

CHAPTER 1

INTRODUCTION

1.1 This introductory chapter briefly describes the conduct of the inquiry, outlines some early responses to the Committee's first report on this inquiry, *Forgotten Australians*¹, adds further information on a number of issues raised in that report, describes perspectives on out-of-home care and provides a short summary of a number of recent reports on inquiries examining issues of child care and protection.

Terms of reference

1.2 On 4 March 2003, the Senate, on the motion of Senator Andrew Murray, referred the following matters to the Committee:

1. (a) in relation to any government or non-government institutions, and fostering practices, established or licensed under relevant legislation to provide care and/or education for children:
 - (i) whether any unsafe, improper or unlawful care or treatment of children occurred in these institutions or places,
 - (ii) whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection, and
 - (iii) an estimate of the scale of any unsafe, improper or unlawful care or treatment of children in such institutions or places;
- (b) the extent and impact of the long-term social and economic consequences of child abuse and neglect on individuals, families and Australian society as a whole, and the adequacy of existing remedies and support mechanisms;
- (c) the nature and cause of major changes to professional practices employed in the administration and delivery of care compared with past practice;
- (d) whether there is a need for a formal acknowledgement by Australian governments of the human anguish arising from any abuse and neglect suffered by children while in care;
- (e) in cases where unsafe, improper or unlawful care or treatment of children has occurred, what measures of reparation are required;

1 Senate Community Affairs References Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, August 2004. See Committee's website: http://www.aph.gov.au/senate_ca

- (f) whether statutory or administrative limitations or barriers adversely affect those who wish to pursue claims against perpetrators of abuse previously involved in the care of children; and
 - (g) the need for public, social and legal policy to be reviewed to ensure an effective and responsive framework to deal with child abuse matters in relation to:
 - (i) any systemic factors contributing to the occurrences of abuse and/or neglect,
 - (ii) any failure to detect or prevent these occurrences in government and non-government institutions and fostering practices, and
 - (iii) any necessary changes required in current policies, practices and reporting mechanisms.
2. In undertaking this reference, the committee is to direct its inquiries primarily to those affected children who were not covered by the 2001 report *Lost Innocents: Righting the Record*,² inquiring into child migrants, and the 1997 report, *Bringing them Home*,³ inquiring into Aboriginal children.
3. In undertaking this reference, the committee is not to consider particular cases under the current adjudication of a court, tribunal or administrative body.
4. In undertaking this reference, the committee is to make witnesses and those who provide submissions aware of the scope of the inquiry, namely:
- (a) explain the respective responsibilities of the Commonwealth and the States and Territories in relation to child protection matters; and
 - (b) explain the scope of the committee's powers to make recommendations binding upon other jurisdictions in relation to the matters contained in these terms of reference.

Conduct of Inquiry

1.3 The inquiry was advertised in *The Australian*, *Daily Telegraph* and *Herald Sun*, and publicised through other print and electronic media, through newsletters circulated by support groups and service providers, and on the Internet. The Committee invited submissions from Commonwealth and State Government departments and other interested organisations and individuals. The Committee

2 Senate Community Affairs References Committee, *Lost Innocents: Righting the Record, Report on Child Migration*, August 2001.

3 Human Rights and Equal Opportunity Commission (HREOC), *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, April 1997.

continued to accept submissions throughout the inquiry and especially following the tabling of *Forgotten Australians* which generated further interest in the inquiry.

1.4 The Committee finally received 537 public and 210 confidential submissions. A list of individuals and organisations who made a public submission to the inquiry together with other information authorised for publication is at Appendix 1.

1.5 Many people who had lived in a broad range of institutional and out-of-home care settings and those representing many organisations gave evidence at public hearings held in Melbourne on 11-12 November 2003; Adelaide on 13 November 2003; Perth on 8-9 December 2003; Sydney on 3-4 February 2004 and in Brisbane on 12 March 2004.⁴

1.6 The Committee tabled its first report on the inquiry, *Forgotten Australians*, on 30 August 2004. The report covered the majority of the terms of reference, focussing on children who were in institutional and out-of-home care, mainly from the 1920s until the 1970s when deinstitutionalisation began to see large institutions replaced by smaller residential homes, foster care or other options such as placements with families for accommodating children in need of out-of-home care. The report included background information on institutions and the governments' and Churches' roles in placing children in care, the treatment of children in care and the long-term effects of experiences while in care. The issues of responsibility, acknowledgement and reparation were also canvassed, as were issues relating to accessing records and information, and the provision of wide ranging services for care leavers which are critical in ensuring that they and their families can improve their quality of life.

1.7 This second report covers the terms of reference relating to foster care, including information from earlier times but with its main focus on contemporary foster care issues, and the contemporary government and legal framework in which child welfare and protection issues operate. The report also discusses children and young people with disabilities in care, and children and young people in juvenile justice and detention centres.

1.8 The Committee made a series of recommendations in *Forgotten Australians* relating to statements of acknowledgement and apology; addressing legal barriers; establishment of a national reparation fund; internal Church redress processes; a Royal Commission; the location, preservation, recording and access to records; funding for advocacy and support groups; the provision of comprehensive support and counselling services for care leavers; the provision of health care, housing, aged care and education programs; data collection and the need for a whole of government approach to program and service delivery; recognition through memorials and exhibitions and collecting oral histories; and the funding of research and the establishment of tertiary study courses on a range of issues relevant to the role and impact of institutional care in Australia's social history through to a focus on child protection and related issues.

4 A list of witnesses who appeared at public hearings is in Appendix 2 of *Forgotten Australians*.

1.9 The Committee acknowledged that some of its recommendations were beyond the Commonwealth's jurisdiction. The Committee considered that the Commonwealth should encourage the States and Territories to adopt recommendations through the Council of Australian Governments and Ministerial Council discussions. The Committee expected that the Churches and agencies would also acknowledge and accept responsibility for their involvement and adopt the recommendations that have been directed towards them.

Responses by some Churches and agencies to *Forgotten Australians*

1.10 The Committee is aware of a number of Churches and agencies that have responded to *Forgotten Australians* by issuing apologies and establishing processes to review their procedures and implement the recommendations contained in the Committee's report.⁵ These are a small but promising start, though there is still a long way to go and many others to respond.

