

The Senate

Community Affairs
References Committee

Protecting vulnerable children: A national challenge

Second report on the inquiry
into children in institutional
or out-of-home care

March 2005

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Senate Community Affairs References Committee Secretariat

Mr Elton Humphery (Secretary)

Ms Christine McDonald (Principal Research Officer)

Ms Geraldine Badham (Principal Research Officer)

Mr Peter Short (Senior Research Officer)

Ms Leonie Peake (Research Officer)

Ms Ingrid Zappe (Executive Assistant)

The Senate

Parliament House

Canberra ACT 2600

Phone: 02 6277 3515

Fax: 02 6277 5829

E-mail: community.affairs.sen@aph.gov.au

Internet: http://www.aph.gov.au/senate_ca

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*Any nation that does not care for and protect all of its children
does not deserve to be called a nation*

Nelson Mandela

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Senator Claire Moore	ALP, Queensland
Senator Andrew Murray	AD, Western Australia
(to replace Senator Meg Lees for this inquiry)	

Senator Marshall wishes to record that as a recent appointee to the Committee he did not have the opportunity to participate in the conduct of the inquiry prior to its final stages.

Participating Members

Senator the Hon Eric Abetz	LP, Tasmania
Senator Lyn Allison	AD, Victoria
Senator Guy Barnett	LP, Tasmania
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TABLE OF CONTENTS

MEMBERSHIP OF COMMITTEE	v
RECOMMENDATIONS.....	xiii
CHAPTER 1	
INTRODUCTION.....	1
Terms of reference.....	1
Conduct of Inquiry	2
Responses by some Churches and agencies to <i>Forgotten Australians</i>	4
Anglican Church.....	4
Australian Catholic Bishops Conference	5
Benevolent Society	6
Uniting Church in Australia	6
Further information on matters discussed in <i>Forgotten Australians</i>	7
Legacy homes and repatriation wards	7
Statutes of limitation.....	9
Mothers and children in institutional care	9
Recruitment into religious orders	10
Experimentation on children in care	11
Perspectives of institutional and out-of-home care	12
Recent reports on the care and protection of children in out-of-home care	14
NSW - Care and support: final report on child protection services	14
South Australia - Our best investment: A state plan to protect and advance the interests of children	15
South Australia – Children in State Care: Commission of Inquiry.....	16
Queensland - Abuse of Children in Queensland Institutions	16
Queensland - Protecting Children: An inquiry into abuse of children in foster care	16
ACT - The rights, interests and well-being of children and young people	17
ACT - The Territory as Parent	18
Tasmania - Review of claims of abuse from adults in state care as children....	19
Western Australia - Gordon Inquiry re Family Violence and Child Abuse in Aboriginal Communities.....	20
Summary.....	21
Conclusion	22

CHAPTER 2**CONTEMPORARY FRAMEWORK FOR CHILD PROTECTION –
STRUCTURE, SERVICES AND PROCESSES**

CONTEMPORARY FRAMEWORK FOR CHILD PROTECTION – STRUCTURE, SERVICES AND PROCESSES	23
Introduction	23
Legal and government framework for child protection.....	24
Commonwealth's role in child protection.....	24
Family Law	24
International agreements and treaties	26
Funding of programs.....	27
State and Territory child protection.....	27
Conclusion.....	33
Child protection processes.....	34
Notifications, investigations, substantiations, mandatory reporting	34
Number of notifications and substantiations of child abuse.....	36
Care and protection orders	37
Numbers of children on care and protection orders – Australia.....	38
Mandatory reporting.....	38
Government funding – care and protection of children	42
Conclusion.....	45
Children's commissioners, children's advocates, children's guardians, etc.....	46
State and Territory children's commissioners	46
New South Wales.....	46
Queensland.....	47
Tasmania	47
Victoria	48
South Australia	48
Australian Capital Territory.....	48
Western Australia	49
Children's guardians and other offices	49
Children's guardian - New South Wales.....	49
Guardian for children and young people – South Australia	50
Advocate for Children in Care - Victoria	50
Office of the Public Advocate – Queensland	50
Office of the Adult Guardian – Queensland.....	51
Office of the Community Advocate – Australian Capital Territory.....	51
Commonwealth, State and Territory Ombudsman Offices	51
New South Wales.....	52
Australian Capital Territory.....	52
Comment on the operation of some offices.....	52

Government and non-government child protection services.....	53
Early intervention to assist families, children and young people.....	54
Commonwealth Government programs and services.....	56
State and Territory Government and non-government programs and services	57
Effectiveness of programs and services	61
Conclusion.....	64
National approach.....	65
Practical division of responsibilities.....	65
National legislation.....	66
National Plan for Foster Children, Young People and their Carers	68
National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities.....	70
A national commissioner for children and young people	71
Conclusion.....	72

CHAPTER 3

OUT-OF-HOME CARE – FOSTER CHILDREN	75
Introduction	75
Moves from children's institutional care to foster care	75
Contemporary out-of-home care	77
Types of out-of-home care	77
Conduct of out-of-home care	80
Numbers and characteristics of children in out-of-home care	82
Reasons why children enter out-of-home care	85
Issues facing out-of-home care.....	90
Systems decisions that affect children.....	90
Input by children.....	92
Children with high-care needs.....	93
High costs of care for children with emotional or behavioural problems	95
Abuse and treatment of children in foster care.....	95
Multiple placements	98
Indigenous children	101
Children returning from out-of-home care to abusive situations	103
Children and young people leaving foster or out-of-home care.....	104
Conclusion.....	108

CHAPTER 4

OUT-OF-HOME CARE – FOSTER CARERS	111
Introduction	111
Caregivers.....	111
Number of caregivers	111
Foster parents – support for, recruitment, retention, training.....	113
Foster care payments	114
Departmental staff and foster carer contact.....	118
Ratio of workers to numbers of children in care	120
Checks and monitoring of staff working with children and young people	121
Monitoring of staff/following up allegations – out-of-home care.....	122
Governments' laws and policies – accreditation and screening	123
Effectiveness of screening processes	126
Allegations of abuse against foster carers	128
Conclusion	128

CHAPTER 5

CHILDREN AND YOUNG PEOPLE WITH DISABILITIES IN CARE	131
Introduction	131
Children and young people with disabilities	131
Types of disability	131
Accommodation options.....	132
Permanency planning	134
Numbers of children and young people with disabilities	136
Legislative and government framework – for children and young people with disabilities	138
Anti discrimination legislation	138
CSTDA and associated legislation and policies.....	138
United Nations Convention on the Rights of the Child	139
State and territory disability departments' programs.....	140
Issues raised in the inquiry	141
Standards and laws in practice	143
Problems with deinstitutionalisation	147
Family care (permanency planning) versus institutional care.....	148
After-care options and assistance	150
Measures to support deinstitutionalisation and permanency planning.....	151
Non-government and government assistance measures.....	153
Funding and income supports for children with disabilities.....	155
Need for apology to children and young people with disabilities	155

Initiatives suggested by organisations	156
Vulnerability of children and young people with disabilities	156
Examples of abuse in care	157
Conclusion	161
Need for family support and assistance.....	162
Consideration of legislative and policy issues	163
Deinstitutionalisation assistance.....	164

CHAPTER 6

CHILDREN AND YOUNG PEOPLE IN JUVENILE JUSTICE AND DETENTION CENTRES.....

.....	167
Children and young people in juvenile justice centres.....	167
Legislative framework.....	167
Children and young people in the juvenile justice system.....	168
Numbers and background of children and young people in detention.....	169
Experiences of children and young people prior to detention.....	171
Indigenous children and young people in juvenile justice centres	171
Children and young people with disabilities in juvenile justice centres.....	173
Longer term health issues	174
Treatment of children and young people in detention.....	174
Experiences of children and young people in detention.....	175
Prevention and support measures for children and young people.....	176
Intervention Programs	176
Diversionary, restorative justice and conferencing programs	176
Restorative justice and conferencing - effectiveness.....	177
Conclusion	179
Children and young people in immigrant detention centres	181

CHAPTER 7

THE FUTURE FOR CARE LEAVERS

.....	183
Introduction	183
National approach to tackling child abuse	183
Cooperative approaches.....	183
Research	184
The value of children.....	186
Public awareness and education - child abuse.....	187
Conclusion	189

APPENDIX 1

LIST OF PUBLIC SUBMISSIONS, TABLED DOCUMENTS AND OTHER
ADDITIONAL INFORMATION AUTHORISED FOR PUBLICATION BY THE
COMMITTEE..... 193

APPENDIX 2

APOLOGIES215

RECOMMENDATIONS

Chapter 1

Recommendation 1

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

Chapter 2

Recommendation 2

2.72 That State and Territory Governments consider reviewing the effectiveness of mandatory reporting in protecting and preventing child abuse, and in conducting such a review, they particularly focus on the successes of the various options used in care and protection systems, in comparison with mandatory reporting.

Recommendation 3

2.160 That, as recommended in *Forgotten Australians*, the Commonwealth, State and Territory Governments establish courses of study at selected tertiary institutions that focus on child protection and related issues, especially early childhood and family studies, psychology, conflict management, the impact of institutional care and social policy, to address issues in these areas. [Rec 39 in *Forgotten Australians*]

Recommendation 4

2.161 That awareness of child protection issues, the effects in the longer term for a child or young person in care and related issues be included as components of teacher education courses conducted at the tertiary level.

Chapter 3

Recommendation 5

3.125 The Commonwealth review the level of the Transition to Independent Living Allowance (TILA) to ensure that it is adequate to meet the needs of young people leaving care.

Recommendation 6

3.126 The Commonwealth, State and Territory Governments consider new models for the schooling and education of children in out-of-home care, particularly children who have been classified as high-risk children, for example, schooling by specialist teachers trained in both education and child psychology.

Recommendation 7

3.127 That the strengthening of case management under the National Plan be progressed as a matter of priority, in particular to attempt to limit the turnover of caseworkers for children in out-of-home care.

Recommendation 8

3.128 That the introduction of national standards for transition planning, particularly when leaving care, under the National Plan be implemented as a matter of priority.

Chapter 4

Recommendation 9

4.63 That the National Plan for Foster Care, Young People and their Carers be extended to include the following:

- Training –
 - investigate the implementation of national carer specific accredited training qualifications, for example, through Vocational Education Training;
- Uniform Data Collection –
 - collection of data on the carer cohort;
- Support –
 - examine ways of improving carer support including national standards for reimbursement of costs to cover the real costs of caring and payment of allowances;
 - examine ways of improving foster carer retention; and
 - develop models of response to allegations of abuse against foster carers and workers based on international best practice including articulation of carer's rights.

Chapter 5

Recommendation 10

5.115 That the State and Territory Governments consider the information in this report and use as a base on which to assist in providing more flexibility in accommodating and caring for children with disabilities, particularly where families can have their children at home. Such considerations would include an examination of a mix of living arrangements such as institutional care combined with options for children to return to families at particular times; week-day residential schools; and other options including various combinations of living at home with families, residential and respite care and foster care, along with a mix

of carers and support. Where required, options could include the use of high-level residential care facilities and highly-trained professional staff and with an emphasis on ensuring that where necessary, the quality of care and actions of the staff are monitored.

Recommendation 11

5.116 That State and Territory Governments enlist the expertise of policymakers in disability and other areas of social policy when formulating laws for children and young people with disabilities, so that legislative provisions take account of the special needs of children and young people with disabilities and are broad ranging in their application, including in relation to residential facilities and services for children with a disability as well as to the actions of advocates and advocacy services.

Recommendation 12

5.117 That the Commonwealth, State and Territory Governments examine ways to break down the barriers to legal assistance for children and young people with disabilities and their families; make the law more easily understood for such groups; and harness the expertise of practitioners in social policy and other disciplines to formulate laws to better serve all people with disabilities.

Recommendation 13

5.118 That the Australian and/or State Law Reform Commissions conduct research among legal practitioners to ascertain their knowledge and expertise in areas of disability and the law. The outcome of such research would highlight the need to introduce measures to educate lawyers so that they are better able to advise clients about laws affecting the lives of people with a disability, particularly in explaining the impact of certain legislative provisions and common law decisions for children and young people with disabilities. Such investigation might also include examining ways to encourage legal practitioners to offer *pro bono* services to children and young people with disabilities, who cannot afford legal fees.

Recommendation 14

5.119 That, where applicable, all jurisdictions amend their *Disability Services Acts* to ensure that terms relating to people with a disability, specifically include children and young persons, as well as adults. This may require additions to legislation to include principles and applications for children and young people with a disability.

Recommendation 15

5.120 That the Commonwealth Government encourage the New South Wales Government to take note of the evidence presented to this inquiry and proclaim ss.155 and 156 of the *Children and Young Persons' (Care & Protection) Act 1998*, so that all children with disabilities in care, including those who have been

voluntarily placed, have broad-ranging legislative protection and monitoring of their care.

Chapter 6

Recommendation 16

6.43 That the Commonwealth Government take note of the merits of restorative justice programs in helping to keep young people out of the juvenile justice system (and later gravitation to the adult prison system), and increase its involvement, support and funding for such programs, to ensure that the coverage of such programs across Australia is wider than is presently the case. It is recommended that the Commonwealth Government introduce restorative justice programs that would assist in reducing the high numbers of indigenous youth in juvenile justice centres.

Chapter 7

Recommendation 17

7.38 The Commonwealth establish a national commissioner for children and young people to drive a national reform agenda for child protection. In doing so, the national commission should

- bring together all stakeholders, including the States and Territories, child protection professionals and researchers and peak organisations, to establish an agenda for change including the identification of key areas of concern;
- encourage the development of innovative models within the child protection system; and
- encourage State and Territory Governments to work toward harmonising child protection legislation, including agreement on common definitions.

Recommendation 18

7.39 That the Commonwealth engage the Productivity Commission to undertake an evaluation of out-of-home care to better determine the real costs to the community of out-of-home care.

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.

CHAPTER 2

CONTEMPORARY FRAMEWORK FOR CHILD PROTECTION – STRUCTURE, SERVICES AND PROCESSES

While some would argue that Australia's current child welfare system presents a marked attitudinal shift away from the Dickensian child care policies practised earlier this century, others could argue that nothing has changed from our colonial days where control and authority over children and families was the order of the day. There are a number of Australian child welfare and social policy analysts who have argued the history of state intervention in the area of child welfare has been one of control rather than the provision of assistance that might be in the best interests of the child or his/her family.¹

Australian society is already experiencing...an increasingly numerous 'underclass' with entrenched inter-generational deprivation and lack of social progress; an increasingly marginalised, disempowered subset of the community...this group is increasingly able to interact only with each other...the greatest cost to us as a broad community, is the untapped potential of these children and adults who are trapped in an environment where their talents, skills and abilities will not see the light of day except through exceptional effort and struggle.²

Introduction

2.1 As outlined in other chapters, the Committee heard evidence about many child welfare issues across Australia, much of it painting a dismal picture about child abuse in out-of-home care and institutions for children with disabilities and juvenile detention centres. Evidence related to many issues, including the unavailability of national data on child abuse; calls for national legislation for the care and protection of children; and the increasing number of children and young people from indigenous backgrounds and with disabilities who are being placed in juvenile justice centres.

2.2 This chapter considers the framework and processes of Australia's child protection system that entails the interaction of different laws and legal systems, not only between the federal arena and the States and Territories, but also among the States and Territories. As such, the Committee has considered aspects of the Commonwealth's *Family Law Act 1975* (FLA) and the relevant State and Territory child protection Acts.

1 *Submission 71*, p.12 (Catholic Welfare Australia), quoting Dickey B, 1987, *No charity there: a short history of social welfare in Australia*, Sydney, Allen & Unwin.

2 *Submission 160*, p.7 (Mofflyn).

2.3 The States and Territories each have a range of agencies which work to protect children, though their functions vary. Some bodies have investigatory powers while others take on advocacy and coordination roles.³ Some jurisdictions have children's commissioners and/or officials such as children's advocates or guardians and their responsibilities differ. As with other areas of service delivery in Australia, many programs to assist children and young people in need of care are administered by State-Territory and Commonwealth Governments, often with assistance from non-government agencies. It can be difficult to determine which sector or service provider has responsibility for some programs, irrespective of the jurisdiction. Overall, Australia's child welfare system has been described as:

...fragmented by numerous jurisdictions and a variety of responsible bodies. This often leads to less-than-ideal results for children where there are multiple agencies involved in their life with little coordination between them. The system is so disorganised at times that agencies can attempt to pass responsibility to others so as to minimise their workload, without cognisance of the impact on children and families.⁴

Legal and government framework for child protection

2.4 In 1997, the Australian Law Reform Commission (ALRC) noted over 230 pieces of Commonwealth, State and Territory legislation in Australia to deal with issues for children, with their administration beset by policy inconsistencies and duplication and gaps in services. The ALRC wrote that the division of responsibilities between different levels of government and departments within each level of government ensues in children and families often having to negotiate a complex web of agencies when they come into contact with legal processes.⁵

Commonwealth's role in child protection

Family Law

2.5 Under Australia's constitutional arrangements, the Commonwealth has a role in protecting children under the *Family Law Act 1975* (FLA) (the principal Act dealing with legal aspects of Australia's family law system). Part VII of the Act focuses on children, children's 'best interests', parental responsibility, and children's right to know and be cared for by both parents and have regular contact with both parents and any other person significant to their care, welfare and development, unless it is contrary to the child's best interests. Under the FLA the Commonwealth's substantial role in child protection arises through cases in Australia's Family Court and the Federal Magistrates Service (which deals with less complex cases) under the

3 Australian Law Reform Commission (ALRC), *Seen and heard: priority for children in the legal process*, Report No. 84, Human Rights and Equal Opportunity Commission, 1997, p.151.

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

5 ALRC 1997, pp.80-81.

FLA. Family law cases in Western Australia are dealt with under an independent State-based Family Court which was established in 1976 under the *Family Court Act* and which mirrors the FLA.⁶

2.6 The example below shows how the workings and responsibilities of the Family Court and the State and Territory child protection agencies can result in situations where children may be left unprotected, particularly regarding child abuse allegations.

2.7 Specifically, overlaps can occur in responsibility for some child protection matters between the State and Territory children's courts and the Family Court or Federal Magistrates Service. This can be particularly serious given that despite a quarter of the cases before the Family Court involve child abuse claims, that court has no independent power to investigate such allegations, and, less than 10 per cent of the allegations transpire to be false.⁷ While FLA provisions require that child abuse reports be made to the relevant State or Territory child protection authority, at times further action is not taken for reasons that include variances between some State and Territory legislation and the FLA regarding contact orders and other issues. As well, FLA definitions of 'abuse' are wide and may not be considered to be of the utmost seriousness or necessarily reportable under State or Territory legislation.⁸

2.8 The NSW Commission for Children and Young People raised an issue of concern, noting that the adversarial nature of many family law cases can result in a downplaying by State and Territory representatives of accusations of abuse of children in Family Court disputes.⁹ Therefore, a potential exists for children to be returned to unsuitable or unsafe circumstances because abuse allegations raised in family law proceedings are not followed up by a State child protection authority. It has been argued that the adversarial nature of many family law cases may reflect the often effective use by defence lawyers of the Parental Alienation Syndrome, which 'begins from the premise that children who allege serious abuse by a parent are lying and that they are made to lie by an apparently protective parent'. However, 'extensive empirical research findings [have shown] that false allegations of child abuse are very much the exception rather than the rule'.¹⁰

6 Kerin P and Murphy P, 'Overview of an emerging model of an integrated family court system', Paper presented at the Eight Australian Institute of Family Studies Conference, Melbourne, 12-14 February 2003, p.3.

7 Ellingsen P, 'Too close to home: the hidden horror of child abuse', *The Sunday Age*, 24 October 2004, pp.1-8.

8 Family Law Council, *Family Law and Child Protection*, Final Report, September 2002, pp.9-10, 34-35.

9 *Submission 35*, p.22 (NSW Commission for Children and Young People).

10 McInnes Elspeth 'Parental Alienation Syndrome: family law's paradigm for child abuse', *On Line Opinion*, 19 May 2003, pp.1-2.

2.9 A Family Law Council inquiry has found that neither the State or Territory child protection system nor the Family Court system necessarily protects children and that this systemic failure could have the most serious and damaging consequences for children's lives.¹¹ The Family Law Council has recommended measures including the establishment of a Commonwealth independent Child Protection Service (CPS) to investigate family law child abuse concerns and to avoid duplication with State and Territory child protection authorities' work. The CPS would be based on the Magellan Project, a Melbourne-trialled program that assists quick resolution of family law cases involving allegations of child abuse, independently of State and Territory child protection services.¹² Under the project, which includes agencies such as the Family Court, Legal Aid and Police, the Victorian Department of Human Services undertook to investigate all child abuse allegations and to provide a written report to the Court. As well, uncapped Legal Aid was made available to children, and other parties (subject to the normal means and merit test).¹³

2.10 Overall, the Magellan Project proved to be valuable especially for its ability to streamline processes and decrease the proportion of distressed children in the courts. Its other recorded attributes include: higher levels of satisfaction, both for parents and for their children; and an emphasis on minimising harm to the child and providing transparency processes for the child and his/her parents.¹⁴ Magellan has been implemented in all Family Court registries in all States except New South Wales¹⁵ and in Western Australia (where the Columbus Project provides case management similar to that undertaken by Magellan).¹⁶ The Commonwealth Government has not implemented the Family Law Council's call for a national child protection service; however, a number of inquiries into children's care and protection including the NSW Parliament's Standing Committee on Social Issues, have expressed support for the establishment of a national child protection service.¹⁷

International agreements and treaties

2.11 The Commonwealth Government has also supported, signed and ratified a number of international agreements regarding the rights of the child. The Human Rights and Equal Opportunity Commission (HREOC) has a statutory responsibility for promoting the United Nations Convention on the Rights of the Child (UN

11 Family Law Council 2002, p.49.

12 Family Law Council 2002, pp.24-25, 58-59.

13 Parliament of NSW, Legislative Council Standing Committee on Social Issues, *Care and Support: Final Report on Child Protection Services*, Report 29, December 2002, p.133.

14 Brown, Thea, 'Project Magellan', Paper presented at: Child sexual abuse: justice response or alternative resolution conference, convened by the Australian Institute of Criminology, Adelaide 1-2 May 2003, pp.7-9.

15 Family Court of Australia, *Annual Report 2003-2004*, p.3 – www.familycourt.gov.au

16 Kerin and Murphy 2003, p.3.

17 *Care and Support*, p.135.

Convention) in Australia. HREOC's work includes examining existing and proposed laws to ascertain their consistency with children's rights, advising governments and investigating complaints about Commonwealth practices that may be inconsistent with children's rights.¹⁸

Funding of programs

2.12 The Commonwealth has established and maintained initiatives for children, young people and families mainly through the Department of Family and Community Services (FaCS) which funds assistance and intervention programs. Many Commonwealth programs have been devolved to the States and Territories for services to families in crisis. Such programs are discussed later in this chapter.

State and Territory child protection

2.13 While the Commonwealth has some role in protecting children and young people and their families, the prime responsibility for children's courts and child welfare legislation and associated administrative bodies, particularly for abused and neglected children rests with State and Territory Governments. State and Territory Governments have branches within their community services departments to deal with issues related to children's care and protection. Examples of State and Territory departments which deal specifically with the care and protection of children are the NSW Department of Community Services (DoCS), the Queensland Department of Child Safety, Western Australia's Department for Community Development, the South Australian Department of Families and Communities and the Department of Health and Community Services in the Northern Territory. In the ACT since the Vardon Inquiry into the safety of children in care, an Office for Children, Youth and Family Support has been set up in the Department of Disability, Housing and Community Services.

2.14 When warranted, State or Territory child protection authorities may take action under their legislation in their children's or youth courts for determination if a child or children are in need of care and protection. Any subsequent child protection order may result in a child being removed from a family and placed in some type of out-of-home care such as foster or kinship care. The following legislation is in place in States and Territories; some of which is under review or being updated:

New South Wales	<i>Children and Young Persons (Care and Protection) Act 1998</i>
Victoria	<i>Children and Young Persons Act 1989</i>
Queensland	<i>Child Protection Act 1999</i>
Western Australia	<i>Children and Community Services Act 2004</i>
South Australia	<i>Children's Protection Act 1993</i>

18 ALRC 1997, p.142.

Tasmania	<i>Children, Young Persons and Their Families Act 1997</i>
Australian Capital Territory	<i>Children and Young People Act 1999</i>
Northern Territory	<i>Community Welfare Act 1983</i>

2.15 The legislation provides the legal framework for matters concerning children such as foster care arrangements, residential and professional care, processes to notify authorities about child abuse, and where appropriate, details of the appointment, roles and responsibilities of officials such as children's commissioners and children's guardians. They also outline the roles of administering departments and grounds under which children and young people may be placed by community services departments on care and protection orders, and the rights of parties in any legal proceedings for the protection of children and young people.

2.16 Some evidence has described the underlying tenets of Australia's welfare laws as out of date:

...the social mores and government priorities that have influenced the development of child welfare services in Australia during the last century...were inculcated into earlier child welfare legislation and practices. This...has [affected] the current child welfare laws, their administration, and the collective or corporate conscience of government officers...implementing child welfare and protection laws.¹⁹

2.17 As noted, there are differing legislative provisions among the States and Territories that govern children's care and protection. All Australian jurisdictions, except Western Australia have mandatory reporting of child abuse requirements,²⁰ however, even among those with mandatory reporting, variations exist about whom has been mandated and what incidents or circumstances require a mandated person to report.²¹ Regardless of the jurisdiction, Family Court personnel, counsellors, mediators or child welfare officers, who in the course of their work during family law proceedings, form a suspicion on reasonable grounds that a child has been abused, or is at risk of being abused, are subject to mandatory reporting rules.²²

2.18 State and Territory legislative provisions differ about when a child would be classified as being in need of care and protection or as being at risk. Some jurisdictions' Acts are more explicit and detailed than others. Definitions vary for the

19 *Submission 71*, p.12 (Catholic Welfare Australia).

20 Mandatory reporting is defined in relevant legislation. It specifies that persons must report child abuse to the relevant community services department. Reporting rules and what may warrant reporting, vary among jurisdictions. See: AIHW, *Child protection Australia 2003-04*, AIHW cat. no.24, Canberra:AIHW (Child Welfare Series no.36), 2005, pp.1; 69-71

21 Lynch 2002.

22 Family Law Council, *The best interests of the child? The interaction of public and private law in Australia*, Discussion paper no. 2, Family Law Council, October 2000, Appendix A.

reporting, investigation and intervention in cases of suspected abuse.²³ Differences exist among jurisdictions classifications of abuse, ie, physical, sexual, emotional or neglect. The definition of what constitutes child abuse and neglect has changed and broadened over the last decade. The focus of child protection in many jurisdictions has shifted away from the identification and investigation of narrowly defined incidents of child abuse and neglect towards a broader assessment of whether a child or young person has suffered harm.²⁴ Each jurisdiction has a point below which statutory child protection intervention is not warranted. These thresholds vary, with Victoria, NSW and South Australia respectively determining 'significant harm', 'in need of care' and 'at risk'. The differences are critical since more children might be assessed to be in 'need of care' than experiencing 'significant harm' and the threshold test is clearly the first decision that faces child protection workers in determining if they have a mandate to intervene. The variations across Australia lead to a lack of consistency as to whether a child's maltreatment allegation will be investigated.²⁵

2.19 The Tasmanian Commissioner for Children advised that the office had been seeking clarification about definitions, procedures and processes for investigating allegations and claims of abuse as there was a view that definitional elements may contribute to allegations being unsubstantiated. The Commissioner noted that in Tasmania, the standards of proof required for what would constitute child abuse vary among agencies including between the Tasmanian child protection system and the Tasmanian Police. The Commissioner stated that this can make situations difficult particularly where children's evidence is up against that of adults. The Commissioner also considered that even where the Police find an allegation of abuse of a child to be unsubstantiated, the Commissioner's office may nevertheless need to have a continuing role in assisting the child.²⁶

2.20 There are many other differences among jurisdictions' legislation including in relation to the age at which a person is classified as a child or young person and the types of court orders available.²⁷ Across jurisdictions court orders for children which include arrangements for accommodation, custodial and responsibility issues, contact and residency, ministerial timeframes for supervision of the child, restraining orders against certain persons, and short-term or long-term guardianship, all vary.²⁸ A tenet which shares common ground in legislation across jurisdictions is that which links a

23 Tomison, A, 'A history of child protection: back to the future', *Family Matters*, No 60 Spring-Summer 2001, Australian Institute of Family Studies, 50.

24 AIHW 2005, p.5. Also see pp.19-26, for details of classifications of forms of abuse, and information on children in the child and protection system.

25 Lynch 2002.

26 *Submission 277*, p.11 (Office of the Commissioner for Children Tasmania).

27 AIHW 2005, pp.63-68.

28 Family Law Council 2000, Appendix A.

child's need for care and protection to situations where no appropriate parent(s), guardians or relatives are available to care for the child.²⁹

2.21 Various inquiries into Australia's care and protection system have advised of the need to bring definitions into line across jurisdictions. South Australia's Layton Review considered legislative definitions of terms such as 'child abuse and neglect' for decisions where a child should be classified as 'at risk' and if such terms are explicit enough for agency staff to assess if certain situations warrant some form of intervention. The Layton Review considered that the combination of the definition of 'abuse and neglect' in section 6(1) and 'risk' in section 6(2) of the *Children's Protection Act 1993* (SA) were excessively complex and confusing and recommended that they be amended and replaced. The Review considered that a definitional concept based on the notion of risk of 'significant harm' using sections 9, 10 and 14 of the *Children's Protection Act 1999* (Qld) could serve as a suitable guiding precedent.³⁰

2.22 Evidence was received relating to how the 'best interests of the child' tenet was espoused in jurisdictions' legislation including that relating to parental rights. It was suggested that at times in some jurisdictions too much emphasis is placed on ensuring that children remain with their biological families. The Victorian Government noted that in circumstances where children are notified to the child protection services under s.119 of the Victorian *Children and Young Persons Act 1989*, decisions must be based on principles that include family preservation and the maintenance of family relationships to the extent that this is consistent with the child's safety and wellbeing, and families and children must be permitted to participate in the decision-making processes.³¹ However a number of groups including Centacare Catholic Family Services have described the Victorian Act as leaning more towards parents' than children's interests:

...the way in which it seems to be interpreted through the legal system and all of the parties to that, as well as child protection, is that the natural family, the mother and father, are the first consideration no matter what. That has been the experience that we have noticed – and certainly the experience that I noticed in my previous work as well. It has swung so far in favour of parents to the exclusion of children's needs.³²

2.23 Berry Street Victoria agreed 'to a point' that the pendulum has swung too far in favour of ensuring that children remain with their natural families, but also stressed the importance of early intervention programs to assist parents with difficulties associated with parenting.³³ The Tasmanian Commissioner for Children

29 AIHW 2005, pp.63-68.

30 South Government, *Our best investment*, A State plan to protect and advance the interests of children: Child Protection Review by Robyn Layton QC, March 2003, pp.23.10-23.13.
<http://www.dhs.sa.gov.au/childprotectionreview/cpr-report.asp>

31 *Submission* 173, p.21 (Victorian Government).

32 *Committee Hansard* 12.11.03, p.57 (Centacare Catholic Family Services).

33 *Committee Hansard* 12.11.03, p.78 (Berry Street Victoria).

acknowledged that under the Tasmanian *Children, Young Persons and Their Families Act 1997*, the best interest of the child principle can be a vexed issue:

This must of necessity focus on the rights of the child and not an emphasis on parents, carers or service system issues. However, the legislation clearly states that intervention to assist and support parents and those in their position, must be the first option, and this is a right and expectation that parents and carers can legitimately have. This is not the same as a parent having a right to have a child live with them in a neglectful or abusive parenting environment that compromises the care, protection, safety and stability of the child.³⁴

The NSW Commission for Children and Young people emphasised that the wellbeing of the individual child is fundamental to a responsive and effective out-of-home care and child protection system, rather than one focused on adults, bureaucratic or judicial processes.³⁵

2.24 The Committee was apprised of on-the-ground instances of legislation not being adhered to. The effectiveness of aspects of Australia's child protection laws have been questioned in other inquiries. Evidence to the Vardon Inquiry from an ACT Law Society legal practitioner in children's and mental health cited some workers' approaches to the legislation:

At times when I speak to child protection workers they respond in a way that leads me to think that they see the legal and regulatory framework in the Act as separate to and different from the child protection framework in which they operate.³⁶

2.25 The Vardon Report accepted that child protection workers and legal practitioners approach issues differently but noted that at times the former treated the regulatory framework as though it has been developed in an irrelevant vacuum, without reference to child protection principles.³⁷

2.26 Looking after indigenous children's best interests was commented upon with the Law Society of New South Wales considering that their best interests are often not taken into account by the NSW Department of Community Services (DoCS) and/or the courts which do not always comply with legislation in placing indigenous children in culturally-appropriate out-of-home care.³⁸ Further, the Committee received evidence about differences in the State-Territory legal frameworks which could result

34 *Submission 277*, p.7 (Office of the Commissioner for Children Tasmania).

35 *Submission 35*, p.3 (NSW Commission for Children and Young People).

36 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), p.11.

37 Vardon Report 2004, p.11.

38 *Submission 253*, pp.1-3 (The Law Society of New South Wales).

in on-the-ground inefficiencies, including for supervision or parental responsibility orders where difficulties can be encountered over inter-State relocations. As the welfare organisation, Mofflyn, noted:

...given the constraints on resources, there is no guarantee that an officer in one State will administer the responsibility of that order on behalf of another State.³⁹

2.27 The lack of cross-jurisdictional agreement between NSW and the Australian Capital Territory for State wards moving between the two areas can present problems:

Whenever there is such separateness, there may be the potential for children and families to be lost in the system and therefore at risk. If such legislation is to remain the responsibility of States, it would be necessary to obtain agreements and protocols to effectively manage movement of children and families.⁴⁰

2.28 Evidence highlighted a need to overhaul the social and legal framework governing Australia's child protection system. The Tasmanian Commissioner for Children reminded the Committee that the United Nations Committee on the Rights of the Child has expressed concern about Australia's lack of a comprehensive policy for children federally and monitoring mechanisms federally and locally and the disparities between jurisdictional legislation and practices.⁴¹ Anglicare Australia called for high priority to be given to establishing and adopting a national definition of child abuse and neglect, including what constitutes abuse and neglect in out-of-home care.⁴² As well, the use of language is crucial if one is to convey the intended meaning. The Committee recognises that the word 'abuse' can be a euphemism to describe actions which are abusive but not necessarily illegal yet can also describe offences such as rape or sexual assault of children which are, and always have been, criminal offences.⁴³

2.29 A further problem arising from the lack of an agreed definition of child abuse relates to the lack of comprehensive data. While organisations such as the Australian Institute of Health and Welfare and the Australian Institute of Family Studies collect data, figures are generated at State and Territory levels based on the different definitions for factors such as abuse, hence inconsistencies occur.⁴⁴

2.30 The lack of uniformity regarding child protection matters and the difficulties in collecting and assessing data were explained to the Committee:

39 *Submission* 160, p.15 (Mofflyn).

40 *Submission* 82, p.8 (Centacare-Sydney).

41 *Submission* 277, p.15 (Office of the Commissioner for Children Tasmania).

42 *Submission* 226, p.9 (Anglicare Australia).

43 *Committee Hansard* 12.11.03, p.51 (Senator Murray).

44 *Committee Hansard* 12.11.03, p.52 (Australian Council of Children & Youth Organisations).

Each state has its own way of handling reports. Each state has different ages of consent, different everything. So it just makes even statistically collecting the data impossible.⁴⁵

We in Australia, still do not have a uniform set of data collected around children in care or child protection. Some of the figures that have been quoted even this morning on substantiation rates are very difficult to compare across jurisdictions because of the way the legislation in different states is categorised, and the way the departments interpret that legislation means that trying to compare it is very fraught.⁴⁶

2.31 Mofflyn argued that the sharing of expertise among various government and non-government agencies and researchers is essential if children and families in Western Australia are to experience an equitable level of service and, as such, policies and systems are needed to ensure this happens.⁴⁷

Conclusion

2.32 While the Commonwealth has a role in child protection through the Family Law Act and the UN Convention, the prime responsibility for child protection rests with the States and Territories. Governments have enacted legislation to establish child protection systems to identify and aid those children who are suffering from or at greatest risk of abuse and neglect. However, evidence pointed to many instances where there are significant variations in the legislation. For example, there are differences in when a child would be classified as being in need of care and protection or as being at risk. There are differences in what would be classified as abuse and the age at which a person is classified as a child. There are also some instances when agencies within jurisdictions differ in their approaches to procedures and processes for investigating allegations and claims of abuse.

2.33 The Committee considers that an assessment of the effectiveness of standards, laws and programs to protect children and young people would be worthwhile. It could assist policymakers to devise and implement laws and programs that more effectively protect children than is presently the case and reduce the need to place children in out-of-home care. In addition, there would be a great benefit in gaining consistency with the various definitions across all jurisdictions.

2.34 The Committee's recommendations concerning the need for a national approach to child protection legislation and programs are contained in Chapter 7.

