

**‘Deserving Widows and Deserted Wives’: The *Neglected Children’s Act* and State
Support of Motherhood in Victoria, 1890 – 1910**

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This article examines the use of the Victorian Neglected Children’s Act (1890) by women seeking state assistance for their children between 1890 and 1910. Although the Act, like its predecessors, was designed to remove certain classes of children from their parents and commit them to state care, over these two decades the legislation was employed increasingly to subsidise children’s upbringing at home. Rather than removing all children deemed ‘neglected,’ Magistrates formally committed some children to the care of the state, but then ordered that they be returned home with financial assistance. However although this practice of ‘boarding out at home’ marked in one sense a major extension of the principle of state welfare for mothers in Victoria, not all women were successful. The obligatory Court hearing also operated as a screening procedure, where a woman’s suitability for assistance was scrutinised. Only the respectable and poor were financed, while others were refused assistance or had their children removed. When the Victorian government eventually legislated for the support of children at home in the post-war period, these principles became the foundation of official maintenance regimes.

ON 8 October 1901, Mrs Mary Thomas appeared before the Essendon Police Court in Melbourne’s west, to ask that six of her eight children be committed to the Neglected Children’s Department, the Victorian government department responsible for state wards. Mary Thomas was a widow, and the six children were aged between one and 10. Mary’s personal circumstances were compelling. The Court heard that her husband, a railway porter, had been killed in an accident about 18 months previously, before her youngest child was born. His colleagues had contributed money towards the support of Mary and the children, but these funds were now nearly exhausted. Mary’s two eldest boys were working, but they earned very little, and certainly not enough to support the whole family. Six months previously, Mary had approached her

local Ladies' Benevolent Society for assistance. They were paying her 6/6 per week, but this too was not enough to make ends meet, especially as her youngest child was, the Court was informed, 'very delicate.' The police supported Mary's application, and Mary was also assisted in Court by Mrs Brunton from the local Ladies' Benevolent Society who 'gave the applicant an excellent character.' The Essendon Bench agreed to commit the four youngest children to the care of the Department and 'recommended that they be boarded out with the mother.' In other words, although her children would become wards of the state, Mary would be allowed to keep them with her at home and she would be paid the foster parents' allowance, five shillings per week per child, to do so. The Melbourne *Herald*, which reported the case, approved of this decision.¹

Mary Thomas' story was sad, but typical. What is legally interesting about this scenario is that the Court had, strictly speaking, no power either to commit her children to state care, or to subsidise their upbringing at home. The Victorian *Neglected Children's Act*, under which Mary made her application, provided for children to be made state wards in a limited number of circumstances, of which parental need was not one. Nor did the Act contemplate boarding out children to their parents. Between 1890 and 1910, this Act was tested daily by women whose children were not 'neglected' according to legislation, but whom they were unable to maintain without state support. In an increasing number of cases, Magistrates recommended such assistance, in the process generating debate about the causes of poverty and the state's role in providing relief. This use of the *Neglected Children's Act* has attracted relatively little academic attention. Most historians of state welfare in Australia have

¹ 'Fatherless Bairns – the State Will Provide,' *The Herald* (Melbourne), 8 October 1901, 4.

tracked the development of institutional and foster care without noting this anomaly.² Shurlee Swain has discussed the establishment of early boarding out schemes by the Melbourne Orphanage and later, the state, but without considering in detail the principles applied, legal implications, or their operation after 1900.³ The Victorian policy of ‘boarding out at home,’ however, deserves attention for a number of reasons. As one of the earliest Australian state welfare regimes for mothers, it has an important place in the histories of both law and social welfare. The extra-legal operation of the scheme highlights the difference between law ‘on the books’ and law in practice at a local level.⁴ Finally, the system relied on initiating applications by impoverished working-class women, allowing us to consider the agency of a group whose voices are often marginal to traditional legal histories.⁵

This article will examine women’s applications for assistance under the *Neglected Children’s Act* over a twenty year period in which they moved from the periphery to a majority of all departmental committals. It explores the judicial reasoning underlying the decision-making process, the broader theoretical questions such applications raised and the legacy of this scheme upon the development of later regimes for the formal support of women and their children. While ‘boarding out at home’ marked in one sense a major extension of the principle of state welfare for mothers in Victoria,

² Donella Jaggs, *Neglected and Criminal: Foundations of Child Welfare Legislation in Victoria* (Melbourne: Phillip Institute of Technology, 1986), 28 – 59; John Ramsland, *Children of the Back Lanes: Destitute and Neglected Children in Colonial New South Wales*. (Sydney: Allen & Unwin, 1986), 111 – 192; Robert van Krieken, *Children and the State: Social Control and the Formation of Australian Child Welfare* (Sydney: Allen & Unwin, 1992), 61 – 87; Richard Kennedy, *Charity Warfare: The Charity Organisation Society in Colonial Melbourne*. (Melbourne: Hyland House, 1985).

³ Shurlee Swain, ‘The Victorian Charity Network in the 1890s,’ (PhD Thesis, University of Melbourne, 1976), 357 – 362; Swain, ‘Destitute and Dependent: Case Studies in Poverty in Melbourne, 1890 – 1900,’ *Historical Studies* 19 (1980): 99.

⁴ See comments in Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867 – 1939*. (Toronto: University of Toronto Press, 1997), 5 – 6.

⁵ For this argument see particularly Mark Peel, *The Lowest Rung: Voices of Australian Poverty*. (Cambridge: Cambridge University Press, 2003), 11 – 15.

not all women were successful. The court hearing also operated as a screening procedure, where a woman's suitability for assistance was scrutinised. Only the respectable and poor were financed, while others were refused assistance or had their children removed. The first part of the article situates these applications amongst other options available to women seeking home-based support for their children. Applications under the Act were often a last resort for mothers who had already tried to obtain aid from charitable organisations or from their children's fathers. The second turns to the development of the state system of boarding out at home and the impact of the 1890s recession in turning a minority scheme into a relatively common solution to the enduring problem of maternal poverty. The third looks at how such applications played out in the Melbourne police courts through a close reading of some of the cases reported in Melbourne newspapers between 1890 and 1910. While magisterial decisions reflected middle-class understandings about gender, poverty and the role of the state, the applications also allow us to consider working-class women's knowledge about and use of the law and the Courts. The final section explores the impact of these decisions on interwar children's maintenance regimes.