Anglican Church

1.11 In September 2004, the Synod of the Anglican Diocese of Canberra and Goulburn issued an unreserved apology to people cared for by Church institutions in the Diocese. The Synod expressed its deepest remorse to any people who had been abused or assaulted in any way. The Diocese's Professional Standards Reference Group was 'assessing our existing processes in the light of the [report's] recommendations and developing a considered response, possibly working with other dioceses and also with government'.⁶

1.12 On 6 October, the Anglican Church's General Synod issued an apology to the children who experienced neglect, harm or distress in institutions conducted by the Anglican Church and its agencies. The apology stated:

The Anglican Church of Australia sincerely apologises to the children whose experiences in institutional and out-of-home care provided by the Anglican Church caused them hurt, distress, and harm.

With deep sadness and regret, this Church acknowledges that many of these children suffered abuse and neglect, and a lack of appropriate care and nurture while in institutional care; and a significant number also suffered physical and sexual assault.

The Church deeply regrets that its institutions and personnel did not always provide environments in which these children were protected and nurtured.⁷

5 Copies of the statements referred to in this section are in Appendix 2. There may have been other responses and statements that have not been drawn to the Committee's attention.

6 *The Canberra Times*, 'Diocese offers abuse apology', 19.9.04, p.2.

7 The Anglican Church of Australia General Synod, 'Church apologises to victims of institutions', *Media Statement*, 6.10.04.

1.13 The General Synod also requested that each diocese involved in the provision of institutional care to children extend an apology in similar terms. The Sydney Diocesan Synod issued a statement of apology on 25 October 2004 to victims of abuse in out-of-home care institutions owned by the Anglican Church. Archdeacon Geoff Huard, a member of the Anglicare Council, told the Synod:

Over 1000 children have passed through the doors of these institutions...Anglicare recognises that there may indeed have been some who received a poor level of care over the history of our institutions for which we are very sorry and we do sincerely apologise. [We are] keen to assist any who have had these experiences.⁸

1.14 The Sydney Synod resolved that the Archbishop of Sydney, the Standing Committee of the Synod and Anglicare's Council will be presented with Anglicare's response to the Inquiry. A report of action taken will be brought to the 2005 Synod. The Synod also affirmed the work of Care Leavers Australia Network (CLAN), as well as a new pastoral care and assistance scheme that is being administered by Sydney Diocese's Professional Standards Unit.

Australian Catholic Bishops Conference

1.15 On 14 December 2004, the Australian Catholic Bishops and the Leaders of Religious Institutes issued a statement on the report into children in institutional care. They formally renewed the apology, first made in the 1996 document 'Towards Healing', to those whose abuse was perpetrated by Catholic Church personnel. The statement said:

We are also deeply regretful for the hurt caused whenever the Church's response has denied or minimised the pain that victims have experienced. And we regret the hurt and distress caused to the many good people who have worked in this area.

1.16 The formation of a 'Senate Inquiry Action Group' was also announced. The mandate of the Action Group is:

The Senate Inquiry Action Group shall make an analysis of the recommendations of the Senate Inquiry, with particular reference to how they apply to the structures, institutions and personnel of the Catholic Church, and provide the bishops and religious leaders with advice concerning the implementation of the recommendations.

The Action Group shall present a preliminary report to the May 2005 meeting of the Australian Catholic Bishops Conference and the June meeting of the Australian Conference of Leaders of Religious Institutes, together with a report on the work still to be done and an estimate of the time needed to present a final report.⁹

8 *Sydney takes the lead to protect children from abuse*, 26.10.04, sydneyanglicans.net.

9 Australian Catholic Bishops Conference, 'Statement on Senate Report into Children in Institutional Care', *Media Statement*, 14.12.04.

Benevolent Society

1.17 The Benevolent Society provided residential care for children in Sydney. In a response to *Forgotten Australians* dated 15 October 2004, the Society apologised 'unreservedly for any abuse, mistreatment or harm experienced by children in our care'. The Society went on to state that:

The Benevolent Society feels deep sadness and regret for the children in our care who did not receive the consistent, loving care that they needed and deserved.

We welcome the Senate Inquiry into Institutional Care and its recommendations. It gives agencies such as our own the opportunity to acknowledge past wrongs and to try to address them appropriately. In particular, we are putting in place services to ensure that we will respond promptly, compassionately and respectfully to anyone who wishes to approach us to talk about their time in Scarba House as children.¹⁰

Uniting Church in Australia

1.18 The Uniting Church in Australia issued a statement on 27 September 2004 which 'expressed regret and sorrow to the children who suffered neglect and abuse while in institutional care provided by the Uniting Church and its agencies during the last century'. The National President, Rev. Dr Dean Drayton, said:

On behalf of the Uniting Church and our agencies, I apologise unreservedly for any physical, psychological or social harm that might have occurred.

I deeply regret that some children were let down while in the care of the Uniting Church and former Methodist, Presbyterian and Congregational Churches.

1.19 Rev. Drayton noted that the Uniting Church, through its family and community networks, had developed new models for providing care and services to children. The Church was committed to ensuring that children and families receive the best facilities and care possible and that it was working constantly to improve them. Rev. Drayton also stated that the unreserved apology was only the beginning of a staged process and that the Uniting Church was 'committed to working with government to respond to the issues raised during the Inquiry'.¹¹

1.20 The lead of the national Church was followed with the Synod of the Victorian and Tasmanian Uniting Church reported to have made its own apology to all children who had suffered physical, psychological or social harm in church-run institutions at a meeting on 28 September. The apology was made by the Victorian Moderator

10 The Benevolent Society, 'The Benevolent Society supports the Senate's Forgotten Australians report', *Media Release*, 15.10.04.

11 Uniting Church in Australia National Assembly, 'The "Forgotten Australians" Report', *Media Release*, 27.9.04; also ABC News Online, 'Church sorry for institutional care suffering', 27.9.04.

Rev. Sue Gormann. The Western Australian Synod was also reported to have made a similar apology.¹²

Further information on matters discussed in *Forgotten Australians*

1.21 The Committee has received additional information that expands on or clarifies a number of matters raised in the first report.