45 *Committee Hansard* 12.3.04, p.80 (Bravehearts).

46 *Committee Hansard* 9.12.03, p.28 (Mercy Community Services Inc).

47 *Submission* 160, p.15 (Mofflyn).

Child protection processes

2.35 Reports of abuse of children across Australia are all too common, including in out-of-home care. Below is a brief outline of care and protection agencies' processes to protect children.

Notifications, investigations, substantiations, mandatory reporting

2.36 Investigations of abuse allegations can be complex and protracted and involve many parties including the child, families, foster carers, child protection bodies and the courts. Children assessed to be in need of protection can come into contact with community services departments through a number of ways including via reports of concerns about a child from someone in the community, a professional mandated to report suspected abuse and neglect, the child or a relative. State and Territory child welfare departments' assessments of child protection notifications may result in an investigation, a referral to other organisations, or, no further protective action. On an investigation's finalisation, a notification is classified as 'substantiated' or 'not substantiated', the former being where it is concluded that the child has been, is being or is likely to be abused, neglected or otherwise harmed.⁴⁸

2.37 Of significance is that child protection policies and practices are continually changing and evolving. Trends in child protection numbers should be interpreted carefully, as such changes in policies and practices impact on assessing the numbers of children in the child protection system in different ways.⁴⁹

2.38 The WA Department for Community Development explained that in investigating allegations of maltreatment of children including those in care, priority 1 case investigations are commenced within 24 hours. Cases which have a priority 2 classification have less immediacy and it may be two to five days for the response and starting process. The department emphasised that it also investigates claims of abuse from earlier times:

If the child is still a child, yes, we would go through that process. But if it is an adult, it is really the responsibility of the police. If they are an adult making an allegation of abuse that happened to them in care when they were a child, they should really go to the police and then we would provide the information to the police.⁵⁰

2.39 As mentioned earlier, there are definitional inconsistencies in Australia's laws about what might constitute abuse or neglect. Some jurisdictions substantiate situations where child abuse and neglect have occurred or are likely to occur; others substantiate situations where the child has been harmed or is at risk of harm and the

48 AIHW 2005, p.2-3.

49 AIHW 2005, p.5.

50 *Committee Hansard* 9.12.03, p.22 (WA Department for Community Development).

parents have failed to act to protect the child.⁵¹ The Tasmanian Children's Commissioner considered that there is a possibility that investigations' procedures about abuse may be contributing to them being concluded as unsubstantiated. The Commissioner made the point that a non-substantiated outcome does not necessarily indicate whether abuse has occurred or not. The Commissioner noted that the mere fact that an allegation has been made can show that something is amiss in a child's life and therefore assistance of some kind may be required:

Non substantiation does not necessarily indicate that abuse did not occur, just that there is insufficient evidence. This is an entirely different matter to concluding that there has been no abuse.

We have to be conscious of the fact that these concerns are serious, as in most instances, these are children who would have already suffered abuse and neglect, prior to entry into care. Any abuse may well adversely impact on the child even if such alleged abuse cannot be substantiated. In cases where it is a child who makes a disclosure, I suggest that it is best practice to always assist the child, and not only provide assistance when there is substantiation.

Fabrication indicates a dysfunction in the past or in the present, and non substantiation must not result in no assistance to the child. There are three possibilities here: something may have occurred, and we cannot prove this; something has occurred but the child has no credibility; nothing occurred, but the child has a problem that needs attention. All three require a protective response to identify what is of concern.

At the very least there must be reassurance to the child and protective mechanisms put in place so that if abuse did occur, it does not occur again.

If abuse did not occur, mechanisms must be put in place to assess and address the child's issues, and resolve any placement or other issues that may arise.

In all these instances, where parents, relatives and carers have made these allegations, they too must be given such advice and assistance.

In accordance with best practice, all disclosures or allegations of abuse must at the very least be recorded and the child assisted. In Tasmania, my information is that all such allegations are documented, and as such can be referred to later in any later or further concerns about the same child or the same carer or institution.⁵²

2.40 The Australian Council of Children and Youth Organisations emphasised the importance of ensuring that in legislative interpretations, not only should events that occur in the legal stream which often lead to a notification of child abuse to a State

51 AIHW 2005, p.3.

52 *Submission 277*, pp.3-4, 10-11 (Office of the Commissioner for Children Tasmania).

child protection service be considered, but also account should be taken of the broader perspectives which are strongly linked to moral duty of care issues.⁵³

Number of notifications and substantiations of child abuse

2.41 The number of child protection notifications in Australia, 1 July 2003-June 2004 was more than 219 000, ranging from 115 541 in NSW to 1 957 in the Northern Territory.⁵⁴ The proportion of notifications that were investigated ranged from 96 per cent in Western Australia to 18 per cent in Tasmania. This range reflects differences in jurisdictional definitions and ways of dealing with notifications and investigations. For instance, in Tasmania, every call received is recorded as a notification and can be very broad and may include family issues that are responded to without the need for a formal investigation process.⁵⁵

2.42 Although the outcomes of investigations varied across the States and Territories, in all jurisdictions a large proportion of investigations were not substantiated. In other words, no reasonable cause was found to believe the child was being, or was likely to be, abused, neglected or otherwise harmed. For example, 61 per cent of finalised investigations in South Australia and 55 per cent in the Australian Capital Territory were not substantiated. The proportion of investigations that were substantiated ranged from 39 per cent in South Australia to 74 per cent in Queensland.⁵⁶

2.43 Across Australia, the number of child protection notifications increased by over 21 000 in the last year, rising from 198 355 in 2002-03 to 219 384 in 2003-04. The number of notifications increased in all jurisdictions except Victoria. The number of substantiations increased between 2002-03 and 2003-04 in every jurisdiction that provided data. Increases in the numbers of notifications and substantiations may be attributable to various factors. One may be an actual increase in the number of children who require a child protection response. This may be due to an increase in the incidence of child abuse and neglect in the community or inadequate parenting that causes harm to a child. It is most likely that it indicates a better awareness of child protection concerns in the wider community and more willingness to report problems to the child protection departments.⁵⁷

2.44 CBERSS cited figures from a 2002 Western Australian Legislative Council Inquiry showing that one in four girls and one in five boys had experienced serious

53 *Committee Hansard* 12.11.03, p.52 (Australian Council of Children & Youth Organisations).

54 As a child can be the subject of more than one notification, investigation or substantiation in a year, there are fewer children than there are total numbers of notifications, investigations and substantiations – AIHW 2005, p.14-16.

55 AIHW 2005, p.15.

56 AIHW 2005, p.16.

57 AIHW 2005, p.17.

sexual abuse by the age of 18 years. Other research quoted showed that approximately 28 per cent of females and nine per cent of males of 1 000 Australian students had been sexually abused.⁵⁸ The WA Department for Community Development noted that the number of children and young people in care in that State has increased by 43 per cent over the past five years and the number of notifications of child abuse has increased by 24 per cent over the same period. Indigenous children and young people represent the greater proportion of this increase.⁵⁹

2.45 However, Western Australia's Department for Community Development (DCD) stated that most concerns expressed to that department about the wellbeing of children do not warrant a statutory response. It quoted the following figures:

For 2 138 finalised child maltreatment allegation investigations conducted by the Department for Community Development in 2001-2002, harm to the child was substantiated in 49.6 per cent of cases.

A child is apprehended as in need of protection and care in approximately 16 per cent of investigated cases. These are the children who cannot be made safe within their families.⁶⁰

2.46 The DCD attributed its low rates of substantiated child abuse to a number of elements including some of the Department's preventative strategies:

We have been doing parenting strategies for 10 years, since the previous government. In addition to that...it is about a lot of work that is done both at field level and through non-government services around providing support to families. I am sure there is a need to do more of it, but we try to work with families to prevent them from coming into the system.⁶¹

Care and protection orders

2.47 Where a child has been the subject of a substantiation, a department may apply to the courts for a care and protection order for the child, especially when other options have been exhausted. Fewer children are placed on a care and protection order compared to the number who are the subject of a substantiation. Apart from particular legislative frameworks, various factors can influence departmental decisions to apply for such orders including the availability of other options for the child.⁶²

2.48 Examples of care and protection orders for children are: guardianship, custody and supervisory orders. Other orders of a more short-term nature, such as, interim and temporary orders, generally provide for a limited period of supervision and/or placement of a child. Apart from being different within jurisdictions, they vary from

58 *Submission 49*, p.10 (CBERSS).

59 *Submission 55*, p.18 (WA Department for Community Development).

60 *Submission 55*, p.23 (WA Department for Community Development).

61 *Committee Hansard 9.12.03*, p.23 (WA Department for Community Development).

62 AIHW 2005, pp.27-28.

one State to another. Western Australia does not have any orders that fit into the supervisory order category and the granting of permanent guardianship and custody of a child to a third party is issued only in some jurisdictions.⁶³

2.49 Children can be placed on a care and protection order for reasons other than abuse and neglect, including where family conflict may require 'time out'.⁶⁴ At 30 June 2004, the majority of children who were on care and protection orders were on guardianship or custody orders. This varied across jurisdictions. Most children on such orders lived in some type of home-based care (either foster care or living with relatives/kin). Living arrangements varied somewhat by State and Territory.⁶⁵ This issue is discussed further in chapter 3.

Numbers of children on care and protection orders – Australia

2.50 The number of children admitted to care and protection orders and arrangements across Australia in 2003-04 ranged from 2 938 in Queensland to 181 in the Australian Capital Territory. These figures do not include NSW. There were more children admitted to orders in every jurisdiction in 2003-04 than in 2002-03. Some children admitted to orders in 2003-04 had been admitted to a care and protection order or arrangement on a prior occasion. Among those jurisdictions where the information was available, the proportion of children admitted to orders for the first time ranged from 39 per cent in Tasmania to 97 per cent in Western Australia. Data on children admitted to orders show that the largest proportion of children admitted to orders in 2003-04 were aged under five years. Fewer children were discharged from care and protection orders in 2003-04 than admitted to these orders. While the rates varied, in all jurisdictions the rate of indigenous children on orders was higher than for other Australian children: in Victoria the rate was 11 times higher for indigenous children than for other children and in Western Australia it was over eight times the rate than for other children while in Tasmania such a rate was twice as high.⁶⁶

Mandatory reporting

2.51 All Australian jurisdictions, except Western Australia, have legislative requirements for the compulsory reporting to community services departments of harm to children from abuse or neglect. In most States and Territories, only members of a few designated professions involved with children are obliged to report. In the Northern Territory, anyone who has reason to believe that a child may be abused or neglected must report this to the appropriate authority. While Western Australia does not have mandatory reporting, it has protocols and guidelines that require certain occupational groups in government and funded agencies to report children who have

63 AIHW 2005, pp.28-29. See pps.28-40 for details of care and protection orders.

64 AIHW 2005, p.4.

65 AIHW 2005, pp.34-35.

66 AIHW 2005, pp.30-38.

been or are likely to be abused or neglected.⁶⁷ The Department for Community Development stated that in Western Australia such mandatory reporting only relates to reporting cases that involve children under 13 years who have a sexually transmitted infection.⁶⁸ As mentioned, various Family Law personnel are required to report cases of suspected child abuse which comes to light in the course of their employment.

2.52 Opinions differ about the merits or otherwise of mandatory reporting. In 2003, the Vardon Report in the ACT considered this issue and noted that South Australia's Layton Review had recommended an increase in the number of mandated persons on the basis that mandatory reporting creates a climate where the community can confidentially report suspected child abuse and the State will intervene to protect the child. In that context, it was argued that mandatory reporting provides accurate information with a higher substantiation rate, sends a clear message that child abuse will not be tolerated and resolves ethical dilemma issues associated with confidentiality. The Vardon Report considered various jurisdictions' stances on mandatory reporting and noted that some views are that it uses large amounts of resources for investigation and legal processes and does not necessarily inform the responsible government agency of all suspected child abuse so that a child in question may not be brought to a department's attention for an appropriate response.⁶⁹

2.53 Evidence suggested that mandatory reporting increases the number of reports about child abuse, many of which do not result in a substantiation of abuse. It also creates support demands for people involved which are often not able to be met by community services. Anglicare Victoria cited Victorian figures showing that of 40 000 reports per year, 11 000-12 000 were investigated and 2500 were substantiated, but very limited resources were provided to the welfare agencies for cases, substantiated or otherwise.

We know that we have these 2,500 to 3,000 children needing some additional support. We do not have the services to provide to them...we [do not] necessarily need to do away with mandatory reporting but...we have to devise a more efficient and effective way of actually dealing with the reports that come in.⁷⁰

2.54 A Queensland law academic, Dr Ben Mathews, noted that for mandatory reporting to work effectively, people who are mandated to report need training:

The key argument against extending a broad reporting obligation to teachers and other professional groups is obviously the increase in the number of reports...[it] is not a principled basis for opposing that extension of a broad obligation. It is really an argument against inaccurate reporting. That can be addressed through proper training, resourcing and support for

67 AIHW 2005, p.1.

68 *Committee Hansard* 9.12.03, p.18 (WA Department for Community Development).

69 Vardon Report 2004, p.116.

70 *Committee Hansard* 12.11.03, p.68 (Anglicare Victoria).

groups who are meant to report and for the investigative and treatment bodies.⁷¹

2.55 The WA Department for Community Development expressed similar sentiments to that of the Tasmanian Commissioner for Children that any allegations of abuse from a child or other person about a child, often show that the child requires assistance, irrespective of an investigation's outcome. The Department explained the rationale for the WA Government's policy in not having a legislative requirement for mandatory reporting:

What we want to have is a shared community concern around the issues of children needing care and protection. We want people to know how to bring that matter to us, but we do not want to overload the system with lots of concerns. The history of what tends to happen when mandatory reporting is in place is that there are many matters that get referred through because people think they are obliged to report, rather than people making some informed judgements.

We have extended the range of our child protection procedures with key government departments. We have also been working with our non-government services around having a better appreciation of what is required when children are at risk of significant harm... We certainly want issues of significant harm referred to the department, and we will act upon those, but we want to work with other agencies in taking a shared approach to the issue.

...What we do know is whilst...the rate of the reporting skyrockets with mandatory reporting, the rate of substantiation actually does not really change that much. You then have a great body of work more to do with family concerns – low-level concerns about parenting skills et cetera – and so you have a vast amount of work being put into quite intrusive child protection intervention where there is no substantiation of child maltreatment.

And there are no services provided to those families traditionally because when talking about resources getting dragged to the front end, mandatory reporting is a classic example: it pulls the resources out of the rest of the organisation in order to respond to the huge numbers that come in. In New South Wales last year there were something like 170 000 reports.

...That is why we introduced a differential response rather than mandatory reporting. It is not a child protection matter; it is a family support matter. Our resources can be targeted towards supporting families in a much less intrusive way... We found...where mandatory reporting is in place too much of the resources are spent in investigation which leaves few resources for work in all the other important areas that you have just identified.⁷²

71 *Committee Hansard* 12.3.04, p.107 (Dr Mathews).

72 *Committee Hansard* 9.12.03, pp.18-19 (WA Department for Community Development).

2.56 Dr Maria Harries explained that the more one increases the demands on people to report the more likely they will report anything 'because people are frightened of not reporting':

So...the less likely it is that you are actually reporting the seriously at risk and the more energy is going to the less seriously at risk. The consequence of that is that most places that have mandatory reporting put a cap on what they are actually going to investigate, so substantiation rates go down initially because there is so much been reported that is not serious. As they reduce the level at which they start investigating, the substantiation rates start going up because they are saying, 'We're only going to investigate if there is a physical injury, if the child is under six, et cetera'. So when I say it is a matter of numbers, substantiation rates are all to do with the thresholds of what is reported and who reports, and then what the agency has to be able to investigate.⁷³

2.57 Dr Harries noted that Western Australia's substantiation rates are seen as low because only high-risk cases are investigated. She noted that being able to locate and assist the children most at risk and their families is critical but mandatory reporting does not necessarily achieve that situation:

It varies all the time...So there is a two-pronged system that we are trying to develop in Western Australia...we have identified a group of families and their children who are in need and another group of families who appear to be harming their children, and those children have a different sort of need. We have tried to manage that two-pronged system. In the other states, they are put into one.

It is argued that WA has lower substantiation rates because it takes into its system as a substantiation something that is significantly a risk issue. It does not take all the other things into account as well. It is meant to be hiving off the in need ones earlier. In fact, substantiation rates are not a good measure of anything at all. Substantiation in one jurisdiction is not substantiation in another. That is what Francis Lynch was talking about earlier when he talked about national standards. In every state we have different standards for substantiation.⁷⁴

2.58 If a positive outcome of mandatory reporting were that it raised alarm bells for the departments and authorities about a child's need for help, then mandatory reporting would be more worthwhile. According to Dr Harries, the evidence is that mandatory reporting often does not necessarily reveal any problems which is significant given that irrespective of its findings, often no assistance is provided to the family anyway. Like the Tasmanian Commissioner for Children (mentioned earlier), she opined that just the allegation of abuse itself is an indication that the child and/or her family needs help. The reality is however, that often help is not provided:

73 *Committee Hansard* 9.12.03, p.48 (CBERSS).

74 *Committee Hansard* 9.12.03, pp.48-49 (CBERSS).

...if it is a mandatory report, you are compelled to do a forensic investigation. You blast in, like police, and you verbally, psychologically, physically – however you do it – assault a family. You are investigating whether a crime or something terrible has happened. The impact on families is catastrophic. In the bulk of those investigations the report is not substantiated, so what have you done to that family? Secondly, even if you find that the family is in need...what do you say, 'No substantiation, case closed'. So you not only assault the family but you do not even offer support...what we are seeing with mandatory reporting worldwide, not just in Australia, is that in the forensic investigation of abuse we are further damaging families, we are not supporting families and children at all and, worse still, the bulk of children who die are known to agencies.⁷⁵

2.59 The resources are often so stretched that such help is not available. Dr Sachmann stated:

There is a growing amount of evidence to demonstrate that, where mandatory reporting is in existence, so much of the organisation structure is geared towards investigation, full stop.⁷⁶

2.60 Similar sentiments about mandatory report were expressed by the Queensland Crime and Misconduct Commission's inquiry into the Queensland foster care system:

Importantly, whatever the merits of the different views about mandatory reporting, there is little point to the extension of mandatory reporting in a system that cannot respond to the demands placed on it by such reporting.⁷⁷

Government funding – care and protection of children

2.61 Recurrent expenditure on child protection and out-of-home care services was at least \$1041.14 million across Australia in 2003-04, representing a real increase of \$110.8 million (11.9 per cent) from 2002-03. Nationally, out-of-home care services accounted for the majority (\$638.6 million – 61.3 per cent) of this expenditure. Some jurisdictions have difficulty in separating expenditure on child protection from that on out-of-home care services. Nationally, real recurrent expenditure per child aged 0-17 years was \$217 in 2003-04. This varied across jurisdictions, from \$296 in the ACT to \$131 in South Australia. Real recurrent expenditure on child protection and out-of-home care services per child aged 0-17 years increased in all jurisdictions between 2002-03 and 2003-04.⁷⁸

75 *Committee Hansard* 9.12.03, p.51 (CBERSS).

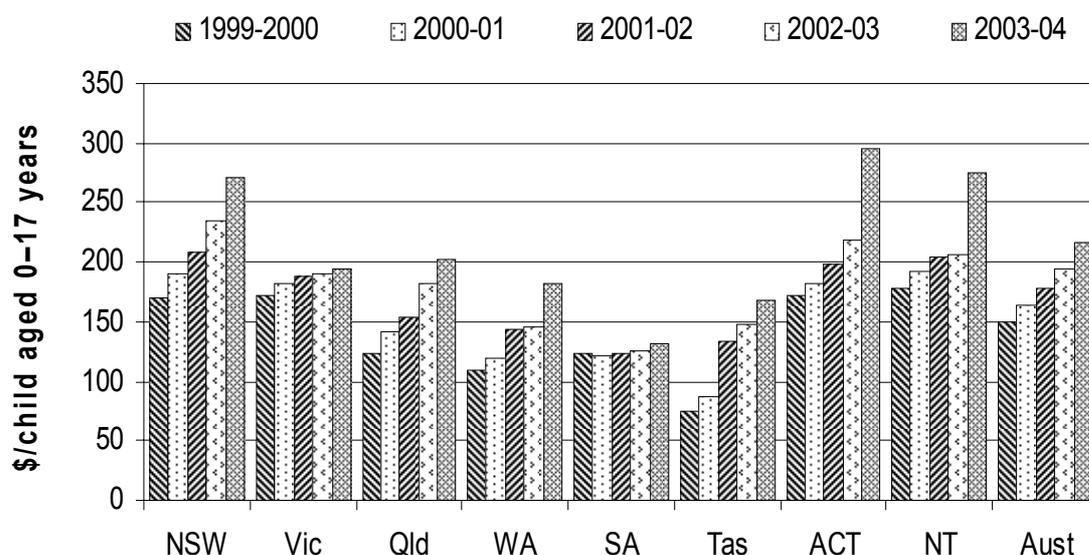
76 *Committee Hansard* 9.12.03, p.51 (CBERSS).

77 Crime and Misconduct Commission, Queensland, *Protecting Children: An inquiry into abuse of children in foster care*, January 2004 (*Protecting children* 2004), p.184.

78 Productivity Commission, *Report on Government Services 2005, Volume 2: Health, Community Services, Housing*, Canberra, January 2005, p.15.10.

2.62 Funding increases for programs to identify families at risk and prevent or at least stem abuse or neglect of children and young people has occurred across all jurisdictions. For example, in NSW, increases in allocations for child protection services include those for intervention and prevention approaches and accommodation for children requiring costly services, while Queensland's extra government funding has provided a range of initiatives including additional staff for the new Department of Child Safety.⁷⁹

Figure 2.1: Real recurrent expenditure on child protection and out-of-home care services (2003-04 dollars)



Source: Productivity Commission, *Report on Government Services 2005, Volume 2*, January 2005, p.15.11.

2.63 However, some welfare providers argued that governments were shirking their funding responsibilities and that out-of-home care providers were increasingly being pressed for funds to meet children's basic needs such as educational costs, uniforms and recreation:

The states and the Commonwealth, I believe, have neglected their responsibility to adequately resource a child welfare system in this state [Victoria] which would enable community service organisations and others to deliver the best quality practice that now the community, at least verbally, seems to be demanding.⁸⁰

...we subsidise it from our other areas...We are subsidising the present contract significantly over...We do not mind doing that...but if you repeat

79 A discussion of State and Territory funding increases for the care and protection of children appears in the Vardon Report 2004, pp.197-198.

80 *Committee Hansard* 12.11.03, p.62 (Anglicare Victoria).

that across all the non-government organisations in Australia, the shortfall is becoming huge...In this financial year we will probably subsidise the service to the extent of around \$100,000. Next year it will possibly be closer to \$200,000.⁸¹

2.64 Youth Off The Streets stated that it does not receive core government funding, even though it often provides community support programs for the NSW Department of Community Services when departments are unable to manage the young person's behaviour:

...despite an estimated number of more than 45,000 young people having used our services since our establishment in 1991, we have yet to receive core funding from the government.⁸²

2.65 Youth Off The Streets emphasised that it requires the certainty that core funding would provide. The organisation noted that short-term funding contracts under which DoCS presently allocates funding to groups such as Youth Off The Streets, are inadequate to meet children's requirements, which in reality are more often long term than *ad hoc*. That organisation regularly provides children and young people with ongoing residential, educational rehabilitation, therapeutic and community support outreach services. Youth Off The Streets quoted a 2003 NSW Ombudsman's out-of-home care funding report which recommended that DoCS identify the extent of need and appropriate models and costs for residential care services so that a policy and funding framework could be developed to guide the planning and provision of residential care.⁸³

2.66 The issue of funding for youth homelessness and juvenile crime prevention programs was also raised in evidence:

In our own state [Queensland]...for every \$1 we put into crime prevention work, we put \$58 into prisons and courts and all the rest of it. I think the same is true in the Commonwealth area with regard to the dollars that we put into counselling versus the dollars that we put into the Family Court. We are a reactive society, not a proactive society.⁸⁴

2.67 Some agencies noted that governments' accountability rules and procedures for funding to welfare groups, often add to pressures for the non-government sector in delivering effective programs and support to families:

Since the 1990s, it has increasingly been the case that funding parameters and shrinking resources, rather than best practice, have been the major drivers of change in the child-care sector. The pressure on the non-government sector to provide increased accountability in administrative

81 *Committee Hansard* 9.12.03, pp.29, 31 (Mercy Community Services Inc).

82 *Submission* 81, p.4 (Youth Off The Streets).

83 *Submission* 81, pp.3-5 (Youth Off The Streets).

84 *Committee Hansard* 12.03.04, p.47 (Father Dethlefs).

compliance has made it extremely challenging for agencies to remain focused on outcomes for children and families.⁸⁵

Getting support from government funding departments under the current tendering processes is costly and requires resources that would be better spent in the program area. Some government departments...refer young people to us but do not provide us with funding for these placements. We do not receive the maximum funding levels available for our schools commensurate with their status as 'special schools' from the Department of Education and Training because we need to provide detailed psychological reports on each child, which we cannot provide because of the lack of administrative resources and because pathologising children is inimical to our organisational philosophy.⁸⁶

2.68 Issues regarding a constant lack of resources for programs and the continual strains on the public purse were regularly raised. Mofflyn considered it vital to maximise efficiencies to achieve the greatest impact with the least possible financial outlay and ranked funding equity and quality of care issues highly. Funding needed to:

Be provided to pilot new initiatives or investigate, through evidence-based research, what modern children and families need by way of support and intervention...Be broad enough to enable agencies to provide services according to the child or family's individual need in order to be most successful...Recognise that training, support, supervision and the professional development of staff and volunteers are the key to providing quality care and important to core program outcomes⁸⁷

Conclusion

2.69 The causes of child abuse can often be traced back to problems and disadvantages in families' lives including drug and substance abuse, lack of finances, marriage breakdown and unemployment. Economic and social stress can also lead parents to become less nurturing and rejecting of their children and that children living in poverty have a high incidence of abuse and neglect. Evidence points to an increase in the number of notifications and substantiations of abuse and neglect.

2.70 All States and Territories except Western Australia have legislative requirements for mandatory reporting. Evidence for and against mandatory reporting was received. Arguments have been put that the resources for reporting could be more effectively directed elsewhere and that mandatory reporting generates unnecessary reporting and strains the system to the point where often assistance is not able to be provided for people who are in genuine need. Others have noted that any report of child abuse, irrespective of whether it is proved or not, is evidence that something is amiss in the life of that child and his or her family. If anything, this shows too that

85 *Submission* 160, p.9 (Mofflyn).

86 *Submission* 81, p.7 (Youth Off The Streets).

87 *Submission* 160, p.15 (Mofflyn).

effective support programs and early intervention measures must be available for families and young people and they must be properly promoted and advertised so that people know of their existence.

2.71 The Committee considers that the effectiveness of mandatory reporting as it currently operates in various jurisdictions needs to be assessed to ensure that resources are being effectively allocated to improve the protection of at risk children.

Recommendation 2

2.72 That State and Territory Governments consider reviewing the effectiveness of mandatory reporting in protecting and preventing child abuse, and in conducting such a review, they particularly focus on the successes of the various options used in care and protection systems, in comparison with mandatory reporting.

Children's commissioners, children's advocates, children's guardians, etc

2.73 In addition to the services provided through State and Territory welfare departments, various offices exist to promote and protect children and their rights. These include children's commissioners, children's advocates and children's guardians.

State and Territory children's commissioners

2.74 Currently, offices of commissioners for children and young people exist in NSW, Queensland and Tasmania. Discussions have occurred for the introduction of such an office in Victoria, South Australia and the ACT and a commission is to be established in Western Australia in 2005. While children's commissioners' powers vary across Australia, they operate under the principle of promoting and protecting children and their rights as defined in the UN Convention. The functions of the Australian models relate to systemic investigation and inquiry rather than individual advocacy for children. Witnesses suggested the establishment of a children's commissioner in each State to provide a legal service for children and those persons who were abused in care as children to reduce their disadvantages in seeking legal recourse.⁸⁸ As well, many individuals and groups suggested the establishment of a national children's commissioner. This issue is discussed later in the chapter.

New South Wales

2.75 Established under the NSW *Commission for Children and Young People Act 1998*, the NSW Commission's role relates to ensuring the safety, welfare and wellbeing of children, and a cooperative relationship between children, their families and the community.⁸⁹ The office's primary functions include promoting the participation of children in decision making, monitoring the wellbeing of children in

88 *Submission 223*, p.2 (Ms Janet Lowe).

89 *Submission 35*, p.3 (NSW Commission for Children and Young People).

the community, making recommendations to government and non-government organisations about legislation, policies and practices that affect children and young people, and monitoring people who are involved in child-related employment.⁹⁰

Queensland

2.76 The office of the Queensland Commissioner for Children and Young People and Child Guardian was established under the Queensland *Commission for Children and Young People and Guardian Act 2000*. The Commissioner's responsibilities include investigating and reviewing complaints from children or young people about government-funded services. The Commission's priorities relate to children and young people in some form of out-of-home care or detention centre and children who have no one to act on their behalf. The Commission assists indigenous children and young people and those who do not speak English, have a disability or are geographically isolated. The Commission's powers include advocacy, and monitoring and reviewing laws, policies and practices.⁹¹ The Queensland Commissioner has a statutory authority to investigate complaints that relate to services provided or required to be provided to a child who is subject to orders or actions under various State Acts such as the *Child Protection Act 1999* (Qld) or *Juvenile Justice Act 1992* (Qld). The Child Guardian's tasks include monitoring, auditing and reviewing agencies which provide services for children and young people in the care system.⁹²

Tasmania

2.77 The Commissioner for Children in Tasmania has a function under s.79(1)(d) of the *Children, Young Persons and Their Families Act 1997*, 'to increase public awareness of matters relating to the health, welfare, care, protection and development of children'. Under s.79(1)(f), the Commissioner can 'advise the Minister on any matters relating to the health, welfare, education, care, protection and development of children placed in the custody or under the guardianship, of the Secretary under this or any other Act'. As the Commissioner has noted:

This section gives me a function with respect to children in any welfare care, but in addition, it also gives me a role with respect to children and young people who are in juvenile justice custody.⁹³

2.78 The Commissioner's tasks are linked with s.124(1) of the *Youth Justice Act 1997*, for children and young people in custody, where the Secretary of the Department of Health and Human Services is responsible for their 'safe custody and well being'. Other roles of the office include notifying the Department's division of

90 ACT Government, *A position paper: for a proposed Australian Capital Territory Commissioner for Children and Young People*, Chief Minister's Department, September 2004, p.6.

91 *Submission 72*, pp.1-2 (Queensland Commission for Children and Young People).

92 ACT Government 2004, pp.6-8.

93 *Submission 277*, p.2 (Office of the Commissioner for Children Tasmania).

Children and Families of any abuse allegations for investigation and internal review. In such cases, the Commissioner's brief includes scrutinising systems issues related to policy, practice and service delivery, to ensure that they are carried out in accordance with the best interest of the child for matters such as health, care and welfare. The Tasmanian Ombudsman can also investigate such claims if they involve an administrative decision with which a child, parent or carer is dissatisfied.⁹⁴

Victoria

2.79 The Victorian Institute of Law has proposed the establishment of a Victorian Commissioner for Children and Young People with functions that include ensuring children's participation in decisions about themselves and their lives and that children's rights and interests are taken into account by parliamentarians, government and local authorities, public bodies and voluntary and private organisations in relation to services provider responses to complaints about services for children. The office's other roles include promoting and monitoring advocacy and other support services and ensuring wide consultation including a capacity for the Commissioner to review and inquire into laws, practices and policies that impact on children.⁹⁵

South Australia

2.80 In South Australia, the establishment of an independent Commissioner for Children and Young people was a key recommendation of the government report into child protection, the Layton Review. As in Queensland, the South Australian model proposed that the Commissioner have the ability to: be an advocate for children and young people; conduct inquiries; promote awareness of the rights of children and young people; influence law, policy and practices; intervene in legal cases involving the rights of children and young people at the systemic level; initiate test cases or support legal actions on behalf of children and young people; and conduct research.⁹⁶

Australian Capital Territory

2.81 Support for the establishment of an ACT Commissioner for Children and Young People can be traced back to an ACT Legislative Assembly committee report, *The rights, interests and well-being of children and young people*. In response to the more recent inquiry, the Vardon Report, the ACT Government is committed to establishing such an office where some of the Commissioner's tasks would include advocacy, standard-setting for government-funded services and powers to convene a tribunal to review decisions of government-funded services dealing with children and young people. A significant task would be the introduction of a review role relating to

94 *Submission 277*, pp.2-3 (Office of the Commissioner for Children Tasmania).

95 ACT Government 2004, p.10.

96 Kenny N and Tait A, 'Commissioners for children and young people: comparing state and territory statutory bodies for protecting the rights and interests of children', *NCPC newsletter*, vol 13, no. 1, Summer 2005, p.32.

people who plan to work in jobs associated with children or young people. The ACT Government is considering possible structures for a children's commissioner including roles that include integration with the Office of the Community Advocate.⁹⁷

Western Australia

2.82 In December 2004, the Western Australian Minister for Community Development announced the finalisation of a model for the State's new independent children's commission, to start work in 2005. The WA model includes 'special attention to indigenous children'. The proposed commission's role includes advocating for children and young people generally, promoting children's participation and the community's understanding of issues affecting children, monitoring and advising the government on legislation, policies and practices and conducting inquiries and research. The model has been developed after consultations with commission counterparts in NSW and Queensland as well as groups and individuals such as the CREATE Foundation, Professor Fiona Stanley, Magistrate Sue Gordon, Meerilinga and 231 children and young people across the State.⁹⁸

Children's guardians and other offices

Children's guardian - New South Wales

2.83 The NSW Office of the Children's Guardian was established under the NSW *Children and Young People (Care and Protection) Act 1998* to promote the best interests and rights of children and young people in out-of-home care in NSW. The need for an independent representative has been highlighted in instances of conflict of interest, such as where a Minister has the dual roles of responsibility for a facility where a child resides and is also the child's legal guardian.⁹⁹ Also included in the rationale for the appointment was the recognition of the lack of power of children in out-of-home care, especially those facing systems failure problems. The Guardian's functions include assuming the parental responsibilities of the Minister for a child or young person in out-of-home care, accrediting foster care agencies, removing children from inappropriate placements, participating in conferences about children's court processes and assisting with dispute resolution and departmental funding decisions.¹⁰⁰

97 ACT Government 2004, pp.4, 10-11.

98 McHale Sheila, 'Western Australia's independent children's commission model finalised', *Media Release*, 6 December 2004.

99 This was illustrated in *Bennett v Minister for Community Welfare* (1992) 176 CKR 408 where the High Court held that the Director of Community Welfare should have arranged for a boy to have independent legal advice on whether to bring a claim - Parkinson P, *The Children's Guardian* 1999, pp.5-6.

100 Parkinson 1999, pp.2-14.

Guardian for children and young people – South Australia

2.84 Although a commissioner for children has not yet been established in South Australia, that State recently appointed a Guardian for Children and Young People. The guardian has the role of advocate for all children and young people by advising the Minister for Families and Communities on whether the needs and interests of children are being met. The guardian will ensure that child protection and alternative care systems, and other government services such as health and education, are child focused and work to improve the wellbeing of all children. Unlike the Queensland Commission, the guardian will not receive and investigate complaints, conduct research, and there is no screening function for child-related employment.¹⁰¹

Advocate for Children in Care - Victoria

2.85 Established in April 2004, the office of the Victorian Advocate for Children in Care has a comprehensive role entailing advocacy and representation of children in out-of-home care. The role includes a focus on encouraging children's participation in decision-making processes and ensuring quality services, standards and compliance and monitoring of the sector. Among the Advocate's 'core functions' are those related to developing a Charter of Rights for Children in Care; undertaking independent and systemic quality reviews of case management and care planning for out-of-home care at the request of or with the approval of the departmental secretary; and, in conjunction with local Aboriginal communities, monitoring adherence to the Aboriginal Child Placement Principle for the placement of indigenous children in out-of-home care. The Advocate's office has identified major work priorities such as those to address children and young people as primary constituents and ensuring systemic quality improvement and the development of communication and relationships with stakeholders.¹⁰²

Office of the Public Advocate – Queensland

2.86 Created under the Queensland *Guardianship and Administration Act 2000*, the Queensland Public Advocate provides systemic advocacy for adults with a decision-making disability. This group includes people with a psychiatric disability, an intellectual disability, an acquired brain injury or some form of dementia. Included in the Public Advocate's legislative functions are those to promote and protect the rights of such adults from neglect, exploitation or abuse. The role of the Public Advocate is to identify widespread situations of abuse, exploitation or neglect of people with impaired capacity due to shortcomings in the systems or facilities of a service provider. The Public Advocate reports these findings to State Parliament.¹⁰³

101 Kenny and Tait 2005, p.32.

102 Department of Human Services Victoria, *Advocate for children in care: progress update, current activities and future directions*, Attachment 1, 8 December 2004.