Options for assistance

Prior to the enactment of maternal endowment schemes, an application under the *Neglected Children's Act* was one of the few mechanisms available to impoverished women in Victoria seeking to maintain their children at home.⁶ Victoria had no poor law or equivalent,⁷ and women who were unable to support their children between

⁶ As opposed to committing children to institutions, or foster placements, which separated parents and children, on this see Swain, 'The Victorian Charity Network in the 1890s,' 156 – 161, 169 – 172.

⁷ Kennedy, *Charity Warfare*, 26.

1890 and 1910 had only two other main options if they wished to try and keep their families together. The first was to seek charitable assistance. By the 1890s, Victoria had a large number of charitable organisations, some providing institutional care and others specialising in outdoor relief. While successive Victorian governments had an officially ‘hands-off’ approach to social welfare, many of these organisations were substantially state subsidised.⁸ Women’s first ports of call were often the local Ladies’ Benevolent Societies (‘LBS’). The LBS were voluntary relief agencies run by middle-class women which provided help either in money or, if possible, in kind. Women seeking help from the LBS and similar organisations were subject to considerable scrutiny. As scholars like Shurlee Swain have documented, the LBS exercised significant surveillance over their recipients, and those allegedly misusing funds, or who misled during the application process, were liable to have their assistance cut off without recourse.⁹ Charitable resources were also limited, particularly during the 1890s when Victoria experienced a severe and prolonged economic depression.¹⁰ Further, while some families were maintained by the LBS for years, the agencies were only intended to operate as short-term sources of funds.¹¹ Another option for some women was to ask an institution to subsidise their children at home. Swain, for example, has noted that the Protestant Melbourne Orphanage ‘boarded out’ children at home from the 1870s, including children who were not orphans but whose mothers were destitute.¹²

⁸ Swain, ‘The Victorian Charity Network in the 1890s,’ 8 – 9, 45.

⁹ Ibid, 310 – 313; see also Swain, ‘Destitute and Dependent,’ 99 – 100; Kennedy, *Charity Warfare*, 16 – 34; Swain, ‘Negotiating Poverty: Women and Charity in Nineteenth Century-Melbourne,’ *Women’s History Review* 16(1) (2007): 100 – 103, 105.

¹⁰ Swain, ‘Destitute and Dependent,’ 98.

¹¹ Swain, ‘The Victorian Charity Network in the 1890s,’ 95 – 96; Swain, ‘Negotiating Poverty,’ 103.

¹² Swain, ‘The Victorian Charity Network in the 1890s,’ 357 – 359. She notes that far more children were cared for in the community than in the orphanage itself.

A woman's other alternative was to seek assistance from the father of her children. Part IV of the *Marriage Act* (Vic) of 1890 continued an older scheme which had allowed mothers of both legitimate and illegitimate children to obtain a maintenance order against a deserting father, or one who had failed to provide for his children.¹³ Specifically, section 42 of the Act provided that a mother or a 'reputable person on her behalf' could apply to a Magistrate to issue a summons or warrant of arrest for a father who had 'desert[ed] his children, whether illegitimate or born in wedlock, or [has left] them without adequate means of support.' The case was then set down for a hearing in the Police Court. If, after the hearing, two justices were satisfied that the woman and her children 'were in fact without means of support' and that the husband 'is able to maintain ... them, or to contribute to ... their maintenance,' the Court could make an order for periodic maintenance.¹⁴ The father, whether present or not, could also be ordered to provide a surety to ensure that he complied with the order. If he could not provide the money immediately, he could be jailed until he could do so.¹⁵ The Act worked better in theory than in practice. With limited means of enforcement, particularly if the father was outside the jurisdiction, a woman with a maintenance order might still be left destitute.¹⁶ The *Marriage Act* also, of course, required a live father, as well as one who could be located, and made no provision for destitute widows.

¹³ This paper does not discuss the situation of women seeking divorces or judicial separations with associated maintenance claims, which have been the subject of other academic discussion. Those matters were litigated in the Supreme Court and although there were some working-class claimants, they tended to attract a better-off clientele, see for example Hilary Golder, *Divorce in Nineteenth Century New South Wales*. (Sydney: New South Wales University Press, 1985).

¹⁴ *Marriage Act* 1890 (Vic), s 43.

¹⁵ *Ibid.*

¹⁶ The difficulties associated with enforcing maintenance orders, especially across jurisdictions, were the subject of continual debate during this period, see for example comments in Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1909*, *Victorian Parliamentary Papers* (hereafter Vic PP) 1910, Volume 3, No. 23, 5; Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1910*, Vic PP 1911, Volume 2, No. 20, 5.

The third, and final, avenue for women was to make an application under the *Neglected Children's Act* of 1890. This Act was an updated version of Victoria's first such piece of legislation, the *Neglected and Criminal Children Act* of 1864, which in turn was based on English Industrial Schools legislation. The 1890 Act allowed 'neglected' children to be committed to state care in certain situations. They were then under the formal guardianship of the Department until they turned 18, or in some circumstances 21, although they could also be released earlier if the Department felt that this was appropriate. Sections 18 and 21 – 24 of the Act provided that children under 17 could be apprehended for begging; if they had been found 'wandering about' without a home or visible means of subsistence; if they had associated with criminals or vagrants, or if they had committed an offence not punishable by imprisonment. If they were under 10 they could be arrested for trading on the streets after dark. Children under 16 who had been living in brothels or associating with prostitutes could also be committed, as could children under 15 if their parents were 'unable to control them.'¹⁷ The Act, then, consciously excluded poverty alone as a reason for committal.¹⁸ Once children had been committed to the care of the Department, a number of placement options were available. Children could be detained in an 'industrial or probationary school,' sent to service or made subject to an apprenticeship, placed in the formal custody of a suitable third person or 'boarded out with some suitable person.'¹⁹ Parents were liable to support their children while in state care, though Magistrates could take into account parents' capacity to pay when making such an order.²⁰

¹⁷ *Neglected Children's Act* 1890 (Vic) ss 18, 21 and 23.

¹⁸ Unlike, for example, its South Australian equivalent, which included a category of 'destitute' children, see *State Children Act* 1895 (SA), ss 4, 32 – 33.