Legacy homes and repatriation wards

1.22 The Committee received submissions from former residents of homes who indicated that they were placed in institutions by Legacy or were 'repatriation wards'. In *Forgotten Australians*, the Committee noted advice from the Department of Veterans' Affairs that the Commonwealth had never had a role in the placement of children in care and that the Repatriation Commission did not own or operate orphanages. The Repatriation Commission and the Department paid pensions, benefits and allowances to ex-servicemen and women and their dependents. The care and responsibility for children was a matter of State legislation.¹³

1.23 Sydney Legacy provided the Committee with further information on 'war orphans' and advised:

There is no record of Sydney Legacy having accepted Legal Guardianship for War Orphans.

Normally in NSW, placement of Orphans in homes or institutions would have been arranged by the NSW Child Welfare Department at the instigation of relatives or representations from non Legacy persons or organisations. In many instances, it would come to Sydney Legacy's attention that Orphans in institutions were the children of Veterans with Legacy prescribed war service. In such cases Sydney Legacy would take an active role in the child's welfare and liaise directly with those children through their home or organisation and supplement any financial assistance.¹⁴

1.24 Sydney Legacy provided hostel accommodation for children and students in need. There were four hostels:

- Glen Mervyn Legacy House, Randwick – operated from 1946 to 1973 to accommodate up to 30 students, generally ranging in age from 14 to 21 years, being educated in Sydney;
- Fred and Ada Cull Legacy House, Ashfield – operated from 1952 to 1970 to accommodate boys undertaking trade certificates;

12 *The Age*, 'Uniting Church says sorry for abuse', 28.9.04, p.3; *Australian*, 29.9.04, p.2; *West Australian*, 29.9.04, p.17.

13 *Forgotten Australians*, pp.82-83.

14 Sydney Legacy, Additional information, 26.8.04, p.1.

- Kyle Williams Home, Blakehurst – operated from 1948 to 1983 as a convalescent home for children; and
- Milne Legacy House, Strathfield – operated from 1964 to 1975 as a transition home for children including total orphans or children permanently or temporarily separated from their mothers. Up to this time, Legacy had relied on institutions run by other organisations to care for children. However, concern that children destined for institutions, or on discharge from them, required a period of adjustment which should be directly under Legacy's care led to the establishment of the home. The home also provided accommodation for children when the mother was hospitalised; when the child was sent to Sydney for medical treatment or while awaiting a final court decision in cases of neglect or some other offence not involving a criminal element.

1.25 Sydney Legacy also indicated that from 1950 its Juvenile Institutions Committee provided support to children in institutions including the Church of England Boys' Home at Glebe where a section was reserved for Junior Legatees. It was arranged for children to attend Legacy activities and Legacy provided pocket money, Christmas and birthday presents and clothing and incidental requirements. By 1962 the Juvenile Institutions Committee supported 100 children in homes including Carlingford Home for Boys and Girls, Masonic Schools at Baulkham Hills and St Vincent's Home at Westmead. The Committee was no longer active after 1974 as the number of children in institutions declined.

1.26 In relation to children in foster homes Sydney Legacy stated:

Occasionally Legacy would become aware of foster children in private homes. Invariably the foster parents did not want to accept Legacy's assistance. This was apparently because of the foster parents direct responsibilities to the NSW Child Welfare Department.¹⁵

1.27 Similarly, Brisbane and Melbourne Legacy maintained residential accommodation for children. In Brisbane, Moorlands was established in 1946 as a children's hostel. It accommodated total orphans, children whose mothers were unable to look after them, children from country areas who came to Brisbane for educational purposes including undertaking apprenticeships and children seeking emergency accommodation when, for example, their mother was in hospital. Moorlands closed in 1972.¹⁶

1.28 Melbourne Legacy purchased its first residential hostel, Holmbush in late 1942. This was followed by Stanhope in 1945. Both these homes were used by children aged nine and above attending school or some form of tertiary education. Early in 1946, the trustees of Blamey House agreed that their funds could be put to acquiring a property to be used as a toddlers' home. In 1947 a large house and grounds

15 Sydney Legacy, Additional information, 26.8.04, p.2.

16 Brisbane Legacy, Personal communication, 21.12.04.

were purchased at Beaumaris. This was renamed Blamey House. In 1950, in response to increasing pressure from country Legacy clubs for city accommodation, a fourth hostel, Harelands, was purchased at Kew.

1.29 In 1956 Blamey House was sold and the name transferred to the Holmbush property which then became the 'toddlers' home'. As numbers were decreasing, the older boys were transferred to the same property in 1960.¹⁷

Statutes of limitation

1.30 The Committee highlighted in *Forgotten Australians* the specific difficulties faced by people who have suffered abuse within institutions in successfully pursuing compensation through the civil court system, especially the limitation periods.¹⁸ The problem posed by statutes of limitation in all jurisdictions is that civil proceedings can generally only be brought by these survivors within three years of turning 18 years. This means that individuals cannot bring a civil action if the State or religious institution and/or the individuals responsible for the injury pleads the expiry of time as a defence to the institution of civil proceedings. Consequently survivors of institutional abuse are generally blocked from gaining access to the courts to bring their own civil proceedings to gain damages. In general, limitation statutes do not apply to bringing criminal proceedings.

1.31 While the limitation statutes do not apply to criminal proceedings, it is rare for the cases of those seeking justice through the criminal courts to proceed, or if they do, to reach judgement. Cases to prosecute alleged perpetrators of abuse are usually refused on the basis that there are insufficient grounds to do so, the reasoning being that the passage of time renders memories unreliable or vague, the advanced age or mental or physical incapacity of the accused and the lack of corroborating evidence.

1.32 In *Forgotten Australians*, the Committee expressed the view that alleged perpetrators of sexual and/or physical abuse should not continue to evade prosecution by hiding behind the limitations of actions provisions. In terms of future survivors of institutional child abuse, Dr Ben Mathews argued that amendments to State civil litigation statutes should be made in line with those made by NSW in 2002 and Victoria in 2003 regarding child abuse claims generally. These changes effectively give such survivors until the age of 37 years to institute proceedings.¹⁹

Mothers and children in institutional care

1.33 Evidence received by the Committee, reflected throughout *Forgotten Australians*, concentrated on the emotionally charged stories of the breaking of mother-child relationships and the subsequent search for reconnection and identity.