103 Queensland Government, The Public Advocate – <http://www.justice.qld.gov.au/guardian/pa.htm>

Office of the Adult Guardian – Queensland

2.87 The Adult Guardian is an independent statutory officer operating under the *Queensland Guardianship and Administration Act 2000*. The Adult Guardian protects the rights and interests of adults with impaired capacity and supports and advises their guardians, attorneys, administrators and other people who provide informal assistance on matters including those related to health and finances. The Adult Guardian can investigate reports of complaints about exploitation, abuse or neglect of a person with impaired capacity or complaints against the actions of a person who has been given enduring power of attorney. If a person is found to have behaved irresponsibly, the Adult Guardian can suspend a power of the attorney, conduct an audit and obtain a warrant to remove an adult who is being abused, exploited or neglected.¹⁰⁴

Office of the Community Advocate – Australian Capital Territory

2.88 The Office of the Community Advocate (OCA) has a monitoring role towards children and young people in need of care and protection, under the *ACT Children and Young People Act 1999*. Under the *Community Advocate Act 1999* the Community Advocate provides systemic advocacy for children and young people in the ACT.¹⁰⁵ The OCA's powers and functions are wide and include those designated in various Acts including the *Mental Health (Treatment and Care) Act 1993* and the *Guardianship and Management of Property Act 1991* and those relating to services, facilities and supports for people with a disability. The OCA may engage in individual or systemic advocacy on behalf of children and young people but it is not a formal complaints agency.¹⁰⁶

Commonwealth, State and Territory Ombudsman Offices

2.89 The Commonwealth and State and Territory Governments have Ombudsman's Offices whose role includes investigating children's complaints about government authorities. The role of the Ombudsman has traditionally been focused on individual rather than systemic complaints. Ombudsman's offices such as NSW have become involved in broader policy issues including inquiring into juvenile detention centres. However, the central focus of an Ombudsman's role tends to be individual complaint investigation and resolution.¹⁰⁷ The following information outlines the Ombudsman's role in caring for and protecting children in a number of jurisdictions.

104 Queensland Government, The Public Advocate – <http://www.justice.qld.gov.au/guardian/ag.htm>

105 Vardon Report 2004, p.185.

106 ACT Government 2004, p.13.

107 ALRC 1997, p.143.

New South Wales

2.90 The New South Wales Community Services Commission merged with the office of the State Ombudsman in December 2002. Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the Ombudsman's office oversees and monitors the investigation of allegations of child abuse against employees of government agencies and certain non-government agencies. The functions provided by this Act and the *Ombudsman Act 1974*, have instigated a significant number of inquiries and investigations on aspects of out-of-home care and child protection. Such reports have identified critical issues in institutional and other forms of care for children and young people in New South Wales.¹⁰⁸

Australian Capital Territory

2.91 Under the *Ombudsman Act 1989*, the Ombudsman investigates complaints relating to actions of ACT public agencies. Since 1997, 159 complaints have been submitted to the ACT Ombudsman about the Department of Education, Youth and Family Services (DEYFS). Major complaints have included concerns regarding the removal of children from parents and/or carers by departmental staff; departmental responses to notification of concerns relating to the care and/or treatment of children; and response times to interested parties who make contact with DEYFS seeking intervention.¹⁰⁹

Comment on the operation of some offices

2.92 The above information briefly describes the roles and responsibilities of some public officials in Australia who represent the interests of children and young people. The Committee was not in a position to conduct in-depth analysis into how their work sits with that of other State-level officials in their own or other jurisdictions or with that of federal bodies. Various opinions were received about the work of such officials. The Association of Children's Welfare Agencies and UnitingCare Burnside expressed confidence in the work of the NSW Ombudsman in better practices and follow up than had happened in previous times:

Part of the Ombudsman's work is to make sure that all agencies have a robust and workable system. That level of scrutiny did not previously exist...while it can be onerous and demanding on agencies, it provides a level of protection that most people believe is necessary. It vastly reduces the chances of abuse by employees or care givers going unnoticed or being swept under the carpet.¹¹⁰

There is a requirement that there be a notification and a report which is signed off by the Ombudsman's office...It is not simply, 'Thank you very much; you've investigated that now. Go on doing what you're doing'. There

108 *Submission 13*, p.1 (NSW Ombudsman).

109 Vardon Report, pp.185-186.

110 *Committee Hansard 4.2.04*, p.14 (Association of Children's Welfare Agencies).

is actually a feedback loop that requires removal of the staff or person, notification of the staff or person and a change in the care plan or whatever it happens to be...it is inevitable, I think, that we will get more complaints about lack of care and/or abuse within foster care simply because more children are in foster care now than are in institutional care...I do think that probably the checks and balances around the system have increased.¹¹¹

2.93 Some evidence suggested that the operations of the Queensland Children's Commissioner are not broad enough as they only apply to children in care:

...the title should be the Commission for Children and Young People in Care. It does not have a universal statutory mandate. It can advocate on behalf of children who are not in care, but it has not got that statutory mandate...I come across 15- and 16-year-olds who are not receiving some of the benefits of being in care. The department will say, 'No, no way. This person is nearly 15 or nearly 16. They are too old.' Yet the law says that they have responsibility for young people in this state under the age of 17.¹¹²

2.94 Some disappointment was expressed about the workings of the NSW Children's Guardian and the possible loss of accountability of their services in relation to case plans for children and young people in out-of-home care.

Centacare notes with disappointment the proposed dilution of these roles for the Office of the Children's Guardian to a random review of care plans as opposed to the original intent of all care plans to be reviewed. Accreditation will mean that all out-of-home care service providers must comply with Standards of Practice to ensure best practice is consistently delivered in out-of-home care.¹¹³

Government and non-government child protection services

2.95 As was pointed out to the Committee, the United Nations has commented on ways to create a more protective atmosphere for children:

This initially needs increased information, support and assistance to parents to enable them to parent less abusively. The United Nations Committee suggested that we could do better with education and the dissemination of information about the Convention and the rights of the child. If we do this, we may well be able to promote a climate and culture where the abuse of children is not tolerated.¹¹⁴

111 *Committee Hansard* 4.2.04, p.26 (UnitingCare Burnside).

112 *Committee Hansard* 12.3.04, p.47 (Father Dethlefs).

113 *Submission* 82, p.7 (Centacare-Sydney).

114 *Submission* 277, p.15 (Office of the Commissioner for Children Tasmania).

Early intervention to assist families, children and young people

2.96 The following information briefly discusses some policies and programs which have been introduced to assist in addressing problems in the child protection sphere.

2.97 For example, governments are increasingly recognising the value of early-years supports and services to assist families with their children and reduce the need for government intervention later. Programs are targeted at different times of the child's life, ranging from when they are very young, through to their teenage years and possibly when they come under the protection of a welfare department. The WA Department for Community Development emphasised that the cumulative risk from the total number of risk factors to which children are exposed is the 'most powerful predictor of later problems' for children, rather than a specific risk factor. Therefore, the Department considers it imperative to target assistance and prevention measures to assist children at particular times of their lives.¹¹⁵

2.98 Regardless of sectoral responsibility, early intervention and prevention services are crucial for many people especially those who are financially disadvantaged, in culturally-diverse areas or who have children with a disability. As noted, a view was put that there is often too much emphasis on ensuring that children remain with their biological families and this can be counterproductive in situations of abusive families. Some witnesses emphasised that early intervention via the provision of parenting support skills can be beneficial:

I think what we really have to look at yet again but in more detail – certainly rigorously – are the causes that bring young people into out-of-home care...For a lot of parents who are not particularly good parents, it is not their fault, so an attempt to work with them and to parent the parent as well as the child is something that we are very mindful of.¹¹⁶

2.99 Given the ever-increasing cases of child abuse, there is a need to break the cycle and to work with parents and the child to assist people to become better parents. Families Australia highlighted prevention strategies, particularly since children under five years continue to be the group most affected by child abuse and neglect:

Research has shown that early intervention programs in the area of child abuse and neglect can work. It makes sense, socially and economically, for the Commonwealth to invest a comparatively small amount into such programs, rather than waiting for the much more expensive long-term costs to eventuate.¹¹⁷

2.100 Certainly, issues related to parenting ability have implications about how children are cared for. In a South Australian study, in 58 per cent of primary care

115 *Submission 55*, p.20 (WA Department for Community Development).

116 *Committee Hansard* 12.11.03, pp.78, 81 (Berry Street Victoria).

117 *Submission 175*, p.5 (Families Australia).

givers, parenting difficulties were identified as a priority area and those rose to 99 per cent for secondary care givers, 25 per cent of whom were identified as demonstrating destructive/abusive parenting. These figures are high given the importance of positive parenting on a child's development and emotional wellbeing.¹¹⁸

2.101 Some care leavers have described difficulties in their lives which they consider could have been stemmed had the right sort of early intervention programs been available for their families at the time. The following excerpt was received from a care leaver who, as a young girl, lived in an extremely dysfunctional household and spent time in institutions including Parramatta Training School for Girls. Nowadays, along with the responsibility of her own two teenage children, she cares for her late sister's three children. The care leaver's late sister experienced many difficulties in life, particularly when she became the single mother of twins when her first child was only 14 months old and the children's father returned to America. Suffering further adversities including post-natal depression, housing difficulties, no substantial support from welfare authorities and the loss of a very good friend, other problems emerged and she eventually became a heavy drinker and heroin user. At the age of 41 years, she had a 'lonely death in a park at Darlinghurst in the early hours of the last day of the Sydney Olympic Games'. Nowadays, with the wisdom and hindsight of her own experiences, the care leaver considers that if assistance has been provided, it could have assisted them significantly:

My sister and I were children from what was known as a broken home; a single parent family consisting of two brothers and four sisters, two of whom had intellectual/physical disabilities... We were disadvantaged, poor, ignored and constantly under the surveillance of the so-called welfare system.

A failure to address a traumatic childhood experience which she [her sister] suffered at the age of four eventually led to her lifelong self abuse through the use of drugs and alcohol. Her 'problem' was dismissed as that of an uncontrollable child and she was subsequently dealt with by the welfare system being committed to Reiby at the age of 14. This was the first of her many experiences of institutions.¹¹⁹

2.102 Youth Off The Streets emphasised the worth of early-intervention programs in assisting indigenous children and young people:

...Redfern Police and Redfern Aboriginal Legal Service have discussed with us the need for placements in our programs for youth who cannot be engaged successfully within existing community support and bail option programs funded by Juvenile Justice. Without exception, these youth have histories of significant abuse, serious criminal behaviour and often substance abuse and family breakdown... Some are as young as thirteen and they continue to commit serious crimes. Without immediate and appropriate intervention, many are undoubtedly facing significant time in detention

118 Layton Report 2003, p.3.7. <http://www.dhs.sa.gov.au/childprotectionreview/cpr-report.asp>

119 *Submission* 511, pp.1-2.

centres. This is an expensive and inappropriate response to youth who continue to commit crimes because the system cannot meet their real needs.¹²⁰

2.103 The Post Adoption Resource Centre – Benevolent Society highlighted the importance of guarding against inconsistency in a child's development and applauded the NSW Government's decision to increase funds to early intervention strategies to help keep families together. The organisation cited the Early Intervention Program and the First Five Years Program run by The Benevolent Society in the Sydney region as evidence that with support, children can remain with their families and that their families can learn to parent well.¹²¹

2.104 In the light of the above organisations' works, the importance for children of secure attachments with significant others in their lives so they might have a healthy childhood and positive long-term outcomes, cannot be overestimated. Experts on attachment theory regarding children, opine that children need to have bonds with significant others and emphasise that this is not an optional extra in a child's life but a core need. Of importance for a child is the combination of many elements such as affectionate bonds, liking, loving and trusting someone else and a sensible balance of psychological dependence. Unfortunately, it is noted that:

Often too, children in care may never have developed a foundation of trust, and have no clear understanding of what care means, as the link between their needs and having them consistently and reliably met was never established.¹²²

2.105 Therefore, children are hardly likely to develop a sense of trust in their carers and other attachment figures if they are insensitive, harsh or physically and psychologically absent for much of the child's life.

Commonwealth Government programs and services

2.106 The Australian Government funds early intervention and prevention measures to assist children and families, through the Commonwealth Department of Family and Community Services (FaCS). In late 2004, the Government announced a four-year extension to the \$365 million Stronger Families and Communities Strategy, with an additional \$112 million committed during the 2004 election campaign.¹²³

2.107 Under the Strategy's National Agenda for Early Childhood, the department conducts programs to assist in reducing the risk of child abuse and neglect in vulnerable families and to address the ever-emerging issues in the child protection

120 *Submission 81*, p.6 (Youth Off The Streets).

121 *Submission 53*, pp.4-8 (Post Adoption Resource Centre – The Benevolent Society).

122 McIntosh, Jennifer, 'The inside journey through care: a phenomenology of attachment and its loss in fostered children', *Children Australia*, vol 28, no. 3, 2003, p.12.

123 Department of Family and Community Services, Additional information, 4.1.05.

area, including those related to the increased numbers of children in out-of-home care. The Department is seeking to address some of the disadvantages of indigenous Australians through a \$3.4 million annual allocation to the Aboriginal and Islander Child Care Agencies for child protection, early intervention and protection activities for indigenous children. Some other departmental initiatives relate to support and funding for grandparents and other kinship carers who are providing primary care for grandchildren, an issue flagged by the Australian Government for discussion at 2005 Council of Australian Governments (COAG) meetings.¹²⁴

2.108 Examples of Commonwealth Government initiatives include:

- the Transition to Independent Living Allowance (TILA) which provides one-off assistance of up to \$1000 via non-government organisations across Australia to help disadvantaged young people make the transition from state-supported care to independent living; and
- approximately \$4.4 million for mentoring for young people. For example, the Mentor Market place programs use mentoring to increase positive outcomes for young people, particularly those at greatest risk of disconnection with their families, communities, education and work. One organisation contracted to deliver such services, the CREATE Foundation, uses mentoring to offer opportunities for young people who are in care, or have been in care, to gain skills and confidence to help them take action in their own lives and within their community.¹²⁵

2.109 FaCS has also introduced the Every Child Is Important campaign to promote attitudes in adults that are caring and supportive of children and to encourage a commitment from adults to develop safe and non-abusive relationships with children. The campaign consists of a range of communication elements including print, radio and television advertising, parenting education involving seminars, kits and booklets and newsletters and includes the use of ethnic media. At November 2004, the campaign had been launched nationally and in Queensland and the Northern Territory. More than 200 000 booklets were distributed and 22 parenting seminars have been held in NSW, ACT, Queensland and the Northern Territory.¹²⁶

State and Territory Government and non-government programs and services

2.110 State and Territory governments have a wide range of programs to assist children and young people in need of care, many of which are delivered by non-government organisations. In recent years, many State and Territory departments with responsibility for the care and protection of children and young people have introduced new legislation, policies and strategies to deal with problems which have been identified or come to light in various ways, including via public inquiries.

124 Department of Family and Community Services, Additional information, 4.1.05.

125 Department of Family and Community Services, Additional information, 4.1.05.

126 Department of Family and Community Services, Additional information, 23.2.05.

2.111 Evidence from the Queensland Government has outlined various measures in that State. Following the 1999 Forde Inquiry into children in Queensland institutions, the State Government allocated \$100 million over four years to implement many of the inquiry's recommendations. Along with various legislative, systems and policy reforms, the State Government introduced measures to improve access to educational opportunities and health care for children in State care.¹²⁷ Since the release in late 2003 of the Queensland Crime and Misconduct Commission's report from its inquiry into abuse of children in foster care in Queensland, further changes have been introduced including the establishment of the new Department of Child Safety, and funding for additional departmental staff; recruitment, payments and support for foster carers and for the needs of high-care children. The Queensland Government has introduced other reforms to the child protection framework including those for better services to children in care, including ways to meet the needs of indigenous children. The State's, *Partnership Agreement: Educating Children and Young People in the Care of the State*, seeks to increase the participation, retention and attainment of children and young people in the education system.¹²⁸

2.112 The Tasmanian Commissioner for Children advised of initiatives to assist children in care in that State including the establishment of the CREATE Foundation which advocates for children in care and maintains contact and liaison between children and other people to improve care experiences and outcomes. Other measures in Tasmania relate to law reforms and new legislation to address child protection and family violence issues. A policy, *Our Kids*, has been introduced to refocus service delivery to children aged under 12 years, to provide parents and children with support and ultimately reduce child abuse and increase children's wellbeing.¹²⁹

2.113 Western Australia's Department for Community Development (DCD) provided a detailed history of that State's welfare and out-of-home care inquiries and evaluations, dating back to the 1953 Hicks Report, which have informed government policies. In 2001, DCD commenced the Renegotiation Project to review service agreements with the non-government sector for funding out-of-home care and has advised that 11 metropolitan child placement services are operating in the not-for-profit sector that provide places for children aged 0-17 years in foster and group care.¹³⁰

2.114 The DCD provides funds for children who cannot live at home safely and for services to support families and individuals in crisis. The Department provides a continuum of services to minimise the need for children to enter out-of-home care including parenting skills services and intensive family support.¹³¹ The Department's

127 *Submission 125*, pp.1-6 (Queensland Government).

128 *Submission 125*, Supplementary Submission, pp.1-5 (Queensland Government).

129 *Submission 277*, p.8 (Office of the Commissioner for Children Tasmania).

130 *Submission 55*, pp.24-33 & 43 (WA Department for Community Development).

131 *Submission 55*, p.23 (WA Department for Community Development).

Care for Children and Young People Strategic Framework informs policymaking and it is setting up an interagency Child Protection Co-ordination Committee to work with other departments and the community. Its Strong Families approach was expanded with 2003-2004 budget increases, particularly since it was shown by the Gordon Inquiry to be effective. As with other States' departments, DCD works closely with the CREATE Foundation on policy and program development for young people.¹³²

2.115 Various jurisdictions and agencies have introduced the Looking After Children (LAC) program. This is a child focused guided best practice case management system developed in the United Kingdom. It provides a comprehensive system to record and track information about children in care such as dental visits and vaccinations. Various agencies have noted its merits:

The whole premise of...LAC...will be that all this information is collected in the one place...it actually belongs to the young person, and when they move...that information goes with them...they will have a history of who they are, where they have been, who their friends were and how often their mums visited.¹³³

[it] ensures that quality information is collected and maintained to inform decisions relating to the need for placement, enable safe and appropriate initial care, and guide the development of effective case plans; guides case practice and quality assurance processes and ensures the voices of children are heard.¹³⁴

LAC's design includes attention to identity formation, with the goal being that the child in care develops a sense of self as a separate and valued person. They will know their family background, will be connected as far as possible in positive ways to their immediate or extended family, and have an understanding of and connection to their own ethnic and cultural background...practitioners need to be creative with regard to how this is actually done...using lifebooks, scrapbooks, videos and recordings.¹³⁵

2.116 The WA Department for Community Development provided a field officer's perspective of the LAC:

It has been implemented only in recent times, but it is a very comprehensive way of recording the child's history while in care – not just facts about the child but who the child is and how they are progressing. It encourages and requires the case managers and other specialists and support staff to support that child in care, along with the carer or the other agency, and to work with that child and to get to know the child so that they will have a very comprehensive record from day one of that child coming into care until the child leaves. It is an interactive process and one that will build

132 *Submission 55*, pp.45-46 (WA Department for Community Development).

133 *Committee Hansard* 12.11.03, p.86 (Berry Street Victoria).

134 *Submission 55*, p.32 (WA Department for Community Development).

135 *Submission 50*, p.19 (MacKillop Family Services).

relationships. We believe it is going to meet some of those needs that have not been addressed in the past.¹³⁶

2.117 Berry Street Victoria emphasised the importance of education because of the 'severe deficits in education' that young people in out-of-home care often experience. In caring for some of Victoria's most vulnerable children, young people and their families, the organisation focuses on educational services and programs.¹³⁷ Youth Off The Streets reinforced the pivotal role that education has in a young person's life:

A decade of experience has taught us that education is the most effective way to break the cycles of abuse that can trap young people. Our new National Schools Program now delivers innovative drug prevention and early intervention programs to schools Australia wide.¹³⁸

2.118 Berry Street Victoria described its programs including Early Learning is Fun which encourages reading at an early age. As well, a Victorian Department of Human Services-funded early-intervention program using a consortium of church groups and agencies for Strengthening Vulnerable Families Innovations Project, has helped the State's most vulnerable families. Berry Street Victoria cited other programs to assist children and families such as Connect for Kids which is a resilience program to strengthen families and an arts youth project.¹³⁹

2.119 Among the wide range of programs provided by Centacare-Sydney to assist children and families are:

- ALIVE (Adolescents Living Independently Via Empowerment) leaving care/after care program which assists Department of Community Services agencies and young people with leaving care plans and young people who have left care with services.
- Community Placement Program which provides supportive accommodation options and intensive caseworker support for young people aged 12-18 years who are no longer able to live at home.
- Family Network Program for parents and children providing foster care placements for up to 12 months while parents focus on achieving goals in order to resume caring for their children. Referrals are via the Department of Community Services for children from 0 to 12 years in Inner West and South Western areas.

136 *Committee Hansard* 9.12.03, p.20 (WA Department for Community Development).

137 *Committee Hansard* 12.11.03, p.76 (Berry Street Victoria).

138 *Submission* 81, p.19 (Youth Off The Streets).

139 *Committee Hansard* 12.11.03, pp.78-79 (Berry Street Victoria).

- Permanent Placement Program for permanent foster care for children 0-12 years who are unable to live with their family of origin. This program covers metropolitan Sydney.¹⁴⁰

2.120 Many member organisations of Catholic Welfare Australia provide alternative care for children and young people, including the MacKillop Family Services in Victoria. The MacKillop service, St Anthony's Family Centre, provides services including preventative in-home support to children and families to avoid children being placed in out-of-home care. MacKillop's services include models for care including for emergency or temporary situations and programs that encompass foster care, residential and specialised home-based care programs for babies, children and young people.¹⁴¹

2.121 Anglicare Brisbane advised of its intensive foster care trial in Brisbane, which entails foster carers taking high-needs children with the help of young workers, therapeutic professionals and respite assistance and supports children and carers. Foster carers are not given a wage but are paid \$600 per week to assist with some of the additional costs associated with caring for children with high needs.¹⁴²

2.122 The Salvation Army's care options include diverse residential and home-based models, including a pilot program for substitute care in Victoria's southern metropolitan region. This has involved the full range of specialist workers in mental health, drug and alcohol and education and guidance for a team to work continuously with a young individual in various family and other settings. The Salvation Army has cited the example of case managing a young person with extremely challenging behaviour in stable home-based care. While expensive, government funds were used successfully to purchase him supports including a support worker, additional school and after-school care, specialist psychiatric back up and regular respite care. The organisation's LASA outreach program provides advocacy to enable young people to remain with family networks. The organisation has embarked on partnerships with other organisations to provide services for children in need of care.¹⁴³

Effectiveness of programs and services

2.123 The Committee received positive comment about various programs. For example, the CREATE Foundation recommended that the Commonwealth program, Transition to Independent Living Allowance (TILA), be expanded to become a more comprehensive package for young people.¹⁴⁴

140 *Submission* 71, p.19 (Catholic Welfare Australia). Centacare-Sydney programs are listed on pp.19-20.

141 *Submission* 71, pp.18-19 (Catholic Welfare Australia).

142 *Submission* 226, p.3 (Anglicare Australia).

143 *Submission* 46, pp.3-6 (Salvation Army).

144 *Submission* 69, p.31 (CREATE Foundation).

2.124 Various testimonies from former participants of Youth Off The Streets programs were highly supportive:

I came to Youth Off The Streets at the age of 16. At this time, I was in a very bad way. I was heavily addicted to heroin, was in a co-dependent and abusive relationship and was living on and off the streets of the King Cross area...As soon as I arrived at Lois House a friendly and caring staff greeted me. I was assigned a caseworker that I could talk to any time I needed help. Every day I attended alcohol and other drug groups and positive peer culture. These groups were based upon the issues that the other girls in the program and I were facing. These groups helped me to deal with drug, crime, low self esteem and anger management issues. There was also a family worker who helped me to retie the broken bonds between my family and me. I went to school every day and achieved my Year 10 Certificate and HSC. I broke away from drugs and my abusive drug-using boyfriend...I have been clean for two and a half years. I have a steady job and will be starting university soon.¹⁴⁵

2.125 Ms Cummings from Berry Street Victoria spoke of the positive results of programs to assist vulnerable children, including in the 'very depressed, deprived area' of Victoria's Latrobe Valley:

In the Latrobe Valley, because it is one of these red flag areas, there have been three urban renewal projects in some of the worst of the ministry of housing areas. Already the Department of Human Services is reporting that the number of notifications [of child abuse] is starting to fall because of the committee development focus and that sense of belonging, identity and self worth and all those sorts of things...we have to look at what we can do at the front end...we should have this whole approach rather than just one at the tertiary end.¹⁴⁶

2.126 A care leaver who had been sexually abused as a child over a three-year period by a foster parent in Western Australia's Mofflyn, attributed having a good education to an ability to recover and deal with the experience of that trauma:

I value enormously my education. I think my degree was the beginning of my recovery...I would like to stress that education and counselling have been the two tools that I have used to create a healthy, functional life for me and my son. Thank you to the organisations that are out there working in this area.¹⁴⁷

2.127 However, a number of welfare groups expressed concerns about some programs' effectiveness in protecting children particularly given the heavy demand for services, tendency for constant changes and the lack of proper targeting of programs.

145 *Submission* 81, p.13 (Youth Off The Streets).

146 *Committee Hansard* 12.11.03, p.79 (Berry Street Victoria).

147 *Committee Hansard* 9.12.03, pp.61-62.

Criticisms tended to be related to the operational aspects of programs rather than their content:

But youth refuges in the nation are full and there is a waiting list. It has taken a long time to get the federal government and Queensland Governments to do something about prevention programs.¹⁴⁸

In New South Wales in this last decade we have seen three major changes in direction of the department. The first was to try to keep children in their families, then there were prevention services, which came after the Wood Royal Commission, and already that is gone; that is only five years. So they did an about-turn and went in another direction, and now we are seeing that they are trying to extinguish parental rights and push kids into adoption, under the guise of permanency planning.¹⁴⁹

Families where there is drug and alcohol abuse or mental health issues, especially single young mothers and their children, resulting in neglect or mental health issues, do not seem to be supported...the Department for Community Development refers all families and determines the hours of support that will be funded for each family...[it] brings with it a tendency for the program to be reactive rather than proactive...[and] restricts...the amount of support that can be provided.¹⁵⁰

2.128 As well, some agencies considered that government departments' practices are often counterproductive. Mercy Community Services said that the incorrect focus of a Western Australian government agency led to negative outcomes for children:

Departmental case managers are observed to spend most of their efforts ensuring that the investigation of child maltreatment is not criticised by the courts or the media. Ensuring that children, once in care, are provided with appropriate services and nurturance always seems to be a lower priority within the risk management culture. There is little emphasis placed within the departmental system about what is going to promote wellbeing for children who are in care.¹⁵¹

2.129 Concern was expressed about the actions or inaction of various government departments. For example, one person described a situation where her sister had recently died and her efforts to locate her sister's children only to find them with a neighbour who, as it transpired, was her sister's 'dealer, and who was very well known to DoCS'.¹⁵²

148 *Committee Hansard* 12.03.04, p.49 (Father Dethlefs).

149 *Committee Hansard* 4.2.04, p.32 (Positive Justice Centre).

150 *Submission* 160, p.10 (Mofflyn).

151 *Submission* 61, p.16 (Mercy Community Services Inc).

152 *Submission* 511, p.2.

2.130 A further concern related to problems in rural areas which are often perceived as places where the need for services is not as high as in metropolitan areas. As Berry Street Victoria noted:

I am talking about particularly high-risk adolescents, because that has been my specialty of 26 years. I find it very disappointing that there is a perception that regional and rural kids will not be as difficult and will not get into the drug scene. I believe it is a perception rather than a reality, having worked in both the southern metropolitan suburbs of Melbourne and down in this rural region. The rural issues are monumental, because there are not the support services around. There is no-one to refer to quite often, and so you have to do it yourself. There are also other costs. For us, most of our telephone contacts are STD. So a lot of these things are not understood, because if you just look at the number of young people using heroin and you compare a country town with the city, you say, 'oh well, obviously'. But in comparison to the culture in that country town, these young people are highly marginalised and need all the support they can get.¹⁵³

2.131 Suggestions were received for more cross-fertilisation of ideas and information exchange about what works best. Anglicare Australia called for increased funding to determine the effectiveness of out-of-home care and child protection services and for national data collection.¹⁵⁴ Mofflyn considered it essential in achieving service and policy efficiencies and equity nationally that all participants in the child welfare sector including individual researchers, share their expertise.¹⁵⁵ The CREATE Foundation recommended that New South Wales and Western Australian after-care services provided by contracted non-government agencies be provided nationally for young people aged 18 to 25 years.¹⁵⁶

Conclusion

2.132 The Committee was advised of a variety of programs which are assisting children and young people and their families in various stages of their lives. Assistance strategies to identify at-risk families are crucial, but any assistance measures for parents and families, need to be offered at a time when they are likely to be receptive to such support. The reality is that parents encountering difficulties and crisis situations are likely to be stressed and they may overreact when faced with the prospect that their children are to be removed and placed in out-of-home care. Ideally, strategies need to be devised to show at-risk families that successful outcomes can be achieved, irrespective of their problems in caring for children.

2.133 The Committee also considers that governments could play a role in encouraging more community connectivity for families and parents who may be

153 *Committee Hansard* 12.11.03, p.80 (Berry Street Victoria).

154 *Submission* 226, p.11 (Anglicare Australia).

155 *Submission* 160, p.15 (Mofflyn).

156 *Submission* 69, p.30 (CREATE Foundation).

experiencing difficulties, given that many may be financially disadvantaged, residing in poor-quality and inadequate housing (possibly in new barren suburbs) and feeling isolated from their traditional support networks and the community. Given the difficulties in adapting to parenthood and the struggles involved in caring for children, often with little resources, involvement in activities such as play groups and young parents' programs can be productive.

2.134 The Committee received much evidence of the range of programs available. However, because of the disparate nature of their implementation across Australia, it would seem productive to ascertain the effectiveness of programs and their potential to assist children and young people in various regions. The Committee's comments on a national approach to child protection are contained in chapter 7.

National approach

Practical division of responsibilities

2.135 During the inquiry, the Committee heard evidence that eight welfare systems administering eight different sets of child welfare laws is both difficult, inefficient and leads to some children not receiving the optimum level of protection. As the following excerpts show, some groups described the system as 'fractured', having different agendas and existing in a milieu where governments shift responsibility to the community sector:

...[it is] a fractured welfare system, an under-resourced system, a system where children and parents are invisible, and a system in need of national standards and approaches.¹⁵⁷

What we see happening throughout Australia is a shift of government responsibility to the community sector: "Take on this responsibility and do this work, and the next time there's an abuse or neglect issue, we can blame you...We actually don't have to own it as a government or a community"...The wellbeing of our children, the healthy state of our families...is not the responsibility of the community sector or government; it is a broader community responsibility.¹⁵⁸

2.136 Many calls for national legislation and a whole-of-government approach to policies and resource allocation were put forward. The development of national standards was seen as a good starting point for national child welfare legislation:

...the need for standards must surely be warranted on the basis of the high degree of responsibility that government and service providers have in regard to the care for children...[and] might be a useful beginning to the process of creating a uniform national framework of child welfare legislation in Australia.¹⁵⁹

157 *Submission 61*, p.1 (Mercy Community Services Inc).

158 *Committee Hansard* 12.11.03, p.63 (Anglicare Victoria).

159 *Submission 61*, p.18 (Mercy Community Services Inc).

The Federal Government...should establish uniform child protection policies and legislation, with minimum standards of care and full auditing of the effectiveness of every aspect of child protection. It should commence nationally coordinated child abuse and neglect-prevention programs.¹⁶⁰

2.137 Difficulties in coordinating services such as police and justice across State and Commonwealth levels were noted. Various groups considered that the care and protection of children warrants the weight of more than one department:

It is evident from the "Pathways to Prevention" framework that "lining up" or "joining together" diverse elements within government, societal institutions, the not-for-profit welfare sector and the community to deliver an integrated and effective child abuse prevention and response strategy is beyond any one particular authority or department.¹⁶¹

...regardless of whether they are in the care of the Department of Community Services here in New South Wales, all departments – the Department of Health, the Department of Transport, the Department of Housing – have a responsibility to give priority access to this child or young people or their families...the state is their parent.¹⁶²

2.138 Irrespective of which department has responsibility for particular child protection responsibilities, many people would simply want problems remedied. One witness reminded the Committee:

...nearly all wards are wards of one of the states, not of the Commonwealth, but there is such an overlap of responsibilities and funding between the two tiers of government that it is not really relevant to say where the buck stops...wards should be the sole financial responsibility of the federal government so that there is a unified and even treatment of children in need across Australia.¹⁶³

National legislation

2.139 The Committee received many calls for the introduction of national child protection legislation. The following care leaver who spent his childhood in orphanages gave his view of the importance of the Commonwealth's role:

...most of the state authorities with responsibility in this area are chronically under resourced which reflects a lack of political will to do anything necessary to guarantee the duty of care implied in the relationship between vulnerable children and the authorities. The periodic media outrage of child abuse or neglect creates a short-term moral panic in the community

160 *Submission 44*, pp.1-2 (Professor Chris Goddard).

161 *Submission 35*, pp.14-15 (NSW Commission for Children and Young People).

162 *Committee Hansard 4.2.04*, p.66 (CREATE Foundation).

163 *Committee Hansard 12.11.03*, p.20.

but too often the resolve to do better for children at risk is allowed to evaporate once the publicity subsides.¹⁶⁴

If those standards or set of principles were given the weight of the Commonwealth, it would be more difficult for state authorities to opt out of their responsibilities.¹⁶⁵

2.140 Some groups argued that the increasing levels of child abuse and neglect demonstrate the need for a national approach akin to something like the National Drug Strategy or National Mental Health Strategy:

...the issue of child abuse and neglect sits at the crossroads of several major Commonwealth Government initiatives: the Stronger Families and Communities Strategy, the (still evolving) Early Childhood Agenda and to a lesser extent Welfare Reform.¹⁶⁶

...efforts should be made nationally to streamline the care and protection system in Australia...the Commonwealth Government should take a lead role...this would require the cooperation of the States and would take some time to achieve. The benefits are likely to be evidenced in a better coordinated and more efficient system to support children and families.¹⁶⁷

2.141 Suggestions were put to the Committee that the Commonwealth invoke its powers under the Constitution's external affairs power [section 51(xxix)] to introduce national child protection legislation in line with the United Nations Convention on the Rights of the Child. Various groups noted that domestic legislation giving affect to the articles of the Convention should be enacted.¹⁶⁸ A relatively recent precedent of the Commonwealth invoking the external affairs power in line with a UN Convention occurred with the introduction of the 1983 *World Heritage Properties Conservation Act*.¹⁶⁹ Then, because the federal government was a signatory to the UN Convention, the World Heritage Convention, it was able to invoke the external affairs power to introduce national legislation to prevent the damming of Tasmania's Franklin River.

2.142 A number of respondents expressed doubt about the feasibility of using the UN Convention as a basis on which to peg national legislation. As Dr Mathews explained:

It is obviously a very complex issue and it would need a lot of other resourcing and infrastructure associated with that as well as policy. At the

164 *Submission* 18, p.39.

165 *Committee Hansard* 11.11.03, p.36.

166 *Submission* 175, p.3 (Families Australia).

167 *Submission* 61, p.16 (Mercy Community Services Inc).

168 *Submission* 70, p.7 (National Children's and Youth Law Centre).

169 This subsequently went to the High Court: *Commonwealth v State of Tasmania* (1983) 158 CLR 1 (the Dams Case).

moment, the UN convention is, apart from the legitimate expectation it raises in administrative law, pretty toothless.¹⁷⁰

2.143 The Committee is aware that the ratification of the Convention by the Australian Government in 1990 does not mean that the Convention automatically becomes part of Australian law. However, it is worth noting that in the case of *Minister for Immigration v Ah Hin Teoh* (1995) 128 ALR 353, the High Court ruled that while the Convention had not been incorporated by legislation into Australian law, it nevertheless still has effect. One writer has noted that options exist for the Commonwealth to pursue national uniform child welfare legislation, including exploring precedents set by the decisions of States to refer their right to legislate on corporate matters or by securing the agreement of jurisdictions on a 'model law' for identical legislation in each jurisdiction.¹⁷¹

National Plan for Foster Children, Young People and their Carers

2.144 During the course of the Committee's inquiry, the National Plan for Foster Children, Young People and their Carers was endorsed by the Community and Disability Services Ministers. The Plan followed a meeting in 2002 of Commonwealth, State and Territory Ministers to develop a national plan for foster carers and young people in care. In a joint media release, the Ministers stated:

All Ministers are committed to working towards a National Plan that will provide directions for whole of Government approaches to enhance the support and services available for Australia's 17,000 children in foster care and their foster families.

Ministers discussed the need for stronger collaboration between the Commonwealth, States and Territories with a focus on training, research, uniform data collection and support.

A focus on the identified areas will assist in achieving better outcomes for children in care and their carers.