¹⁹ *Neglected Children's Act* 1890 (Vic) s 30.

²⁰ *Ibid*, s 45.

The *Neglected Children's Act*, like its predecessors, was based on vagrancy legislation, and procedures under the Act echoed criminal court procedure. To be committed to the department, children had firstly to be charged with neglect by the police, except in the situations where parents themselves brought an application to commit 'uncontrollable' children. Even if the application was in effect brought by a parent, like that by Mary Thomas, the police were still obliged to investigate and had discretion about whether to lay the charge. Once charged, all children, including infants, were obliged to physically appear at their local police court for the case to be heard. Once the *Children's Court Act* of 1906 came into force in early 1907, such applications were heard at different times from ordinary police court business and in closed courts. In the city of Melbourne, a separate Children's Court heard all neglected children's cases from 1908. Before 1907, all such applications were part of the ordinary police court business and were not usually accorded any particular priority. In February 1891 the *Melbourne Age* published a critical editorial about a sick baby who had died in the City Court 'while waiting for its 'case' to be called on.'²¹ The bench usually made a determination on the spot after a brief hearing, although sometimes children's cases were adjourned for more evidence to be acquired. When children were committed to the department, even if they were subsequently returned home, a conviction was recorded against their name and they were under state supervision from this date onwards. It was a process which, like other police charges, was designed to be intimidating, and the fact that cases were heard in public no doubt deterred some women from seeking assistance.

²¹ 'Editorial,' *The Age* (Melbourne), 11 February 1891, 4. The article called for the establishment of nurseries in watch houses, or to amend the legislation to allow the children to be placed in the Infant Asylum pending a determination.

Notwithstanding the Act's specifications, the vast majority of children who became wards between 1890 and 1910 were admitted due to parental poverty, and the Department recognised this reality. The number of committals increased hugely during the 1890s as economic conditions deteriorated and unemployment began to bite, and despite attempts to restrict numbers in the early twentieth century, rose again during the half decade to 1910. The information recorded about the parents of new state wards in the Department's annual reports and in Victoria's statistical registers gives a good indication as to their circumstances. In 1891, there were 390 new admissions. Of those, 13 children were orphans and the parentage of 21 children was unknown. 101 of the remainder had both parents alive and in the colony, but 77 children had widowed mothers and 66 had been deserted by their fathers.²² New admissions then rose every year except 1895, and by 1898 had jumped to 1,020.²³ Of the 1898 cases, 24 children were orphans and in 17 cases both parents were unknown. They were far outnumbered by the 387 children whose father was dead and whose mother was described as 'poor, but of good character,' and the 192 children whose father had deserted them and whose mother was again deemed 'poor, but of good character.'²⁴ Committals fell in 1899 and 1900 before rising again in 1901. Between 1902 and 1904 there was a judicial crackdown which reduced the number of new wards to 382 in 1904.²⁵ Thereafter, new admissions increased every year between 1905 and 1910, reaching a new peak of 1,365 in 1910. The Department's report for 1910 recorded that 1,026 of these children were committed because their parent or

²² *Statistical Register for the Colony of Victoria for the Year 1891, Part IX – Social Condition.* (Melbourne: 1893), Public Record Office Victoria (hereafter PROV), VA 3098 Department of Education, Government Reports and Publications, VPRS 14004/P/0004, Unit 00001, 38.

²³ Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1898*, Vic PP 1899 – 1900, Volume 3, No. 26, 3.

²⁴ *Ibid.*, 9.

²⁵ Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1904*, Vic PP 1905, Volume 3, No. 33, 3.

parents had 'no means.' Again, a high percentage of the mothers were widows and deserted wives.²⁶

Boarding out at home

Overall, there were about one thousand more neglected children in the care of the state in 1910 than in 1898, though this figure had fluctuated over the decade and the 1910 figure was in fact lower than some earlier years. What also rose significantly during this period was the number of state wards who were living at home. The Department first noted this phenomenon officially in 1898. The annual report for that year remarked that of Victoria's 4,196 'neglected children,' 611, or 14.5 per cent, were residing with their mothers.²⁷ By 1910, 2,230 of the state's 5,199 neglected children were living with their mothers, (42.9 per cent), a proportional increase of nearly 30 per cent over twelve years.²⁸ The Department did not always record particulars about such children over these twelve years, but the figures it did publish revealed that between about one third and one half of new committals were returned home in any one year. The fact that children were placed back at home did not necessarily mean that their mothers received payments for their support, but departmental commentary suggested that the majority of these children were indeed subsidised. The table below summarises the information available, with blanks

²⁶ *Report of the Secretary and Inspector for the Year 1910*, 3 – 4.

²⁷ *Report of the Secretary and Inspector for the Year 1898*, 4.

²⁸ *Report of the Secretary and Inspector for the Year 1910*, 6.

indicating that particular statistics were not included in Departmental reports for that year.²⁹

| Year | New committals (neglected children) | New committals returned home | Total number of state wards (neglected children) as at 31 December | Total number of neglected children living at home |
|-------------|--|-------------------------------------|---|--|
| 1898 | 1,020 | | 4,196 | 611 |
| 1899 | 928 | 420 | 4,596 | |
| 1900 | 874 | 328 | 4,863 | |
| 1901 | 1,152 | 585 | 5,302 | |
| 1902 | 842 | | 5,402 | |
| 1903 | 397 | 131 | 5,045 | |
| 1904 | 385 | 105 | 4,889 | |
| 1905 | 493 | 193 | 4,813 | 819 |
| 1906 | 702 | 395 | 4,920 | 972 |
| 1907 | 707 | 398 | 5,008 | |
| 1908 | 1,012 | 620 | 5,477 | |
| 1909 | 1,219 | 668 | 4,556 | |
| 1910 | 1,365 | 750 | 5,199 | 2,230 |

The Neglected Children's Department called this form of support 'boarding out at home,' a derivation from the nineteenth-century term used to describe foster care more generally. 'Boarding out at home,' a scheme which may have originated in Australia, stemmed both from the growth of the fostering system in Australia and a reaction to the depression. The colony of Victoria had used foster care, rather than institutionalisation, for the majority of its state wards from the 1870s, at any rate for

²⁹ The Department always noted how many children were boarded out every year, but did not always specify whether those children were boarded out at home or in foster families. I have not included the discharges, which accounted for the falling numbers in some years.