17 Melbourne Legacy, Additional information, 5.1.05, p.1.

18 *Forgotten Australians*, pp.199-213.

19 *Submission 300*, Supplementary submission, 11.11.04 (Dr Mathews).

Much of this evidence discussed the relationship from the child's perspective. However, a number of submissions emphasised that mothers also struggle to complete their own stories, to correct the official historical record and to receive an acknowledgement of the injustices they have experienced.

1.34 MacKillop Family Services commented on the need to understand and acknowledge the experience of, and central place of, mothers whose children were adopted and/or placed in institutional care. They noted that during the time of the operation of the St Joseph's Homes in Broadmeadows and Carlton over 12 500 mothers were resident. Most of these women were resident prior to and/or following the birth of their babies, some others came for respite. Some babies remained with their mothers, some babies were placed for adoption and some were placed in institutional care.²⁰

1.35 Origins Victoria commented on the specific abuse suffered by young mothers of the 1950s to 1980s whose children were taken from them for adoption.²¹ Origins described that the abuse of these mothers has been an emotional abuse, including 'psychological, verbal and mental abuse, humiliation and isolation'. The loss of their babies has 'culminated in lifelong post traumatic stress, depression and loss for which there is no recognition'.²²

1.36 MacKillops submitted that:

Mothers have the right for their anguish and pain to be heard, and are similarly in need of support and acknowledgment. Their suffering will continue until it is acknowledged and addressed and adequate support services are in place... We support the call for an inquiry into past adoption practices to aid in the story of mothers being heard, to effect reconciliation where possible, and to enable people (mothers, children and carers) to move forward constructively.²³

Recruitment into religious orders

1.37 The Committee received evidence from people who had entered religious orders as young people aged 14 or 15 years. Some had entered orders straight from school or after attending religious institutions such as schools or hostels. Their graphic stories of a harsh and repressive regime that destroyed self-esteem, typically through humiliation, and the longer term impact on their lives, often after much traumatic struggle to leave the order, provide another perspective into institutional care.²⁴

20 *Submission 50*, Supplementary submission 'Acknowledging Mothers', 5.12.03 (MacKillop Family Services).

21 The issue of forced adoption of babies was raised in *Forgotten Australians* at pp.107-9.

22 *Submission 224*, Additional information 11.12.04.

23 *Submission 50*, Supplementary submission, 5.12.03, p.2 (MacKillop Family Services).

24 See also *Forgotten Australians*, p.136.

1.38 One lady outlined her experience in a religious order, submitting that while staying at the Pastorelle Sisters Girls Hostel, the Sisters 'had convinced me I had a vocation to religious life and they had been very persuasive indeed. They had me leave my job and cease going to College and I had become totally dependent on them for everything.' The young girl was sent to Italy as a novitiate without her mother's consent. She stated that 'my passport documents had been falsified by the Sisters' agent, a solicitor – my Mother had not signed them'. After seven years the lady returned to Australia working for the Sisters until after long, debilitating illnesses she left the Convent on an Invalid (Disability) pension and with no home, no family and absolutely no experience of the outside world. She described the impact on her life:

When I left the Sisters I was a nothing and a nobody a reject...I had no educational qualifications at 30 years of age and I was very ill indeed... My experiences in the 'care' of the Sisters have impacted adversely on my life as an adult. Illness, depression, loneliness, reclusiveness and all the consequences of these things. I have suffered as an adult because of how I was treated as a child.²⁵

1.39 The Committee received other evidence that those going into orders often found the experience very difficult and that life after leaving orders was equally difficult. One witness, who is in contact with others who were in Orders, submitted:

I was recruited as a child straight from school into a lifestyle of harsh living conditions, sexual repression, social isolation from my family and friends and constant humiliating practices aimed at breaking my will and destroying my self esteem...

[Many others who were in Catholic institutions] are left scarred by this experience and are now over fifty and suffering poor mental and physical health, unemployment, insecure housing and social isolation, etc...Others took their own lives or died younger than average from stress related disorders.²⁶

Experimentation on children in care

1.40 In addition to the specific medical experiments and research conducted on children in orphanages and babies homes in Victoria referred to in *Forgotten Australians*,²⁷ further trials involving children in care have come to light. *The Age* has reported that Commonwealth Serum Laboratories' (CSL) records in the National Archives show that 56 babies aged under 12 months in five Victorian institutions were used for trials between December 1959 and early 1961 to test a new quadruple antigen vaccination including Salk polio vaccine. It is known batches of the Salk vaccine were contaminated with a monkey virus, SV40, which has been linked to cancer.²⁸ These

25 *Submission 373*, pp.1-9.

26 *Submission 383*.

27 *Forgotten Australians*, pp.114-7.

28 *The Age*, 'Deadly shots', 23-24.10.04, News Review p.31 and 'Polio vaccine tested at orphanages before release', 25.10.04, pp.1, 3; also ABC Online, AM, 25.10.04.

trials were much later than the experiments previously referred to in *Forgotten Australians*. One baby who was a part of the trial died in August 1960 from meningitis. There was no coronial inquiry into the child's death.²⁹

1.41 While there is no indication of who gave formal consent for the children and babies to be used in the experiments conducted between 1945-1970, a 1997 report by the Department of Human Services found there are no records available to identify whether specific formal written approval was sought and obtained from either parents (in the case of babies placed voluntarily in homes), the Department (for wards of the State) for involvement in the medical research or staff responsible for the management of the babies' and children's homes. However, the report found that 'it is likely that the research institutes gained consent to conduct the research from staff responsible for the institutions and possibly in one case, from a Departmental employee'.³⁰

1.42 Clinical trials involving vaccines and using the residents of children's homes also occurred in Ireland during the 1960s and 1970s. A report prepared by the Chief Medical Officer of the Department of Health and Children was tabled in the Irish Parliament in November 2000. The Minister, Mr Martin, noted that 'questions of ethical propriety, consent and responsibility have been raised. These children were in the care of the State and it is important to establish if the State fulfilled its obligation to them'.³¹ These same issues have been raised in relation to the trials conducted in Australia. A comment by the Irish Minister is equally pertinent to the Australian trials when he wondered, who was minding the rights of the child?