Ministers acknowledged the critical role played by foster carers and the need to support them to continue to provide quality care for children. Foster care remains an essential response for children unable to live with their families.¹⁷²

2.145 A national working party was established to oversee the development of the plan. After consultation with key stakeholders, the working party prepared a final draft plan. The plan was endorsed and released at the Community and Disability Services

170 *Committee Hansard* 12.3.04, p.107 (Dr Mathews).

171 Lynch 2002. A discussion of the Commonwealth's obligations regarding the UN Convention appears in the ALRC's report, *Seen and heard* pp.74-79. See also the Joint Standing Committee on Treaties, *United Nations Convention on the Rights of the Child*, 17th Report, 1998.

172 Portfolio Ministers, Australian Department of Family and Community Services, *Media Release*, 'Working together for children in foster care', 1.11.02.

Ministers' Conference in July 2004. Implementation of the National Plan will occur over a two-year period (2004-2006), coordinated by a working group with representatives from all governments, led by the ACT.

2.146 The National Plan focuses on improving the wellbeing and life chances of children and young people in home-based foster care. It has been developed and implemented against a background of:

- responsibility for children and young people's welfare rests primarily with State and Territory Governments. The Australian Government has an interest in longer-term outcomes for all Australian children and young people;
- increasing numbers of children and young people in out-of-home care with indigenous children over-represented in out-of-home care;
- an increase in the level and complexity of the need of many of those entering out-of-home care;
- fewer people becoming foster carers;
- there is a significant trend towards relative/kinship care;
- a need for new models of foster care to be developed and tested;
- greater awareness of the many points at which children and young people in foster care are particularly vulnerable, including the transition of young people out of foster care to independent living;
- several States and Territories have moved from direct service delivery to purchased provision through non-government agencies; and
- links to other International and National Plans such as the UN Convention, the National Agenda for Early Childhood, the National Mental Health Plan and the National Drug and Alcohol Plan require exploration.

2.147 In developing and implementing the National Plan, governments have committed to a set of principles which include that improved outcomes for children and young people will be achieved; service delivery will be flexible, innovative and matched to the real needs of children and young people; the role, status and commitment of foster carers will be respected and supported; and governments will work collaboratively on the implementation of the National Plan and respect any relevant resource constraints.

2.148 Key areas of action and proposed outputs have been identified for each of the four areas of focus:

- *Training*: safe environments and quality outcomes for children and young people require the promotion and sharing of good practice in recruitment,

training and assessment of foster carers. This includes action on positive promotion of foster care and active, effective recruitment of a diverse pool of capable foster carers;

- *Research*: further targeted, quality information on foster care in Australia would more effectively inform policy and program development. This includes action on an agreed foster care research agenda and ways of influencing relevant research;
- *Uniform data collection*: different legislation, policies and practices across jurisdictions mean it is difficult to compare data at a national level. Work is being undertaken by the National Child Protection and Support Services (a subgroup of Community Services Ministers' Advisory Council's (CSMAC) National Community Services Information Management Group), the Productivity Commission and the Australian Institute of Health and Welfare to improve national out-of-home care reporting. The National Plan seeks to endorse and encourage these existing mechanisms. This includes action to standardise statistical definitions, data collection processes and reporting and cross-jurisdiction information on foster carers; and
- *Support*: the National Plan encompasses support for children and young people in foster care and support for foster carers. Areas of action include strengthening case management; over-representation of indigenous children and young people in foster care; and examining ways of supporting relative/kinship care.¹⁷³

2.149 Unfortunately, the Committee did not receive extensive evidence regarding the plan, however, the Western Australian Department for Community Development commented about the Plan:

This will be an important contribution to the wellbeing of children and young people in care. The department is keen to progress the proposed actions in conjunction with other jurisdictions.¹⁷⁴

National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities

2.150 In June 2004, the Council of Australian Governments agreed that 'the extent of family violence and child abuse among indigenous families continues to be a matter of grave concern for both governments and indigenous communities'. COAG indicated that jurisdictions would work cooperatively to improve how they engage with each other and work in partnership with indigenous communities to tackle this

173 For details of key areas of action and proposed outcomes, see [http://www.facs.gov.au/internet/facsinternet.nsf/via/national_plan_foster_children/\\$file/NationalPlanFosterChildren.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/via/national_plan_foster_children/$file/NationalPlanFosterChildren.pdf)

174 *Committee Hansard* 9.3.04, p.3 (WA Department for Community Development).

issue under a new National Framework on Indigenous Family Violence and Child Protection. Bi-lateral arrangements between the Commonwealth and State and Territory Governments will underpin the Framework.

2.151 Jurisdictions' action to prevent family violence and child abuse in indigenous families will be based on the following principles:

- safety;
- partnerships;
- support;
- strong, resilient families;
- local solutions; and
- address the cause.

A national commissioner for children and young people

2.152 The Committee received many suggestions for the appointment of a national children's commissioner with a brief that includes establishing national standards for all voluntary and professional carers and a capacity to screen people who work or volunteer with children and young people.

2.153 As the following excerpts show, evidence has emphasised the importance of a national children's commissioner along with increased Commonwealth Government involvement in standard setting for the care and protection of children:

An Australia wide Children's Commissioner should be supported. We must all be vigilant about listening to children.¹⁷⁵

The National Children's Commission should be established and function independent of any government department.¹⁷⁶

There is general recognition among out-of-home care providers on the need for the States and Territories together with the Federal Government to further develop a National Agenda for children. Ongoing services and support for people who have been in out-of-home care should be one focus of that Agenda.¹⁷⁷

Urgent steps need to be taken to appoint a Children's Commission and to establish a national research agenda.¹⁷⁸

...preferably additionally, they could establish a National Commissioner for Children and Young People, who could work towards the standardisation of

175 *Submission 53*, p.8 (Post Adoption Resource Centre – The Benevolent Society).

176 *Submission 160*, p.16 (Mofflyn).

177 *Submission 82*, p.14 (Centacare-Sydney).

178 *Submission 44*, pp.1-2 (Professor Chris Goddard).

child protection laws, policies and practices across all the States and Territories.¹⁷⁹

We think [it] is absolutely essential...to increase children's and young people's entitlements such as through a children's commissioner, which of course would assist in hearing the voices of all children. That would be of particular significance to the disadvantaged children that we work with...Whilst a children's commissioner would be of benefit to children and young people more broadly in the community, specifically it would be of assistance to children in care.¹⁸⁰

2.154 The Australian Medical Association (AMA) has been a strong proponent of establishing a national children's commissioner. The AMA has emphasised the increasing rate of reported/suspected and substantiated cases of child abuse and neglect in Australia, particularly among indigenous children and highlighted the serious health implications of child protection issues and the correlation between adverse childhood experiences and later health problems.¹⁸¹ CBERSS quoted studies that consistently show a link between people's experiences of childhood abuse and problems in later life including depression, substance abuse and relationship disturbances, problems that often become inter-generational.¹⁸² These and other long-term social and economic effects were described in detail in chapter 6 of *Forgotten Australians*.

2.155 In 1997, the Australian Law Reform Commission (ALRC) and HREOC contended that the 'most pressing need at this stage is a national body located within government to co-ordinate policy development and service delivery for children'. That inquiry noted that HREOC 'already undertakes the functions that would be expected of a Commissioner for Children' with attributes that include independence in law, experience with government and non-government bodies, record in speaking out in defence of children and experience scrutinising legislation and policies to ensure their accord with the principles of the UN Convention.¹⁸³

Conclusion

2.156 The Committee notes that the National Plan for Foster Children, Young People and their Carers was endorsed by the Community and Disability Services Ministers and that COAG has agreed to the National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities. While these are major steps forward in improving child protection services, witnesses pointed to many areas

179 *Submission 70*, p.7 (National Children's and Youth Law Centre).

180 *Committee Hansard* 12.11.03, p.76 (Berry Street Victoria).

181 Australian Medical Association, 'More must be done to protect our children from abuse and bullying', *Media Release*, 17 September 2004.

182 *Submission 49*, pp.7-8 (CBERSS).

183 ALRC 1997, pp.148-149.

where there is a need to review legislation and considered that a national approach to child protection was required. The Committee's recommendations concerning a national approach are contained in chapter 7.

2.157 The definitional disparities among State and Territory care and protection laws result in many children in abusive situations in some jurisdictions not having the protection that others may provide, a concern which has been highlighted by various inquiries which have shown that some practitioners are unaware of the relevance of legal applications in their daily child protection work. Further, while the 'best interests of the child' principle underpinning policies and legislative provisions is often invoked with the very best of intentions, by policymakers and programs managers, it seems to be bandied around to the point where it risks becoming a cliché.

2.158 The Committee was also concerned at information from Professor Freda Briggs that child protection and development issues are an unexplored area of policy research.¹⁸⁴ While the Commonwealth Government has established a Chair in Child Protection at the University of South Australia, no university in Australia teaches its social work degree students about the many issues in child protection, including child abuse. The Committee considers that given the enormity of problems which continue to come to light there is a need to ensure that there are adequate numbers of well-trained child care professionals. The Committee recommended in *Forgotten Australians* (recommendation 39) that the Commonwealth and other Australian governments co-operate to establish courses at selected tertiary institutions that focus on child protection.

2.159 The Committee also considers that the conduct of a well-targeted public education campaign by State and Territory Governments about their legislation may be worthwhile in ensuring that care and protection workers are fully informed of their legislative responsibilities towards children.

Recommendation 3

2.160 That, as recommended in *Forgotten Australians*, the Commonwealth, State and Territory Governments establish courses of study at selected tertiary institutions that focus on child protection and related issues, especially early childhood and family studies, psychology, conflict management, the impact of institutional care and social policy, to address issues in these areas. [Rec 39 in *Forgotten Australians*]

Recommendation 4

2.161 That awareness of child protection issues, the effects in the longer term for a child or young person in care and related issues be included as components of teacher education courses conducted at the tertiary level.

184 *Committee Hansard* 9.12.03, p.16 (Senator Murray).

CHAPTER 3

OUT-OF-HOME CARE – FOSTER CHILDREN

Introduction

3.1 This chapter provides information about contemporary out-of-home care for children in Australia. It includes a discussion on the types of care available, details about changes from institutional care to home-based and family care for children in need of care, the number of children and young people accessing services and problems and situations for children and young people in out-of-home care. Chapter 4 discusses the foster carers and other people and organisations who provide various forms of out-of-home care to children and young people.

Moves from children's institutional care to foster care

Foster care has now replaced institutionalisation. Multiple placements have replaced the turnover of staff of the institutions. The high cost of institutionalisation has been replaced [by] low cost under resourced foster carers. Children still experience similar difficulties, system abuse, lack of support when they leave, inadequate support while they are in care, poor education and so on. The problems of children in care continue to be much the same. Nothing has really changed.¹

...in Victoria, we have a crisis in out-of-home care. We are losing carers. We have got multiple placements. We have got a child protection system in crisis...²

3.2 As noted in *Forgotten Australians*, from Australia's earliest times until the 1960s alternative care for children whose families were unable to care for them oscillated between the use of large institutions such as orphanages and other forms of care such as foster care. Research in the 1950s and 1960s drew attention to the adverse effects of institutional care on children. Other research on maternal deprivation linked emotional adjustment and mental health to maternal love and care in childhood. As a result, 'government and non-government child welfare agencies reviewed their practices towards children in the light of this emerging research'.³ Governments looked to care by family members or foster care rather than large institutions for children in need of out-of-home care.

3.3 The move to foster care occurred at different times across jurisdictions, with Western Australia being the first State to encourage foster care in the late 1950s. In

1 *Confidential submission*, Additional information.

2 *Committee Hansard* 12.11.03, p.63 (Anglicare Victoria).

3 Australian Institute of Health and Welfare (AIHW), *Australia's Welfare 2001*, AIHW, Canberra 2001, p.101.

Queensland the number of children in institutions declined from the 1960s. In Victoria and New South Wales the implementation of the policy favouring foster care was slower: the number of children in institutional care increased throughout the 1950s and 1960s, but declined rapidly from the early 1970s. In New South Wales the last of the State institutions closed following the release of the Usher report in 1992.⁴ Centacare-Sydney commented:

By the 1970s foster care was being encouraged as a preferred model of out-of-home care and most Catholic orphanages in NSW were closed by the mid-1980s.⁵

3.4 Currently, government policy and practice is to maintain children within the family if possible and to place a child in out-of-home care only if this will improve the outcome for the child. If it is necessary to remove the child from his or her family, various options are available. Ideally, foster care with early intervention and prevention support could be used to help families temporarily and keep children out of the welfare system. In reality, foster care is becoming long term for many families. Children are entering care at a young age and staying there for longer periods and the numbers of children in care are increasing.⁶ Professor Dorothy Scott has noted that there is also a lack of stable residential care options which are often the most appropriate care for 'high-risk children, that is, those children with extremely anti-social behaviour'.⁷

3.5 Evidence is that children who have been in out-of-home care: have poor life opportunities; miss out on an education; feature highly in homeless populations and the juvenile justice system; do not always receive adequate dental or medical care; often gravitate to substance abuse; and are more likely than their contemporaries not in care, to have thought of or attempted suicide. Sadly, many children and young people in care do not even know why they are not with their families and may think that it is their own fault they are in care.⁸ At times they are vulnerable to the actions of the very people who should be protecting them but often they simply do not have the capacity or skills to voice their concerns about any bad treatment.⁹

3.6 These above findings about outcomes for many out-of-home care children are similar to those from the Committee's earlier report into institutional care, *Forgotten Australians*, relating to children who spent their childhoods in orphanages and other institutions from Australia's very earliest times until the 1970s. That report exposed

4 Johnstone H, 'The demise of the institution – national trends in substitute care for children and young people from 1970 to 2000', Paper presented at the 8th Australasian Conference on Child Abuse and Neglect 2001, Melbourne, November, p.2.

5 *Submission* 82, p.3 (Centacare-Sydney).

6 *Submission* 55, p.18 (WA Department for Community Development).

7 Scott D, 'Home on the hill', *Background Briefing*, Radio National, Sunday 7 September 2003.

8 *Submission* 175, pp.14-16 (Families Australia).

9 *Submission* 61, p.17 (Mercy Community Services Inc).

many disturbing accounts of abuse of children including neglect, separation from families and deprivation of food, education and healthcare, all of which took a toll on the children's emotional development, as noted in the report:

The long-term impact of a childhood spent in institutional care is complex and varied. However, a fundamental, ongoing issue is the lack of trust and security and lack of interpersonal and life skills that are acquired through a normal family upbringing, especially social and parenting skills. A lifelong inability to initiate and maintain stable, loving relationships was described by many care leavers who have undergone multiple relationships and failed marriages.

Their children and families have also felt the impact, which can then flow through to future generations.

The legacy of their childhood experiences for far too many has been low self esteem, lack of self confidence, depression, fear and distrust, anger, shame, guilt, obsessiveness, social anxieties, phobias, and recurring nightmares. Many care leavers have tried to block the pain of their past by resorting to substance abuse through life-long alcohol and drug addictions. Many turned to illegal practices such as prostitution, or more serious law-breaking offences which have resulted in a large percentage of the prison population being care leavers.

For far too many the emotional problems and depression have resulted in contemplation of or actual suicide.

Care leavers harbour powerful feelings of anger, guilt and shame; have a range of ongoing physical and mental health problems...and they struggle with employment and housing issues.¹⁰

Contemporary out-of-home care

3.7 The Committee received wide-ranging evidence about Australia's out-of-home care systems including that relating to the ever-increasing number of children needing to be placed in care because of parental drug or substance abuse, high levels of family violence and subsequent abuse and neglect, and continuing difficulties in recruiting and keeping adequate numbers of foster carers to meet emerging needs.

Types of out-of-home care

3.8 Out-of-home care is defined as out-of-home overnight care for children and young people under 18 years of age where a State or Territory makes a financial payment.¹¹ Out-of-home care is either formally or informally arranged. Informal care refers to arrangements made without intervention by statutory authorities or courts. Formal care occurs following a child protection intervention (either by voluntary

10 Senate Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, 2004, pp.xv-xvi.

11 AIHW, *Australia's Welfare 2003*, Canberra, 2003, p.257.

agreement or court order). It can occasionally result from a Family Court agreement. A large part of formal care is authorised by government departments and provided directly or by non-government agencies under contract.¹²

3.9 Out-of-home care includes residential care, foster care and relative/kinship care. Children in care can be placed in a variety of living arrangements or placement types. The Australian Institute of Health and Welfare (AIHW) uses the following categories in the national data collection:

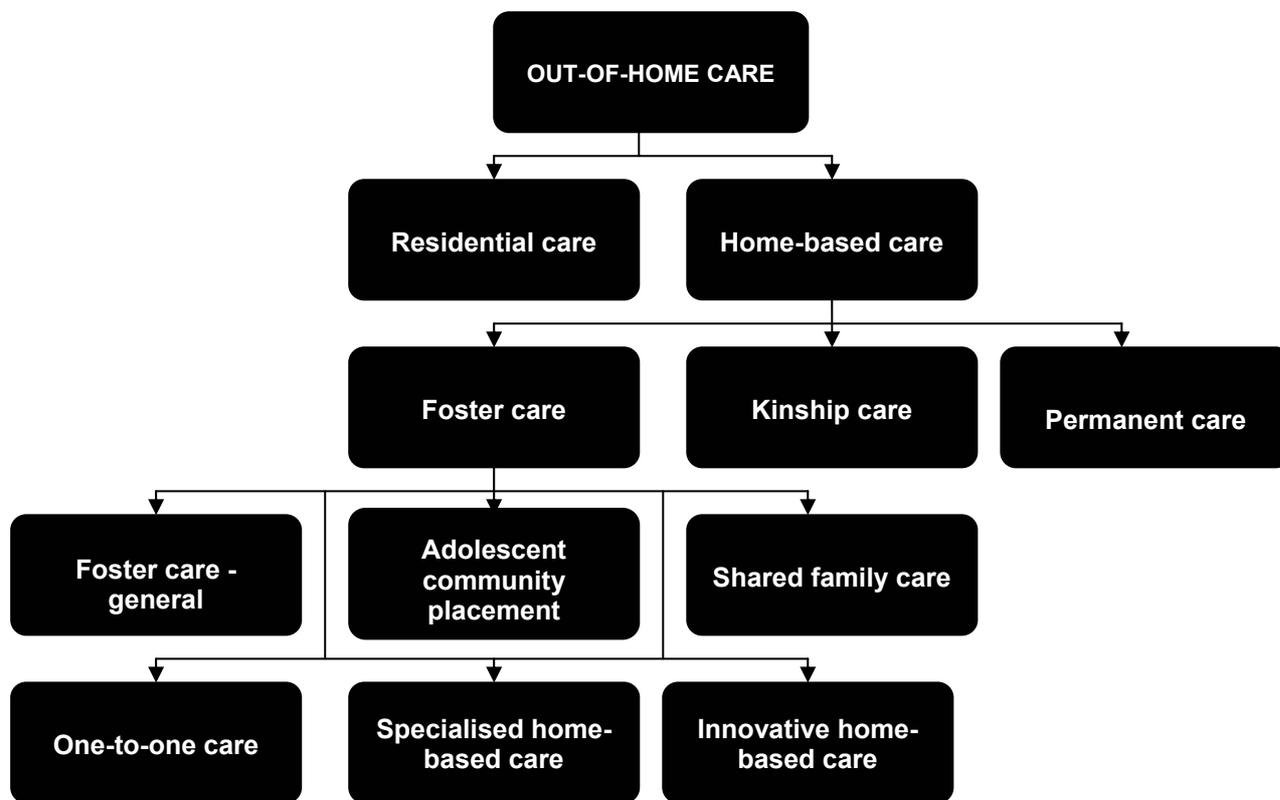
- *Home-based care* – where placement is in the home of a carer who is reimbursed for expenses in caring for the child. The three categories of home-based care are:
 - *foster care* – where care is provided in the private home of a substitute family which receives a payment that is intended to cover the child's living expenses;
 - *kinship care* – where the caregiver is a family member or a person with a pre-existing relationship with the child;
 - *other home-based care* – care in private homes that does not fit into the above categories.
- *Residential care* – where placement is in a residential building whose purpose is to provide placement for children and where there are paid staff. This includes facilities where there are rostered staff, where there is a live-in carer and where staff are off-site (for example, a lead tenant or supported residence arrangement).
- *Family group homes* – where placement is in a residential building which is owned by the jurisdiction and which are typically run like family homes, have a limited number of children and are cared for around-the-clock by resident substitute parents.
- *Independent living* – where children are living independently, such as those in private boarding arrangements.
- *Other* – where the placement type does not fit into the above categories or is unknown.¹³

3.10 The different types of placement in out-of-home care can be seen in the diagram of out-of-home care arrangements in Victoria at Figure 3.1.

12 Thorpe R, 'What Works!?' Evidence based practice in child & family services', Paper presented at the ACWA 2002 Conference, 2-4 September 2002.

13 AIHW, *Child protection Australia 2003-04*, AIHW cat. no.24, AIHW (Child Welfare Series no.36), 2005, p.42.

Figure 3.1: Out-of-home care in Victoria



Source: Department of Human Services, *Public Parenting: A review of home-based care in Victoria*, June 2003, p.12

3.11 Jurisdictions utilise each form of out-of-home care to a different extent: compared with other jurisdictions, in 2003-04 Queensland and South Australia had a relatively high proportion of children in foster care (74 per cent and 78 per cent respectively) and New South Wales had a relatively high proportion of children placed with relatives or kin (56 per cent). In some jurisdictions there is a trend toward kinship care as it reflects government policy that children should be placed with an adult to whom a child has an established attachment as the preferred option. In Western Australia placement in relative/kinship care increased from 26 per cent of out-of-home care at June 2000 to 37 per cent at June 2004. In the same period, relative/kinship care in the Northern Territory increased from 15 per cent to 23 per cent. South Australia had the lowest proportion of children in relative/kinship care (16 per cent).¹⁴

3.12 Kinship care is often used by Aboriginal and Torres Strait Islander communities to meet specific needs and fulfil cultural obligations. The special needs

14 AIHW 2005, p.46; AIHW, *Child protection Australia 1999-00*, AIHW cat. no.24, Canberra:AIHW (Child Welfare Series no.36), 2000, p.40. See also Productivity Commission, *Report on Government Services 2005, Volume 2: Health, Community Services, Housing*, Canberra, p.15.21.

of indigenous children and young people are recognised in the Aboriginal Child Placement Principle which outlines the placement preferences for indigenous children when they are placed outside their family. Preference is given to placement with the child's extended family (which includes indigenous and non-indigenous relatives/kin); within the child's indigenous community; and finally, with other indigenous people. This principle has been adopted by all Australian jurisdictions either in legislation or policy. For example, in Queensland the Principle is contained in section 83 of the Child Protection Act. The proportion of indigenous children in out-of-home care at 30 June 2004 placed in accordance with the principle ranged from 81 per cent in Western Australia to 40.4 per cent in Tasmania.¹⁵ In Queensland, over 60 per cent of indigenous children were placed in accordance with the principle and the Crime and Misconduct Commission (CMC) inquiry recommended that the compliance with the principle be periodically audited and reported on by the new Child Guardian.¹⁶

3.13 Residential care is the less preferred option for out-of-home care. However, the Victorian Department of Human Services noted:

...it may not be possible to place children and young people in home-based care, either because they display a significant level of challenging behaviour and/or because they are part of a large sibling group. Hence, the objective of residential care is to provide temporary, short or long term accommodation to children and young people who are unable to be placed in home-based care.¹⁷

3.14 Children may be placed in out-of-home care for short, medium or long-term periods or permanently. Some children are placed in out-of-home care under respite arrangements or shared care (the care is shared between the family and another party). The AIHW noted that not all jurisdictions can identify which children in out-of-home care are in respite care. Children may also be placed in respite care while being placed with a foster carer.¹⁸

Conduct of out-of-home care

3.15 State and Territory Governments are responsible for funding out-of-home care. However, jurisdictions differ in the way the services are provided with some relying solely on non-government organisations to provide services and in other jurisdictions there is a mix of government and non-government providers.

3.16 In Queensland for example, out-of-home placements are organised by the Department of Child Safety (previously the Department of Families) directly, or

15 Productivity Commission 2005, p.15.23. See also AIHW 2005, p.50.

16 Crime and Misconduct Commission, *Protecting Children: An Inquiry into Abuse of Children in Foster Care*, CMC, January 2004, pp.127-28; 234.

17 Department of Human Services Victoria, *Public Parenting: A review of home-based care in Victoria*, June 2003, p.12.

18 AIHW 2005, p.41.

through a shared family care agency on behalf of the Department. Placements for children with complex psychological and behavioural problems may also be organised through one of the agencies listed on the Department's register of preferred providers of placement and support for children with complex needs.

3.17 Foster carers in Queensland are a person to whom the Department has issued a certificate of approval as an approved foster carer. The Department may also place the child with 'relative carers' or 'limited approval carers'. A limited approval carer is a person who has not been fully assessed or trained but is approved to care for a particular child or young person, for a specific purpose, for a defined period of time.¹⁹

3.18 In Victoria, the report on current home-based care has noted that Victorian 'home-based care comprises a complex set of arrangements that involves a number of different stakeholders including the Department of Human Services and its case (child protection) workers, CSOs [community service organisations], caregivers and the client themselves'.²⁰

3.19 Most home-based care in Victoria is provided by CSOs which are responsible for assessment of referrals; caregiver management; pre-placement planning; care management; placement management; and post placement support. A service agreement contract between the Department of Human Services and the various CSOs specifies the terms and conditions under which the Department purchases services from CSOs and CSOs deliver these services. CSOs receive an annualised unit price for negotiated annual placement targets.

3.20 Most caregivers looking after children in Victoria have a direct relationship with CSOs through the agency's management arrangements and an arm's length relationship with a departmental case worker. The Department retains direct responsibility for recruiting and supervising kinship carers and establishing placements. The Department noted that despite moves in the 1990s to outsource the provision of all foster care, 'the shift to kinship care, and to a lesser extent permanent care, has meant that the department again has a significant service provision role, with nearly half of all home-based care placements provided by the Government'.²¹

3.21 The NSW Commission for Children and Young People noted some potential difficulties with the use of service providers:

Purchasing service outcomes can pose challenges for funders. It is difficult to implement in geographic or cultural communities where there is only one agency available to provide the required essential service. If that agency is unable to achieve the outcomes purchased, the funder has no option but to continue funding the agency.

19 CMC, pp.25, 35.

20 Department of Human Services Victoria 2003, p.14.

21 Department of Human Services Victoria 2003, p.x.

An unintended by-product of the tender process can be disruption and distress to children and young people as a result of changing service providers after an initial 'pilot' period or if the funder is dissatisfied with the service provision and services are re-tendered.

In addition, while there may be a set of high level 'service standards' funded agencies are required to comply with, funding may not enable agencies to adequately meet their 'duty of care' to the children, young people and families receiving services.²²

Numbers and characteristics of children in out-of-home care

3.22 The AIHW in producing data on out-of-home care has noted differences between the States and Territories in the scope and coverage of the data. For example, Victorian data includes children on permanent care orders as the State makes an ongoing financial contribution for the care of these children.²³

3.23 The AIHW reported that trends in out-of-home care have shown increasing numbers of children using these services. At 30 June 2004, there were 21 795 children in out-of-home care compared with 20 297 children at 30 June 2003. The number of children in out-of-home care increased by 56 per cent between June 1996 and June 2004. The AIHW noted that the number of children in out-of-home care increased in all jurisdictions over this period with the exception of Tasmania. The data for Tasmania no longer includes a significant number of children who live with relatives under informal care arrangements made with their parents. The AIHW stated that 'taking these children into account, Tasmania also experienced an increase in the number of children in out-of-home care'.²⁴

3.24 There were 4.5 children per 1000 aged 0-17 years in out-of-home care in Australia at 30 June 2004. This is an increase since 1997 when 3.0 children per 1000 were in out-of-home care. Over the period the largest increases were experienced in NSW where rates increased from 3.4 to 5.7 per 1000 children and in the Northern Territory where they increased from 1.9 to 4.3. Figure 3.2 indicates the rates for each State and Territory at 30 June 2004. The AIHW stated that the reasons for the variations across the jurisdictions 'are likely to include differences in the policies and practices of community services departments in relation to out-of-home care, as well as variations in the availability of appropriate care options for children who are regarded as being in need of this service'.²⁵

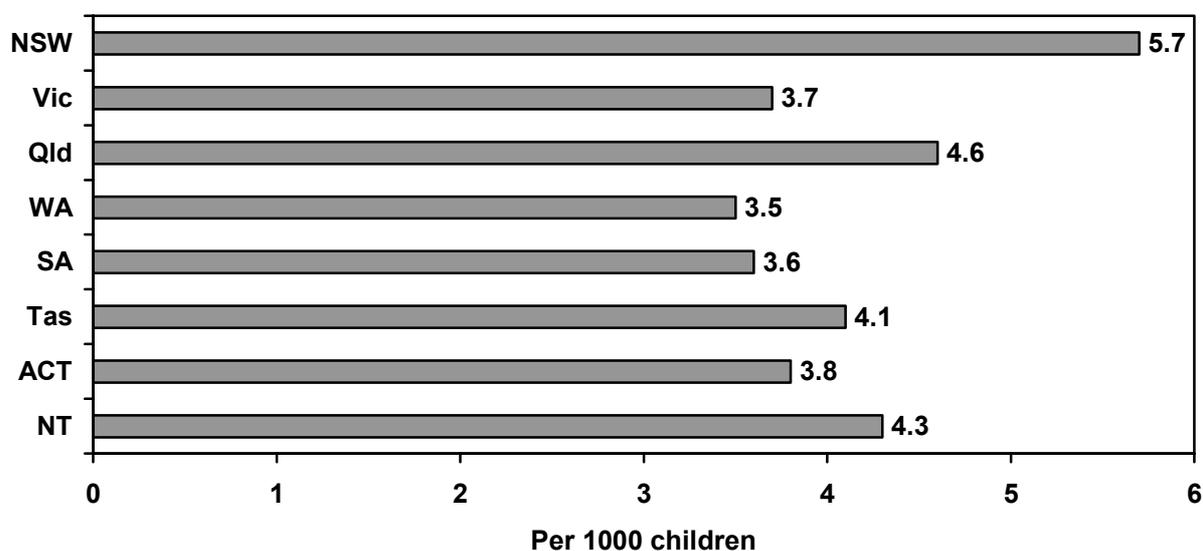
22 *Submission 35*, p.19 (NSW Commission for Children and Young People).

23 AIHW 2005, p.43.

24 AIHW 2005, p.44. The national data for children in out-of-home care is based on a count of children at 30 June of the relevant year and are therefore a prevalence measure.

25 AIHW 2005, pp.48,49.

Figure 3.2: Rate of children (per 1000) in out-of-home care in Australian States/Territories at 30 June 2004



Source: AIHW, *Child protection Australia 2003-04, Child Welfare Series no.36* (2005).

3.25 In evidence, the Western Australian Department for Community Development also noted the increase in the number of children entering out-of-home care and that children are entering at a younger age.²⁶ The Department stated:

...we are still seeing an increasing trend of children and young people coming into care. The number of young people and children coming into care increased by about eight per cent in the last financial year and eight per cent in the previous year. In fact the increasing number of children coming into care has been an issue that Treasury has raised with us.²⁷

3.26 The AIHW reported the following characteristics of children in out-of-home care at 30 June 2004:

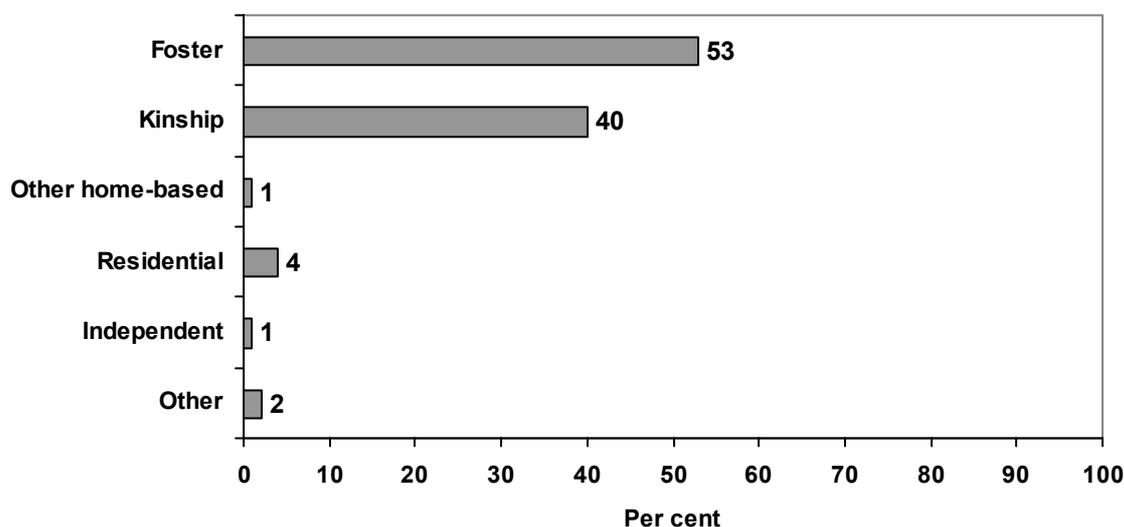
- most (94 per cent) in out-of-home care were in home-based care;
- 4 per cent were in residential care Australia-wide, ranging from 1 per cent in Queensland to 9 per cent in Victoria;
- 1 per cent were in independent living arrangements;
- of those in home-based care, 53 per cent were in foster care; 40 per cent in relative/kinship care and 1 per cent in some other type of home-based care;
- 23 per cent of the children in out-of-home care were aged under 5 years, 31 per cent were aged 5-9 years, 33 per cent were aged 10-14 years and 13 per cent were aged 15-17 years; and

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

27 *Committee Hansard* 9.12.03, p.22 (WA Department for Community Development).

- children in residential care were considerably older than children in home-based care.²⁸

Figure 3.3: Children in out-of-home care – type of placement as of 30 June 2004



Source: AIHW, *Child protection Australia 2003-04, Child Welfare Series no.36* (2005).

3.27 The Victorian report, *Public Parenting*, also provided information on trends in out-of-home care within that State. Between 1997-98 and 2001-02 there was a shift in placements towards kinship and permanent care (with growth rates of 55 per cent and 79 per cent respectively), and to a lesser extent, residential care (an increase of 17 per cent) and away from foster care. While foster care remains the leading form of out-of-home care, the number of clients fell by 15 per cent.²⁹

3.28 The length of time that a child stays in out-of-home care varies. The CREATE Foundation commented that while many children coming into care are aged under five years, they tend to stay in care for short periods before a return to their families, and may 'bounce in and out of the system' for quite a period.³⁰ The AIHW reported that at 30 June 2004 in most jurisdictions, at least half of the children had been in out-home-care for less than 2 years. However, a relatively high proportion of children had been in out-of-home care for five years or more, ranging from five per cent in Tasmania to 34 per cent in Western Australia.³¹

3.29 Across Australia, indigenous children are six times more likely to be in out-of-home care than non-indigenous children. In Victoria, the rate of indigenous

28 AIHW 2005, pp.45-47.

29 Department of Human Services Victoria 2003, p.25.

30 *Committee Hansard* 4.2.04, p.65 (CREATE Foundation).

31 AIHW 2005, p.48.

children in out-of-home care was 13 times the rate of other children and in New South Wales it was nine times the rate at 30 June 2004.³² The Human Rights and Equal Opportunity Commission (HREOC) has indicated that:

The intergenerational effects of previous separations from family and culture, poor socioeconomic status and cultural differences in child-rearing practices are important reasons for this over-representation.³³

Reasons why children enter out-of-home care

3.30 As noted in chapter 3 of *Forgotten Australians*, over the years children and young people were placed in out-of-home care for many reasons such as family dislocation from domestic violence, divorce or mental illness; lack of assistance to single parents; parents' inability to cope with their children; or as 'status offenders'.

3.31 A Commonwealth study from the late 1970s identified family finances, parental abuse or neglect of children, and children's behavioural problems as factors which contributed to child welfare agencies' decisions to place children in residential care.³⁴ From the 1970s, Australia experienced significant social and economic changes leading to major changes in families that are likely to have had different impacts on the need for substitute care. The size of families in Australia decreased, the number of births to teenage mothers decreased, women's roles in families changed as more women entered the workforce, the number of one-parent families increased and unemployment increased. At the same time, the Commonwealth Government markedly increased its assistance to low-income families and implemented new forms of assistance such as the supporting mother's benefit to assist families in need.³⁵

3.32 Nowadays however, welfare services' intervention to remove children from their families 'is most likely to be due to allegations of child abuse and neglect or harm to a child, rather than solely because of family poverty as in earlier years'.³⁶ Anglicare voiced alarm at 'the growing number of Australian children who experience abuse at the hands of their family members at home'.³⁷ Catholic Welfare Australia also stated:

There are occasions when the removal of Australian children from their families may be warranted as part of a social welfare intervention initiated

32 AIHW 2005, p.50.

33 AIHW 2003, p.253.

34 Hanson D, *Why are they in children's homes?* Report of the ACOSS children's home intake study, Department of Social Security, 1979, pp.14-17.