children committed as neglected rather than those charged with criminal offences.³⁰ Inspired initially by the example of the neighbouring colony of South Australia, whose State Children's Council had adopted the policy in 1871,³¹ by 1874 Victoria was a leader in the field. In December 1874 Victoria's *Neglected and Criminal Children's Act* was amended to reflect this new reality. Instead of being placed in industrial schools or institutions, state wards were detained temporarily in 'receiving depots' and then mostly dispatched to foster homes. Foster parents were paid to care for the children, although at a fairly low rate. The scheme was administered by voluntary organisations of middle-class women, or 'Ladies' Committees,' who selected suitable foster parents, paid the boarding out allowance and inspected children in state care. The Committees were divided into specific localities and had virtually unfettered authority within their regions, although they reported to the (male) Inspector of Industrial and Reformatory Schools.³² A similar system was also introduced in New South Wales from the 1880s.³³

Foster care was promoted by its supporters as combining the best aspects of state intervention and private care. Children were removed from inadequate parents, but instead of living under the impersonal management of institutions, were placed instead in a new family environment which would provide appropriate moral guidance.³⁴ Boarding out at home challenged both rationales. By accepting that most mothers seeking state assistance were the appropriate guardians of their children, it

³⁰ 'Reformatory children,' the other major form of state committal, were still customarily sent to institutions, although older children were often subsequently sent to service, see the figures in *Report of the Secretary and Inspector for the Year 1910*, 6.

³¹ Jaggs, *Neglected and Criminal*, 33 – 38. For a contemporary account of the South Australian system by one of its protagonists, see Catherine Helen Spence, *State Children in Australia: A History of Boarding Out and its Developments*. (Adelaide: Vardon & Sons, 1907), 10 – 42.

³² Jaggs, *Neglected and Criminal*, 40.

³³ Ramsland, *Children of the Back Lanes*, 159 – 192.

³⁴ Spence, *State Children in Australia*, 35 – 42.

tacitly recognised that economic need, rather than moral failure, was at the basis of much intervention and that the solution was financial support rather than the child's removal. For this reason, the scheme was always fairly controversial, and its increasing use reflected shifting attitudes towards poverty and the role of the state. The Victorian state scheme had tentative beginnings in the 1880s, following the Protestant orphanage which began the practice in the 1870s. A 1919 memo by the Department for Neglected Children suggested that children had first been boarded out with their mothers in 1880 but 'were very few in number.' By 1889, numbers had grown sufficiently for the Secretary for the Department to intervene and restrict numbers to forty at any one time. Nevertheless, numbers continued to grow and in early 1896 Cabinet decreed that the practice should cease. This in turn was challenged by some parliamentarians, who argued that such a blanket prohibition would cause unreasonable hardship. In August 1896, the Premier retracted his earlier position and declared that 'deserving cases' could still be considered.³⁵ In 1898, the Departmental secretary Thomas Millar suggested in his annual report that economic circumstances were at the root of the change. '[T]he depression ... formed a precedent for extending the ... practice, [which] has now become almost general throughout the colony,' he argued.³⁶

What the depression had done was undermine, at least to some extent, Victorian middle-class moral theories which held that poverty resulted from improvidence, and that applicants should never be offered assistance without strings attached. As Shurlee Swain has argued, the economic downturn of the 1890s was so severe and so

³⁵ *Victorian Parliamentary Debates* (hereafter Vic PD), Legislative Assembly, Volume 152, 5 August 1919, 474 (The Hon. H.S.W. Lawson).

³⁶ *Report of the Secretary and Inspector for the Year 1898*, 4.

widespread in its effects that many people who traditionally had no contact with charitable agencies came under its net, as well as the existing poor who suffered more. This created not only an overwhelming demand for assistance which agencies struggled to meet, but forced middle-class charitable workers, administrators and parliamentarians to contemplate the hitherto unpalatable reality that destitution could stem from structural forces beyond an individual's control.³⁷ Thomas Millar did not endorse boarding out at home, in part because he thought it was illegal, but he recognised that it was a 'humane' development assisting women in need.³⁸ The scheme also reflected a growing sense of state responsibility towards the young, with a new emphasis on keeping working-class children with their mothers. Thomas Smith, head of the department between 1907 and 1910, emphasised in his 1907 report that 'I am favourably impressed with the success of this policy [in] assisting deserving women to keep their families together ... as there is no doubt that the mothers are the best guardians for their own children.'³⁹ The moral paradigm was never entirely superseded. As with all charitable applications, cases were investigated to filter out the unworthy and only the 'deserving' were rewarded. Smith reassured readers in 1908 that 'in every case, inquiries were made and as far as could be gathered, each [successful] case proved to be deserving.'⁴⁰

Opposition to the scheme came from several angles. One was that these committals were illegal, as such children were not neglected according to the provisions of the

³⁷ Swain, 'The Victorian Charity Network in the 1890s,' 31 – 32, 305 – 306, 313 – 321, although Swain argued that shifts in attitude were still the exception rather than the rule amongst many Victorian voluntary charitable organisations, with most change coming from a select group of radical individuals.

³⁸ *Report of the Secretary and Inspector for the Year 1898*, 4

³⁹ Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1907*, Vic PP 1908, Volume 2, No. 25, 3.

⁴⁰ Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1908*, Vic PP 1909 (second session), Volume 2, No. 17, 4.

legislation. Millar thought that a separate assistance scheme should be devised, with funds being allocated from the Annual Charities Vote and distributed to mothers by the LBS.⁴¹ He also suggested that this would prevent women having to go through the Court committal process. 'I ... express the hope that ere long, some means will be devised of offering such assistance to deserving widows and deserted wives, without their having to go through the ordeal of taking their little ones before the justices,' he urged the government in 1900.⁴² Another source of opposition was the old fear about extending state assistance too far. If there was no deterrence associated with government relief, some continued to argue strongly, the state would be overridden with claimants seeking to take advantage of its beneficence. Millar himself sometimes expounded this principle, particularly during years with high committal rates. In 1898, he argued that committal numbers reflected 'a wholesale undermining of that strong feeling of personal and local effort in times of trouble ... which was so conspicuous in the earlier days of our colony.'⁴³ He thought that the extension of the scheme had led to 'many parents and relatives ... [coming] to look upon the fact of children being committed ... as being little or no degradation, so long as they are left with their relatives.'⁴⁴ Others also objected on moral grounds. In 1906, secretary John Davis maintained that the growing numbers of children boarded out at home 'shows that there is an increasing tendency on the part of impoverished widows and deserted wives to expect the state to support their offspring.'⁴⁵

⁴¹ Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1901*, Vic PP 1902, Volume 2, No. 24, 4. The Charities Vote was the government funding distributed every year to privately run charities.