Perspectives of institutional and out-of-home care

1.43 As noted in *Forgotten Australians*, institutional care involves a variety of living arrangements. Residential care for children includes placing children in residential buildings where children are cared for by paid staff, who may or may not live on the premises. Home-based or out-of-home care may include foster care (where the child is placed in a family setting), or community care or relative/kinship care where the caregiver is a family member or a person with a pre-existing relationship to the child.³² In this report the Committee has examined care and experiences in residential and out-of-home care (foster and kinship care), juvenile justice centres, migrant detention centres and the care of children with disabilities.

29 *Submission* 155, Supplementary submission 5.12.03 and Additional information 12.1.04. The supplementary submission contains notes taken from CSL files opened for inspection at National Archives relating to the Salk polio vaccine and includes the experiments on babies and children, experiments on monkeys and CSL knowledge that batches of the vaccine were issued with the SV40 virus present.

30 *Submission* 155, Additional information 12.1.04, Draft report on medical research conducted in babies and children's homes in Victoria – 1945 to 1970, Department of Human Services, November 1997, (released under FOI).

31 Parliamentary Debates (Ireland), Seanad Eireann, v.164, 15.11.2000, Mr Martin.

32 *Forgotten Australians* 2004, p.8.

1.44 Many respondents to the inquiry have called for policies that would meet the 'best interests' of children as defined in the United Nations Convention on the Rights of the Child (UN Convention).³³ Underlying Australia's State and Territory Acts for the care and protection of children and young people is the principle that actions and decisions regarding children and young people should be undertaken in the 'best interests' of the child, a principle which has been developed by reference to court decisions and social welfare attitudes both from the past and contemporary society, as well as from current global child care philosophies. The Commonwealth's *Family Law Act 1975* promotes actions in the 'best interests of the child' and provides an influence on more recent Australian child welfare legislation.³⁴ What constitutes best interests can be a nebulous concept. It may entail many stipulations to be met which could perhaps be met by ensuring that a child is raised by his or her own family or that he or she be provided with an out-of-home care option.

1.45 Article 3 of the UN Convention sets out the best interests of the child as:

In all actions concerning children by social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

States Parties must ensure such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him or her, and take all appropriate legislative and administrative measures.

States shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the area of safety, health, in the number and suitability of their staff, as well as competent supervision.³⁵

1.46 While the UN Convention does not precisely define a child's 'best interests', significant indicators are outlined in the Convention including those relating to ensuring that children are in conditions where they can develop their full human potential, with human dignity and can enjoy the rights and freedoms set out in the Convention and other human rights conventions, treaties, and guidelines. These include principles relating to children being given opportunities to participate and express their views (if capable of forming a view); have rights to freedom of expression, thought, conscience and religion; the recognition that children require special protection because of their vulnerability and stage of maturation (eg, prohibitions on sexual or economic exploitation, or special requirements before the

33 Australia ratified the Convention, with reservations, on 17 December 1990.

34 Lynch Francis, 'Australia needs a uniform national approach to child-protection legislation', *On line opinion*, 15 April 2002.

35 ACT Commissioner for Public Administration, *The Territory as Parent: review of the safety of children in care in the ACT and of ACT child protection management*, May 2004 (Vardon Report 2004), http://www.cmd.act.gov.au/child_protection_review/, pp.43-44.

law); and the recognition that it is in the best interests of indigenous children to be raised in the indigenous community.³⁶ Under Article 20 of the UN Convention, children have the right to special protection from the state, including alternative care if necessary.³⁷

Recent reports on the care and protection of children in out-of-home care

1.47 In recent years, various inquiries have been or are being conducted into the activities of some State and Territory government agencies with responsibility for the care and protection of children. The findings of these inquiries show that jurisdictions across Australia are experiencing similar problems in matters related to the care and protection of children. The brief discussion that follows of the most recent reviews and reports is by no means comprehensive as many other inquiries and studies have been undertaken in recent years.³⁸

NSW - Care and support: final report on child protection services

1.48 During 2002 the NSW Legislative Council's Standing Committee on Social Issues conducted an examination of the NSW Department of Community Services (DoCS) regarding aspects of the care and protection of children and young people at risk of harm, systems to deal with children, young people and families, out-of-home care placements and departmental staffing and resource issues. Their report, *Care and Support: Final Report on Child Protection Services* released in December 2002,³⁹ concluded that there was a 'lack of adherence by [DoCS] staff to policy and procedures', inconsistency about practices within the Department and no clear staff guidance on policies and procedures.⁴⁰ The State's out-of-home care system was described as the 'overlooked arm of the New South Wales child protection system', and was said to have poor long-term outcomes for children and young people.⁴¹

1.49 The report's 70 recommendations included those related to open and transparent relationships among groups, funding for families with complex needs, the

36 Cunneen C & White R, *Juvenile justice: youth and crime in Australia*, Oxford University Press, South Melbourne, 2002, p.276.

37 Thorpe, Professor Ros, *What works!? Evidence based practice in child and family services*, ACWA 2002 Conference, 2-4 September 2002. See also NSW Law Reform Commission, *Review of the Disability Services Act 1993 (NSW)*, Report 91, July 1999, pp.118-119 re: children's rights under the UN Convention.

38 For example the Burdekin Report (1989); Wood Royal Commission in NSW; Cashmore and Paxman study on leaving care (1996); Victorian Department of Human Services study showing link between leaving out-of-home care and homelessness (2002).

39 Parliament of NSW, Legislative Council Standing Committee on Social Issues, *Care and Support: Final Report on Child Protection Services*, Report 29, December 2002 (*Care and Support* 2002).

40 *Care and Support* 2002, p.31.