35 Johnstone, pp.3-4.

36 Johnstone, p.4.

37 *Committee Hansard* 12.11.03, p.61 (Anglicare Australia).

by the state in an effort to look after the best interests of individual children.³⁸

3.33 According to the report, *Public Parenting*, 'in 2001-02, almost all children and young people entering foster care had a history of protective involvement, which means that the majority would have experienced some form of abuse or neglect'.³⁹ The AIHW has reported that the rise in the number of children in care since 1998 'is consistent with the higher number of child protection notifications that occurred in most jurisdictions during the same period'.⁴⁰

3.34 Drug and alcohol abuse among parents of children who enter the out-of-home care system is endemic and is a critical issue confronting child protection services. Victorian Government figures have shown a significant increase since 1997-98 of substance abuse among the parents of children and young people entering foster care.⁴¹ It has also been shown that drug abuse increases the risk of child abuse and neglect; figures from the 2002 NSW Department of Community Services (DoCS) annual report reveal that up to 80 per cent of all child abuse reports investigated by DoCS have concerns about drug and alcohol-affected parenting.⁴²

3.35 Evidence from the WA Department for Community Development stated that its research indicated that 'approximately 70 per cent of care and protection applications result from parental drug and alcohol abuse in combination with other factors such as family violence and mental illness'.⁴³ Not surprisingly, the associated lifestyle of drug-using parents may also make the home physically unsafe and reduce the likelihood of parents' availability to care for young children, lead to isolation from an extended family and expose the children to a wide network of drug using adults.⁴⁴

3.36 Evidence also showed the cyclical nature of out-of-home care in families, as one care leaver advised:

The really interesting thing is that this goes in cycles. The photo on the left is of my grandmother. She also grew up in an institution. My mother grew up in an institution. I will share with you part of her life, because her life was so much a part of my life.⁴⁵

38 *Submission 71*, p.16 (Catholic Welfare Australia).

39 Department of Human Services Victoria 2003, p.30.

40 AIHW 2003, p.258.

41 Department of Human Services Victoria 2003, p.35.

42 Ainsworth Frank, 'Drug use by parents: the challenge for child protection and drug alcohol services', *Children Australia*, vol 29, no. 3, 2004, p.4.

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

44 Ainsworth 2004, p.6.

45 *Committee Hansard* 12.3.04, p.30.

3.37 To some extent, the above sentiments about inter-generational care were confirmed by the CREATE Foundation:

It is a bit of a gut feeling: there is not a whole lot of research...one-third of the young mums being tracked have had their children go into the care system in the five years since they left care. Obviously there are some strong correlations there. That was just the tracking of a group that left care in one year in New South Wales...there are some services in Western Sydney that say that they are seeing their third generation of people who have been in care. I think there is a link there but, especially without a lot of research, I would never like to push that there is an intergenerational care cycle, because young parents and older parents who have been in care certainly do rise above it and do not go on to abuse and neglect their children.⁴⁶

3.38 While family poverty may be less of a reason for welfare services' intervention regarding children nowadays than in previous eras, the majority of children in the care and protection system are from low socio-economic families.⁴⁷ Evidence to the Committee's 2004 inquiry into poverty and financial hardship showed overwhelmingly that economic and social stress can lead parents to become less nurturing and rejecting of their children and that children living in poverty have a high incidence of abuse and neglect.⁴⁸ Similar evidence has been presented to this inquiry and UnitingCare Burnside confirmed the link between poverty and associated problems and the placement of children in care:

Poorer parents get less relief from the constancy of child rearing. They are less able to afford baby-sitting, quality childcare, entertainment, social or sporting activities or go on stress-relieving holidays. They tend to experience higher levels of conflict and family disruption. They are more likely to live in substandard and crowded housing where it is difficult to get a break from other family members. Parents in poverty are more likely to experience ill health themselves and for their children to be ill...Under these circumstances it is understandable that some parents have a less informed or unrealistic understanding of parenting and children's behaviour.⁴⁹

3.39 Therefore, many families experience an array of problems: family poverty and impoverishment are increased by parental substance abuse because of the high cost of maintaining a drug habit and parents experiencing domestic violence often have substance abuse problems. Further, children of parents with a disability or multiple disabilities, particularly an intellectual disability and mental illness, are significantly over-represented in the child protection system. It is more likely that parents with a

46 *Committee Hansard* 4.2.04, p.67 (CREATE Foundation).

47 Johnstone, p.4.

48 Senate Community Affairs References Committee, *A hand up not a hand out: renewing the fight against poverty*, Report on poverty and financial hardship, March 2004, p.258.

49 *Submission* 59, p.11 (UnitingCare Burnside).

disability will have at least one child if not more removed early in life and approximately one in six children in out-of-home care will have a parent who has a disability. People with Disability submitted that:

...evidence provided at the NSW Legislative Council inquiry into disability services and the inquiry into child protection services demonstrate that when family support programs and sufficient community-based mental health services are provided to parents with disability, the outcomes for their children are not significantly different from other children.⁵⁰

3.40 In some situations a range of factors may lead to complex problems for families where greater levels of intervention are required. As a consequence, children may remain in out-of-home care for longer periods of time. The WA Department for Community Development stated:

The increase [in numbers of children in out-of-home care] also relates to the complexity of family situations with issues such as drug abuse and so forth. That is driving the numbers higher because there are a lot of issues to be resolved before the children can leave care and be back home, as is our aim – to reunify parents and children.⁵¹

3.41 It has also been reported that the prevalence of complex problems among the families of children entering care has increased with the Victorian Department of Human Services reporting that between 1997-98 and 2001-02:

- parents experiencing domestic violence and substance abuse increased by 56 per cent;
- parents with a psychiatric disability and substance abuse increased by 50 per cent; and
- parents with an alcohol problem who experience domestic violence increased by 71 per cent.⁵²

3.42 Anglicare commented that:

Expanded programs to support families effectively to ensure their children's safety and well-being through prevention and early intervention programs are urgently needed. There is a need for more investment in prevention and early intervention, including family support programs.⁵³

3.43 The NSW Commission for Children and Young People commented that many services which could prevent or reduce the severity of abuse are family support

50 *Submission* 165, pp.13-14 (People With Disability Australia Inc), (citing: Parliament of NSW, Legislative Council Standing Committee on Social Issues, *Care and Support*, Final Report on Child Protection Services, Report 29, Parliament of NSW, Sydney, 2002, 147).

51 *Committee Hansard* 9.12.03, p.22 (WA Department for Community Development).

52 Department of Human Services Victoria 2003, p.35.

53 *Submission* 226, p.2 (Anglicare Australia).

services, which are directed towards parents, especially those with 'risk' characteristics in their family make up. Other services targeting children with learning and social difficulties or aggressive tendencies are ideally suitable for delivery through childcare and schools.

3.44 The Commission went on to comment that a comprehensive outline of frameworks to constructing services to alleviate the likelihood of abuse was provided to the Commonwealth by a team of noted researchers and academics in 1999 in the 'Pathways to prevention – developmental and early intervention approaches to crime in Australia'. However, the Commission took the view that 'there are obstacles to the provision of adequate preventative, support and remedial services in Australia'. These obstacles include a lack of resources as 'currently whether any jurisdiction can effectively respond to the level of abuse and child exploitation in its community is doubtful'. There is also poor coordination and effective use of resources. The Commission noted that 'the system currently does not appear to provide value for its investment', concluding that:

The Commission supports the view that the states are constitutionally responsible for the provision of statutory child protection services. However, the provision of statutory child protection services is only possible when they are contextualised within a range of primary and secondary programs and where there is a vision about the outcomes the national system is to deliver.

The Commission's view is that the Commonwealth has a valid role in providing some services and shared leadership to achieve the outcome of an effective child protection system.⁵⁴

3.45 As noted previously, indigenous children as well as other care leavers, have a high need for out-of-home care services with key reasons including:

- higher rates of poverty;
- inadequate housing and living conditions;
- intergenerational effects of previous separations from family and culture;
- cultural differences in child rearing practice; and
- a lack of access to support services.⁵⁵

3.46 The Secretariat of National Aboriginal and Islander Child Care (SNAICC) has commented that child neglect is a result of parents and families being unable, 'but not necessarily unwilling' to provide for their children because of family poverty, unemployment, poor housing and family stress. SNAICC stated:

54 *Submission 35*, p.15 (NSW Commission for Children and Young People).

55 SNAICC, *Their Future Our Responsibility: making a commitment to Aboriginal and Torres Strait Islander children*, p.7.

The major contributor to the over representation of Aboriginal and Torres Strait Islander children in the child welfare system and out of home care is child neglect – not child abuse. In fact an Aboriginal and Torres Strait Islander child who has been removed from home is less likely to have been abused than a non Aboriginal child.⁵⁶

3.47 The AIHW has indicated that there is no national data available on the reasons why children are placed in out-of-home care. However, a new data collection is currently being developed. More information will be collected on the child and each placement the child has throughout their time in out-of-home care.⁵⁷

Issues facing out-of-home care

3.48 Many submissions pointed to the issues facing out-of-home care as a result of the increased numbers of children in care and their more complex problems. The Committee heard evidence that the system is 'chronically stressed' and often overwhelmed by demands. Anglicare stated that 'the chronic state of foster care across Australia is a major underlying cause of unsafe and inadequate treatment of children in institutions and fostering programs'.⁵⁸

3.49 The WA Department for Community Development expressed the view that problems in foster care are occurring across Australia:

To be honest, we are not the only jurisdiction in Australia facing issues around the recruitment of carers and being able to cope with the increase in the number of children in care and finding placements for them. If we had the answer to that question, the kids and we would be a lot better off.⁵⁹

Systems decisions that affect children

3.50 Various respondents noted systems' inadequacies which are working against children's interests. The Children's Welfare Association of Victoria (CWAV) referred to a study from 1994 by Cashmore et al that described 'systems abuse' as:

...preventable harm done to children in the context of policies or programs which are designed to provide care or protection. Such abuse may result from what individuals do or fail to do or from the lack of suitable policies, practices or procedures within systems or institutions.⁶⁰

56 SNAICC, p.7. See also Robertson Boni, *Aboriginal and Torres Strait Islander women's taskforce on violence report. The State of Queensland, 1999.*

57 AIHW 2005, p.41.

58 *Submission 226*, p.2 (Anglicare Australia).

59 *Committee Hansard* 9.12.03, p.5 (WA Department for Community Development).

60 *Submission 115*, p.3 (Children's Welfare Association of Victoria).

3.51 Some evidence suggested that often short-term services are being given priority over cohesive long-term planning and quality of care.⁶¹ The foster care system is also said to be too reactive and not necessarily aware of the importance of keeping siblings together:

The placement system is so attuned to responding to crisis that finding a safe place and a bed for the children takes priority over every other consideration. This constant state of crisis in the care system is a barrier to the physical, emotional and mental development and wellbeing of children in care.⁶²

The separation of a child from his/her parents and surroundings may be traumatic and the additional separation of the child from siblings, school and social networks compounds the negative experience of care.⁶³

3.52 Some witnesses cited instances relating to governments' failure to ensure that children were safe and well cared for. The mother of a child in foster care advised of concerns that on occasions her son has gone to school without lunch or money and the school has had to provide him with lunch. She made the point that the NSW Department of Community Services had not acted in response to her complaints.⁶⁴

3.53 Other evidence described an instance of a child being placed at the age of six months in what turned out to be a very abusive foster care environment, with no legal or formal arrangements between his biological and foster parents. In describing the many difficulties which he had experienced as a child, including being constantly starved and beaten and witnessing similar treatment towards his foster siblings, the young man advised that he found out at the age of 12 years that he was adopted, from a Department of Community Services social worker. He noted too that it was only through his brother's involvement with the police that the Department 'accidentally' discovered his origins. He has since ascertained via freedom of information requests that the Department had had no records on him. This lack of government involvement or monitoring has caused him distress as outlined below:

At 19, I was forced to change my birth name...to what it is now...when I applied for a health care card...the Government did not know who I was...The answer I would really like to know is – how the hell could the Government not know who I was for 10 years. Is there anybody else out there like me I wonder? I am less than satisfied with the response I've received from the Government. Everything I've discovered however has been from them although to this day I have no idea how I came to be with my foster parents as a baby at six months of age...Where is there accountability and duty of care.⁶⁵

61 *Submission 115*, pp.3-7 (Children's Welfare Association of Victoria).

62 *Submission 115*, p.4 (Children's Welfare Association of Victoria).

63 *Submission 35*, p.5 (NSW Commission for Children and Young People).

64 *Submission 92*.

65 *Submission 433*, pp.1-2.

3.54 The NSW Commission for Children and Young People highlighted the need to recognise the positive aspects of the current system of child protection and out-of-home and alternative care, citing some of the system's strengths in NSW, including:

...the *Children and Young Persons (Care and Protection) Act 1998* is based upon principles of good practice and key research messages;

the recent decision by DoCS to move the organisation away from a forensic approach to child protection service delivery to a more holistic assessments and strengths based approach is to be applauded;

the development of specialist out-of-home care teams and of specialist workers/cross office teams for recruitment and support of foster carers has occurred in some areas.⁶⁶

Input by children

3.55 The Committee considers that it is timely to ensure that children and young people in care can participate in decisions about their lives and agrees with the rationale of the CREATE Foundation about involving children and young people. That organisation's research shows that children in care are often 'left out' with many of them not being informed about matters that affect their lives such as a changed placement or who a new case worker might be.⁶⁷

3.56 That children and young people need to be heard was well expressed by various people including an ex-ward who described her circumstances of having 'missed the boat' in parts of life particularly with her career. As a young person she recognised her need to achieve an education and pursue a career but was frustrated in efforts to express her needs to people who could help her:

There was no...social worker to explain the 'care' system to me, or what would happen, or expectations of either parties, or that I would have a case plan drawn up etc. I was just doing time. I had no rights, no advocacy, no representation...This attitude WAS NOT REPRESENTATIVE of society in general in the early 1970s as much social change was occurring.⁶⁸

3.57 While the above situation should have been anathema by the 1970s given the prevailing social attitudes which emphasised pathways to education and career opportunities for girls, the Committee is aware that similar situations are still occurring. The CREATE Foundation advised the Committee about life for some children in institutional care nowadays:

Across the care system young people are now being placed without having had any conversation about where they would like to be placed or who they would like to be placed with – whether in foster care, kinship care or any other type of care. There is still a huge lack of conversation with young

66 *Submission 35*, p.18 (NSW Commission for Children and Young People).

67 *Committee Hansard 4.2.04*, pp.57-58 (CREATE Foundation).

68 *Submission 369*, pp.6-20.

people...There is a need for a real priority focus on education because the education of far too many children and young people who have been in care has been seriously broken up. Many of them will leave school quite early; many will leave without year 10 or year 12 qualifications and many will leave having very poor literacy and numeracy skills. For them to try to get back into education, the door is often shut and there is no support to do that.⁶⁹

3.58 The WA Department for Community Development acknowledged that in the past 'the child has certainly not had the voice they should have had', while parents have had active participation in conferences and 'been respected by providing input and contributing to the decision making process'. However, the department noted that in recent times, situations have changed:

Children have had direct input in more recent times depending on their age, development and understanding of the circumstances. I have personally chaired case conferences where children as young as 10, 11 and 12 have actually participated as part of those forums.⁷⁰

Children with high-care needs

3.59 Some children enter out-of-home care with high-care and complex needs usually because of very damaging situations and experiences in their lives, prior to care. Often it can be difficult for these children to adapt to everyday foster care and they require attention and monitoring that can only be provided in specialised, residential care by people who are equipped to care for them:

Some of these kids are too damaged to slot into another family without extra professional supports, like psychiatric evaluation and treatment, physical rehabilitation and educational assistance.⁷¹

3.60 Some organisations described the extreme damage of many young people and the people and specialist services that are required to care for them:

...[they are] often so damaged by their experiences of life and the care system, that their lack of trust of all adults makes the task of engaging, educating and helping them to begin to turn their lives around difficult and sometimes almost impossible.⁷²

...difficult, if not impossible, to care for [them] within the foster care system as it is currently set up. There should be perhaps a consideration of the professional foster care model.⁷³

69 *Committee Hansard* 4.2.04, p.57 (CREATE Foundation).

70 *Committee Hansard* 9.12.03, p.10 (WA Department for Community Development).

71 Thomas Helen, 'Home on the Hill', *Background Briefing*, Radio National, Sunday 7.9.03.

72 *Submission* 81, p.3 (Youth Off The Streets).

73 *Committee Hansard* 4.2.04, p.2 (Youth Off The Streets).

...The sort of person who could do respite foster care once a fortnight is quite different from somebody who would take on what could almost be a lifetime commitment of a relationship with a high-risk adolescent who is a very damaged person... You cannot put a range of young people who have quite complex needs and issues... together in the community and expect that they will just meld in.⁷⁴

3.61 One very experienced carer who has five children of her own and who has cared for over 30 foster children submitted details of the lack of support from the South Australian Department of Family and Youth Services (FAYS) when she had responsibility for 'the most difficult child I ever met'. She noted that FAYS' staff were 'out of touch' and inadequately educated for the reality of caring for severely damaged children.⁷⁵

3.62 The Committee was provided with examples where, from very early ages, children's lives were interspersed with traumatic and unsettling experiences which led to them becoming very hard to handle and costly to keep in care. For example, 'Kim' was placed in care on the day of her birth, remaining so until she turned 18 years. She experienced many residential arrangements and harsh rules, lived with paedophiles, sustained injuries in care, had no significant and consistent adults in her life, and when a cottage closed down, she was forced out and shunted elsewhere. Little wonder that she became a high-risk child requiring around-the-clock care:

I got placed in a house and have one worker around the clock two days on and two days off. Got along really well with them... We sat down and made our own rules and I felt human when I was there. It cost about \$10,000 a month and I spent about 6 months there.⁷⁶

3.63 Another 'high-risk' child was allegedly raped, on a daily basis by his father and uncle. He says he was often taped up when this happened, regularly beaten and kept in the laundry at night:

By the time he was five, he'd been through six foster families. Then, he got lucky. He was placed with a woman who was prepared to change her whole life to allow him to have one of his own.⁷⁷

3.64 Evidence to the Committee highlighted that the provision of care for high-risk children is hampered by difficulties in obtaining suitable carers as well as the spin-off of financial cuts:

At the moment in Victoria we are suffering productivity cuts, which will limit these self-funded operations that we do which are already necessary. It is a very difficult situation.⁷⁸

74 *Committee Hansard* 12.11.03, p.77 (Berry Street Victoria).

75 *Confidential attachment*.

76 *Submission* 69, pp.12-15 (CREATE Foundation).

77 Thomas Helen, 'High risk kids', *Background Briefing*, Radio National, Sunday 19.10.03.

...I think it then becomes unreasonable to expect someone who is in essence a volunteer to be a full-time carer, 24 hours a day, seven days a week, on simply a reimbursement basis. But it does move the notion, the idea, of foster care into another dimension.⁷⁹

High costs of care for children with emotional or behavioural problems

3.65 The cost of maintaining a high-risk adolescent in residential care is expensive and more than one welfare organisation cited examples. Anglicare stated 'for us to run a high-risk adolescent unit for four young people aged 12 to 17 costs us about \$230 000 per adolescent'.⁸⁰

3.66 Figures on children requiring high levels of care show that when it is necessary to accommodate such children and young people in motels with several full-time workers, it can cost up to \$100 000-\$300 000 per year per child.⁸¹

3.67 Care requirements for young people who are at the 'extreme end of this difficult group' can involve expensive options of 'containment' or 'lockdown':

In New South Wales, some 400 'high-risk' children cost the Department of Community Services about \$60 million a year. A recent DoCS 'snapshot' indicates 182 kids are costing more than \$250 000 each a year, the highest coming in at \$858 000.⁸²

3.68 One highly-traumatised 15-year-old girl with a record of displaying violent behaviour is said to require six carers to ensure that she does not harm herself or other people:

At one stage this difficult arrangement of care, involving at least six workers on shifts around the clock, was costing more than \$15 000 a week; in fact he describes her as 'the million dollar kid'.⁸³

Abuse and treatment of children in foster care

3.69 The Committee received significant information and stories about abuse of children in foster care, not dissimilar to themes outlined about the bigger institutions and orphanages in *Forgotten Australians*. CBERSS made the point that:

...we not only catastrophically removed kids from families but we subsequently punished them more...we are still doing it today. We are still

78 *Committee Hansard* 12.11.03, p.33 (MacKillop Family Services).

79 *Committee Hansard* 12.11.03, p.68 (Anglicare Victoria).

80 *Committee Hansard* 12.11.03, p.69 (Anglicare Victoria).

81 Cashmore J, 'Child protection in the new millennium', *Social Policy Research Centre Newsletter*, May 2001, No 79, quoted in submission 35.

82 Thomas 19.10.03.

83 Thomas 19.10.03.

removing kids from families. We may not put them in institutional care – we might put them in foster care and they go around and around – but the abuse continues.⁸⁴

3.70 The theme that abuse continues and that the state has neglected its duty of care towards children in its care is reflected often: 'if the state was a birth parent, on many occasions the children would be removed'.⁸⁵

3.71 Dr Maria Harries cited United States research showing that 50 per cent of children in foster care have been sexually abused as well as statistics showing that one in three to one in five children have been abused yet they have not lived in institutional care. CBERSS noted that figures are likely to under estimate the prevalence of child sex abuse given that victims often do not report abuse because they fear negative consequences from disclosure.⁸⁶

3.72 The Committee was advised that contemporary situations are such that children are not necessarily safe in care, as the CREATE Foundation noted:

We would also argue and recommend that there is vigorous recruitment of people who work within institutional care and residential care type places. The feedback we have had from young people is that the staff there are not always professional in their manner of dealing with children and young people.⁸⁷

3.73 As well, a number of young people related stories of harsh conditions in care in recent times including the following examples:

[There were] fights, harsh discipline towards the kids around me from the supervisors that were there and low living standards.

People getting hit with towels and wooden spoons and things like that, pretty much right in front of me. There would be someone at your table mucking up and a supervisor would come out of nowhere and slam on the table, and plates and everything would bounce up.⁸⁸

3.74 The WA Department for Community Development acknowledged that various abuse allegations had been raised with it through children's advocacy groups such as: Watchmen In God's Service; Advocates for Survivors of Child Abuse; Help All Little Ones; the Juvenile Justice Association and the Family Support for Victims of Paedophiles. The Department raises such concerns with the State Police.⁸⁹

84 *Committee Hansard* 9.12.03, p.46 (CBERSS).

85 Radio National, Interview with delegate -Knowledge into action: effective practice for children and family services conference, Sydney, 2-4 August 2004, *Life Matters*, 3.8.04.

86 *Committee Hansard* 9.12.03, pp.46-47 and *Submission* 49, p.9 (CBERSS).

87 *Committee Hansard* 4.2.04, p.58 (CREATE Foundation).

88 *Committee Hansard* 4.2.04, p.71.

89 *Submission* 55, p.13 (WA Department for Community Development).

3.75 Sexual abuse in foster care featured in many submissions though much of it related to earlier days. Descriptions of abuse in evidence included situations of wives being complicit where their husbands sexually abused foster children; government departments not acting to remedy bad situations; good care becoming bad, and of children being abused over long periods of time; and situations of humiliation where a child was treated like an animal for 10-years and locked in kennels where he had to pilfer dog food to survive, while another child was locked in a pitch-black garden shed with spiders and mice and had to wear a nappy with a dummy in her mouth and parade in front of children on the school bus.⁹⁰

3.76 A common theme in evidence was that any outside perceptions of abuse in the foster home would have been anathema, where from the outside everything seemed to be stable, often in very good 'Christian' homes. One former foster child outlined details of her life in the 'apparently perfect placement' in a leafy Sydney suburb. In reality, she was sexually, emotionally and physically abused for years. Another person described her 'lucky' situation of 14 years 'stable' care, where she and her sister appeared to be happy when in fact they were isolated, lonely and terrified of a very controlling foster mother.⁹¹

3.77 As with children who experienced slave labour in institutions, many outlines were given about the use of child slave labour by foster parents, regardless of the era or the location. Often children were required to undertake some unusual tasks, along with the drudgery of housework and domestic work:

If they had a party you had to stay up and clean up and be up early and look after their children and keep them quiet till they got up...I used to eat the left overs...I didn't want to go to Perisher Valley as their friends used to come with their family and doing the washing under the house was cold.⁹²

3.78 Some people have described situations of being treated differently, working hard and receiving no love or family nurturing and affection, or being isolated, both in the home and from other children at school; and having excessively disciplinarian and inflexible dominating foster parents.⁹³ One former foster child told of her loss of identity when her foster mother made the decision to change her name:

...I asked her not to change my name because that is all that I own. It belongs to me. But like everybody else she did not listen either and changed that to Rosemarie. But my name is Marie Rose. Nobody ever listened they just did whatever they wanted.⁹⁴

3.79 The Committee also received positive stories as the following excerpts show:

90 *Submissions* 131; 239, p.2; 185, p.2; 190; 237, p.3; 139, p.2; 258, p.1.

91 *Submissions* 293, p.1; 244, p.1; 395, pp.2-4.

92 *Submission* 315, pp.2-3; see also *Submissions* 367, p.1; 368, p.7; 434 and 443.

93 *Submissions* 327, p.6; 320, pp.1-2; 16, p.2; 17, p.1.

94 *Submission* 126, pp.7-8.

...I believe that my foster care experience was a positive one; I was taken well care of and was treated like their natural child. My placement broke down as a result of my need to establish myself as a young adult.⁹⁵

...I went through quite a few public schools until I was placed at a foster home. I am probably one of the luckiest people you will ever hear about. It was a great home for me and I was there for eight years. I had a great relationship and I still talk to them now.⁹⁶

3.80 As well, some people described contrasting experiences of foster homes:

We were then sent to Mrs Ingham's place at Bendigo. I don't think we could have found a better home. She was a great church woman and lived her religion...She looked after us better than our own mother...We were then sent to a woman a Mrs Bramley...The verandah, a cellar under the house and the backyard were our home and we could sleep in the bedroom at night. In the cold weather we were always cold and hungry...half starved and eaten by bed bugs. We were sent to school with our head full of lice.⁹⁷

3.81 Another person described one of her foster care experiences as her 'first real family' and the 'happiest time of my young life' which contrasted markedly with her later foster care where she was subjected to horrific sexual abuse.⁹⁸

Multiple placements

3.82 The Committee heard evidence that children and young people in out-of-home care often experience many moves in their home and school lives. Multiple placements have serious negative effects on young people's emotions, educational and employment chances and long-term personality development. Unfortunately, the following excerpt from a Radio National program is indicative of the high number of placements experienced by some children:

I remember being really surprised when you said, in fact I thought I'd misheard you, you said you had 80 different placements, I thought I must have misheard and you'd said 18, because 80 seems like an awfully large number for any kid.⁹⁹

3.83 Resultant problems from the many moves can be wide ranging and may include experiences of ongoing depression, anxiety, anti-social attitudes, nightmares, fear of people, and lack of confidence, social skills and identity. MacKillop Family Services commented that multiple placements can be unavoidable, often because it

95 *Submission* 142, p.2.

96 *Committee Hansard* 4.2.04, p.69.

97 *Submission* 413, pp.3-4; also *Submission* 364, p.2.

98 *Submission* 419, pp.4-5.

99 Thomas 7.9.03.

can be difficult to find suitable carers for children and young people with complex needs.¹⁰⁰ One former foster child stated that:

...by the age of six I had undergone seven failed placements, due to the inability of the foster families to cope with a child whose needs were so great for a loving family...I was declared unsuitable for immediate placement and sent to the children's home.¹⁰¹

3.84 Child welfare practitioners are aware of the damaging effects for children's development from all forms of inconsistency and proponents of attachment theory have demonstrated that children need consistent routines of care from one or two preferred attachment figures.¹⁰² As well, if adults in the out-of-home sector are to gain the trust of the children and young people and therefore assist them, it is obvious that some semblance of stability is required:

In one case we helped a young teenage boy in relation to criminal matters. In the eighteen-month period before he came to us he had in excess of twenty foster places. One pair of initial foster parents had been keen to look after him on a more permanent basis but lost interest after the department delayed and procrastinated in getting back to them. The boy had been so disappointed that it was very difficult for him to trust anyone again. This...is commonplace for young children who have been in care and protection, as they experience what they see as betrayal.¹⁰³

3.85 The multiple placements of children and young people in out-of-home care is well documented. A Victorian Department of Human Services report shows that of all clients in placement at 30 June 2001, seven per cent had had just one placement, 65 per cent had had four or more placements and 11 per cent had 10 or more placements. The impact of multiple placements on a developing child's behaviour and educational attainment is substantial, often resulting in negative life patterns including those related to instances of stealing, absconding and bullying. Severe learning disorders can be a by-product of constant changes in a child's carer. This can affect a young person's academic performance which of course is compounded by constant changes in schools. A 1996 NSW study demonstrated that 80 per cent of children who lived at home with their families completed their Higher School Certificate compared with 36 per cent of young people in out-of-home care. The average number of schools attended by young people living at home with their families was 2.3 compared with 5.4 schools for those in out-of-home care.¹⁰⁴

100 *Submission 50*, p.14 (MacKillop Family Services).

101 *Submission 20*, p.2.

102 *Submission 45*, p.6 (NSW Committee on Adoption and Permanent Care).

103 *Submission 127*, p.2 (West Heidelberg Community Legal Service).

104 Cashmore, Dr Judy & Paxman, Ms Marina, *Wards leaving care: a longitudinal study*, NSW Department of Community Services, Sydney, 1996.

3.86 A 23-year-old man who had been moved around by DoCS 'every three months – here, there and everywhere', described to the Committee, his situation of not ever having been to school and being unable to read and write, having difficulties in relating to people, never having had a job and being unsure of what he wanted. He advised that if given the opportunity, he would like to learn literacy and numeracy skills but felt unconfident that any employer would give him a job.¹⁰⁵ Another young man aged 22 years who had also experienced many institutional placements, told the Committee that although he had done well at school, he had very little confidence and was experiencing difficulties in gaining meaningful employment. He considered that finding decent employment would be a key to assisting him:

I actually did all right in school. I did not finish year 12 but I finished year 11. I was quite gifted in a couple of subjects...help with employment is the main thing. I need something behind me like a trade or anything like that. I have nothing.¹⁰⁶

3.87 Professor Dorothy Scott emphasised that the multiple placements of today's system can be more damaging than the relative stability which some children and young people may have experienced in the old-type institutions.¹⁰⁷ The Post Adoption Resource Centre-Benevolent Society stated that many past mistakes in policies and practices in the out-of-home care sector have not necessarily served as lessons for contemporary policymakers:

...we continue to over burden and underpay those working in child protection and out-of-home care, causing high staff turnover. Similarly, we invest large sums of money into problematic 'time-saving' strategies such as the DCS Helpline and into child protection, which works on short-term goals and is crisis-driven, and fails to provide children with long-term futures. Time, money and effort should be invested into supporting existing and coming foster care placements to give children a better chance of stability and continuity.¹⁰⁸

3.88 Adding to problems for children in out-of-home care can be the lack of consistency with departmental caseworkers, usually the result of a high turnover in workers. A 2002 CREATE Foundation survey of 143 children and young people aged nine-18 years across Australia, found that 80 per cent of the children and young people surveyed had a departmental caseworker, six per cent were unsure if they had one and 14 per cent did not have one. Of the children and young people who had a caseworker, 32 per cent had had more than five workers while in care, 23 per cent said that they had the same caseworker for three months or less and only 10 per cent had

105 *Committee Hansard* 4.2.04, pp.62-68.

106 *Committee Hansard* 4.2.04, pp.60-61.

107 Scott D, 'Looking back to see ahead: enduring insights and emerging understanding in relation to vulnerable children and their families in the child welfare system', Lecture to mark Child Protection Week, October 2000.

108 *Submission* 53, p.7 (Post Adoption Resource Centre-The Benevolent Society).

had the same departmental worker since being in care. CREATE advised that the significant change in caseworker numbers impacts negatively on their capacity to meet the needs of children and young people in care. One young person noted:

I found [it] didn't work having so many case managers in such a short period of time. [More than 5 in less than two years]. They never seemed to respond to what I wanted, they didn't organise contact with my brothers. Since I have had a stable case manager in the last few weeks it has been a lot better because she has established contact with me and my brothers.¹⁰⁹

3.89 The Committee recognises the complexity of the issue of multiple placements which is symptomatic of a range of problems for families including drug and substance addiction, unemployment and family breakdown, which often lead to situations of children being placed into out-of-home care. At times the anti-social behaviour of some children who have experienced abuse and spent too long in abusive situations, escalates to a point where no carer is able to provide care for them. In this context, Youth Off The Streets advised:

So young people are inappropriately placed. When they are placed, there are insufficient resources on the ground to support those placements. You can predict from that point onwards that inevitably they will rotate in and out of foster care placements until they are deemed 'unfosterable'. Then, when they are teenagers, we see the result. Some may come to us...Others end up on the streets as a result of the systems failure that they have experienced throughout their care history.¹¹⁰

3.90 Therefore, a multi-faceted problem develops which can only be addressed by a comprehensive multi-faceted response. Initiatives which can be successful to address problems include early intervention programs to assist people with their parenting and caring abilities. As well, other areas that need to be addressed are those to engage more foster carers and to provide them with support and also ensuring that children have access to education and worthwhile employment.

Indigenous children

3.91 Indigenous children are over represented in out-of-home care. As well, systems breakdowns seem to be occurring regarding indigenous children's placements. As mentioned, all jurisdictions have adopted the Aboriginal Child Placement Principle regarding preferred placements of indigenous children.

3.92 The Law Society of New South Wales submitted that there is frequent failure to give proper effect to the principle. In particular, Aboriginal or Torres Strait Islander children are not being identified as required by legislation; indigenous children are not being placed in culturally-appropriate out-of-home care; and no consultations are

109 *Submission 69*, pp.19-21 (CREATE Foundation).

110 *Committee Hansard 4.2.04*, pp.2-3 (Youth Off The Streets).

occurring with the welfare or indigenous community groups that could assist in identifying suitable placements. The Law Society stated:

...there is typically no real attempt to allow the child to develop any understanding of the child's heritage and culture. Any plans proposed by the Department are espoused in a general way and non-specific in their services. There is frequently a reliance upon the foster carer doing the right thing without any commitment by the Department and its Officers to ensure the heritage and culture needs are followed through...indigenous siblings are separated, sometimes into indigenous appropriate placements and sometimes not. There is frequently a failure to provide regular contact not only between the siblings but with their extended family members...That failure is both in breach of the principles referred to and the objects of the Act which require a child to know and develop a relationship with the child's family and in the wider sense his or her community.¹¹¹

3.93 SNAICC stated that:

...the continuing practice of placing children with non Indigenous foster care constitutes a serious risk to the cultural identity of Indigenous children in Australia. In particular it places at risk their right to grow up in a community with other members of their group, to enjoy their own culture, profess and practice their own religion and use their own language.¹¹²

3.94 Families Australia noted that while kinship care is very important to indigenous people for indigenous children needing out-of-home care, a serious shortage of indigenous carers is part of the reason why the Aboriginal Placement Principle is often not adhered to.¹¹³

3.95 In response to the high number of indigenous children in care, SNAICC has recommended a national commitment to Aboriginal and Torres Strait Islander children including:

- the development of a National Aboriginal and Torres Strait Islander Family policy between indigenous organisations, the Commonwealth and State and Territory Governments to reduce the number of indigenous children being removed from home for child protection and poverty related reasons; an expansion of the availability of Aboriginal and Islander Child Care Agencies and Family Support Services; and an outline of targets for reducing the current rates of child removal;
- the provision of improved access to family support services to prevent family breakdowns and reduce the number of indigenous children removed from their families by welfare authorities; and

111 *Submission 253*, pp.1-3 (The Law Society of New South Wales).

112 SNAICC, p.8.

113 *Submission 175*, p.23 (Families Australia).

- the implementation of recommendations from the *Bringing them home* inquiry, including those related to the reform of the current systems of child protection and minimum standards of care, protection and support for Aboriginal and Torres Strait Islander children in need of care.¹¹⁴

Children returning from out-of-home care to abusive situations

3.96 The primary goal of out-of-home programs is to reunify children and young people with their families, where this is in the best interests of the children. However, with children being placed in out-of-home care as a consequence of complex family problems, including parental substance abuse, difficulties can be encountered in ensuring that children are returned to suitable family situations.

