CHILD MIGRANTS TRUST

228 Canning Street
North Carlton Vic 3054
Tel: (03) 9347 7403
Fax: (03) 9347 1791
www.childmigrantstrust.com

Also based at:
8 Sunbury Road
Victoria Park WA 6100

Legal and Constitutional Affairs Committee
Review of Government Compensation Payments

1. Introduction

The Child Migrants Trust is an independent, professional social work agency based in Australia and the UK. It has provided trauma and identity counselling, supported by specialist family reconnection services for former child migrants and their families, for the past 23 years. The Trust played a leading role in bringing the plight of child migrants to the attention of governments, and has presented evidence before parliamentary inquiries in Australia and UK. It has been instrumental in the production of investigative documentaries on this human rights issue and in 2002, organised an international congress on child migration in the USA. The Trust's pioneering work has been recognised within national apologies delivered by the Prime Ministers of both Australia and the United Kingdom.

2. Former Child Migrants

Australia played a proactive and explicit role in the forced migration of 7,000 British and Maltese children during the twentieth century. From 1914 – 1970, thousands of children aged 3-14 years were bought to Australia as 'good white stock' and placed into harsh, cold and often isolated institutions across the country.

The deception practiced over many years by various agencies responsible for child migrants falsely defined their status as 'orphans', a stigmatised label associated with feelings of abandonment and very negative views about their families. This has frequently led to difficult adult relationships, weak attachments, inability to trust or form intimate relationships, and low self esteem. These burdens and consequences were often reinforced by the appalling abuse experienced by many throughout their childhood at the hands of untrained, overloaded residential child care staff.

Falsely described as orphans, child migrants were denied the comfort and

security of family life. Instead, many endured child labour, physical degradation, sexual exploitation and a lifetime of loneliness and identity confusion.

3. **The Federal Government's responsibility**

Unlike Australian children in State Government care, child migrants were the particular responsibility of the federal Government. Its duty of care to the children was specified in the Immigration Act 1946 (Guardianship of Children). The recruitment of child migrants formed an important element of post-war immigration policy which was promoted as key to national survival and security –in political, military and economic terms.

The Federal Immigration Minister, Arthur Calwell, was very proud of his campaign to boost the population; in June 1949, he called it 'an epoch-making phase in Australia's development.' Indeed, post-war immigration changed the face and the character of Australia's population and led to significant demographic growth. Had post-war child migration been a success, we would not have witnessed successive federal Governments' reluctance or refusal to examine its decisive contribution and enthusiastic involvement in all the key stages of this policy.

Of course, there is a joint, shared responsibility with the UK (and Malta) for the fate of former child migrants. However, many Australians seem to have either forgotten or never heard of this critical chapter of their recent history, or collude with a convenient myth that Australia was a passive victim in these matters. Nevertheless, there is clear and compelling evidence that the Federal Government took a leading, interventionist role in recruiting former child migrants as part of a policy of post-war reconstruction.

While the overall reconstruction strategy seems sound, the specific decision to include young, vulnerable children was extremely misguided. This aspect of the policy was fatally flawed, particularly as the original justification was to recruit around 50,000 children in three years, a totally impractical target which fortunately resulted in only about 3,500 children arriving in Australia over two decades. In addition, there was a serious and consistent failure to ensure that robust arrangements were made to protect these exquisitely vulnerable children from a variety of risks.

The terrible and enduring consequences of these comprehensive failures in the federal Government's duty of care have been catalogued in the Senate

inquiry into child migration and the various State Government redress schemes. For decades, the human cost in terms of childhoods damaged,

innocence betrayed and hopes dashed has proved too difficult to contemplate for many of those governments and agencies involved. However, many former child migrants have never been given the choice of avoiding these painful legacies.

The bold and assertive initiatives in recruiting former child migrants by the Federal Government two generations ago have never been matched by an appropriately bold and active set of reparation policies. Part of the explanation for this inertia lies in the well known tendency for official responses, based on denial and avoiding responsibility, to continue for decades before more constructive strategies are developed. These have been urgently required to enable former child migrants to cope with the consequences of their terrible childhood experiences of loss, deception and abuse.

4. **Inequalities in State Government Redress Scheme responses**

The Federal Government's reluctance over many years to consider the need for a national reparation scheme, especially given the legal obstacles posed by statutory time limitation periods, is a very serious cause for concern. It suggests either a lack of moral leadership or confusion about its historic role or involvement. The resulting vacuum was filled by certain States who have pursued their own policies, with inevitable variations between the levels of redress available.