41 *Care and Support* 2002, pp.93-94.

integration of research and evaluations into the Department's functions, the development of standard assessment processes for potential and current foster carers, the introduction of a charter of rights for children in out-of-home care and specialist assistance for caseworkers dealing with the Children's Court. The inquiry also supported the idea of a national child protection service as mooted in 2002 by the Family Law Council.⁴²

South Australia - Our best investment: A state plan to protect and advance the interests of children

1.50 Released in March 2003, *Our best investment: A state plan to protect and advance the interests of children*,⁴³ addressed issues related to preventing child abuse and neglect and working for better outcomes for children and young people who have experienced abuse and neglect, and their families. The report, which contained strong messages about inter-agency collaboration and more efficient work practices and targeting of resources, examined many subjects such as: legislation, policies, practices and procedures of government; criminal law and police procedures; other jurisdictions' legislation; and the financial and social costs of child abuse and neglect. It considered the experiences of groups including indigenous children and young people, children with disabilities, children from culturally-diverse backgrounds and children who have had contact with the courts. The report drew on the findings of an earlier review, the Semple Report⁴⁴ and noted situations of insufficient training and support for carers and systems abuse towards children.⁴⁵

1.51 Included in the report's 206 recommendations are those for parenting courses for high-risk or high-need families and the interlinking of data about child abuse notifications from the department and subsequent court outcomes. The South Australian Government has been working to progress the recommendations of the Layton Review, the Semple Review and the findings of the Family and Youth Services Workload Analysis Project. Included in the Government's initiatives since 2003-2004 have been: the recognition of the special needs of children under the guardianship of the Minister; increased staffing in Children, Youth and Family Services; the creation of two assessment stabilisation and transition services for vulnerable young people; the establishment of three regional Aboriginal Family Care Committees; the completion of a review of Aboriginal children in non-Aboriginal foster care and the development of cultural maintenance plans for Aboriginal children and young people in foster care; and the establishment of a Special Investigations Unit

42 *Care and Support* 2002, p.135.

43 South Australian Government, *Our best investment: A state plan to protect and advance the interests of children*, Child Protection Review by Robyn Layton QC, March 2003 (Layton Report 2003). <http://www.dhs.sa.gov.au/childprotectionreview/cpr-report.asp>

44 Semple, Des (2002) Alternative Care Review - investigated the alternative care system in South Australia, given the significant upsurge in demand for alternative care services for children.

45 Layton Report 2003, pp.11.3-11.4.

to ensure the independent investigation of allegations of abuse in care and that children under the Minister's care and/or guardianship are properly protected.⁴⁶

South Australia – Children in State Care: Commission of Inquiry

1.52 In November 2004 a Commission of Inquiry into children in State care was established through an Act of the South Australian Parliament.⁴⁷ The Commission, chaired by Justice Ted Mulligan, will inquire into any allegations of sexual abuse of people while under the care of the State or criminal conduct which resulted in the death of a person who, at the time that the alleged conduct occurred, was a child in State care. The Commission is expected to report in June 2005.

Queensland - Abuse of Children in Queensland Institutions

1.53 In 1998, the Queensland Government established a Commission of Inquiry chaired by Ms Leneen Forde AC to examine, *inter alia*, if there had been any abuse, mistreatment or neglect of children in Queensland institutions and breaches of any relevant statutory obligations during the course of the care, protection and detention of children in such institutions. The report, *Abuse of Children in Queensland Institutions*, released in May 1999,⁴⁸ covered the period from 1911 to the present. The sections of the report relevant to care of children in institutions was discussed in *Forgotten Australians*; however the report also commented upon the modern child welfare system in Queensland, the juvenile justice system in Queensland and current juvenile detention centres, and evaluated current legislation and departmental practice.

Queensland - Protecting Children: An inquiry into abuse of children in foster care

1.54 In June 2003, the Queensland Government commissioned an independent external audit of foster carers, after allegations of abuse of children by carers in Queensland's foster care system. Phase one of the audit was completed in November 2003, with the Government accepting the 91 recommendations.⁴⁹ Matters from the independent audit were also referred to the State's Crime and Misconduct Commission (CMC). The CMC's investigations of serious systemic failings in the State's foster care system, resulted in the January 2004 report, *Protecting Children: An inquiry into abuse of children in foster care*.⁵⁰

46 Australian Institute of Health & Welfare (AIHW) *Child protection Australia 2003-04*, AIHW cat. no.24, Canberra:AIHW (Child Welfare Series no.36), 2005, p.10.

47 *Commission of Inquiry (Children in State Care) Act 2004*.

48 *Commission of Inquiry into Abuse of Children in Queensland Institutions*, May 1999 (Forde Report). www.qld.gov.au/html/fordeinquiry See also *Forgotten Australians*, pp.10-12.

49 *Submission 125*, Supplementary submission, 22.3.04, p.1 (Queensland Government).

50 Crime and Misconduct Commission, Queensland, *Protecting Children: An inquiry into abuse of children in foster care*, January 2004 (*Protecting children 2004*). <http://www.cmc.qld.gov.au>

1.55 The CMC investigated foster children's allegations of sexual abuse by members of a number of foster families. The inquiry also dealt with the handling by the then Department of Families and responsible ministers, of allegations of abuse against foster children. The inquiry reported on a range of child protection matters including the deaths of two children which had previously been investigated by the Queensland Ombudsman. The CMC noted many instances of inadequate responses from the Department as well as major problems which had existed for many years across different governments and administrations. The inquiry revealed many instances of abuse and inappropriate behaviour by foster families and instances of young children having a sexually-transmitted disease.⁵¹

1.56 The report delivered 110 recommendations some of which address data management and staff matters related to training, professional development, specialist investigative skills and expert knowledge of child neglect and abuse issues. The Government accepted the recommendations and established an Implementation Steering Committee and Child Protection Implementation unit. The Queensland Government had introduced reforms after the 1999 Forde Inquiry and commenced improvements in child protection. Its latest reforms have included the establishment of a new Department of Child Safety and have focused on service delivery, client management, indigenous children's needs; improvements to accountability in the child protection system; initiatives to address the backlog of child protection applications and changes to care and protection legislation. A Partnership Agreement: Educating Children and Young People in the Care of the State, designed to improve access to education for children and young people in care, has also been released.⁵²

ACT - The rights, interests and well-being of children and young people

1.57 In August 2003, the Australian Capital Territory (ACT) Legislative Assembly Standing Committee on Community Services and Social Equity produced a report *The rights, interests and wellbeing of children and young people*.⁵³ The Committee had considered matters such as children's and young people's participation in developing laws, policy and practices; the role and impact of the care and protection system on children and young people; the role of various publicly-appointed child welfare officials; and the experiences of children and young people who have acute mental illnesses or drug and/or alcohol problems including youth in the criminal justice system.