3.97 The Committee received evidence about children being returned from out-of-home care to abusive family homes, including instances where parents are on drugs. Many care organisations acknowledge parents' rights to request the return of their children but they highlighted the difficulties associated both with assessing parents' suitability and being able to monitor such situations. The CREATE Foundation stated:

If we say that, yes, the parent has to undertake a drug program, we do not then go thoroughly enough into making sure that they have undertaken that program, that they are clean and that these children are going to be safe when they return to that home. And then, once they are back in that home, there is no monitoring in the home to make sure that everything is going well and there are no alarming characteristics.¹¹⁵

3.98 A parent with extensive experience of providing foster care cited her first-hand experiences of returning a child to a home where he would be exposed to abuse:

...it is very hard...to have to send the child back to a situation that you know the child does not want to return to, that you know is going to be detrimental and where the child is probably going to end up back in your care...this little boy's mum was given additional access time with him, unsupervised, when it was patently obvious – and everybody knows – she was abusing again.¹¹⁶

3.99 The difficulties of reunification are reflected in data reported by the Victorian Department of Human Services. It was found that there was a fairly high level of attempt at reunification with parents over a five-year period. However, it was estimated that of children who enter home-based care, 'only between about 20-30 per cent will be successfully reunited with their parents over a five-year period'.¹¹⁷ The WA Department for Community Development noted that while a return to families is

114 SNAICC, p.5.

115 *Committee Hansard* 4.2.04, p.66 (CREATE Foundation).

116 *Committee Hansard* 11.11.03, p.74 (Mrs Ziino).

117 Department of Human Services Victoria 2003, p.57.

preferred, the Department recognises that some children and young people will never return home due to unresolved safety concerns at home. The department noted:

Repeated attempts at family preservation has meant some children and young people experiencing frequent placement changes and broken relationships as they move between parents and carers.¹¹⁸

3.100 The Committee heard that the parents and family members of children in care are often marginalised or disempowered and that insufficient attention and resources are given to ameliorating the damage to children or to addressing the behaviour or parents' attitudes that led to their children being placed in care. Mercy Community Services argued that governments need to provide more services for behavioural and attitudinal problems to ensure that parents are able to have their children returned at the earliest and safest opportunity.¹¹⁹

3.101 Some organisations have called for funding to help keep children with their families via intensive support services, and to ensure that a child's removal from their family is in accord with permanency planning so that the child is given opportunities to maintain contact and relationships with significant members of their family, particularly with their siblings. This is crucial in assisting children to develop a sense of stability and identity.¹²⁰

Children and young people leaving foster or out-of-home care

3.102 Each year, about 1700 Australians aged 15-17 years are discharged from out-of-home care. Some return to the family home, others exit care into independent living.¹²¹ They are one of the most vulnerable and disadvantaged groups in society, yet, often they do not receive support to help them to settle their lives or to find accommodation and employment. Of particular concern is that many children and young people enter out-of-home care with myriad problems and many depart the system with additional problems. It seems to be a continuum of difficulties for them.

3.103 Young care leavers face barriers in accessing educational, employment and other developmental and transitional opportunities. As mentioned earlier, many could have experienced abuse and have had many changes in carers, placements and schools and have no real assistance networks as they move to independence.

3.104 As the following excerpt shows, some young people have experienced abusive and unstable foster care conditions from which they often carry 'scars' for life:

At age 14 after leaving home for the 3rd time and just not wanting to get hit anymore, I was 5 foot tall, wore size 6 kids clothes and weighed just 5

118 *Submission 55*, p.45 (WA Department for Community Development).

119 *Submission 61*, p.18 (Mercy Community Services Inc).

120 *Submission 45*, pp.6-7 (NSW Committee on Adoption and Permanent Care).

121 AIHW 2004, p.41.

stone. For the next 2 years, I was thrust between foster family and any old place the department could place me in including brief periods with juvenile offenders although I had done no wrong...I returned home to my foster parents at 16 years of age for 18 months before being thrown out of home in the middle of repeating year 12. A week later whilst I returned to pick up my clothes, my foster mother threw the adoption papers in the bin. This was just devastating and an action I can never forgive. I meant nothing to my foster parents and they made it seem like it was somehow my fault...The abuse that I suffered at the hands of my foster parents during my childhood has scarred me for life...Fortunately I was never sexually abused, but my foster mother was the best teacher in selfishness and deprivation...the pain will not go away. I have absorbed myself in tasks to hide the pain. Later in life I will have to deal with it, somehow and some day.¹²²

3.105 The NSW Committee on Adoption and Permanent Care also noted that often young people leave care with enormous emotional and psychological baggage.¹²³ They may have nowhere to live. Often their many years in refuges and lack of social skills means that they are blacklisted from the private rental market, and community and departmental housing waiting lists are often very long.¹²⁴ The 1996 NSW study of wards leaving care in that State found that one year after leaving care, most participants had unstable living arrangements and half were unemployed and had financial troubles.¹²⁵

3.106 A care leaver from the 1970s who endured difficulties, even though it was easier in those days to find employment, described the situation now for care leavers:

...many young people are leaving care, without finishing high school, and without any training scheme for employment. They are effectively unemployable in today's fiercely competitive market conditions, and they do not have parents or family as a safety net. They literally have no place to go, and cannot afford rent on the private rental market, and are chronically vulnerable. Unlike Australia in the 1970s...the HSC is now the relative equivalent of year 10...There is no prospect for these people without educational resources.¹²⁶

3.107 Given that young people often leave care without a proper education, some are drawn to earning a living in the sex industry. In a series of in-depth interviews, the non-government organisation, Child Wise, spoke to 21 female and nine male sex

122 *Submission 433*, p.2.

123 *Submission 45*, p.4 (NSW Committee on Adoption and Permanent Care).

124 Mendes Philip and Moslehuddin Badal, 'Moving out from the State parental home: a comparison of leaving care policies in Victoria and New South Wales', *Children Australia*, vol 29, no. 2, 2004, pp.20-29.

125 Cashmore and Paxman 1996, *Wards leaving care*.

126 *Submission 369*, p.6.

industry workers, most of whom had left school early; all of them had a drug addiction. Of particular concern is that 16 of these young people had been in the care of the State system and noted that it had been while in the system's care, that they had been introduced to sex work and other harmful high-risk activities.¹²⁷

3.108 That young people are leaving care before they turn 18 years may also be adding to their problems and inability to deal with life in contemporary society. For example, the Western Australian welfare agency, Mofflyn, made the point that many children are remaining with their families until they are in their mid to late 20s, and as such, that situation should apply for some young people in foster care.¹²⁸

3.109 Many factors are contributing to disadvantages for young people leaving care, including a lack of post-care support. Evidence from Dr Phillip Mendes suggested that there is a major gap in after-care services in most Australian States and Territories, with some individual non-government agencies providing assistance on an *ad hoc* and often unfunded basis.¹²⁹

3.110 The Positive Justice Centre noted that while the 1989 Burdekin inquiry into homelessness found that 50 per cent of homeless children had been in the care of the state, any acknowledgement of this does not appear in any information about homelessness services such as the Supported Accommodation Assistance Program (SAAP).¹³⁰

3.111 While welfare groups such as Berry Street Victoria acknowledged that there are 'good people along the road' to assist young people leaving care, it advised of a need for improvement in service provision and supports and noted the need in Victoria for better leaving-care supports, ideally comparable to what is available in other Australian States and overseas:

...a simple thing would be rent assistance for young people when they move out of residential care, rather than having to into the SAAP system...when they are ready to leave care, where do they go? How do they gain housing, how do we support them? They tend to move into the SAAP system, which is actually a homelessness system. I find it quite abhorrent that we spend all these years trying to support, nurture and develop young people who are very damaged and then when they get to the end of their formal in-care time there is nothing but the homelessness service.

...a lot of agencies, and individuals within agencies, offer the sort of support...on an ad hoc basis. I really do feel very strongly that Victoria needs to look seriously at a leaving care program and needs to be prepared

127 Child Wise, *Speaking for themselves: voices of young people involved in commercial sexual activity*, August 2004, p.6.

128 *Submission 160*, p.12 (Mofflyn).

129 *Submission 2*, Additional information, p.1 (Dr Philip Mendes).

130 *Committee Hansard 4.2.04*, p.30 (Positive Justice Centre).

to support, as in other states and other countries, young people who need that kind of after care up to the age of 25.¹³¹

3.112 Some groups advised, with a degree of ambivalence, of their after-care support services for young people. In NSW, Centacare Catholic Community Services has a State after-care service that deals only with people who have been in care up to the age of 25 years. UnitingCare Burnside provides a number of services however it emphasised that like other agencies, its focus tends to be nowadays on assisting families, children and young people before any need for out-of-home care emerges.¹³² Youth Off The Streets cited details of its five-year quality improvement program with the NSW Office of the Children's Guardian focusing on children's daily participation in case planning and programs. This group has established semi-independent living for young people who are about to exit care. It is developing a program involving follow-up for at least two-three years, at the young person's request. In describing the Youth Off the Streets' exit-care plan, Mrs Power noted that the organisation would prefer to have more counsellors and psychologists in order to meet service requirements:

...during the last 12 months we have established a semi-independent living program recognising young people who are preparing to exit care... This is a point at which we are obviously preparing them to go out into the world but it is a point which I feel we may be letting down some of the young people if they have not received adequate support and counselling and their needs have not been addressed... We would like to be able to identify those needs and continue to meet them. We are...developing an exit program which will involve follow-up for at least two to three years, obviously at the young person's request... A lot of young people come back 10 years later and bring in their children, but what worries us as an agency are perhaps those who have left us feeling that they did not have the best experience with us... I would like to see a formal system of tracing young people when they leave us and perhaps more family workers to begin to help them in that program of reintegrating into the communities that they choose.¹³³

3.113 In terms of government assistance for leaving-care plans, Dr Mendes made the point that there are no Commonwealth Government national leaving-care benchmarks or legislation. He asserts that while the 1995 Standing Committee of Community Services and Income Security Administrators endorsed out-of-home care standards which included an obligation to develop exit plans for each young person leaving care, many States have failed to implement these standards.¹³⁴ He also noted examples of overseas legislative and program supports for care leavers including in the United Kingdom and the United States.¹³⁵

131 *Committee Hansard* 12.11.03, p.87 (Berry Street Victoria).

132 *Committee Hansard* 4.2.04, pp.3,5 (Centacare Catholic Community Services and UnitingCare Burnside).

133 *Committee Hansard* 4.2.04, p.13 (Youth Off The Streets).

134 Mendes and Moslehuddin 2004, pp.20-29.

135 *Submission 2*, p.1 (Dr Philip Mendes), additional information.

3.114 As well, that after-care programs for young people leaving care are conducted on an *ad hoc* basis is perhaps demonstrated by the following. Some jurisdictions have transitional and after-care programs for care leavers. Under the NSW *Children and Young Persons (Care and Protection) Act 1998*, after-care services for young people aged 15-25 years are in place, including an after-care resource and advocacy centre. That State also has leaving-care services for metropolitan and surrounding areas and a State-wide Aboriginal and Torres Strait Islander Service.¹³⁶ Entitlements to leaving care or after-care supports are not available under the Victorian *Children and Young Persons Act 1989* other than post-placement support. However, the Victorian Department of Human Services (DHS) provides support to care leavers aged 18 years to complete their schooling. The DHS has trialled housing and support projects in the Gippsland and Southern Metropolitan regions to address the incidence of homelessness among care leavers.¹³⁷

3.115 Western Australia's *Children and Community Services Act 2004* contains a range of transitional measures for out-of-home care leavers in that State which will be available when the Act is fully proclaimed. This should occur when the necessary preparatory work has been completed. Transitional arrangements will include provisions for the Department for Community Development to ensure that a child leaving care is provided with social services that the department considers appropriate, having regard to a child's needs as identified in his or her care plan. As well, the department must ensure that a person who qualifies for assistance is provided with services to assist the person to do any one or more of the following: obtain accommodation; undertake education and training; obtain employment; obtain legal advice; access health services; access counselling services.¹³⁸

3.116 From a Commonwealth perspective, the Transition to Independent Living Allowance (TILA) provides a one-off financial payment to disadvantaged care leavers in making a transition to independent living.¹³⁹

Conclusion

3.117 The evidence indicates very disturbing trends in out-of-home care: that the number of children entering the system is increasing and children have increasingly complex problems as a result of extremely damaging family situations. Indigenous children are over-represented in the out-of-home care system, with indigenous children being six times more likely to be in out-of-home care than non-indigenous children. Often, the out-of-home system is unable to provide adequate care for these high-care children. This is exacerbated by multiple placements, multiple changes to

136 Mendes Philip, 'A boost for those most in need', *The Canberra Times*, 4.9.03, p.17.

137 Mendes and Moslehuddin 2004, pp.20-29.

138 *Submission 55*, Additional information 4.3.05 (WA Department for Community Development).

139 Mendes and Moslehuddin, 2004, pp.20-29.

caseworkers; lack of adequate after-care services; and children returning to abusive situations.

3.118 The Committee also received evidence that many children experience poor outcomes from their placement in out-of-home care: they have poor educational attainment; limited life opportunities; feature highly in homeless populations and the juvenile justice system; do not always receive adequate dental or medical care; gravitate towards substance abuse; and are more likely than their contemporaries not in care to have thought of or attempted suicide.

3.119 The Committee considers that there is a need for diversity in the provision of out-of-home care. Many children and young people can have their needs met by standard foster, kinship or family-based care. The Committee acknowledges however that for some people who are classified as 'high risk', a level of care is required that can only be met by residential care staffed by highly-trained professionals. Regardless of the category of children and young people or their needs, care that would suit a young child will not always apply in later childhood or adolescence. Therefore a continuum of options will be required within each sphere of the foster care system.

3.120 The Committee also considers that residential care staffed by specially-trained personnel is often the only way to care for high-risk children but such options are often not available and are expensive. However, given the costs and needs in maintaining high-risk children along with the many problems inherent in the service system, it is relevant to consider a model of therapeutic foster care that fits between general foster care and the full residential institutional arrangements. This form of care is required for the children and young people who require wide-ranging levels of support including behaviour monitoring, health and educational assistance and counselling support.

3.121 Given the benefits of ensuring that children have contact with their natural families, where appropriate, people with disability who have children and young people, need assistance and support so that they can carry out their everyday parenting and family activities. Greater assistance is also required for already damaged young people leaving care and attempting to live, for the first time, an independent life. There is a need to ensure they have adequate education, life skills and financial support to successfully make the transition from care to independence.

3.122 The Committee considers that there are obvious benefits for all jurisdictions to co-operate and exchange information and it may be that they can learn from each other regarding successful programs in the out-of-home care sector, particularly when assisting very high-needs children.

3.123 The Committee acknowledges that many of the areas of concern identified in the above discussion have been included in the National Plan for Foster Children, Young People and Foster Carers as key areas for action. In particular, the National Plan aims to strengthen case management, and to implement national standards for the transition planning for children and young people in foster care. The over-

representation of indigenous children and young people in foster care is also to be examined to identify possible areas for action. A further key area for action is to investigate and develop emerging models of foster care, including trends in relative/kinship care. The Committee sees this area as being of fundamental importance as greater numbers of children with more complex needs are entering the out-of-home care system.

3.124 While the National Plan has identified areas for action, the Committee is mindful that identification is not only required: implementation with long-term commitment from all stakeholders will be necessary to introduce change to a system which is severely stretched and stressed.

Recommendation 5

3.125 The Commonwealth review the level of the Transition to Independent Living Allowance (TILA) to ensure that it is adequate to meet the needs of young people leaving care.

Recommendation 6

3.126 The Commonwealth, State and Territory Governments consider new models for the schooling and education of children in out-of-home care, particularly children who have been classified as high-risk children, for example, schooling by specialist teachers trained in both education and child psychology.

Recommendation 7

3.127 That the strengthening of case management under the National Plan be progressed as a matter of priority, in particular to attempt to limit the turnover of caseworkers for children in out-of-home care.

Recommendation 8

3.128 That the introduction of national standards for transition planning, particularly when leaving care, under the National Plan be implemented as a matter of priority.

CHAPTER 4

OUT-OF-HOME CARE – FOSTER CARERS

The foster care/kinship care model relies on voluntary carers who are not adequately provided with reimbursement, training or support to care for Australia's most vulnerable children.¹

Introduction

4.1 As noted in chapter 3, many situations and experiences in the foster care sector impact on foster carers as well as the children and young people. This chapter provides information about contemporary issues related to foster carers and other people and organisations who provide out-of-home care to children and young people in Australia. Included in discussion is information on carer numbers, difficulties for carers including those associated with the cost of providing care, and mechanisms to ensure that people who care for children and young people are monitored.

Caregivers

Foster care is a highly stressful sector, which is amongst the lowest paid professions and consequently attracts less experienced staff for shorter periods of time. This devaluing of the professionals involved in the sector only further devalues the very children being cared for...resources should be invested into the skilling up of workers for training, assessment, placement and post-placement support of foster carers and children. All workers should receive regular professional development and supervision for their work with families and children. All workers involved in foster care should have skills in working with children as well as adults.²

Number of caregivers

4.2 There are approximately 11 000-13 000 carers in Australia though no authoritative figures are available.³ While the number of children and young people in need of care is increasing, carer numbers are in decline.⁴

4.3 The Victorian report, *Public Parenting*, provided information on caregivers in that State. In 2001-03 there were around 5500 caregivers providing out-of-home care. This was an increase of 25 per cent from 1997-98. The number of caregivers

1 *Submission 226*, p.3 (Anglicare Australia).

2 *Submission 45*, p.10 (NSW Committee on Adoption & Permanent Care).

3 Orr Bev, 'Surviving the allegation of abuse investigation process', Presentation to Victorian Foster Care Conference, Melbourne, Victoria, 2003, p.4.

4 Australian Foster Care Association (AFCA), *Securing a safe and effective foster care system*, Priorities and position statements, 2004, p.2 (Forward by Bev Orr, AFCA President).

providing kinship and permanent care increased, while the number of foster carers declined. In relation to foster carers it was found that:

- new recruits to foster care declined by over 40 per cent from 1997-98 to 2001-02;
- in 2001-02 there was a large increase in the number of foster carers who ceased to provide foster care;
- experienced foster carers were leaving the sector, those leaving in 2001-02 had on average almost four years experience compared to only 1.6 years in 1997-98; and
- remaining foster carers provided an average of 286 placement days each in 2001-02 compared to 214 days in 1997-98.⁵

4.4 The Australian Foster Care Association (AFCA) has reported the results of a Commonwealth-funded study of foster, relative and kinship carers which was conducted by AFCA. The study showed that: 42 per cent and 25 per cent of foster carers have been fostering for one to five years and six to 10 years, respectively. Thirty-eight per cent of foster carers were aged 45-54 years, 30 per cent were aged 35-44 years and 20 per cent were aged over 55 years. Of the sample, 41 per cent were professionals, managers, administrators or para professionals while 22 per cent had no breadwinners or were retired or on pensions. The remainder were employed in a range of occupations. The need for support for carers was noted by 84 per cent of the sample, yet only 41 per cent considered that they got 'just enough support to get by'. Foster carers agreed that the financial support provided to cover their expenses is not sufficient.⁶

4.5 Families Australia advised of very little available data on indigenous kinship carer or indigenous foster carer numbers, but that anecdotal evidence suggests a serious shortage of indigenous carers. The organisation noted the difficulties in recruiting non-relative indigenous carers, for a number of reasons: Aboriginal families have greater economic and other pressures and a fear of fostering based on past relationships between government and Aboriginal people; indigenous carer families appear to have more children placed in their care than non-indigenous families and hence are often struggling financially, often with no money for essentials such as food for additional children.⁷

5 Department of Human Services Victoria, *Public Parenting: A review of home-based care in Victoria*, June 2003, p.40.

6 AFCA, *Securing a safe and effective foster care system*, Priorities and position statements, 2002-2003, p.14.

7 *Submission 175*, p.23 (Families Australia).

Foster parents – support for, recruitment, retention, training

4.6 Given the ever-increasing number of children and young people who require out-of-home care and their complex problems which is resulting in more stressful situations for carers, the Committee is not surprised that foster carer numbers are in decline. The detrimental effects for children of being too long in dysfunctional families was commented upon in a number of submissions:

[children are] entering care too late and, sadly, being terribly damaged. As a result foster care is close to collapse in many, if not all, states.⁸

By the time that most children get to out-of-home placements, they are so damaged that you would need trained people to look after them and I think foster families are just leaving foster care agencies in droves.⁹

4.7 The demands on carers in looking after children are high, and the remuneration and status for foster carers are low. The President of AFCA has noted: some of the very damaged children coming into the system 'have come from an absolute life of hell'.¹⁰ As such, caring for these children is not always easy:

...it is very hard to change the behaviour patterns of children and young people who come from very damaged backgrounds and to keep them attached and connected in a very positive relationship with their carers.¹¹

4.8 Apart from recruitment problems, other problems are presenting for carers such as the increasing workloads and the constant need to 'do more with less':

...it is not just a financial cost. It is difficult finding personnel. If you can imagine a husband-and-wife team working with quite dislocated children 24 hours a day seven days a week, you would know that it is not easy, so that is another element. It has become more difficult in the last 10 years anyway.¹²

As the number of suitable placements diminishes, experienced carers are asked by the state to care for more children and as the States' resources are 'downsized' or deployed elsewhere, carers are pressured to take on more financial and practical responsibilities for the children in their care.¹³

4.9 The Committee is aware of problems for foster and kinship carers, many of whom consider that support for them is only 'just enough support to get by' and that

8 *Submission 44*, p.1 (Professor Goddard).

9 Dowling, Liz, 'Home on the Hill', *Background Briefing*, Radio National, Sunday 7.9.03.

10 Orr, Bev, 'Home on the Hill', *Background Briefing*, Radio National, Sunday 7.9.03.

11 *Committee Hansard 9.12.03*, p.11 (WA Department for Community Development).

12 *Committee Hansard 9.12.03*, p.31 (Mercy Community Care Inc).

13 *Submission 35*, p.4 (NSW Commission for Children and Young People).

financial support provided to cover their expenses is not sufficient.¹⁴ Foster carers take on high workloads and responsibilities for which they receive little remuneration. Foster parents may be at the receiving end of unfounded allegations of abuse from particularly-damaged children wanting revenge on a carer or who may use such actions to deal with their emotional problems. Despite that carers are increasingly being accused of such abuse and being placed in stressful situations, there can be a lack of support for them from care agencies or governments.

4.10 Factors which also hamper opportunities for an effective foster care system include: insufficient training and professional development for carers; too much government emphasis on costs and 'bean counting'; very high turnovers among child protection workers.¹⁵ The NSW Commission for Children and Young People expressed the view that:

Arguably, most foster care today is still partially founded in propositions inherited from a bygone era. At its most fundamental, foster care is considered by the state as an act of charity. Carers are paid a token subsidy to assist them meet the costs of caring for the children in their care – carers in Australia are generally not paid for their skill or labour.¹⁶

4.11 Many commentators, practitioners and academics are voicing concern about Australia's foster care and for the children in the system. The following comment is a reminder that the move from deinstitutionalisation to foster care has not been entirely successful:

...we threw the baby out with the bathwater when we completely deinstitutionalised child welfare, and we now have overloaded a fragile foster care system to a point that it's actually breaking under the strain...¹⁷

4.12 It must be recognised however that there are many dedicated hard-working carers in the system and as such, in face of some negativity at times about foster carers, one welfare agency representative told the Committee that 'they are all motivated by the desire to help children in need and they do a magnificent job'.¹⁸

Foster care payments

4.13 Most foster carers receive a subsidy and partial reimbursement for costs and access to some services for the child in their care. Relative and kinship carers sometimes receive a subsidy and access to selected support services, but most struggle

14 Information cited in: *Securing a safe and effective foster care system*, Priorities and position statements, 2002-2003, p.14.

15 'Home on the Hill', *Background Briefing*, Radio National, Sunday 7.9.03.

16 *Submission 35*, p.5 (NSW Commission for Children and Young People).

17 Scott, Dorothy, 'Home on the Hill', *Background Briefing*, Radio National, 7.9.03.

18 *Committee Hansard* 4.2.04, p.4 (Wesley Mission Dalmar).

to make ends meet from within the family's own limited resources.¹⁹ Various welfare organisations called for better financial payments for carers, particularly given the demands in caring for children with special needs or difficult behaviour:

...foster carers, and agencies (both government and non-government) can be perceived as requesting more resources for their own needs. The resources are requested for the needs of children. The current care system is not designed around meeting the individual needs of children, it is designed for rationing a strained resource across an increasing number of children in care.²⁰

The remuneration that foster carers get is inadequate for the job they do. I also believe that more training is necessary for foster carers. Perhaps we should be moving to less a volunteer model and more a professional foster care model, particularly for the more difficult to place young people. I am involved in operating what we call 'one to one' home-based care programs for high-risk adolescents in which the carers' remuneration is higher and we work with them as paraprofessionals, which, in a sense, we can ask of these people because we give them higher remuneration. I think that if we are going to attract more people to manage the more difficult young children they would need to be more appropriately remunerated and trained, and treated as co-workers.²¹

4.14 A major study of foster care payments in Australia conducted by Ms Marilyn McHugh of the University of NSW has confirmed that foster carers receive low levels of standard subsidy from the States. The study showed that foster carers have concerns about many factors including the inability to obtain reimbursement for additional services, lengthy delays and debates with departmental workers about expenses and inconsistent policy advice about reimbursements. Foster carers in rural and regional areas have additional expenses for transport and other necessities. Kinship carers experience inequities in subsidies and reimbursement. The study cited many costs paid by carers, though not taken into account in budgets, including for personal-care items, foods to meet children's special needs, damage to property and household goods caused by foster children, increased energy and water needs and a wide range of leisure activities and goods for children of all ages. In addition, carers may have to purchase clothes for children who arrive at a new home with no clothing or at best, very old, worn-out items.²²

4.15 The McHugh study delivered recommendations on major foster care issues. Of particular interest are those related to costs and payments, including:

19 AFCA 2002-2003, p.2.

20 *Submission* 61, p.17 (Mercy Community Services Inc).

21 *Committee Hansard* 12.11.03, p.76 (Berry Street Victoria).

22 McHugh, Marilyn, *The costs of caring: a study of appropriate foster care payments for stable and adequate out of home care in Australia*, Social Policy Research Centre, University of NSW, February 2002.

That consideration be given by the Commonwealth and States for a national framework for payments that would address issues of adequacy and equity for all foster carers across Australia and better reflect the real costs of caring (recommendation 1).

That all States review their level of standard subsidy (including higher payments for specified categories of need) paid to carers and increase levels to reflect the direct costs of fostering. The review process should include consultation with NGO agencies and carer associations (recommendation 2).

That the additional allowances for initial clothing and footwear requirements and for gifts should be mandatory payments for all children in medium to long-term care (recommendation 6).

That all States systematically update the level of weekly subsidy paid to carers to correspond with regular changes in the CPI (recommendation 8).

That in the case of carers of pre-school aged children, good quality child care on a regular basis, should be made available and paid for by the department at no cost to the carer (recommendation 10).

That all (indigenous and non-indigenous) kinship carers receive the same level of standard subsidies paid to other carers (recommendation 24).

That all (indigenous and non-indigenous) kinship carers receive the same level of support and access to services for children in care as other carers (recommendation 25).

4.16 Among the study's other recommendations are those related to reimbursements to carers for specialist counselling to assist recovery from family violence, other expenses and children's medications; funding for regular respite care for all carers; policies and procedures for the issue of private health or Medicare cards and additional subsidy loadings for carers in remote and regional areas.²³

4.17 Other studies from Ms McHugh relate to foster care in Britain, Canada and the United States where moves have occurred to professionalise foster care, including via higher pay, employment contracts, re-training and extra worker support. Such moves are at different stages of implementation and development and their benefits are not known. Findings from small-scale studies of professional foster care programs in England cite positive outcomes such as easier carer recruitment, better retention rates, higher quality services and less offending by young people. Similar findings have been recorded in Scotland and the United States. In the United Kingdom, national standards and core competency frameworks have linked carer ability and competence to fee payments. However, evidence of the progress for equity issues of similar payment levels for all carers in the UK is not reassuring. A survey of payment

23 McHugh 2002, pp.xi-xvii.

schemes by the Fostering Network (UK) indicated that over half of local authorities' allowances are below the recommended level.²⁴

4.18 The issue of paying foster carers in Australia has been debated. On the one hand payments are said to depersonalise caring, attract the wrong people and undermine the voluntary spontaneous nature of parenting that occurs in the home. Contrary views are that professionalism entails providing a recognised valuable service that requires experience, education and knowledge and that foster parents have the common sense not to treat children as 'clients' in their own homes. Ms McHugh's research notes that professionalising foster care in Australia would require an enormous paradigm shift by governments, workers and carers including in regard to moving labour from the care to mainstream economy and would have implications for women who tend to be the main providers of unpaid care.²⁵

4.19 The NSW Commission for Children and Young People has argued that 'there is considerable scope for augmenting the current options of "charitable" foster care and almost unsupported kinship care' and that the latter should be based on adequate assessment, support and monitoring. The Commission further noted that 'professional' foster care, or caring as a form of employment, should be available as an option in all jurisdictions.²⁶

4.20 Given that high levels of expertise are required by carers to deal with difficult children, there is a need for professional training and salaries for such carers. As well, it is often difficult to find carers, particularly specifically trained personnel who can care for high-risk children. Therefore, it may be that paying carers is the only realistic option. In that regard it is perhaps worth citing Ms McHugh's further comments:

The monetary costs would be substantial but the benefits in positive outcomes for children and society could be significant and well worth the financial costs...The tentative conclusion to be drawn...it is time for governments to give serious consideration to rethinking policies and practices in the out-of-home care sector to better reflect and acknowledge the changing role of women as foster carers and the diverse needs of children coming into care.²⁷

4.21 The Australian Foster Care Association (AFCA) has recommended a Commonwealth and State-Territory approach to foster care regarding national standards for recruitment, training and accreditation and recompense.²⁸

24 McHugh Marilyn, 'Paying for care: the state of affairs in fostering', Paper presented at 8th Australian Institute of Family Studies Conference, Melbourne, 12-14 February 2003, pp.7-9.

25 McHugh 2003, pp.9-10.

26 *Submission 35*, p.21 (NSW Commission for Children and Young People).

27 McHugh 2003, p.11.

28 AFCA 2004, pp.25-26.

Departmental staff and foster carer contact

4.22 Many witnesses emphasised the importance of having good relationships among foster carers, agencies and departments for a child's best interests. However, relationships between carers and departmental workers are not always satisfactory. One experienced foster parent outlined situations of high staff turnovers in departments and staff who although 'lovely', seemed ill equipped to deal with complex child relationship issues:

...we were often dealing with young girls who did not have families of their own and were very limited in their experience with regard to child care and relationships...they were not very experienced in life. I found that difficult sometimes. I found myself, quite an educated person, being counselled by these young girls.

...We and this little fellow had five or six different workers, just with DHS [Department of Human Services]...DHS were the guardians, and if he went on a camp we had to send in the documentation and they had to sign it to say he could go...but they never really bothered. They never asked to see any of his school reports, for example.

...we received no information about vaccinations status, past illness, hospitalisation, dental history etc. We only found out, by chance when our child's mother died...this lady also suffered from bipolar and major eating disorders. This is important information and yet neither ourselves or the school were privy to it...it took us a long time to work out that our child had been physically abused...once we had this information we were better able to address his needs and fears and understand his behaviours.²⁹

4.23 Similar concerns about the lack of information from a government department about a foster child's medical and behaviour history were expressed by a very experienced carer:

The only information she was given to her acceptance of the foster child was that she suffered from epilepsy. She was not warned or prepared for...extreme behaviours or arson and she became...the second long-term foster carer without being aware of her sexual activities, false allegations and the risks to the two males in her household.³⁰

4.24 Negative comments and concerns were expressed about State welfare departments. For example, a number of experienced foster carers in South Australia were critical of the department:

The department's case workers are not sufficiently well educated to be able to give advice and support to foster carers who experience unmanageable behaviour, such as setting fire to the foster carers' home, drug and alcohol abuse, offering sex to residents and visitors, exhibiting sexualised

29 *Committee Hansard* 11.11.03, pp.72,74 (Mrs Ziino) and *Submission* 12, p.3.

30 *Confidential Attachment*, pp.16-17.

behaviours, molesting other foster children or accusing them or foster carers of sexual abuse.

The defence mechanism used by incompetent case workers and supervisors is to denigrate the foster carer with accusations that they are either (a) too emotionally involved with the child or (b) not coping. The foster carer is then threatened with de-registration and the loss of all foster children.³¹

4.25 The Committee was provided with a comprehensive survey on foster carers'/support workers' views about their relationships with a community services department. While this contained positive feedback, overall, the responses were negative, describing departmental staff as 'unpredictable', 'in denial when there are problems', 'distant, uncaring and think they are superior', and 'frustrating, demoralising, unhelpful, and fob you off when a child shows emotional problems'. Asked about the departmental workers' understanding of day-to-day foster care, only two carers responded positively (one of whom also had negative experiences). Among the survey's conclusions were that:

Some children are left in damaging homes for so long that they become too emotionally and sexually disturbed for fostering by partially trained, well meaning volunteers. The breakdown of foster placements and the inability of [the department] to provide practical support suggests that the State should provide residential therapeutic accommodation staffed by appropriately qualified and experienced therapists.

It would appear that the department's workers focus on family reunification even when children have been sexually abused and are being sexually abused on access visits. Foster carers are concerned that the safety of children is not the department's priority.

Carers sense that their expertise is devalued, bearing in mind that some respondents had cared for more than a hundred children over periods up to 20 years.

It would appear that children are deprived of counselling and special education services because of lack of funding.

Neither juvenile sex offenders nor victims are receiving treatment when it is requested and there seems to be a lack of understanding about child sexual abuse in general among [the department's] staff. It would also appear that there are long delays for counselling and treatment services.³²

4.26 Mercy Community Services considered that in any focus on the needs of children in care by the State and Commonwealth governments, a national project to address the instability of staffing within statutory child welfare agencies would be worthwhile.³³

31 *Submission 220*, p.1.

32 *Confidential Submission*.

33 *Submission 61*, p.20 (Mercy Community Services Inc).

4.27 The WA Department for Community Development noted the difficulties experienced by government child protection departments, including their additional responsibilities imposed by legislative provisions. The Department made some comparisons with the non-government sector, including that the government often has heavy workloads and takes on the more complex cases. As a researcher with wide experience of several non-government organisations as well as the government stated:

...working in the non-government sector, the situation working with children and families is a lot more contained. We are able to say: 'No, we will not take this family. We will not take this child'. We can be a lot more selective...We are more able to manage our caseloads. There is definitely a lot more containment around it than in the government where we really do have to take on every family and every child that is in need.

...one of the reasons the department has created a new system called placement services is to try and work with that group of very difficult children and young people. They are difficult to place and difficult to keep in one setting...They are damaged when they come to us. It is very difficult for us to keep them on one placement because of the strain and pressure on carers. Therefore that syndrome of multiple placements is created and unfortunately and tragically many actually leave still as damaged. Not all – we have done some fantastic work – but it is very hard to change the behaviour patterns of children and young people who come from very damaged backgrounds and to keep them attached and connected in a very positive relationship with their carers.

We deal with 48 000 contacts a year or something like...it is always going to be difficult when you have had to remove someone's children from them...we get into disputes with parents around the planning for the children, which is one of the reasons we have the case review board there.³⁴

Ratio of workers to numbers of children in care

4.28 The Committee is concerned about the ability of departments to provide services and address needs particularly in the light of increases in notifications and substantiated cases of abuse and neglect. Some groups highlighted the importance of caseworkers' capacities to provide good quality relationships and support. Centacare noted that relationships need to be well resourced so that the capacity is there for children to be given the time to spend with their significant extended networks, 'whether that be family or other agencies and institutions that they are part of'.³⁵

4.29 However, some welfare groups expressed concern that high caseloads meant that they were not able to take the time to support or listen to the concerns of the foster carers and children in care:

...many caseworkers believe that they do not spend enough time...with foster care, visiting the placement with the child...The level of scrutiny,

34 *Committee Hansard* 9.12.03, pp.11-12 (WA Department for Community Development).

35 *Committee Hansard* 4.2.04, p.19 (Centacare Catholic Community Services).

support, supervision and assistance will vary according to how often the caseworker in an agency can visit that household to support the carer and see and listen to the child. I do not think that many people would believe that we have got to the point where that is adequate across the board.³⁶

4.30 Research by Cashmore and Paxman and the Victorian Department of Human Services has shown that all parties are impacted upon by high staff turnovers. Children need to have the opportunity to develop a relationship with their worker if they are to feel confident and safe to disclose any abuse or difficulties within the placement.³⁷

4.31 There has been concern that increasing caseloads and complexity of problems for individuals, and staffing issues in child welfare departments are taking a toll. A community legal service emphasised the tasks facing case workers:

...the complexity of the role and stress must be understood but they must also make sure they act validly and they need to be backed by resources to assist families who struggle with parenting. Separation of a child from its parents should occur with good reason especially as the state which becomes the guardian upon removal is very often not a good parent.³⁸

4.32 As well, departments are said to often be in crisis mode which results in resources being diverted from the children who are seemingly 'safe'. Consequently, departmental officers may have less time to support foster placements until a crisis occurs rather than being in the position of providing ongoing support before any crisis arises.³⁹ Similar observations and comments have been made in recent State reviews leading to extensive departmental reorganisations in some States. However, the issues that are raised seem to be endemic and it is flaws within the system itself that still need addressing.