⁴² Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1900*, Vic PP 1901, Volume 3, No. 30, 4.

⁴³ Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1897*, Vic PP 1898, Volume 3, No. 27, 4.

⁴⁴ *Report of the Secretary and Inspector for the Year 1898*, 4.

⁴⁵ Department for Neglected Children and Reformatory Schools, *Report of the Secretary and Inspector for the Year 1906*, Vic PP 1907, Volume 2, No. 20, 3.

**‘Good and bad motherhood:’ Applications in the Melbourne Police Courts, 1890
– 1910**

Davis might have portrayed committal applications as an easy option, but in practice, the process was beset with difficulties. An examination of some of the cases reported in Melbourne newspapers during this period reveals how such applications played out in practice, and how fraught they could be. A mother faced two hurdles. The first was whether the children should be made wards at all. The secondary issue was whether they should be returned home. To succeed on both counts, woman needed to prove not only that she was poor, which in most cases meant without a male breadwinner, but that she was of good character and had the capacity to care for her children appropriately. In other words, for children to be committed as neglected children and then boarded out to their mothers, a woman had to demonstrate that her children were *not* neglected according to the terms of the Act. Poverty was usually the easiest aspect to prove. As we have seen, the majority of mothers whose children became wards were widows or deserted wives without means, but the Courts, via the police, certainly scrutinised applicants for any hint of alternative financial means. On 26 January 1893, Ernest and Letitia Batty were charged with neglect before the Prahran police court. Their mother in most respects fulfilled all the criteria for a successful application. Four years previously, she had been deserted by her husband, who had subsequently died. Mrs Batty had endeavoured to support the family by taking in boarders and washing, but had then become ill. The Court, however, refused to commit the children because Mrs Batty would inherit £100 when her mother died.

Although there was no suggestion that she had immediate access to the money, the Court evidently considered that her relatives could assist her.⁴⁶

Alongside poverty, and equally importantly, women had to prove their respectability. Police court registers and departmental records did not record information systematically enough to allow us to assess the criteria used in every case, but the newspaper reports indicated common patterns. The application process clearly favoured married women who had become impoverished through no fault of their own, usually through the death of a male breadwinner. On 24 August 1901, Maria Ivey applied to the Carlton bench to have her three children, aged six, four and one, committed. Maria was a widow, her husband having been killed in an accident 18 months previously. Since then, Maria had been living with her mother and ‘trying to support the family by taking in white work,’ but she could only earn 5 shillings per week. Like Mary Thomas, Maria had a corroborator, a family friend who ‘bore testimony to the applicant’s respectability.’ The three Ivey children were boarded out to their mother.⁴⁷ Similarly, on 8 February 1906 Elizabeth Tyrell’s two youngest children, aged eight and 12, were committed to the department and returned home. Elizabeth’s husband, a stevedore, had recently died in hospital following injuries sustained at work and Elizabeth ‘could not make ends meet.’ The Port Melbourne police court determined that Elizabeth was ‘of good character’ and granted the application.⁴⁸ Other female family members were sometimes also successful. On 10 July 1905 Ada Beattie advised the Port Melbourne Court that she would take charge of her orphaned niece and nephew, aged five and three, if they were committed to the

⁴⁶ ‘Police News,’ *The Age*, 27 January 1893, 7.

⁴⁷ ‘An Unfortunate Family,’ *The Herald*, 24 August 1901, 4.

⁴⁸ ‘Police Intelligence,’ *The Age*, 9 February 1906, 8.

department and she was paid for their upkeep, 'as she had no means of her own.' No other information about her circumstances was reported, but she was evidently respectable enough for the bench to agree.⁴⁹

In establishing their criteria for 'respectability,' Police Court Magistrates behaved similarly to middle-class charitable workers, who also looked at women's behaviour, housekeeping standards and reports from outsiders before determining whether an applicant was deserving of assistance.⁵⁰ Deserted wives were the other major category of applicants, although their numbers were significantly lower than those of widows. There are two possible explanations for this. Deserted wives were generally viewed with more ambivalence, as it could never be discounted that they might have been 'at fault' in some way for the breakdown of the marriage.⁵¹ More practically, they had live husbands who might be located and forced to maintain their families. Magistrates were certainly inclined to try and get fathers to pay before committing the state, and only particularly compelling cases seem to have been granted assistance. Sarah Collier was one such successful applicant. Sarah, who was partially blind, appeared before the South Melbourne police court on 29 January 1898 to request that her three young children, aged seven, four and one, be committed. Sarah's husband had been a caretaker at the Melbourne Cricket Ground but had 'lost his position due to drink' and then deserted his family. The police sergeant bringing Sarah's application described her husband as 'a most unmitigated scoundrel.' Before her husband left, Sarah had tried to provide for herself and her family by obtaining a situation, but her husband had 'compelled her to leave it.' Sarah was supported in Court by her mother and a

⁴⁹ 'Police News,' *The Herald*, 10 July 1905, 4.

⁵⁰ Swain, 'Negotiating Poverty,' 103 – 110.

⁵¹ *Ibid*, 107.

representative from a charitable organisation. The South Melbourne bench not only granted Sarah's application for all three children and recommended that they be boarded out to her, but gave her 10 shillings from the poor box to tide her over and issued a warrant of arrest for the errant husband.⁵²

As well as the death or absence of their male breadwinner, all of these women emphasised the work they had done to support their families prior to the police court application. This was obviously a critical point in determining which mothers should obtain assistance. Like charitable organisations, police magistrates evidently preferred applicants who showed some reluctance in seeking relief. This demonstrated independence and strength of character, and suggested that the candidate was not 'naturally' reliant on charity.⁵³ Relatively few women managed to obtain assistance if they had husbands living with them, and the men had to be absolutely unfit for employment. Of the 258 mothers who obtained state assistance for their children in 1909, only 41 had live husbands. Twenty men were invalids, four husbands were blind and one was epileptic. Eleven other men were in gaol and five in asylums. Fathers were not eligible under the scheme. Men, some of them widowers, did apply during this period to have their children committed to the department, but if the application succeeded the children were invariably removed from their care.⁵⁴ When mothers did obtain assistance, funds were limited. The Neglected Children's Department never really intended that boarding-out allowances would cover all expenses associated with children's upkeep. With foster families they fondly hoped

⁵² 'Police Intelligence,' *The Age*, 2 February 1898, 10.