1.58 The Committee noted that the Department of Education, Youth and Family Services (DEYFS) had not complied with its statutory obligations in forwarding information to the Office of the Community Advocate (OCA) about all children on

51 *Protecting children* 2004, Summary, pp.xii-xviii.

52 *Submission* 125, Supplementary submission, 22.3.04, pp.3-4 (Queensland Government).

53 Australian Capital Territory Legislative Assembly: Standing Committee on Community Services and Social Equity, *The rights, interests and well-being of children and young people*, Report No 3, August 2003 (ACT Assembly 2003).

care and protection orders in the ACT and that the Department did not always take reports of child abuse seriously or respond to such reports.⁵⁴ The Committee's 41 recommendations included calls for the ACT Government to provide support for children and young people in domestic violence situations; early intervention programs; and a community-nurse home visiting scheme for families with new babies. The ACT Government considered its response in December 2003 and agreed, or agreed in principle, to 13 recommendations, noted 25 and disagreed with three.

ACT - The Territory as Parent

1.59 Arising from the ACT Assembly report and the Minister being notified that the Department (DEYFS) had not met its statutory obligations regarding advice to the Office of the Community Advocate (OCA) about alleged abuse reports, the ACT Commissioner for Public Administration (Cheryl Vardon) conducted a review into the safety of children in care in the ACT. The Commissioner assessed the shortcomings in the ACT system, including staffing levels, reporting procedures, case management, and resource allocation for child protection services.

1.60 The Commissioner's report, *The Territory as Parent: review of the safety of children in care in the ACT and of ACT child protection management*, was presented in May 2004.⁵⁵ The report's focus included comparisons of other jurisdictions' practices, such as Queensland's legislative provision for a Charter of Rights for a Child in Care. It also highlighted information about the lack of mechanisms for support to the indigenous community and concerns about the wellbeing of some children. The review expressed concern about the high numbers of indigenous children in the care of the Department; the Department's lack of specific strategies to identify children and young people with high needs; and an extremely high turnover of departmental staff in 2003. The recommendations included strategies to identify high-needs children and young people for the development of services and placements; initiatives to meet indigenous children's and young people's needs; a recruitment, training and support program and remuneration equivalent to the work value of this role as a way of extending the options for support of children and young people in care who have more complex needs.⁵⁶

1.61 The ACT Government allocated an additional \$6 million to implement the report's key recommendations. Major reforms and initiatives included the creation of a new independent ACT Commissioner for Children and Young People; increased funding for new programs to target early intervention, prevention and family support; additional staff to ease the high workload in the care and protection of children; the increased scope of a team to take policy and program responsibility for indigenous

54 ACT Assembly 2003, pp.47-48, 53, 57.

55 ACT Commissioner for Public Administration, *The Territory as Parent: review of the safety of children in care in the ACT and of ACT child protection management*, May 2004 (Vardon Report 2004). http://www.cmd.act.gov.au/child_protection_review/

56 Vardon Report 2004, pp.xvii-xxiv, 27, 29, 45, 128, 166.

children and young people; and the transfer of functions related to the care and protection of children to the Chief Minister's Department.⁵⁷

1.62 Along with the Vardon Review, the ACT Government commissioned an independent review of files on a group of children who had been assessed by the ACT Department as at great risk. The audit revealed many inadequacies in the ACT child protection system in protecting vulnerable children and young people as well as a systematic neglect of indigenous children. Among the audit's findings were that for every three children subject to the audit, another child was identified as needing child protection intervention. Problems were found with poor or incorrect departmental records on children in need of care and protection including a substantial number of cases where reports of abuse were incorrectly unsubstantiated by staff. The audit report made 66 recommendations concerning issues such as staff training, data collection management, monitoring of child protection measures, foster care, and the roles and responsibilities of child protection workers.⁵⁸

Tasmania - Review of claims of abuse from adults in state care as children

1.63 In July 2003, the Tasmanian Ombudsman, Jan O'Grady, in conjunction with the Secretary of the Department of Health and Human Services, commenced a review of claims of abuse of children in State care following allegations of abuse by a person who had been in foster care. Following commencement of the review, the Tasmanian Premier announced that *ex gratia* payments of up to \$60 000 would be available and appointed an Independent Assessor.

1.64 The Ombudsman's task was to assess each claim of past abuse and to make recommendations to the Department for individual reparation other than the provision of *ex gratia* payments. The Ombudsman was also to identify any issues and make recommendations relevant to current practice. An interim report was released in January 2004 and the final report in November 2004.⁵⁹

1.65 The Ombudsman made 11 recommendations in the final report including that the Government continue to accept claims of past abuse from adults; that the Government establish an independent unit for receipt of claims and assessment and the Department of Health and Human Services establish a unit to manage claims; that funds be allocated to establish a private educational trust fund to assist adult victims of child abuse in State care to upgrade or continue their education; the Government liaise with Church authorities to seek a contribution to the private education trust fund and

57 ACT Chief Minister and Minister for Education, Youth and Family Services, 'ACT Government acts swiftly in response to child protection report', *Media Release*, 25 May 2004.

58 Murray G, *The Territory's Children: ensuring safety and quality care for children and young people*, Report on the Audit and Case Review, July 2004, pp.v-xxvii.

59 Tasmanian Ombudsman, *Review of Claims of Abuse from Adults in State Care as Children*, November 2004 (O'Grady Review 2004). The January 2004 interim report is discussed in *Forgotten Australians*, pp.13-14.

an apology for claimants who allege they were abused in Church run homes; and that the Minister ask the Commission for Children to investigate more recent cases of alleged abuse referred to in the report.⁶⁰

1.66 On 6 December 2004, the Tasmanian Premier Paul Lennon announced that *ex gratia* payments would be made to 169 people who had suffered abuse whilst in State care. A further 80 claims were still being assessed. The Government had accepted the Ombudsman's report 'in full' and claimants would receive payments of up to \$60 000. In addition, the Government would also pay for financial and legal advice for those receiving payments through advisors of their own choice. The formal assessment process also included a range of assistance, including reuniting people with their families and counselling.