4.33 Submissions argued that State and Commonwealth Governments should work to ensure a focus on the needs of children in care and that this would be assisted by a national project to address the instability of staffing within statutory child welfare agencies.⁴⁰

Checks and monitoring of staff working with children and young people

4.34 The Committee has noted information about screening, monitoring and other mechanisms in Australia to protect children from abuse, particularly in out-of-home care.

36 *Committee Hansard* 4.2.04, p.15 (Association of Children's Welfare Agencies).

37 *Submission* 45, p.9 (NSW Committee on Adoption & Permanent Care) – citing DHS survey.

38 *Submission* 127, p.2 (West Heidelberg Community Legal Service).

39 *Submission* 45, p.9 (NSW Committee on Adoption & Permanent Care).

40 *Submission* 61, p.16 (Mercy Community Services Inc).

Monitoring of staff/following up allegations – out-of-home care

4.35 Various organisations provided information about their protocols to ensure that reports of abuse of children in care are investigated and followed up.

4.36 The Association of Children's Welfare Agencies (ACWA), which conducts foster carers' professional development courses, commented on the particular onus on carers and their responsibility in processes to ensure that children are safe:

No carer in New South Wales would be unaware of the responsibilities they have or of the processes that would go into place if there were allegations. They would be aware of the importance of listening to children and making sure that every step is taken to investigate an allegation so that children are protected, even if that means some risk of disruption to the foster carers.⁴¹

4.37 UnitingCare Burnside noted that contemporary arrangements in non-government organisations contrast with practices of earlier eras when there were no guidelines⁴² and other similar groups expressed confidence in their systems to weed out abusers of children in care:

Our own protocols were in place before the reviewed ones of the Department of Human Services. If it is of a non-criminal nature, we would generally advise the individual concerned that they should lodge a complaint with the organisation and we would be willing to support them in the lodgement of that complaint.⁴³

I am not saying that we never miss anything in our agency, but I am beginning to be more confident that when staff observe something they are unhappy or uncomfortable with they will pick up the phone and ring the helpline themselves...if inappropriate events take place or there are any concerns at any level.⁴⁴

4.38 A number of agencies advised that their policies to deal with abuse allegations included the standing down of accused people from work pending investigations and removing children from the care of the alleged offender.⁴⁵ Some organisations emphasised the importance of having comprehensive pre-employment checks on people who work with children:

CWAV's position is that it is essential for such pre-employment checks to adopt a holistic approach and look beyond mere police clearance, if they are to succeed in protecting our vulnerable children from potential harm.⁴⁶

41 *Committee Hansard* 4.2.04, p.17 (Association of Children's Welfare Agencies).

42 *Committee Hansard* 4.2.04, p.17 (UnitingCare Burnside).

43 *Committee Hansard* 12.11.03, p.65 (Anglicare Victoria).

44 *Committee Hansard* 4.2.04, p.15 (Youth Off The Streets).

45 *Committee Hansard* 12.11.03, pp.56 & 60 (Centacare Catholic Family Services); *Committee Hansard* 9.12.03, p.34 (Mercy Community Services Inc).

46 *Submission* 115, p.7 (Children's Welfare Association of Victoria).

4.39 The WA Department for Community Development (DCD) cited findings of inquiries from that State regarding deaths or abuse of children in out-of-home care, including the 1992 Harries Inquiry. Further, in reporting about issues surrounding the 1993 Duty of Care Inquiry which had identified a breakdown in departmental case management, the department noted that many issues arising from the inquiries 'continue to be addressed' and that any allegations of abuse against children are brought to the attention of the State Police.⁴⁷

Governments' laws and policies – accreditation and screening

4.40 Many groups advised of a preference to have a national, comprehensive system around Australia rather than eight sets of standards for the accreditation of people who work with children and young people. The Australian Council for Children and Youth Organisations reminded the Committee that while accreditation processes are in place for staff in public hospitals and residential aged care and for child care through the National Childcare Accreditation Council, no such framework exists for children and young people in out-of-home care.⁴⁸ The Australian Council for Children and Youth Organisations suggested the introduction of nationally consistent 'suitability checks' legislation for staff and volunteers working with children based on the NSW model and cited a recommendation from South Australia's Layton Report that such checks should be a prerequisite for receipt of government grants.⁴⁹ There has been strong support for the introduction nationally of the Working With Children Check which is presently operating or in the process of being introduced in various jurisdictions.⁵⁰ As it stands, across Australia variations exist regarding governments' screening requirements for people who come in contact with children and young people via their work and voluntary or caring activities. Below is a very brief overview of State and Territory screening requirements.

4.41 In Queensland, under the *Commission for Children and Young People Act 2000*, screening applies to employees, self-employed persons and volunteers in defined categories of child-related employment, taking account of convictions and charges for serious sexual and violent offences. It also includes consideration of professional disciplinary proceedings before bodies such as the Teachers Registration Board. Following assessment, a person is issued with either a positive suitability notice, commonly referred to as a 'blue card', or a negative notice. A review of the Queensland scheme in 2004 saw the addition of categories of professional disciplinary proceedings (including nurses and other health professionals) under the *Commission*

47 *Submission 55*, pp.13-15 (WA Department for Community Development).

48 *Committee Hansard* 12.11.03, pp.48-49 (Australian Council for Children & Youth Organisations).

49 *Submission 54*, p.6 (Australian Council for Children & Youth Organisations).

50 *Committee Hansard* 9.12.03, p.36 (Mercy Community Services Inc).

for *Children and Young People and Child Guardian Amendment Act 2004*.⁵¹ The Queensland Commission for Children and Young People advised that under the Working with Children Check in Queensland, the Commissioner for Children and Young People can access a person's complete criminal history including charges and convictions regardless of when or where they occurred in order to screen people's suitability, and penalties can be imposed on employers who do not have the appropriate clearances for their staff.⁵²

4.42 Established under the *Commission for Children and Young People Act 1998* and the *Child Protection (Prohibited Employment) Act 1998*, the New South Wales scheme contrasts with that of Queensland as it only screens employees. However, as well as convictions and charges for serious sexual offences, it takes account of Apprehended Violence Orders where children are involved, and general employment information such as where an employer has terminated an employee for alleged sexual misconduct. The outcome of the NSW Check is also different to the Queensland Check, with an employer being provided with a 'risk assessment' of the potential employee. It is then up to the employer to decide whether to employ that person and in what capacity. The NSW scheme is currently being reviewed.⁵³

4.43 A Victorian model to enable the screening of people who work or volunteer with children is presently under discussion. As the *Working with Children Bill 2005*, it would allow for screening of people who wish to work with children for relevant criminal offences, charges and professional disciplinary proceedings. Its proposed application is broad and includes self-employed persons and volunteers. Under the Victorian model, if a person has a relevant criminal record or an adverse finding made against them by a professional disciplinary body, this information would be assessed to determine their suitability for working or volunteering with children. For a person with no relevant history, or with history which is deemed irrelevant, an 'assessment notice' would be issued, allowing them to work or volunteer with children, though this notice does not guarantee that a person is 'safe' but merely a declaration that the person has been assessed and declared eligible on the basis of their criminal, or professional disciplinary, history. Overall, the Victorian scheme would entail employers and volunteer organisations sharing responsibility to determine people's suitability including through referee checks, character assessments and practices. The scheme will be phased in over five years. The scheme has emphasised considerations of interests relating to natural justice, fairness, sensitivity, privacy, and encouraging volunteering for people working or volunteering with children and ensuring the protection of children.⁵⁴

51 Department of Justice (Victoria), *Working with Children Bill 2005*, Discussion paper, December 2004, p.4.

52 *Submission 72*, p.3 (Queensland Commission for Children and Young People).

53 Department of Justice (Victoria), p.4.

54 Department of Justice (Victoria), pp.3-5.

4.44 Under the Western Australian *Working With Children (Criminal Record Checking) Act 2004*, from 1 January 2006 certain people, including employers, employees and volunteers working with children in that State are required to undergo a confidential, national criminal record check. The process will entail checking an applicant's national criminal record to ensure that the person does not have a history of offences that may place children at risk of harm. However, people will not necessarily be prevented from working with children because of a criminal record as screening for criminal records will consider the circumstances of convictions or certain recorded charges and their relevance to children's safety. Checks will result in either an Assessment Notice, accompanied by a photographic card and identity number or a Negative Notice prohibiting a person from applying for or continuing to work with children. Included in the checking processes will be those on criminal convictions including spent and juvenile convictions. Assessments will examine many factors relating to records such as the nature, circumstances and pattern of charges or convictions and an offender's age at the time of an offence. The check will be required by many people working with or having contact with children.⁵⁵

4.45 The Northern Territory Government has released a discussion paper on its proposed *Care and Protection of Children and Young People Act 2005*, including provisions in Part 3 for the screening of people in child-related employment. The draft bill provides that where persons wish to enter child-related employment, they must first obtain a notice of suitability before applying for a job. The bill also requires the employer to ensure that people are deemed suitable prior to employing them to work with children and child-related employment and it applies to a wide range of types and places of employment with children, including voluntary work.⁵⁶

4.46 In January 2005, the Tasmanian Commissioner for Children released for public comment *Screening of Individuals Who Work with Children in Tasmania*, proposing a new model for government and non-government organisations in Tasmania that also acknowledges the importance of ensuring natural justice for persons who are the subject of screenings. Among the model's proposals are those regarding information on a person's criminal history and previous employment. All persons working with children would be the subject of a Working With Children Check and outcomes of a check would see the issue of a Tascard which people could use to undertake work that includes voluntary work with other organisations, without further screening. Screenings would mostly be undertaken by the organisations themselves, many of which already have processes in place. The Central Screening Authority would assess self-employed persons. While the system would exclude persons previously convicted of serious offences against children, it would allow some people with less serious or old offences to work with children, with screening requests assessed on their merits. The proposal has emphasised wider approaches than just

55 WA Department for Community Development – www.dcd.wa.gov.au

56 Northern Territory Government (Department of Health and Community Services), Consultation paper and response sheet on the discussion draft for a proposed Act – *Care and Protection of Children and Young People Act 2005* – www.children.nt.gov.au

checking people's criminal histories since most people who are a threat to children have never been convicted of a relevant offence. The Central Screening Authority would also be the repository for information relating to complaints and disciplinary action against persons if they relate to working with children.⁵⁷

4.47 The South Australian Department for Families and Communities' policy on screening and criminal history checks applies to employees, volunteers and funded non-government organisations where the department retains a duty of care. Its underlying principles include the paramountcy of children's and young people's safety, natural justice tenets in decisions about people's suitability to work with children and young people, employers' responsibility in taking reasonable steps to establish that their employees are suitable for such work and the importance of relevant information on employees, volunteers or prospective employees, for employers to have, in order to keep children and young people safe.⁵⁸ The policy's associated guidelines and procedures are comprehensive including details of officers designated to undertake the screening procedures. Among factors to be considered in assessments are applicants' previous offences, the nature of the offence, the scope of an individual's criminal history and the degree of rehabilitation. All processes are undertaken acknowledging the rules of confidentiality and review mechanisms available for applicants.⁵⁹

4.48 In the Australian Capital Territory, government departments taking on new employees to work with children and young people, undertake police checks on prospective employees. The ACT's Vardon Report discussed the establishment of a statutory commissioner for children and young people in the Territory whose responsibilities would include a review role in connection with people planning to work in a job associated with young people.⁶⁰ An independent review of child abuse cases in the ACT conducted by Ms Gwenn Murray, has recommended that investigations be undertaken to develop systems for employment screening in the Territory, similar to the Working With Children Check used by the NSW Commission for Children and Young People.⁶¹

Effectiveness of screening processes

4.49 The Committee is not entirely convinced that non-government agencies' screening procedures are effectively keeping track of people who are abusing children

57 Tasmanian Commissioner for Children, 'Screening of individuals who work with children in Tasmania', *Media Release*, 7 January 2005.

58 Department for Families and Communities (South Australia), *Screening and criminal history checks policy*, 1.2.2005, pp.1-3.

59 Department for Families and Communities (South Australia) 2005, pp.1-11.

60 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), p.187.

61 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, p.xxvii.

in care. The NSW Ombudsman has reported that the Catholic Commission for Employment Relations (CCER) had failed to ensure that Catholic schools, child-care centres, foster carers and other agencies working with children are properly investigating abuse allegations, training staff in child protection laws and notifying the Ombudsman of investigations. The Ombudsman noted instances where the system was letting children down, concluding that if abuse is occurring in one school, it could be occurring in others.⁶² It is concerning that police checks on staff and volunteers who work with children do not necessarily screen out paedophiles. According to the non-government body, Child Wise, only five to 10 per cent of child sex offenders entering children's organisations have criminal convictions for child abuse. Child Wise considers that a broader approach than police or other background checks as the main measure to detect child-sex offenders in institutions is necessary, including educating organisations in child protection measures, rigorous recruitment and selection practices, and close supervision of all staff and volunteers who work with children and young people.⁶³

4.50 Similarly, while the Working with Children Check and other mechanisms to examine the suitability of certain people to work safely with children and young people are comprehensive and often very effective, it is also evident that they are not necessarily foolproof. For example, the NSW Committee on Adoption and Permanent Care noted that while in NSW the Working with Children Check is the only criminal record check on foster carers and workers in child-related employment, its application is very limited and that some organisations would support a more thorough check including a government-funded national fingerprint check by police.⁶⁴ UnitingCare Burnside advised about the Check in NSW:

It certainly does not solve all the problems, but its intent is to weed out the predatory, where it is possible to do so because of known police records...All of us are required to apply a Working With Children Check to any staff or volunteers who work with us.⁶⁵

4.51 Moreover, recent events in Queensland involving raids related to child pornography have revealed situations where men charged with possessing pornography had in fact been cleared by the Queensland Government to work with children. These incidents had raised serious doubts about the effectiveness of the blue card system under which the Queensland Commission for Children provides accreditation to people who are deemed as suitable to work with children.⁶⁶

62 Horin A, 'Weak watchdog raises abuse risk: report', *The Sydney Morning Herald*, 27.10.04, p.6.

63 McMenamin B, 'Police checks not enough to protect our children' [Letters Page], *The Age*, 29.10.04.

64 *Submission 45*, p.10 (NSW Committee on Adoption & Permanent Care).

65 *Committee Hansard 4.2.04*, p.16 (UnitingCare Burnside).

66 Townsend, Ian, 'Child pornography raids conducted in Qld', *ABC PM*, Friday 11.2.05.

Allegations of abuse against foster carers

4.52 Foster carers are often the subject of allegations of abuse of children in their care. They are reported more often for alleged abuse than other members of society for many reasons including that higher standards are expected of them. It may be that they have children in their care who have previously accused carers of abuse and perhaps 'make a habit' of making such accusations. As well, children may genuinely misinterpret behaviour and be confused with normal parenting possibly as a result of earlier abuse or they may have an intellectual disability and give confusing or inaccurate information. If carers are new to fostering they may not know how to deal with emotionally-disturbed children, often about whom they know very little.⁶⁷

4.53 Certainly abuse of children by foster carers does occur, the most common forms being physical (hitting) and sexual abuse. Some overseas research shows that the carers' children or foster siblings perpetrate 25 per cent of instances of abuse.⁶⁸ However false accusations are made. An example of unfounded allegations of sexual abuse was provided to the Committee by a very experienced foster mother where a child with a long history of accusing other males of abuse, accused the carer's husband of sexual abuse. While the child later retracted the statement, the saga involved enormous bitterness between many parties including the carer and departmental case workers. It encompassed people having their names sullied and a lack of departmental support for the foster mother, ending in tragedy when the teenager died.⁶⁹

4.54 Therefore, foster carers can be vulnerable, including to unfounded allegations and regardless of the veracity of any allegations, the result for carers can be difficult. In practical terms, they stand to lose significantly if they are so accused including a loss of self esteem and identity as carers. They also lose the children for whom they have been caring, an occupation and income, and trust from their partner or control over their own lives. Given the many constraints on carers, they may need to consider changes to their lifestyle and personal behaviours for themselves and their families, in order to minimise the risk of being the subject of allegations. Such a strategy needs to be all encompassing even to the point of where carers need to be able to anticipate ways to deal with any allegations in practical terms.⁷⁰

Conclusion

4.55 The best interests of children in foster care can only be met if the framework is working and there are adequate numbers of foster carers. The evidence received by the Committee indicates that large numbers of foster carers are leaving and few are

67 Orr, Bev, 'Surviving the allegation of abuse investigation process', Presentation to Victorian Foster Care Conference, Melbourne, Victoria, 2003, pp.1-6.

68 Orr, Bev 2003, p.4.

69 *Confidential Attachment*, pp.11-34.

70 Orr, Bev 2003, pp.2, 6-10.

entering the sector. Accurate identification of the trend in foster carer numbers is difficult as little national data is available. However, what is clear is that many foster carers are finding it increasingly difficult to care for children with more complex needs, increasing demands from State and Territory child protection services and inadequate support.

4.56 A range of reforms may be needed including an injection of funds into the State and Territory child protection systems for better financial assistance to carers to adequately cover the costs of looking after a child, particularly high needs children. In addition, governments should provide incentives to encourage more carers, such as better training. Further, there needs to be better recognition of carers' professional skills and the pressures under which they and their families operate in caring for children. In other words, it is important to cease undervaluing this group of people who take on demanding workloads and priorities, often with very limited training and support.

4.57 To be accredited, foster carers need training which may include advice on assisting carers to handle the issues encountered when looking after foster children, making decisions in conjunction with parties such as the child and natural parents and knowledge of their legal obligations.

4.58 As noted above, each State and Territory has screening processes for people who work or volunteer with children and young people. However, it may be that a broader approach than police or other background checks to detect child-sex offenders in institutions is necessary. This could include an education process about measures to protect children including for recruiting and ongoing monitoring of staff who work and volunteer with children and young people. Since foster carers often have false accusations made against them, they also need back-up and protection so that they are aware of their legal rights and obligations and what caring for a 'high-risk' child can entail.

4.59 Many arguments exist about the merits or otherwise of professionalising the work of foster carers where they would be paid salaries and achieve a professional status. A pragmatic approach to the recruitment and training of foster carers may be required if carers are to be found for the ever-increasing number of children needing out-of-home care. However, there is a need for a continuum of carers – ranging from volunteers to the highly trained professional carers who are retained to provide care for the most high needs children.

4.60 The National Plan for Foster Children, Young People and their Carers has identified key areas for action. However, the Committee considers that it is important that carers concerns are adequately identified and addressed under the Plan. In particular, the Committee is concerned that the continued loss of carers and inadequate recruitment will impact adversely on the provision of care to children in need. While the Plan is to examine ways of supporting relative/kinship carers, this is not extended to foster carers. The collection of data should also include information about foster carers, including numbers, age of carers and length of time in the sector.

The Committee considers that such data would be of great use in identifying trends in the retention of foster carers and for planning purposes.

4.61 While the National Plan is an important instrument in improving the foster care system, the Committee considers that there needs to be a mechanism to ensure that the reforms to the sector are implemented as quickly as possible, in the most effective way across all jurisdictions.

4.62 The Committee comments on the need for a national approach in chapter 7.

Recommendation 9

4.63 That the National Plan for Foster Care, Young People and their Carers be extended to include the following:

- **Training –**
 - **investigate the implementation of national carer specific accredited training qualifications, for example, through Vocational Education Training;**
- **Uniform Data Collection –**
 - **collection of data on the carer cohort;**
- **Support –**
 - **examine ways of improving carer support including national standards for reimbursement of costs to cover the real costs of caring and payment of allowances;**
 - **examine ways of improving foster carer retention; and**
 - **develop models of response to allegations of abuse against foster carers and workers based on international best practice including articulation of carer's rights.**

CHAPTER 5

CHILDREN AND YOUNG PEOPLE WITH DISABILITIES IN CARE

Children and young people with disabilities have historically entered the out-of-home care system for different reasons than other children. Professionals, parents and the Australian community believed that the disability specific needs of a child made that child unlike other children and so needed to receive different care to most other children. Families were not expected to 'bear the burden' of raising a child with a disability...children with disabilities were...segregated from the wider community.¹

Introduction

5.1 Evidence has illustrated that many systems in Australia for the care and protection of children and young people with disabilities in various settings including out-of-home care, are often not working. Among issues raised are those relating to abuse in care, lack of foster care options particularly for high-needs children with disabilities, lack of support for families to ensure that they can keep their children at home and inadequacies in certain aspects of the law for the care and protection for children and young people with disabilities.

Children and young people with disabilities

Types of disability

5.2 As defined under s.4 of the *Disability Discrimination Act 1992* (Cth), 'disability' includes intellectual, psychiatric, physical, sensory, neurological and learning disabilities as well as physical disfigurement and the presence in the body of disease-causing organisms, such as HIV/AIDS.² In 1998, there were approximately 3 905 600 children aged 0-14 years living in Australia, of whom 296 400 (or 7.6 per cent of children aged 0-14 years) had a disability. Of the 296 400 children with a disability aged 0-14 years, 252 800 experienced specific restrictions. Of these, 206 300 experienced activity restrictions (ie, in the areas of self care, mobility or communication) and 175 200 experienced schooling restrictions. The level of core activity restriction experienced by a child provides a broad understanding of the level of support that they reportedly need in the known above activities. In 1998, there were

1 *Submission 77*, p.3 (Disability Council of NSW), quoting Community Services Commission, *Inquiry into the practice and provision of substitute care in NSW – new directions: from substitute to support care*, NSW Government, Sydney, 2000, pp.47-48.

2 This definition is similar to that in the *Anti-Discrimination Act 1977* (NSW). However, it is broader than that in other Acts in Australia, including that in the *Disability Services Act 1993* (NSW) – New South Wales Law Reform Commission, *Review of the Disability Services Act 1993 (NSW)*, Report 91, July 1999, pp.75-77.

an estimated 144 300 children aged 0-14 years (or 3.7 per cent of children in this age group) with a severe or profound core activity restriction (severe disability). There were: 76 500 children aged 0-14 years (2.0 per cent of children of this age) with a profound level of core activity restriction, meaning that they were unable to do, or always needed help with, one or more core activity; 67 800 children in this age group (1.7 per cent of children of this age) with a severe level of core activity restriction, meaning that they sometimes needed help with a core activity task, or had difficulty understanding or being understood by family or friends, or could communicate more easily using sign language or other non-spoken forms of communication; 20 000 children in this age group (0.5 per cent of children of this age) with a moderate level of core activity restriction meaning they did not need assistance but had difficulty performing a core activity; and 42 000 children in this age group (1.1 per cent of children of this age) with a mild level of core activity restriction, broadly meaning they had no difficulty performing a core activity but used aids or equipment because of a disability. In addition, 175 200 children aged 0-14 years had a schooling or employment restriction. Of these, 128 700 also had a mild, moderate, severe or profound core activity restriction, while 46 500 had a schooling restriction only.³

5.3 Some children have a need for intensive medical and therapeutic support or continuous care. Others may have long-term behavioural patterns that can include a range of actions such as regular violence to themselves or others, chewing or breaking furniture and house fittings, screeching or being noisy at all hours, ingesting inedibles, smearing faeces, or absconding.⁴

Accommodation options

5.4 Historically, children with a range of disabilities were often accommodated in institutions specifically for the disabled which had been set up in the nineteenth century 'to protect society from the "feeble minded"'.⁵ The first Australian institutions for disabled children were established including institutes for 'deaf and dumb' children in Victoria and New South Wales where parents were required to sign over complete control to their management committees. Similar institutions for children with disabilities were established in other Australian States in the late nineteenth century.⁶ Therefore, during much of the 20th century Australian children with disabilities were provided with 'whole of life' services, usually in large, segregated institutional

3 Australian Institute of Health and Welfare (AIHW), *Children with disabilities in Australia*, 2004, pp.14-15, [AIHW Cat. No. DIS 38].

4 Bain KJ, 'Children with severe disabilities: options for residential care: is living under the same roof necessary for a nurturing family relationship?', *Medical Journal of Australia* 1998, 169, pp.598-600.

5 *Submission 173*, p.15 (Victorian Government), quoting Ozanne, Rigby, Forbes, Glennen, Gordon & Fyffe, *Reframing opportunities for people with intellectual disability*, University of Melbourne School of Social Work, 1999, p.173.

6 Mellor EJ, *Stepping stones: the development of early childhood services in Australia*, Harcourt Brace Jovanovich, London, 1990, pp.27-28.

settings.⁷ A number of organisations have noted that in earlier times, families of children with disabilities were very often encouraged to place their children in care:

...removal was traditionally viewed as the best option for parents and families who needed to be spared the burden of raising a child with a disability. Parents and families who ignored this view were expected to take full responsibility for their children with very little government support.⁸

5.5 The 1960s saw significant criticism directed towards traditional institutions. Influences were also at work with the application of human rights principles to mental health, and intellectual and physical disability, and various theories were applied to the possibilities of creating more independent lifestyles for people with intellectual and physical disabilities.⁹ However, despite Bowlby's attachment theory about the importance of nurturing relationships for healthy child development that accompanied deinstitutionalisation in mainstream child protection services in the 1960s and 1970s, for children with disabilities this did not occur until the 1990s.¹⁰

5.6 Throughout the 1970s-1980s other factors diminished the need to have large institutions including better Commonwealth government financial assistance that allowed people, especially mothers, to keep their children rather than relinquish them to an institution. As Centacare-Sydney noted:

Much research was being undertaken with regard to child development and the increasing body of knowledge was clearly stating that children were not best cared for in institutionalised settings, rather in a family environment or within small group homes.¹¹

5.7 Deinstitutionalisation entailed a shift in service delivery from large-scale institutions to smaller, community-based settings, originating with the activities of United States and Scandinavian human rights advocates in the 1950s and 1960s. Gaining momentum in Australia in the 1980s and 1990s for people with disabilities, its proponents compared the negative aspects of large institutions with the potential benefits of community homes, including the opportunities for independence and an improved quality of life. The idea of moving people from large institutions to smaller home-based or community care was attractive to governments because the latter option was more cost effective.¹²

7 ACROD, 'Children with disability', *Fact Sheet*, May 2004, p.1.

8 *Submission 165*, p.8 (People With Disability Australia Inc), quoting reports from the Community Services Commission, Family Advocacy and Leadership Development, and Amicus Brief to the Community Services Appeals Tribunal.

9 AIHW, 'Deinstitutionalisation: the move towards community-based care', *Australia's Welfare 2001*, Canberra, 2001, p.99.

10 *Submission 77*, p.4 (Disability Council of NSW).

11 *Submission 82*, p.3 (Centacare-Sydney).

12 AIHW 2001, pp.97-103.

5.8 For mental health issues it was accepted that some institutional services would continue to be required, partly for the management of acute episodes, and for some on a continuing basis. As such, a policy emphasis was placed on opening psychiatric wards within or in association with acute care hospitals, rather than continuing large-scale stand-alone psychiatric hospitals.¹³

5.9 In Victoria for example, until the 1980s the major form of long-term placement for children with disabilities were large residential institutions. Some children were placed in smaller congregate care situations of 20-50 residents, under the former Commonwealth nursing home program. The early 1980s saw the introduction of the Community Residential Units, small group houses with rostered staff, managed by community-based parent committees. State institutions were gradually closed and institutional care for children with intellectual disabilities was phased out by the early 1990s. After the handover of the former nursing homes from the Commonwealth to the States, the Commonwealth financially supported State initiatives to redevelop some of the large facilities. When large institutions closed options for children may have included a return to birth families with a support package, a family placement or a small group residential placement.¹⁴

Permanency planning

5.10 Over the last 15 years or so, professional and government opinion has changed regarding children with severe disabilities and high-support needs. In the late 1980s, 'permanency planning' ideas gained professional favour in child welfare. In the context of children with severe disabilities, permanency planning favours that they live with a family, preferably their birth family or an adoptive or foster family and is based on the view that a long-term, day-to-day relationship between the child and at least one continuous caregiver is necessary. It arose from the concern that children in foster care drift, with a loss of contact with natural parents and negative emotional and social consequences for the child as placements break down and foster agency staff move. Specific aims of permanency planning include: the provision of financial and other support to birth families to enable the child to stay at home, at least until legal adulthood; the pursuit of permanent reunification with the natural families for children who have previously been relinquished or placed in institutions; and adoption or long-term placement with a foster family, preferably on an 'open' basis so that birth parents can continue with an informal parenting role where parents have requested an out-of-home placement.¹⁵

5.11 Variations exist across Australia regarding accommodation for children and young people with disabilities who are unable to remain at home. Some jurisdictions'

13 AIHW 2001, p.102.

14 Gordon Meg, 'Family care of children with an intellectual disability', in *Reframing opportunities for people with an intellectual disability*, A report funded by the Myer Foundation undertaken by School of Social Work, University of Melbourne, 1999, pp.225-226.

15 Bain 1998, pp.598-600.

government departments may prefer 'specialised' foster care while others opt for the use of group and large institutions yet others may focus on in-home support, respite houses or residential units attached to hospitals.¹⁶ Anecdotal evidence about the placement preferences under the Family Options program in Victoria, suggests that practices vary from region to region.¹⁷

5.12 Underpinning contemporary permanency planning ideas has been the philosophy of *inclusion*. This principle subscribes to the notion that everyone, including people with disabilities, can participate in mainstream community life, and is best supported through the family which is ideally placed to provide the child with a sense of identity and practical and emotional support. Many ideas are put forward to support permanency placements including programs to assist parenting roles. It is also recognised that issues surrounding all family members need to be addressed, particularly given the lack of congruence at times between the needs of the child with a disability and the needs of other family members. For permanency planning to work, wide-ranging flexible supports, tailored to the individual family needs, should be available.¹⁸

5.13 Certainly the strains on families who have a child or children with disabilities are well documented, and it is obvious that the availability of good supports for such families is important. Many families with a child with disabilities experience a loss of income as a result of the mother's or both parents' reduced paid employment. Often a mother's chance to study or make future plans for employment can be seriously curtailed. Mothers of children with disabilities are more likely to be unemployed, in part-time employment and on lower salaries than mothers of non-disabled children of the same age. The above issues are important in considerations of a family's total function. If a child with a disability is to remain at home, families of children with disabilities need to have at minimum, the degree of financial security and opportunity of other families.¹⁹ Many high-needs children with disabilities and their families require significant attention and assistance and living expenses for them can be particularly high, irrespective of where they live.²⁰

5.14 While research has compared the effects of various types of child rearing and placements for children, little research has been conducted for family placement of children with disabilities. One study of different care models showed both positive and negative results associated with each. Little research is available on the impact of the combination of good quality, small residential care with frequent, positive contact with the child's birth family.²¹ Comprehensive family support programs have been

16 Bain 1998, pp.598-600.

17 Gordon 1999, p.226.

18 Gordon 1999, pp.198, 202-204.

19 Gordon 1999, pp.203-205.

20 Bain 1998, pp.598-600.

21 Gordon 1999, p.199.

successful in substantially reducing out-of-home placements and keeping children with disabilities in the family home. While it is unclear if family support programs reduce family stress, they may increase a family's coping capacity.²²

Numbers of children and young people with disabilities

5.15 It can be difficult to determine the number of children and young people in Australia with disabilities. A study in 1993 estimated that 63 500 Australian children aged 5-14 years had a severe or profound handicap (that is, they always or sometimes need personal assistance or supervision with activities of daily living).²³

5.16 As noted earlier, in 1998 in Australia, about 296 400 children aged 0-14 years, were estimated to have a disability.²⁴ Almost twice as many boys as girls had a disability (192 800 or 9.6 per cent of boys compared to 103 600 or 5.4 per cent girls). This sex difference also applies when considering the pattern for children with a severe disability (97 400 or 4.9 per cent of boys compared to 47 000 or 2.5 per cent of girls). Of the 296 400 children aged 0-14 years with a disability, 144 100 children (or 3.7 per cent of the population aged 0-14 years) were estimated to have a physical/diverse disability, either as a main disabling condition or an associated disabling condition.²⁵

5.17 The Disability Council of NSW cited figures from the Community Services Commission (CSC) from May 2001 of 310 children and young people with disabilities living in residential care, but acknowledged that this did not include children living in non-disability specific residential facilities. The Council also noted that national figures are hard to obtain stating that 'Australia wide, a little over 4 000 children lived in residential services or corrective institutions, but the number of these children who have disabilities is not identified'. The Council advised:

...the number of children with disabilities in disability services institutions, psychiatric institutions, hospitals, boarding schools, long-term respite placements or other forms of 'temporary care' arrangements is not known. It has been unfortunate that with deinstitutionalisation and the use of alternate congregate care options it has become more difficult to identify and monitor children and young people with disabilities in out-of-home arrangements.²⁶

5.18 The Victorian Government quoted a 2001 survey showing one disabled child living in congregate care and 142 disabled children and young people in shared supported accommodation on the snapshot day, ranging in age from under five years

22 Gordon 1999, p.211.

23 Bain 1998, pp.598-600.

24 AIHW 2004, p.14.

25 AIHW 2004, pp.xii-xiii.

26 *Submission 77*, p.5 (Disability Council of NSW).

to 18 years. The same survey showed that there were also 82 children in out-of-home care supported by the Family Options program.²⁷

5.19 Mr French from PWD spoke of numbers of children with disability who are in the nation's care and protection system:

...something like 40 per cent of children and young people in the care and protection system in Australia are also children and young people with disabilities. They grow up and eventually leave care...they are very poorly supported, generally speaking.²⁸

5.20 Figures from a Commonwealth State Territory Disability Agreement (CSTDA) data collection have shown that on a snapshot day, around 8 000 children aged 0-14 years have been assisted under the CSTDA.²⁹

5.21 Little is known about the rate of Aboriginal and Torres Strait Islander children's disabilities for a number of reasons including that indigenous people are not identified in the Australian Bureau of Statistics 1998 Survey of Disability. A 1989 study by Bower et al noted some significant differences in some particular congenital malformations between indigenous and non-indigenous infants in Western Australia, 1980-1987, including that Aboriginal infants were more likely to have microcephaly, than non-indigenous babies. The prevalence of disability among Aboriginal children aged 4-17 years in Western Australian was investigated in 2001-2002 by the Telethon Institute for Child Health Research. Its findings included that:

- 8.1 per cent did not have 'normal' vision in both eyes. This rate fell from 11.3 per cent in the Perth metropolitan area to 3.1 per cent in areas of 'extreme' relative isolation;
- 6.8 per cent did not have 'normal' hearing in both ears. Of these children, 49 per cent were deaf or partially unable to hear in one ear and 24 per cent were deaf or partially unable to hear in both ears;
- 9.8 per cent had trouble saying certain sounds. Among children aged 4-11 years, this difficulty was more pronounced in boys (16.5 per cent) than girls (9.9 per cent); and
- 8.5 per cent had a speech impairment which prevented other people readily understanding them when they spoke.³⁰

5.22 Given Australia's trend from institutional care towards in-home care including with their families, in 1998, almost all children aged 0-14 years with disabilities lived in a household. Less than one per cent lived in care accommodation.³¹

27 *Submission 173*, p.16 (Victorian Government); as this submission notes, many older adults with disabilities have spent at least part of their childhood in institutions.

28 *Committee Hansard 4.2.04*, p.77 (People With Disability Australia Inc).

29 AIHW 2004, p.42.

30 AIHW 2004, pp.29-30.

Legislative and government framework – for children and young people with disabilities

5.23 The Commonwealth and State and Territory governments have enacted legislation to protect the rights and interests of people with disabilities. The Commonwealth State Disability Agreement (CSDA) was established in 1991. Nowadays as the Commonwealth State Territory Disability Agreement (CSTDA), it provides a framework within which the Commonwealth and jurisdictions aim to protect the interests of people with a disability and is supported by a range of Commonwealth and State and Territory disability legislative provisions. The United Nations Convention on the Rights of the Child (UN Convention) also applies to children and young people with disabilities. Some of these provisions are discussed below.

Anti discrimination legislation

5.24 Disability anti-discrimination legislation has been in place in most Australian States and Territories since at least 1977, to address discrimination against people with disabilities.³² In NSW, the *Anti-Discrimination Act 1977* (NSW) prohibits among other things, discrimination on the ground of disability in the provision of goods and services (whether for payment or not). Other States and Territories have similar legislation. The Human Rights and Equal Opportunity Commission (HREOC), administers various pieces of Commonwealth legislation including the *Disability Discrimination Act 1992* which contains anti-discrimination provisions.³³

CSTDA and associated legislation and policies

5.25 The Australian, State and Territory governments fund government and non-government provided services for people with a disability. Funding regimes and service delivery regimes vary across jurisdictions. The CSTDA between the Australian, State and Territory governments defines their roles and responsibilities in providing specialist disability services to people with a disability. The CSTDA's purposes include: providing a national framework to underpin specialist disability services across Australia, and outlining a means for measuring and publicising the progress of governments towards achieving this national framework; outlining the respective and collective roles and responsibilities of governments in the planning, policy setting and management of specialist disability services and providing accountability mechanisms regarding government funding for services.³⁴

31 AIHW 2004, p.xiii.

32 Yeatman A, *Getting real: the final report of the review of the Commonwealth-State Disability Agreement*, AGPS, Canberra, 1996, p.1.

33 New South Wales Law Reform Commission 1999, pp.53-55.

34 Productivity Commission, *Report on Government Services 2005, Volume 2: Health, Community Services, Housing*, Canberra, 2005, pp.13.4-13.5.