This has led to additional feelings of discrimination for those former Child Migrants who were sent to Victoria, New South Wales and South Australia. The opportunity to access any form of government redress is experienced as a postcode lottery. The issue is further compounded by significant variations in NGO responses to the demand for redress. For example, in New South Wales, those abused within certain institutions cannot turn to either State or agency based schemes, while in Western Australia both types of redress have offered a small measure of reparation.

The redress schemes can be described in these basic terms:

- Tasmania: maximum payment $60k; scheme closed 2005 and re-opened briefly in 2008 in response to late applications.

- Queensland: 2 tier scheme, maximum payment $40k; closed 2008.

- Western Australia announced its redress scheme in 2007, offering an initial payment range of $10-80k; subsequently reduced to $5-45k,

attracting extensive negative publicity and protest. Applications closed June 2009.

- South Australia announced limited access for care leavers to apply to the Victims of Crime Fund, restricted to those who suffered sexual assault, following the 2008 Mullighan review.

- Victoria and New South Wales – no redress schemes for child migrants.

The Tasmanian State Government placed its redress scheme within the office of the Ombudsman, in recognition of the independence and integrity required to investigate the State Government's (and its funded agencies') failure to protect vulnerable children in care. This is a significant operational difference from the Queensland and WA schemes.

These schemes clearly illustrate the difficulties associated with leaving these complex and sensitive issues in the hands of the individual States. First, although many concerns had been raised by the mass media and indeed the Trust's own advocacy from the late 1980s onwards, the redress schemes have been quite a late arrival in terms of offering tangible measures of assistance.

Secondly, each State has devised its own redress scheme at different times with varying amounts available for serious examples of abuse suffered while in State care. None of these schemes have offered serious amounts of financial payments which truly reflect the profound physical and psychological damage caused in abusive institutions. As such they represent token gestures of recognition.

5. **Legal hurdles to compensation- statute of limitations.**

The legal requirement of a standard of evidence 'beyond reasonable doubt' for conviction in criminal cases is a massive hurdle in historic cases where the victim was a child, and the perpetrator an adult with consistent, unregulated, everyday access to the child through their employment. For many the only option is to pursue the issue as a civil matter whereby the lower standard of evidence, 'balance of probabilities', is nevertheless restricted by statute of time limitation periods. This barrier to justice fails to acknowledge the multitude of reasons why victims of childhood physical and sexual assault often fail to disclose the crime until many years later. It is

however now widely understood, if not recognised in law, that this delayed response in seeking remedy by victims of historic abuse often stems from an overwhelming burden of shame, stigma and distress.

Given the very large numbers of complaints made over the past decade involving different types of abuse, there have been few convictions of those

responsible. This must be a serious cause for concern from a criminal justice point of view, as grave offences and serial offenders have never been brought before the courts.

It is recommended that an amnesty on statute of limitations in historic child abuse cases for 5 years with wide publicity be adopted in recognition of the particular problems experienced by adults abused as children. The lack of **independent** services available in the past to those leaving care reduced the flow of complaints about both abusive institutional regimes and specific individuals - especially predatory paedophiles, who were not restricted to Catholic establishments.

6. **Stolen wages**

A frequent theme amongst the grievances levelled at governments, churches and charities in parliamentary inquiries, from the landmark 'Bringing them Home' through to more recent Senate Inquiries is the issue of 'stolen wages.' It was common practice to withhold the wages of young people recently released from institutional care and placed into employment while still under State guardianship and control.

Many young people were sent hundreds of miles away onto isolated farms where they lived in tin sheds without power or water and were exploited and abused by the adult workforce. Others were placed into cold, lonely and often filthy boarding houses in cities, often crammed into rooms with predatory, itinerant adults, whilst most of their meagre salary was taken for board and the remainder 'held in trust' until their 21st birthday. Some described this practice as holding them to ransom; if they ran away they lost any hope of their own funds being returned- as seems to have been the case for the majority as reported by our clients over many years. Employment and living conditions for newly released care-leavers, including former child migrants, are frequently described as 'slave labour'.