⁵³ Swain, 'Negotiating Poverty,' 105.

⁵⁴ The Departmental report for 1909 indicated that 14 widowers, 5 men whose wives had left the family and 3 men with wives in goal had their children committed, but none of these children were boarded out to their fathers, see *Report of the Inspector and Secretary for the Year 1909*, 12.

that the foster parents would come to treat the child ‘as their own,’ or, in other words, supplement the cost of their upbringing if the parents could not be made to pay.⁵⁵ With mothers taking care of children themselves, it was likewise accepted that the Department would not pay simply to keep the women at home. A common tactic was to commit some, but not all of the children, so probably saving the mother from destitution, but obliging her to continue to find some other source of income.

Women like Maria Ivey, Elizabeth Tyrell and Sarah Collier invited the Court’s pity. Not all mothers were so lucky. While the ‘deserving’ were rewarded, women who did not fulfill the Court’s implicit moral criteria were either sent away, or were advised that they would only receive assistance if their children were removed. On 9 April 1906, an unnamed deserted wife appeared before the Carlton police court for failing to send her children to school, and at the same time asked for state support for her two youngest children. The woman’s financial situation was desperate. She had seven children. Her husband had gone to Sydney and had paid her 13 shillings over the last nine months. She had sent an equivalent sum back to him in the hope that this would pay his fare back to Melbourne but had heard nothing further. She earned one pound per week through needlework and her eldest daughter earned 5 shillings, out of which they paid 7/6 rent and 2/6 on sewing machine repayments. Her eldest girl, aged 18, was ‘in delicate health’ and could not work, and her youngest was only three. The Court advised her that they would only commit the children if she agreed to have them removed from her care, as she had shown herself ‘unable to control her boys,’ who were often away from home and not attending school regularly. The woman

⁵⁵ Shurlee Swain and Renate Howe, *Single Mothers and their Children: Disposal, Punishment and Survival in Australia*. (Cambridge and Melbourne: Cambridge University Press, 1995), 130 – 131.

refused and left the court with her children.⁵⁶ Any hint of alcohol use also served to discredit a woman's respectability, although relatively few children were committed due to their mother's drinking alone. Of the new wards without fathers in 1898, only 15 had mothers deemed 'drunkards.'⁵⁷

Unmarried mothers were another category of applicant who were never provided with support to maintain their children at home. Throughout this period there was continual debate about the death rate of illegitimate children, which was significantly higher than the rate for legitimate children, the need for a foundling hospital and for better regulation of privately boarded out infants.⁵⁸ These concerns never translated into the same type of financial assistance available to impoverished married women. Mothers of illegitimate children did apply to have their children made state wards, and occasionally they succeeded, although Magistrates were reluctant to 'sanction sin' or to 'encourage' such women to rely on state assistance. At the Richmond police court on 16 May 1892, several mothers tried to commit six illegitimate children, but the only one who was successful was the one who most approximated dominant norms of respectability. Jessie Williams had apparently had a long-term relationship with the father of her three children, who had left her to live in Western Australia, and her application was supported by Miss Sutherland of the Neglected Children's Aid Society. The remainder were dismissed, even though, *The Age* noted, the women were 'shabbily dressed females, who had pitiful tales to tell.'⁵⁹ When women did make

⁵⁶ 'Neglected Children – A Mother's Struggles,' *The Herald*, 9 April 1906, 1.

⁵⁷ *Report of the Inspector and Secretary for the Year 1898*, 12; on alcohol in LBS reports see Swain, 'Negotiating Poverty,' 103, 105.

⁵⁸ Swain and Howe, *Single Mothers and their Children*, 91 – 113; see also comments in *Report of the Inspector and Secretary for the Year 1893*, Vic PP 1894, Volume 3, No. 53, 3; *Report of the Inspector and Secretary for the Year 1897*, 4.

⁵⁹ 'Police News,' *The Age*, 17 May 1892, 7.

such applications, however, they never asked for the child to be boarded out at home, but rather for the children to be removed so they could support themselves. In October 1901, a 16 year old state ward applied for her baby son, Alfred McVeigh, to be committed to the Department so that she could find a situation. This mother was also supported in Court by a prominent charitable worker, Mrs Goldspink, who assured the bench that if the child was committed, she would assist the mother to find work.⁶⁰

Even if they met all the moral criteria, mothers could still have their applications refused. The scheme was extra-legal and therefore discretionary, and there were always Magistrates who disapproved of twisting the legislation. The Richmond bench maintained a particularly strong line against ‘no-fault committals’ in the early 1890s, declaring in January 1892 that it was ‘taking a very decided stand against the foisting of children upon the care of the state.’⁶¹ The campaign against boarding out at home grew again in the years between 1898 and 1902, primarily on financial grounds. As we have seen, committal numbers rose very significantly between 1890 and 1898 and reached a new peak in 1901.⁶² Another economic recession followed in 1902, and with limited funds at their disposal, successive secretaries of the Neglected Children’s Department launched a campaign against children being committed as ‘neglected’ contrary to the provisions of the Act. Magistrates responded. In his 1903 Annual Report, secretary William Davis noted with satisfaction that ‘benches have adopted a more rigid interpretation of s 18 of the *Neglected Children’s Act* ... with the result that only 397 children ... were placed under control during the year.’⁶³ On 30 March 1903 the Prahran Court supported a father’s challenge to a mother’s application to

⁶⁰ ‘A Neglected Child,’ *The Herald*, 15 October 1901, 4.

⁶¹ ‘Foisting Children on the State,’ *The Age*, 12 January 1892, 10.

⁶² *Report of the Secretary and Inspector for the Year 1907*, 3.

