an entirely new identity (and birth certificate) that was tied to their adoptive parents.

The 1965 Act banned privately arranged adoptions, making it an offence to advertise a child for adoption or seek adoptive parents. Birth parents were not allowed to choose who their child went to – they could only give consent to the child being adopted. In practice, this meant private agencies were still able to arrange adoptions, but they had to be approved by the court. Exceptions were made for relatives or step-parents.

An important element of this Act was a tightening of secrecy provisions to ensure members of the birth family and the adoptive family would not discover each other’s identity, and that the records of the adoption would be kept confidential. Indeed, the new birth certificate issued for the adopted child (the ‘amended birth certificate’) was intended to disguise the fact that the child had been adopted.

The 1965 Act was changed over time to take into account new ideas about marriage and parenthood. In 1979, after the *Domicile Act 1979* abolished the legal principle that married women lived wherever their husbands did, the Act was Amended. In 1980-1982, under various Amendments, an Adoption Tribunal was created. In 1984 the Act was Amended to allow adoption by a man and a woman in a de facto relationship, and to require permission for adoption to be sought from the fathers of ex-nuptial children.

The *Community Welfare Act 1983* also resulted in Amendments to the *Adoption of Children Act 1965*. In 1987 the Act was further Amended to allow adoptions from other states and countries, to recognise various forms of de facto and married relationships and change some of the rules about children’s input into their own adoptions, including the age at which they could consent to be adopted.

In 1991 the [Adoption Information Act](#) gave adoptive children and birth parents the right to information about their adoptions, including their original birth certificates. The Adoption of Children Act was repealed in 2003 when the Adoption Act 2000 came into effect.

The [Adoption Act 2000](#) (75/2000) was ‘an Act with respect to the adoption of children and access of information relating to an adoption; to repeal the *Adoption of Children Act 1965* and the *Adoption Information Act 1990*; to amend the *Births, Deaths and Marriages Registration Act 1995* with respect to registration of adoptions and adopted persons’ birth records’. It was an overhaul of legislation that incorporated many of the changes in social and community attitudes towards marriage and parenthood in the period since the passage of *Adoption Act 1965*. It governed both adoptions and adoption information. This legislation remains in force in 2024.

Gallery



Given or Taken?

Description: Four Corners report into forced adoptions in Australia. States that, over five decades in the 20th century, thousands of women gave up their newborn children for adoption. While they were supposed to make their decision freely, many claim they were coerced, bullied and their children were effectively stolen.

More info

Related Entries

Related Events

- [National Apology for Forced Adoptions, Parliament of Australia \(21 March 2013\)](#)
- [Apology for Forced Adoption Practices, Parliament of New South Wales \(29 September 2012\)](#)
- [Inquiry into Adoption Practices in NSW, New South Wales Legislative Council \(1998 - 2000\)](#)
- [Inquiry into Commonwealth Contribution to Former Forced Adoption Policies and Practices, Commonwealth of Australia \(2011 - 2012\)](#)

Related Glossary Terms

- [Forced Adoption \(c. 1940 - c. 1970\)](#)

Related Legislation

- [Children's Protection Act 1892, New South Wales \(1892 - 1902\)](#)
- [State Children Relief Act 1901, New South Wales \(1901 - 1923\)](#)
- [Child Welfare Act 1923, New South Wales \(1923 - 1939\)](#)
The *Child Welfare Act 1923* was the first law in NSW that provided for legal adoption.
Date: 1923 - 1939
- [Adoption Act 2000, New South Wales \(2000 - current\)](#)
- [Adoption Information Act 1990, New South Wales \(1990 - 2003\)](#)
- [Child Welfare Act 1939, New South Wales \(1939 - 1987\)](#)
- [State Children Relief Act 1896, New South Wales \(1896 - 1901\)](#)
- [Child Welfare \(Amendment\) Act 1924, New South Wales \(1924 - 1939\)](#)
- [Adoption of Children Act 1965, New South Wales \(1965 - 2003\)](#)
- [Child Welfare \(Amendment\) Act 1966, New South Wales \(1966 - 1987\)](#)
- [Child Welfare \(Further Amendment\) Act 1961, New South Wales \(1961 - 1965\)](#)

Related Organisations

- [St Anthony's Home Croydon \(1925 - 1980\)](#)
- [Post Adoption Resource Centre \(1991 - current\)](#)
- [Methodist Adoption Agency \(- 1970s\)](#)
- [Seventh Day Adventist Adoption Agency \(- 1993\)](#)
- [South Sydney Women's Hospital \(1905 - 1976\)](#)
- [Myee \(1926 - 1977\)](#)
- [Carramar \(1961 - 1984\)](#)
- [Tresillian Mothercraft Homes, Royal Society for the Welfare of Mothers and Babies \(1918 - current\)](#)
- [Tresillian Wollstonecraft \(1940 - current\)](#)
- [Tresillian Vacluse \(c. 1935 - October 1968\)](#)
- [Tresillian Petersham \(1921 - 1997\)](#)
- [State Children's Relief Board \(1881 - 1923\)](#)
- [State Children's Relief Department \(1881 - 1923\)](#)
- [Child Welfare Department, State Government of New South Wales \(1923 - 1970\)](#)
- [Anglicare Adoption Services \(1997 - current\)](#)

Related Archival Collections

- [Records relating to Adoption \(1900? - current\)](#)
- [Records of the Anglicare Adoption Services \(1961 - current\)](#)

Related Archival Series

- [Applications and Adoption files for State wards \[Dependent Children and Adoptions Branch, Department of Community Services\] \(1940 - 1961\)](#)
- [Adoption Files \[Dependent Children and Adoptions Branch, Department of Community Services\] \(1947 - 1974\)](#)
- [Private Adoption files \[Dependent Children and Adoptions Branch, Department of Community Services\] \(1954 - 1967\)](#)
- [Private adoption agency contact files \[Dependent Children and Adoptions Branch, Department of Community Services\] \(1950 - 1975\)](#)
- [Benevolent Society adoption register \[Dependent Children and Adoptions Branch, Department of Community Services\] \(23 May 1969 - 1 September 1975\)](#)
- [Presbyterian Adoption Agency adoption registers \[Dependent Children and Adoptions Branch, Department of Community Services\] \(1966 - 1975\)](#)

Resources

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