Most State Governments have been unable to locate records relating to State ward trust accounts for those in their care prior to the 1960s, during which time many records were destroyed. There are a few former child migrants, however, who recall visiting 'the welfare office' and receiving a sum sufficient to buy a car, and in at least one case, the deposit for a house. The sums involved, in contemporary terms, were considerable, representing

sometimes five or more years' wages 'held in trust.' Former child migrants for the most part have no way of proving the extent of funds siphoned from them. Seen within the context of prolonged childhood suffering and exploitation, followed by decades of denial without recourse to reparations, it remains an outstanding and enduring grievance. Official responses have been largely ambivalent and helpless, citing the loss of records as an unfortunate but unintended consequence – 'tough luck.' There is need for

federal leadership on this shameful exploitation and theft from vulnerable children who were already failed miserably by their legal guardians.

7. **Differing national approaches to reparations**

The past decade has seen a radical shift in the willingness of some governments to accept responsibility for past policy failures that have led to tangible pain and suffering where there was a duty of care to provide safety and protection.

In relation to historic child abuse on a widespread scale as acknowledged in Australia by the Prime Minister's National Apology on November 16 2009, the essential components of a national reparations response should include: acknowledgment and apology; restorative, well funded services to ameliorate the range of losses and try to improve the quality of life for the future; and direct compensation payments related to assessment of loss and damage.

There is much that the Australian Government could learn from the Canadian and Irish Governments' response to these issues. Both have combined political apologies with much more comprehensive reparation schemes.

The consequences of failure to address reparation issues towards achieving restitution, particularly following recognition, within a National Apology, of the terrible scale of pain and suffering endured by thousands of vulnerable young children, will undoubtedly lead to cynicism and further suffering for victims of trauma. Differing and effectively discriminatory redress practices by the States, churches and NGOs undermine the Prime Minister's National Apology and perpetuate injustice, denial and isolation.

Much stronger federal leadership is urgently needed. At this present time, a former child migrant with a comparable damages claim to any other might have the options of State Government redress, State Redress as well as access to ex-gratia payments from the church or NGO schemes – or no options at all.

There are further complexities related to the varying standards of response to historical abuse from churches and charities, some of which use non professional staff and operate from their religious or charitable values rather than a social justice perspective. The legalese and explicit disclaimers often combine to alienate those former residents who choose to approach them seeking redress and justice. Some former child migrants, during a 'reconciliation' process with a faith based agency, have been told at the point of settlement negotiation that their ex-gratia payment 'is being taken directly from the Sisters' pension fund.' There are many examples of the

misuse of 'reconciliation' processes that ultimately re-traumatise the victims and fail to operate within accepted standards of independence and integrity. There is little evidence that criminal matters disclosed by claimants are referred by the organisations investigating themselves to the police.

How many parliamentary inquiries are needed before a national standard and policy will be established to respond to historical child abuse? The level of abuse, the failure of statutory authorities, churches and charities or the weight of crimes against children are no longer in question. To maintain its credibility, the Federal Government should either institute a full judicial review or implement a comprehensive package of reparation measures.

Conclusion

This submission has focused on the historic role of the Federal Government's post-war child care policy because it is not well known or understood that, in the case of child migrants, the Federal Government had a clear and active responsibility. The Government's position has been repeatedly stated that compensation is a matter for the States. Yet the States were not parties to the Commonwealth Child Migration Schemes, negotiated between the British and Australian governments. Whilst a different case can be clearly made in relation to Australian born care-leavers, 'Forgotten Australians'; the responsibility for child migrants remains with the Federal Government.

Failing to take the lead and leaving compensation to the States has resulted in the predictable, obvious dangers of unacceptable variations and differing standards, which form the present landscape of redress schemes across the nation.

Specialist restorative services form a key component of the national response to past policy failures. Properly funded services are vital before opportunities to restore families and identities are lost forever. Yet despite acknowledgement and clear evidence, resources from the Federal Government for services to assist former child migrants have remained too modest and quite inadequate. The numbers of former child migrants are

now quite small and are reducing every week as a result of illness, despair or old age.

It is painfully clear to former Child Migrants and those involved in their care that not all aspects of their damaged lives can be remedied or restored. We cannot undo the impact of a lifetime of deceit about their identity or family origins. However, this makes it imperative to take much more determined, co-ordinated and comprehensive steps to trace missing relatives, to ease traumatic memories and facilitate reunions. The need for a much more positive and robust lead from the Federal Government is a crucial missing

piece of the reparation package, for this post war child care policy disaster. There is still a small window of opportunity for positive action before time finally runs out on former child migrants.

Margaret Humphreys OAM, International Director

Ian Thwaites, Service Manager

Mervyn Humphreys, Project Evaluator