⁶³ *Report of the Secretary and Inspector for the Year 1903*, 3.

commit their child, declaring that ‘too many children [are] committed.’⁶⁴ In 1904, numbers fell still further and Davis remarked approvingly that ‘Magistrates are exercising more care and discretion than formerly in dealing with certain cases.’⁶⁵ Notwithstanding, 131 out of 397 children committed in 1903, and 105 out of 382 in 1904, were still returned home,⁶⁶ and the new stringency did not last long.

Applications for assistance under the *Neglected Children’s Act*, then, were public performances, where working-class mothers had to prove their worth to middle-class decision makers and where Magistrates based their determinations upon particular understandings of class, gender roles and state responsibility, rather than the limits of the law. Alongside judicial reasoning, though, the applicants themselves deserve our attention. The appearance of these invariably impoverished and often marginalised women in the police courts raise interesting questions about working-class women’s legal agency, or how they came to know such options existed and how they went about applying for state assistance through the judicial system. In 1919, when the Victorian Legislative Assembly was debating amending legislation, Mr Billson, MP for Fitzroy, described the application process in some detail. He suggested that when women were left destitute, they customarily ‘applied to a public man, such as an MP, to inquire [as to] the best means of getting the children boarded out to her, because she is unable to support them.’ The ‘public man’ would then write to the local police sergeant, asking him to make inquiries about the family’s situation. The police subsequently made inquiries, (‘usually kindly,’ Billson conceded), and following the

⁶⁴ ‘Police Intelligence,’ *The Age*, 31 March 1903, 6. The dispute related to the father’s liability to maintain the child, as he had signed an agreement releasing him from his obligations on payment of £12. The maintenance order would have overridden the agreement, if the committal had gone ahead.

⁶⁵ *Report of the Secretary and Inspector for the Year 1904*, 3.

⁶⁶ *Report of the Inspector and Secretary for the Year 1903*, 3.

investigation process, the mother was notified to attend Court. The mother then attended Court, where, as Billson put it, ‘the farce ... is gone through ... The Court has to determine that the children are neglected, though the Magistrate knows that they are not ... But if the Magistrate did not decide that they were neglected, no relief could be given to the mother.’ By 1919 an even larger percentage of new wards were boarded out at home.⁶⁷

Billson’s comments indicated that by 1919 and before, the availability of boarding out at home was widely known amongst working-class communities and that a standard procedure was followed when implementing this extra-legal remedy. As well as MPs or other public figures, women may also have approached the police or the Courts directly. Christina Twomey has argued in relation to an earlier period that working-class communities attended the police courts for general advice as well as to pursue legal remedies, and Magistrates customarily made themselves or their clerks available at certain times to provide such information.⁶⁸ The police were in the front line of dealing with neglected children and no doubt suggested this course of action if it seemed appropriate. Likewise, successful applicants presumably spread the word themselves amongst their friends and neighbours. However the presence of middle-class charitable representatives in reported cases also suggests that the Ladies’ Benevolent Societies and other relief organisations were closely involved in these proceedings. Members of charitable associations attended the Police Courts routinely, to take charge of neglected children, advise Courts about familial situations and keep an eye on proceedings like carnal knowledge cases. If they were not aware of the

⁶⁷ Vic PD, Legislative Assembly, Volume 152, 12 August 1919, 608 (Mr J.W. Billson).

⁶⁸ Christina Twomey, ‘Gender, Welfare and the Colonial State: Victoria’s 1864 *Neglected and Criminal Children’s Act*,’ *Labour History* 73 (1997): 169 – 175.

availability of state relief prior to their work for such organisations, they would rapidly have become so. Particularly where funds were limited, they probably urged women who needed ongoing assistance greater than the charity could provide to explore the committal option, and may even have approached the police on their behalf. They also played a role in the court proceedings themselves, routinely giving evidence to support the mothers, and as ‘respectable’ middle-class women, their words had weight. A charitable corroborator could make all the difference between a successful and unsuccessful application.

Interwar legacies

An application under the *Neglected Children’s Act* remained a major strategy for working-class mothers to obtain financial assistance from the state for nearly 30 years. Despite repeated calls for intervention, the Victorian Government did not act until 1919, when it was faced with the necessity of change by an adverse Court decision. In early 1919, a father had appealed a child’s committal to the department. Justice Hood in the Supreme Court determined that applications under s 18 to commit children where the children were not neglected according to legislation were illegal. Magistrates soon hesitated about committing such children, and the government introduced new legislation, the *Children’s Maintenance Act*, to cover these scenarios.⁶⁹ The legislative intervention was generally welcomed amongst Victorian MPs, who argued that the new Act would make two major changes to the existing regime. One would be to remove the stigma of conviction from children who were committed as neglected children due solely to parental poverty. Such children would

⁶⁹ Vic PD, Legislative Assembly, Volume 152, 5 August 1919, 477 (The Hon H.S.W. Lawson).

no longer be deemed ‘neglected,’ but would be dealt with under an entirely separate system. The other, related aim, was to remove the requirement for the Court to prove parental fault or neglect, rather making the application dependant on need. The Premier, Mr Lawson, who introduced the bill, argued that the Bill reflected new attitudes towards the role of the state in assisting the needy, and in particular towards children. ‘We think more kindly of one another now, and we regard the children as an asset,’ he maintained during the Bill’s second reading speech, stressing later that ‘it is our undoubted duty to see that [children] are properly cared for.’ Sir Alexander Peacock, MP for Allandale, agreed that the legislation reflected ‘humanitarian feeling ... towards these unfortunate children.’⁷⁰

MPs may have promoted the Bill as innovative and humane. In practice, the new Act was effectively thirty years of Police Court practice translated into legislative form, and poverty alone was never the only requirement. The *Children’s Maintenance Act* operated under two overarching principles. The first was indeed that the state would support children under fourteen who were not wards of the department, so that they would not need to be committed as neglected. The second, however, was that this assistance was based explicitly on the character of the applicant mother.⁷¹ The Act allowed women who had exhausted all other options to apply to the secretary of the Department of Neglected Children for a weekly payment.⁷² Upon receiving the application, the Department was obliged to make enquiries to ascertain ‘the circumstances and character of the applicant,’ as well as ‘the ability of the applicant to maintain the child ... without assistance’ and ‘the truth of the statements in the

⁷⁰ Vic PD, Legislative Assembly, Volume 152, 12 August 1919, 613 (Sir Alexander Peacock).