1.67 In order to receive the payment, claimants must first sign a Deed of Waiver, with those who decide against taking up the *ex gratia* payment retaining the option of taking civil action through the courts.

1.68 The Premier stated that the Government was not under any legal obligation to make *ex gratia* payments but he felt there was a strong moral obligation. It was a formal recognition of the pain and suffering caused to victims. In a letter to those receiving *ex gratia* payments, the Premier formally apologised. The Premier indicated that a formal motion of apology for abuse suffered would be moved when State Parliament resumed in 2005.⁶¹

Western Australia - Gordon Inquiry re Family Violence and Child Abuse in Aboriginal Communities

1.69 The *Gordon Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, commenced in January 2002, headed by Magistrate Sue Gordon. Ms Gordon examined and investigated various matters related to family violence and child abuse in Aboriginal communities in Western Australia including the activities of State government agencies in addressing complaints and the reporting of sexual abuse in Aboriginal communities; and identifying the barriers and capacity of government agencies to address the issue of family violence. The inquiry revealed substantial child abuse among Aboriginal communities in Western Australia and high levels of domestic violence among regional indigenous communities.⁶²

1.70 The Western Australian Government's response has included strengthening responses to child abuse and family violence; responses to vulnerable children and adults at risk; safety of communities; and governance, confidence, economic capacity

60 O'Grady Review 2004, pp.39-40.

61 Premier of Tasmania, Paul Lennon, MHA, 'Providing Closure for Victims of Abuse in State Care', *Media Release*, 6.12.04.

62 *Submission 177*, p.7 (WA Department of Justice).

and sustainability of communities. The inquiry also highlighted the need for services to be responsive to the needs of local communities and indigenous cultures in order to maximise the effectiveness of services. It is likely that an increased awareness of child abuse in indigenous communities will lead to a greater demand for government services and support from communities.⁶³

Summary

1.71 A common theme from these reports has been that departments do not always respond to previous inquiries' recommendations or suggestions.⁶⁴ The ACT Assembly committee summed up this view:

...it is difficult to see where progress has been made and members of the community may legitimately ask how many recommendations, from how many reviews does it take for action to occur? The Committee had no desire to produce yet another report that simply sits on someone's shelf collecting dust.⁶⁵

1.72 Other conclusions have related to government agencies' procedures and processes and abilities including departmental management styles that undermine effective delivery of child protection services; organisational failure where staff did not have the information or skills and resources to make decisions in the best interests of children in care; and instances where inadequate, long-term departmental responses resulted in missed opportunities to protect foster children.⁶⁶ The inquiries also noted high and/or increasing numbers of children at risk of abuse or harm and constantly increasing demands for placements.⁶⁷

1.73 The reports noted the need to improve all aspects of fostering such as carers' pay, professional status, conditions and training.⁶⁸ A lack of inter- and intra-agency cooperation and coordination and departments' failure to keep accurate and coordinated records within and across agencies also featured.⁶⁹ Similarly, departments were found to have poor relationships with foster carers to the point of not consulting with carers on significant decisions, where carers often felt excluded, under valued and unsupported in their work to care for vulnerable children and young people.⁷⁰ As well, State departments seemed to lack the confidence of non-government providers in

63 *Submission 55*, p.17 (WA Department for Community Development).

64 *Care and Support 2002*, p.64; Layton Report 2003, p.1.3.

65 ACT Assembly 2003, p.v.

66 *Care and Support 2002*, p.35; *Protecting children 2004*, pp. xiv & xiii.

67 *Care and Support 2002*, p.36; Layton Report 2003, p.11.3; Vardon Report 2004, pp.99-100.

68 Layton Report 2003, pp.11.3-11.4; ACT Assembly 2003, pp.55-56.

69 ACT Assembly 2003, pp. 54-55, 123-126.

70 ACT Assembly 2003, p.63; *Care and Support 2002*, pp.110-111; Vardon Report 2004, p.21.

managing, planning, funding, coordinating or developing the out-of-home care sector and a lack of trust between departments and carers seemed to be common.⁷¹

1.74 The issue of screening of people who work or volunteer with children was also a significant point raised in these reports, including the development of assessment processes; legislative arrangements for a National Paedophile Register; the development of risk-based screening processes; and views about the lack of screening of carers or indications of criminal history checks.⁷²

Conclusion

1.75 At regular intervals over many years, reports on problems and shortcomings of the care and protection of children in out-of-home care have been produced. Unfortunately, it seems that these reports had minimal impact in achieving a system that was responsive, accountable and achieved outcomes in the best interest of children. A spate of more recent reports for a number of States and Territories reveal crisis-ridden child protection systems that are under-resourced, under-funded, under-staffed resulting in a high turnover of over-worked (burnt-out) and often inexperienced workers. They have also found that the crisis-ridden systems have resulted in children at risk not being adequately protected.

1.76 The Committee considers that the improvement of the child protection system is of fundamental importance for the development of our nation, as our children are our future. The social and economic cost of not fully addressing these issues will only escalate in the future. The protection of children needs to be at the forefront of government policy agendas within all jurisdictions: the Commonwealth and the States and Territories. The Committee's recommendations in this regard are contained in chapter 7 of this report.

1.77 The Committee also considers that child protection issues must be paramount in general public debate and the public consciousness. The Committee believes that this can be assisted through a year designated as the year against child abuse in Australia to focus attention on this significant problem.

Recommendation 1

1.78 That the Commonwealth Government consider the designation of a year as the National Year Against Child Abuse in Australia.

71 *Care and Support* 2002, pp.93-94; Vardon Report 2004, p.166.

72 *Care and Support* 2002, rec 44; Layton Report 2003, rec 131; ACT Assembly 2003, rec 27; Vardon Report 2004, p.101.