⁷¹ Only mothers could apply, see *Children’s Maintenance Act* 1919 (Vic) s 3.

⁷² Ibid.

application.⁷³ The Department then sent a report to the Police Magistrate, who presided over a Court hearing where the evidence was tested.⁷⁴ After the hearing, the magistrate sent back to the department a report recommending whether or not assistance should be granted. The Act mandated that the ‘police magistrate shall not recommend that assistance be granted unless he is satisfied that the applicant is *deserving of assistance* and unless the evidence ... of the applicant is corroborated on all material points (my italics).’⁷⁵ The Act also provided that children boarded out to their mothers under the old Act were no longer wards of the state.⁷⁶ Although the investigative process was debated in the Legislative Assembly, with some MPs querying the time it would take, no member objected to the Court continuing to scrutinise the applicant’s character.⁷⁷

Under the *Children’s Maintenance Act*, therefore, a mother’s ‘respectability’ continued to be central, regardless of her financial situation. The Act provided that if a mother was subsequently found ‘guilty of conduct rendering her unfit ... to have custody of the child, or the mother is not properly maintaining the child’ then the payments would cease, and the child would become a state ward.⁷⁸ Decisions remained discretionary, with the Department and Magistrate having virtually unfettered powers to decide individual cases. Victorian legislators clearly intended the new Act to provide for the same class of applicants who had succeeded under the old *Neglected Children’s Act*, or, in other words, mostly widowed mothers and some deserted wives. Mr Solly, MP for Carlton, noted that ‘the bill will mainly deal with

⁷³ Ibid, s 4.

⁷⁴ Ibid, ss 5- 7.

⁷⁵ Ibid, s 6(1) and (2).

⁷⁶ Ibid, s 9(1).

⁷⁷ Ibid.

⁷⁸ Ibid, s 12(1) and (2).

those children who have lost their fathers, [who] must be protected by the state.⁷⁹ When progressive MPs sought to raise the amount payable to mothers under the new regime, they argued for this on the basis that these women and their children were blameless. ‘A mother ... who has no breadwinner to support her ... should have the right to a sufficiency,’ Solly maintained.⁸⁰ Such assumptions continued in the next round of legislative change. In 1928 the Victorian Government re-enacted the legislation, bringing all applications for child support under one overarching Act, the *Maintenance Act*. The first part of this Act concerned applications against fathers and the second applications to what had been renamed the Children’s Welfare Department, but the principles remained unchanged. Mothers were barred from assistance if they were considered ‘undeserving’ by reason of character or associations.⁸¹ The Minister gained even greater discretion to stop payments, being able to make this recommendation merely ‘if the circumstances of the case warrant ... discontinuance.’⁸²

Conclusion

Between 1890 and 1910, the Victorian police courts expanded significantly the state scheme of boarding out at home. Through a legal fiction, children were formally committed to the care of the state and then sent back home with their mothers, who were paid a weekly allowance to maintain them. Numbers were small in the early 1890s, but by 1910 over half of new applicants were dealt with in this manner. The practice attracted both supporters and detractors. Supporters of boarding out at home

⁷⁹ Vic PD, Legislative Assembly, Volume 152, 12 August 1919, 622 (Mr Solly).

⁸⁰ Ibid, 619.

⁸¹ *Maintenance Act* 1928 (Vic), s 38(1) and 40(2).

⁸² Ibid, s 45.

argued that it was a humane response to structural problems of unemployment and economic hardship, allowing women without breadwinners to maintain their families with some degree of dignity. Opponents argued either that the scheme was illegal, and should be replaced with an extension of private charitable assistance, or that it undermined principles of relief, making assistance ‘too easy’ to obtain and applicants too dependant on the state. Studying this regime in action not only illuminates the important extension of outdoor relief to mothers in need, and the great differences between law ‘on the books’ and law in practice, but the knowledge about and use of the law by working-class women at the turn of the twentieth century. Women were obviously aware of this legal remedy and chose to engage with the Court system, in most cases in desperation, but also with the clear intention of trying to keep their families together and maintain them with a degree of stability not available through short-term charitable relief.

Yet if the *Neglected Children’s Act* regime inaugurated an important extension of state assistance, such assistance was also restricted to those considered worthy by police court magistrates and the department. While ‘deserving widows and deserted wives’ had their applications approved, those with a prior history before the Courts, unmarried mothers, or those considered morally doubtful, were either sent away or faced the choice between having their children removed from their care, or brought up with them in destitution. When Victoria formally legislated for the support of the mothers and their children in the interwar period, this theme continued. Even in a self-proclaimed humanitarian era, which consciously distanced itself from many of the moral attitudes of its predecessors, only the ‘deserving’ achieved financial support. And while we may have come a long way in some respects from the *Children’s*

Maintenance Act of 1919, the principle that state assistance for children is not only a recognition of the child's need, but a reward for appropriate maternal behaviour, continues. We still see the temptation to whittle down or 'manage' benefits unless parents behave in particular ways, whether that means teenage mothers attaining educational qualifications,⁸³ or parents 'controlling' their truanting children.⁸⁴ Indeed if the current federal opposition has its way, any parents receiving benefits may have their payments quarantined unless they can prove to Centrelink that they are 'responsible.'⁸⁵ Over one hundred years on, the residual influence of the judicial decision-makers under the *Neglected Children's Act* persists surprisingly strongly.

⁸³ Patricia Karvelas, 'Toughen Rules on Teenage Mums,' *The Australian*, 6 May 2011, www.theaustralian.com.au/national-affairs/toughen-rules-on-teenage-mums/story-fn59niix-1226050764546.

⁸⁴ James Massola, 'Howard Minister Mal Brough Backs Crackdown on Welfare Payments to Truants' Parents,' *The Australian*, 18 October, 2011, www.theaustralian.com.au/national-affairs/indigenous/howard-era-minister-mal-brough-backs-crackdown-on-welfare-payments-to-truants-parents/story-fn9hmlpm-1226169608191.

⁸⁵ Australian Council of Social Service, 'Policy Analysis – Compulsory Income Management – A flawed answer to a complex issue.' (June 2010): 2 – 3.