5.26 Under the CSTDA, the Australian Government has responsibility for the planning, policy setting and management of specialised employment services. The State and Territory governments have similar responsibilities for services such as accommodation, respite and other support services. As such, each jurisdiction has entered into bilateral agreements with the Australian Government which identify ways by which both levels of government can work together to address issues of local concern.³⁵ The Commonwealth provides funding to the States and Territories to assist them with their responsibilities as required under the Agreement.³⁶

5.27 Prior to the transfer of Commonwealth-funded services to the States which accompanied the introduction of the CSDA, services for people with a disability were administered by the Commonwealth under the *Disability Services Act 1986* (Cth). Before the Agreement took effect, the Commonwealth required all States and Territories to enact disability services legislation to complement the Commonwealth *Disability Services Act*. The *Disability Services Act 1993* (NSW) represents the complementary legislation in New South Wales; other jurisdictions have similar legislation. As with comparable Acts in other jurisdictions, the NSW *Disability Services Act* contains objects, principles and applications of principles that people with disabilities have the same basic human rights as other members of the community. Among the Act's objects are principles to assist people with a disability to integrate into the community, achieve increased independence and access employment.³⁷

5.28 Examples of Commonwealth and State and Territory departments which deal specifically with issues that affect people with disabilities, including children and young people are: the Commonwealth Department of Family and Community Services; Disability Services Queensland; the Western Australian Disability Services Commission; the Department of Ageing, Disability and Home Care, NSW; and the Department of Health and Community Services in the Northern Territory.

United Nations Convention on the Rights of the Child

5.29 The United Nations Convention on the Rights of the Child, provides an international framework for the treatment of children and young people with disabilities. Included in its principles are the following:

5.30 Article 23.1 of the Convention provides that children with a disability should:
enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

35 Department of Family and Community Services (FaCS), 'Commonwealth State Territory Disability Agreement', *Factsheet*, 30 July 2004 – www.facs.gov.au

36 Australian Institute of Health and Welfare (AIHW), 'Disability and disability services', *Australia's Welfare 2003*, Canberra, 2003, p.358.

37 New South Wales Law Reform Commission 1999, pp.8-9, 17.

5.31 Article 23.2 recognises the right of a child with a disability to special care, and shall encourage and ensure the extension of appropriate assistance to the child and those responsible for his or her care. Under Article 23.3 such assistance should be designed to:

ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

5.32 People With Disability Australia (PWD) has pointed out that the UN Convention has not been wholly incorporated into domestic law in Australia.³⁸

State and territory disability departments' programs

5.33 The following information provides some examples of the role of government departments and their programs for children with disabilities.

5.34 State and Territory Acts are administered by relevant government agencies. In NSW under the DSA, services to people with a disability, including those delivered by non-government agencies, have been administered and funded by the Department of Ageing, Disability and Home Care. The department has funded services that include accommodation support such as large residential services, hostels, group homes and alternative placements and community supports related to early intervention, independent living and transition from school to adult community living.³⁹

5.35 In Victoria, the first Disability-funded family placement programs, Shared Family Care and the IDS Permanent Care Initiative, were established in 1987-88 and were subsequently expanded. Provided through the State's generic foster care and permanent care programs, these programs represent a compromise between a generic and a specialist model of service. In 1995-1996, the Family Options program, for children with disabilities and high daily support needs was established, funded through the 100 Places initiatives supplemented by CSDA funds. Placements have been accessed through the Department of Human Services' regional offices.⁴⁰

5.36 The Queensland Government submitted details of its long-term reform policies and responses for children with a disability and complex and high-support needs, to help children remain with their families. Through Disability Services Queensland's Family Support Program, it supports over 480 families with a child with a disability who has complex and high-support needs. Included in the Queensland Government's key responses are:

38 *Submission* 165, p.22 (People with Disability Australia Inc).

39 New South Wales Law Reform Commission 1999, pp.10-11.

40 Gordon 1999, p.226.

- a research paper commissioned by Disability Services Queensland in 1996 to investigate best practice in supporting families long term as a preventative measure to placing children with a disability into State care;
- the introduction of the Family Support Program in July 1999 to support families including with discretionary funding, to continue to care for a child with a disability with high and complex support needs (where they might otherwise be relinquished into the care of the State department); and
- the development of a Quality framework in 1999 and an ongoing commitment to best practice within all its services to children and adults with a disability, both direct and funded. A key commitment in the Future Directions for Disability Services 2003-2007 has been the provision of a further \$83 million over four years to improve services to children and adults with a disability.⁴¹

5.37 The Queensland Commissioner for Children and Young People assists children and young people who have a disability, including via advocacy, and monitoring and reviewing laws, policies and practices, particularly for children and young people in institutional care. Under the Commission's Community Visitor Program, 24 community visitors State wide visit children in out-of-home facilities such as youth detention centres and authorised mental health services.⁴²

Issues raised in the inquiry

5.38 As noted in various reports including *Forgotten Australians*, institutional care for children has been very unsatisfactory. A number of submissions were critical of the treatment and care received by many children with disabilities in institutions:

Institutional settings [are]...the site of almost unbelievable levels of abuse and neglect of children and young people with disability. Apart from this, institutional care by its very nature is utterly incapable of meeting the emotional and developmental needs of children and young people.⁴³

Children...have experienced unsafe, improper and unlawful treatment in these institutions. They have experienced long-term social and economic consequences as a result of the neglect and abuse that has been part of their everyday lives, and they certainly continue to experience human anguish resulting from that neglect in care.⁴⁴

5.39 Evidence cited many examples of inadequacies with institutions and associated situations for the placement of children and young people with disabilities including:

41 *Submission* 125, pp.7-8 (Queensland Government).

42 *Submission* 72, pp.1-2 (Queensland Commission for Children and Young People).

43 *Submission* 165, p.1 (People With Disability Australia Inc).

44 *Committee Hansard* 4.2.04, p.74 (Family Advocacy).

- many institutions for children and young people with disabilities have served as 'attractive' places where people who prey on vulnerable children can do so;⁴⁵
- despite moves to smaller community settings, many children with disabilities continue to live for long periods in congregate care environments such as group homes, psychiatric facilities, and juvenile justice detention centres, and hospitals, where they are likely to be abused and taken advantage of;⁴⁶
- children with non-acute illnesses are often not viewed by authorities as requiring a mental health service and therefore not assisted to successfully live with their families or helped to stem their illnesses, often resulting in self-harming behaviour;
- the system is often unable to effectively treat and assist children with a dual diagnosis such as an intellectual disability and a mental illness;
- children with acute illness are often placed in adult units where they can be at risk of harm and not given appropriate care;
- a lack of after-care options and services exists to the point where government departments often place children and young people with challenging behaviour in inappropriate institutions such as juvenile justice centres which do not have the capacity to meet the child's needs;
- there are difficulties in recruiting suitably-qualified staff to care for children and young people with disabilities, attributable to reasons that include a preference of some carers not to work in disability areas;
- there is a lack of degree courses or other training programs that would equip staff with skills to work in this area;⁴⁷
- problems are occurring for children living at home because of a lack of specialist services including speech pathology and respite and school-based therapy. This often results in family breakdown, dysfunction and crisis, with the only option for children becoming the out-of-home care system.⁴⁸

5.40 Groups such as PWD presented evidence to show that children with disabilities from an indigenous background have a greater potential for disadvantage and vulnerability than other children and are over represented in all welfare statistics.⁴⁹

45 *Submission 77*, p.7 (Disability Council of NSW).

46 *Submission 77*, pp.4-5 (Disability Council of NSW); *Submission 165*, p.14 (People With Disability Australia Inc).

47 *Submission 165*, p.16 (People With Disability Australia Inc); *Committee Hansard 4.2.04*, pp.58-59 (CREATE Foundation); *Submission 77*, p.12 (Disability Council of NSW); *Committee Hansard 4.2.04*, pp.83-84 (People With Disability Australia Inc).

48 *Submission 165*, pp.11-12 (People With Disability Australia Inc).

49 *Submission 165*, p.20 (People With Disability Australia Inc).

Standards and laws in practice

5.41 Governments and families have a wide array of responsibilities towards children with disabilities. The legal framework in which policies operate include those relating to monitoring a child's living arrangements, legal guardianship issues for a child in out-of-home care and situations where parents relinquish guardianship. For instance, the Australian legal system offers an option (appropriate in some instances), of voluntary relinquishments of guardianship by parent/s to a third party through the Family Court's processes and legal framework.⁵⁰

5.42 Many services which allocate government funds to service providers for programs require a compliance with standards. The Disability Services Commission of Western Australia cited guidelines which apply to respite support programs funded through Western Australia's Local Area Coordination Program, including those for monitoring and supervision, mandatory reporting of suspected abuse and neglect and liaison with that State's Department for Community Development. The WA Disability Services Commission's care and protection policies apply to its staff and include reporting mechanisms for allegations or concerns about a child with a disability, interagency protocols regarding child protection and a wide range of other standards and policies including those for privacy, complaints and disputes, consumer protection from abuse, neglect and exploitation and police clearances for agency staff, volunteers and board members.⁵¹ Comparable agencies in other jurisdictions have similar standards and requirements.

5.43 The Committee was advised of inadequacies in Australia's laws to protect children and young people with disabilities, ranging from an inherent bias against people with disabilities to more tangible aspects that laws are being ignored or not enforced. An underlying area of concern is that people with a disability often find it difficult to access competent legal advice and advocacy because of the lack of specialist expertise in the disability area and the prohibitive costs of lawyers' fees.⁵²

5.44 It was argued that children and young people with disabilities experience extra disadvantages within the Australian legal system. For instance, often they are simply not believed when they allege abuse, or, the incident may not be treated seriously. As the Australian Law Reform Commission noted:

...children with disabilities may be particularly disadvantaged within the legal system, including an inability to communicate, susceptibility to manipulation (particularly in the context of questioning and investigations)

50 Gordon 1999, pp.228, 230.

51 *Submission 84*, pp.4-6 (Disability Services Commission WA).

52 *Submission 165*, p.25 (People With Disability Australia Inc).

and barriers to participation based on stereotypes of their abilities to participate.⁵³

5.45 In describing the outcome after an 11-year-old Down Syndrome girl had been sexually abused by a man, one group of experienced carers wrote to the Committee:

Needless to say, no-one is ever arrested or charged when the victim is disabled.⁵⁴

5.46 Some organisations emphasised that the standards that apply to children and young people with disabilities in institutional care have been developed for adults, not children:

...so staff who work there may work to the standards or try to run their service to the standards, but those standards do not take into account the particular emotional and developmental needs of children and young people...those services cannot cater to the needs of children and young people.⁵⁵

Standards have not been developed with children and young people with a disability in mind and they are often seen as mini adults with deficits, rather than as children who have some additional needs.⁵⁶

5.47 Evidence also suggested that often discrimination against people with disabilities occurs, 'in a covert and insidious way':

A sort of Clayton's discrimination...I refer particularly to state-based legislation: privacy legislation, occupational health and safety legislation, workers' compensation, funding formulae for education of difficult and disabled school children etc...imbedded in many types of legislation are latent discriminatory features which make the care of children in institutions difficult and giving rise to circumstances which are not in their best interests.⁵⁷

5.48 A 1999 NSW Law Reform Commission review of the NSW *Disability Services Act 1993* found inadequacies in the Act's coverage. The review noted that while children under the age of 18 years were living in large residential centres in that State and the department funded services and supports for children with a disability, the Act contained no specific provisions about children nor did its principles and application of principles specifically mention children. The Commission noted:

They do not address the issue of the participation of children and their parents as consumers of services. There are no special standards for

53 Australian Law Reform Commission (ALRC), *Seen and heard: priority for children in the legal process*, Report No. 84, Human Rights and Equal Opportunity Commission, 1997, p.109.

54 *Submission 220*, p.2.

55 *Committee Hansard 4.2.04*, p.85 (People With Disability Australia Inc).

56 *Committee Hansard 4.2.04*, p.85 (Family Advocacy).

57 *Submission 502*, p.7.

organisations that provide accommodation or other support for children with a disability.⁵⁸

5.49 Evidence has noted that in NSW 'anybody can put up a shingle and call themselves a disability service provider' and that standards and policies are not applied as such because of no systematic independent way of accrediting agencies against those standards.⁵⁹ The Disability Services Commission of Western Australia noted that the *WA Disabilities Services Act 1993* does not provide specifically for the establishment or licensing of any government or non-government institutions, or foster practices to provide care and/or education for children.⁶⁰

5.50 While acknowledging shortcomings in Australia's mainstream child protection system, some organisations considered that its best interests for children approach is better than what the disability service system offers. They emphasised that under the relevant legislation there is no monitoring of the 'best interests' of the child or focus on restoring the children to a family or alternate family, and no framework of permanency planning.⁶¹ Family Advocacy explained the lack of legislative protection for children with disabilities placed voluntarily in NSW institutions rather than via the State's care and protection system:

There are two pathways into care. There is the court-ordered care that leads children and young people into the child protection system. Whilst the safeguards for young people in out-of-home care through the child protection system are less than adequate, children with disability do not get the same levels of protection.⁶²

5.51 Family Advocacy noted that under the NSW *Children and Young Persons (Care and Protection) Act 1998*, review and monitoring processes apply to children and young people in out-of-home care who are under a children's court, care and protection order under s.150 of the Act. Arrangements for children in voluntary out-of-home care for extended periods are outlined in ss.155 and 156, though these sections have not been proclaimed. While children in out-of-home care via a court order have the legislative protection of the Children's Guardian, those placed 'voluntarily' do not have such safeguards, resulting in situations where children may be experiencing protracted, unplanned periods in care without any legislative review safeguards. Many children with disabilities have been in institutions long term, where their needs are not met and parental contact has been severed. These children have no 'child specific' authority to assume guardianship, exercise parental responsibility or focus on their best interests. In other words, because disability services are not

58 New South Wales Law Reform Commission 1999, p.120.

59 *Committee Hansard* 4.2.04, p.84 (People With Disability Australia Inc).

60 *Submission* 84, p.3 (Disability Services Commission WA).

61 *Committee Hansard* 4.2.04, p.75 (Family Advocacy); *Submission* 165, p.8 (People With Disability Australia Inc).

62 *Committee Hansard* 4.2.04, p.75 (Family Advocacy).

included in the definition of 'designated agencies' under s.139 of the Act, such agencies are not required to be accredited by the Children's Guardian or comply with government standards and accreditation standards and processes.⁶³

5.52 The Committee was further advised that some provisions and standards of the NSW *Disability Services Act 1993* are not being met, including that:

in New South Wales a number of disability service families have been found not to meet even minimum legislative requirements of the *Disability Services Act 1993* and some operate outside this legislation

a large number of abuse in care cases occur particularly regarding physical and sexual assault and these constitute breaches of criminal law

policies, standards and guidelines to assist services comply with legislation, such as Disability Service Standards, are not being met, or they are being contravened.⁶⁴

5.53 In addition, comments were received that many programs for children in NSW under the State's care and protection legislation, do not benefit children and young people with disabilities:

There are some specific after-care programs that have been developed, for example in New South Wales under our new *Children and Young Persons (Care and Protection) Act 1998* but, by and large, they address the general population of children and young people and do not address the specific issues that confront young people with developmental disability, intellectual disability for example, or perhaps mental health conditions when they are leaving care.⁶⁵

5.54 Of further concern is the lack of adherence to the law regarding the placement of indigenous children with disabilities as noted by PWD:

a review of 850 transition plans as required by the DSA for indigenous people with disabilities has shown no plans to address the issue of restoring Aboriginal children with a disability to their families or to find a suitable permanent placement with their extended family or the community.⁶⁶

5.55 Various submissions detailed instances of abuse of children and young people with disabilities in various settings. The parents of a young person with disabilities who had been the subject of serious sexual abuse in a care facility, expressed concern that the Queensland Commissioner for Children and Young People is powerless to do

63 *Submission 60* (Family Advocacy, pp.1-2 additional information).

64 *Submission 165*, p.21 (People With Disability Australia Inc).

65 *Committee Hansard 4.2.04*, p.77 (People With Disability Australia Inc).

66 *Submission 165*, p.21 (People With Disability Australia Inc).

anything and that it 'would appear' that Disability Services Queensland (DSQ) is in a similarly powerless position.⁶⁷

5.56 However, there appears to be little or no formally-reported evidence of any abuse of children with disabilities in care, as the following excerpts show:

The Department of Community Services (DoCS) has a statutory responsibility for responding to reports of child abuse in NSW and the Ombudsman is responsible for overseeing investigations of child abuse against employees of designated agencies, which includes employees of disability services institutions. There is little evidence that reports of abuse in institutions, by staff or other residents are received and/or acted upon by DoCS.⁶⁸

of 125 mandatory reports reviewed dating back to 1999 in Western Australia, there was no evidence of service provider involvement in unsafe, improper or unlawful care or treatment or of any occurrences of serious breach of any relevant statutory obligation to children under the age of 13 years in care.⁶⁹

Problems with deinstitutionalisation

5.57 It has been noted that deinstitutionalisation in itself does not necessarily guarantee better care or quality of life for children with disabilities. Some of its desired aims such as more independence and life choices have not always come to fruition, for reasons that include:

- despite being in the community, group homes do not mean greater participation in community activities, better quality care or necessarily that individuals have their needs met or are protected from abuse and neglect; an incompatibility of residents often leads to injury, aggression, hostility, threats, intimidation and fear;⁷⁰
- often children and young people with a disability are being abused in community settings;⁷¹
- the monitoring of residents' activities processes and support systems that are necessary to enable deinstitutionalisation to work effectively, are not necessarily occurring. Various studies have shown that group homes are not

67 *Confidential Submission* 91, p.13.

68 *Submission* 77, p.9 (Disability Council of NSW).

69 *Submission* 84, p.4 (Disability Services Commission WA).

70 *Submission* 165, p.10 (People With Disability Australia Inc), quoting Audit Office of NSW, Performance Audit Report: Ageing and Disability Department, *Group homes for people with disabilities in NSW*, 2000, p.30.

71 *Submission* 165, p.20 (People With Disability Australia Inc).

suitable for many people and that family environments are the most apt for children and young people with disabilities;⁷²

- children and young people with disabilities are being placed in homes where many residents have complex and high support needs. This has created mini institutions and not enabled people with a disability to move into a better quality of life as members of the community.⁷³

Family care (permanency planning) versus institutional care

5.58 Proponents of permanency planning maintain that a child needs to live virtually full time with one family, to gain emotional security and personal identity. However, co-parenting can work well and there are examples of successful long-term stable arrangements among a range of networks, as often demonstrated in today's world of blended families. Residential schools are common in the United Kingdom and in some parts of the United States, with close family involvement, or regular residential services for people with disabilities.

5.59 Some evidence, while noting the closure of many large institutions occurred 'with good reason', also reminded of the importance of considering the impact of the deinstitutionalisation on the person and families. A view was put by a parent of a severely-intellectually disabled child that contemporary ideology which promotes 'that the best place for children with a disability is with their family, supported by services from within the local community to meet their particular needs', rings as hollow as any populist slogan. This parent advised that:

Because of the almost non-existent support to families of children with difficult behaviour or disabilities...the 'inclusionist' ideology has led to many families becoming institutionalised. It has increased the new 'mini-institution' the family home. Of great concern is that these 'mini-institutions', these families, are invisible to the policymakers and ideologues. Their isolation and loneliness is not factored into policy because they neither have the time nor the energy to agitate and be heard...this holds true for most families who have the difficult task of not only meeting the challenges of life in the modern world, paying the mortgage, meeting expectations/commitments of work and relationships as well as raising children and the special challenges presented by this unique task. Add to this the difficulty of a child with difficulties either medical problems, behaviour problems or a disability and the task of keeping a family in tact seems almost impossible. Is it any wonder these families are endangered.⁷⁴

5.60 The operation of special schools can provide a successful model of care. A number of Sydney parents highly recommended the ethos and practical programs of

72 *Committee Hansard* 4.2.04, p.77 (People With Disability Australia Inc).

73 *Committee Hansard* 4.2.04, p.77 (Family Advocacy).

74 *Submission* 502, p.7.

Anglicare's Kingsdene Special School, for children who are severely to profoundly intellectually disabled, many of whom cannot speak and have physical disabilities and challenging behaviour. Comprised of group homes and hostels and catering for 25 children aged 10-18 years, the school is jointly funded by the NSW Government, State Disability, the Commonwealth Education Department, Anglicare and parents' contributions. It combines residential living with a typical school setting and operates Monday-Friday during school terms. Children return home for weekends, school holidays and when sick or ill.

5.61 The mother of 13-year-old, Nicholas, who has the 'developmental age of a two-year-old', physically-disabling epilepsy, many autistic tendencies and at times, 'challenging and destructive' behaviour wrote about Kingsdene. She considers the school to be 'a centre of excellence' which 'should be imitated and emulated', describing it as a place where children learn to live life to the best of their ability with their peers and have their potential maximised.⁷⁵

5.62 Nicholas' mother noted that it meets individual needs in an unrestricted fashion so that the needs of children with autistic tendencies who are often affected badly by changed routines can be best met. The school has a diverse physical environment to cater for the needs of varying degrees of disability, 'very well trained' carers and a curriculum providing wide-ranging educational and social activities. The school's ethos is based on ideas about being self-contained while also sharing its facilities to prepare the children for what occurs in the wider community, carried out in a way that can reduce or at least not trigger, the anxieties which can set off a child's aggressive behaviour. Because of the school's emphasis on self care and being aware of appropriate behaviour towards peers and other people, the children are taken into the community where they shop at the local supermarkets and attend restaurants or clubs. In other words, such interactions become a learning process about what happens in the wider community and in their families. As Nicholas' mother noted:

Since my son commenced at Kingsdene, he is so much happier, he loves going to school, he is with his friends and he is with people who help him control his aggressive behaviour. He is provided with a rigidly structured environment where he knows exactly what is going to happen next and which helps him cope with the world.

He is learning self-control and living within the framework of rules and that consideration of others must be part of his experience. He is happier, more settled and is much better behaved. He is learning life skills, to make a sandwich, a tuna mornay for lunch, pizza, to make a milkshake. He is learning to shop for the ingredients to make these lunches. Bearing in mind all these activities must be supervised for his safety and the safety of others, he is nonetheless learning to live.⁷⁶

75 *Submission 502*, pp.1-3.

76 *Submission 502*, pp.1-3.

5.63 The mother of 12-year-old Charley, who has Angelman Syndrome wrote that her son has the 'intellect of an eight-month old baby' and that he has positive experiences at Kingsdene. She described the facility's lifestyle including its consistent routines, stable 'mini' community that provides a stepping stone for children to learn to cope with spontaneity and a small integrated physical environment where staff can share good or bad days with each other. Charley's mother emphasised the facility's worth in assisting families:

Parents get a chance to have a normal life during the week. Parents get a chance to spend time with their other kids, taking them to ballet, rugby or swimming, helping them with homework without feeling guilty because they are not attending to the routine they have been given for their disabled child (toileting routine, exercise, etc).⁷⁷

5.64 The school's attributes include a heated swimming pool and play equipment and purpose-built environment to increase the freedom of movement and safety for children who would be restricted in a normal school. Charley's mother emphasised its capacity to help the children create strong friendships among themselves:

Real, two-way, level friendships. Friendships developed with the 'normal' community are very important but – let's be honest – are unequal and patronising at this severe level of intellectual disability. (You ask any parent what it feels like to see their child greeted by peers with screams of delight and open arms – you just can't beat it).⁷⁸

After-care options and assistance

5.65 Evidence shows a distinct lack of permanency planning and support for children with disabilities when they are discharged from institutions to birth or alternative families. It was said that changes in NSW legislation for children and young people with disabilities that accompanied the introduction of the modern guardianship legislation have resulted in detrimental effects for such children. The Committee was advised that in some cases that occurred because many people who were discharged from guardianship did not fit within certain provisions of the modern guardianship law and as such, were discharged into the general community without support. PWD explained that the effects of children with disability being given no support or assistance with life skills often becomes apparent later in their lives, particularly when they have children and are not equipped to care for their children:

Where you see this typically is in children's courts where you see parents with intellectual disabilities, who have often spent their entire lives in an institutional setting, struggling to support their children. Mum and dad might both have an intellectual disability and people assume that they are struggling to care for their children because of their intellectual disability. Often the real reason is that they had no parental model that has taught them how to parent children and the support services that they need to be

77 *Submission 503, p.2.*

78 *Submission 503, p.2.*

effective parents are not available. A parallel can be drawn there with many Aboriginal families who struggle for the same sorts of reasons.⁷⁹

5.66 Other views posited related to Commonwealth programs such as the Supported Accommodation Assistance Program (SAAP).⁸⁰ PWD described the program's policies and practices of excluding children because of their disability or stipulating conditions which children with a disability cannot comply, as 'unlawful' under the Commonwealth *Disability Discrimination Act 1992* and State anti-discrimination laws. SAAP has been cited as an area where young people with a disability seek assistance but which does not always meet their needs.⁸¹ SAAP operates in a way that excludes children and young people with a disability from the supports. Such exclusion occurs for a range of reasons including:

- the inability of SAAP workers to deal with the challenging behaviour of many children with a disability which results from previous abuse and neglect. Often, SAAP services call the police to deal with such behaviour, increasing the children's involvement in the juvenile justice system. This is counterproductive given that sector's emphasis on punishment and rehabilitation rather than assessment, intervention and support services;
- because many children with disability in SAAP are not identified as having a disability when they enter the program their specific support needs are not necessarily addressed;
- there is a lack of interagency cooperation that could assist a person with a disability including practice agreements between SAAP and other services;⁸²
- no monitoring of children and young people in SAAP occurs because they are not considered to have been in institutional care and it is often unclear whom has responsibility for such children, including in relation to medical treatment.⁸³

Measures to support deinstitutionalisation and permanency planning

5.67 In recent years there has been increased awareness of the need for a mix of services to assist people with disabilities. Choices could include group homes, home-based support services and individualised funding packages and cluster housing that could involve various people such as families.

5.68 The Committee is aware of a need for the continued development of community specialised and generic disability services so that intensive family

79 *Committee Hansard* 4.2.04, p.78 (People With Disability Australia Inc).

80 SAAP provides transitional supported accommodation and associated services to help people who are homeless or at risk of homelessness.

81 *Submission* 165, pp.17, 21 (People With Disability Australia Inc).

82 *Submission* 165, pp.15-17 (People With Disability Australia Inc).

83 *Submission* 77, pp.13-14 (Disability Council of NSW).

supports are adequately funded. As well, there is a need to consider what is best for the child and the effects for families of having a child or children with a disability. PWD noted that to a large extent, early intervention can assist in ensuring that a child or young person with a disability does not need to be placed in out-of-home care, an event which is usually accompanied by a crisis which often leaves parents unable to cope and does not necessarily result in a good outcome for the child or the family.⁸⁴ A variety of early intervention measures are required including those to ensure that children's educational or development needs can be met within their communities. A number of organisations noted the need for collaborative approaches:

When we are talking about a primary support system we are talking about the development of family support services that would provide emotional and practical support to families, and the development of clinical services that a family can draw on. In the case that you talk about that means specialised behaviour intervention and support services that can teach families behaviour management skills so that they know how to teach a child who is not able to verbalise other ways to communicate so the frustration does not result in the child lashing out at siblings, perhaps teachers at school or perhaps mum and dad, and a whole range of other components that would be essential to be able to keep kids in families.⁸⁵

The children and families service system must be able to respond to the needs of all children, whether they are from culturally linguistically diverse backgrounds, Aboriginal and Torres Strait Islander backgrounds, or if a child in the family has a disability.⁸⁶

5.69 The Disability Council of NSW emphasised a need for changes to child protection practices so that family preservation becomes the preferred model. It was noted that this would require training for child protection workers including to identify ways to assist parents who find it difficult to care for the child.⁸⁷ The Committee noted the positive aspects of a range of practical assistance measures. PWD cited the findings of the NSW Law Reform Commission about a range of basic assistance measures for families with children with disabilities:

The greatest emphasis should be placed on giving the family the support that it needs to care for the child at home. This is really about very practical interventions like domestic assistance – someone to help with a bit of the housework from time to time. Often the child will generate more washing than other children might...Having some attendant support around mealtimes is often very helpful because the child might take additional time to eat and so forth. Home modifications are often a critical issue. If a child has cerebral palsy or some other significant physical disabilities, young families, especially those in our large cities where housing is a very large

84 *Committee Hansard* 4.2.04, p.81 (People With Disability Australia Inc).

85 *Committee Hansard* 4.2.04, p.81 (People With Disability Australia Inc).

86 *Submission* 77, p.15 (Disability Council of NSW).

87 *Submission* 77, p.16 (Disability Council of NSW).

cost, would benefit from government intervention that would allow them to modify their homes. Then mum would not have to carry a 50-kilo child upstairs and wreck her back.⁸⁸

5.70 Family Advocacy cited an example of institutional care for children with disabilities that works well with permanency planning and support:

In Queensland, in the early 1990s, there was an institution called Xavier children's nursing home...which housed 54 children and young people with disability who were medically frail and had very high support needs. A policy decision was taken to close that institution on the premise that children belong in families. Under that premise, every one of those children and young people was either returned to their birth family or placed in alternative families who were properly supported, as the birth family was properly supported. There was an assumption that they were children first, a belief that it could work and supports were built up to make it work.

Unfortunately, our experience in New South Wales has not been nearly so positive because there is not a framework of permanency that says, 'Children belong in families and we need to plan for them in a lifelong way'. There is not a system that supports and believes that it can be possible. Therefore, group homes become the mechanism that is developed. But we do have experience even here in Australia that shows it being done successfully, even for children with the highest support needs.⁸⁹

Non-government and government assistance measures

5.71 A number of submissions and evidence cited a range of programs for children with disabilities. For example, the Disability Council of NSW advised that programs such as Family Options, Victoria; Options Coordination, South Australia; and, Melanie's Program in NSW, demonstrate that children with complex medical needs or challenging behaviour can grow up in a family, provided that the right support is available.⁹⁰ Catholic Welfare Australia cited Melanie's Program, Sydney, where long-term foster care is provided for children aged 0-12 years who have moderate to severe physical and/or intellectual disabilities.⁹¹

5.72 Western Australia's Mofflyn described its Family Care Program that provides placements in families for children with severe and/or multiple disabilities in group houses. The program includes assessments of origin families and foster families to ensure positive matching of children, support to assist children as they grow and their needs change and measures to assist origin families cope with their sense of loss and grief and case management including advocacy for carers and children. Mofflyn cited its high success rate for placements, the commitment of carers, positive feedback to

88 *Committee Hansard* 4.2.04, p.79 (People With Disability Australia Inc).

89 *Committee Hansard* 4.2.04, p.78 (Family Advocacy).

90 *Submission* 77, p.15 (Disability Council of NSW).

91 *Submission* 71, p.19 (Catholic Welfare Australia).

families and best practice standards about the management of cases and family numbers as indications of the program's positive aspects.⁹²

5.73 Family Advocacy pointed to the local support coordination system for disability services which is operating in some Australian States:

...it builds from the person in the community and it builds their informal networks of support and uses resources in a much more tailored way. Each...individual or family really has a significant control over the ways in which the resources that are targeted for them are used...reviews, including by the Productivity Commission...have shown them to be significant value for money.⁹³

5.74 In Western Australia, the Disability Services Commission funds consumers for supports through the Commission's Local Area Coordination program, where supports are individually tailored around specific needs of families and a family member with a disability. Based on voluntary engagements between the family, the person with a disability and its services, the program aims to support families and complement family strengths. The Commission funds and assists with organising a range of in-home or out-of-home options for families where children have a disability, and the options that have been funded include foster care, host family, co-residency models and a limited number of group home situations.⁹⁴

5.75 In Victoria, some children with disabilities needing out-of-home care are placed through mainstream foster care or permanent care programs, and additional support can be provided to caregivers. Many are placed through the specialist Family Options Program, which provides higher levels of support to specifically recruited specialist foster carers.⁹⁵

5.76 In noting its Family Support Program for families with children with disabilities, the Queensland Government cited a 2002 program evaluation which found that many families had developed the capacity to continue with the long-term care of their child in ways which met the needs of the family and the child, thus creating a preventative rather than a crisis intervention approach.⁹⁶

5.77 The advocacy group, PWD, auspices the National Disability Services Abuse and Neglect Hotline, funded by the Commonwealth Department of Family and Community Services. It is an Australia-wide hotline for reporting abuse and neglect of people with disability, including those children who use Commonwealth, State or

92 *Submission* 160, p.11 (Mofflyn).

93 *Committee Hansard* 4.2.04, p.80 (Family Advocacy).

94 *Submission* 84, pp.2-3 (Disability Services Commission WA).

95 *Submission* 173, p.16 (Victorian Government).

96 *Submission* 125, p.8 (Queensland Government).

Territory funded disability services. As noted later in the chapter, the hotline receives information about a wide range of abuse of people with disabilities.⁹⁷

Funding and income supports for children with disabilities

5.78 Under the CSTDA, all Australian governments co-operate to fund and provide disability support services. The third CSTDA covers the five-year period, 2002-2007. While in 2000-2002, governments provided an extra \$519 million in response to the unmet need for services, the need for additional resources for early intervention services for children (including aids, equipment and therapy) and for families to have a break from constant caring, remains urgent.⁹⁸

5.79 The Queensland Government submitted that under the Family Support Program for children with disabilities, 2002-2003 funding was \$10.2 million and its 2003-2004 Budget provided significant extra funding over four years to support additional families with children with a disability to maintain their family unit.⁹⁹

5.80 Families may receive the non-means tested Carer Allowance (Child) if they look after a child with a disability or severe medical condition. Centrelink uses the Child Disability Assessment Tool to assess medical eligibility for the Allowance by measuring the child's functional ability. A list of severe disabilities and chronic medical conditions allows fast-track entry to the Allowance for children with more severe conditions. Families are eligible to receive the more generous Carer Payment if they provide constant care in their home for one or more children under the age of 16 years with a profound disability or medical condition, and meet the income and assets tests.¹⁰⁰

Need for apology to children and young people with disabilities

5.81 A number of organisations emphasised the need for an apology to children and adults with disability who have been abused and/or neglected in institutions. PWD suggested that such groups be consulted about any acknowledgment or apology. The organisation considered that such a gesture would only be meaningful if accompanied by a commitment to genuine and immediate deinstitutionalisation in conjunction with intensive family support and family-based programs as well as collaborative interagency services including health, police, education and housing. PWD emphasised that people with disabilities need to be included in any consideration of reparation measures to people who have been in care and should be afforded the same access to opportunities as other people.¹⁰¹ The Disability Council of NSW saw the

97 *Submission 165*, p.5 (People With Disability Australia Inc).

98 ACROD, 'Children with a disability', *Factsheet*, May 2004, p.2.

99 *Submission 125*, p.7 (Queensland Government).

100 ACROD, 'Children with a disability', *Factsheet*, May 2004, p.2.

101 *Submission 165*, p.24 (People With Disability Australia Inc).

need for an acknowledgment, apology, financial compensation, as well as services such as education, training, counselling and other support as recommended in the Forde Inquiry in Queensland.¹⁰² Issues surrounding the giving of apologies and linking them with positive actions and the provision of services were discussed in chapter 5 of *Forgotten Australians*.¹⁰³ A number of churches and agencies have commenced issuing apologies or statements of regret with plans of action to be taken. These are noted in chapter 1 of this report.

Initiatives suggested by organisations

5.82 The Committee received many suggestions on ways to improve the lives of children and young people with disabilities in care, and their families, including evidence which called for the Commonwealth Government to consider overseas initiatives for introduction in Australia. PWD cited the Canadian government's draft national plan of action for children and young people that attempts to achieve this.¹⁰⁴

5.83 Other recommendations included:

- the appointment by all States and Territories of independent children's commissioners whose functions would include monitoring compliance with the United Nations Convention on the Rights of the Child;¹⁰⁵
- an incorporation of the Convention's principles into legislation such as the NSW *Disability Services Act 1993*;¹⁰⁶
- more active Commonwealth involvement in developing social policy and legal and political consciousness of children and young people with disability as children and young people first, and the implementation of national legislation in line with the Convention;¹⁰⁷
- the appointment of a national children's commissioner to meet Australia's national obligations under the Convention for children with disabilities.¹⁰⁸

Vulnerability of children and young people with disabilities

5.84 Children and young people with disabilities are vulnerable to all forms of abuse. They are the most likely group in society to be institutionalised yet they are often placed in venues which are the least able to protect them. The abuse of people with disabilities is characteristically invisible and underreported. People with

102 *Submission 77*, p.17 (Disability Council of NSW).

103 *Forgotten Australians 2004*, pp.197-198.

104 *Committee Hansard 4.2.04*, p.76 (People With Disability Australia Inc).

105 *Submission 165*, p.25 (People With Disability Australia Inc).

106 *Submission 77*, pp.18-19 (Disability Council of NSW).

107 *Committee Hansard 4.2.04*, p.76 (People With Disability Australia Inc).

108 *Submission 165*, p.25 (People With Disability Australia Inc).

disability generally do not have their complaints taken seriously or have the capacity to bring them to public attention where they might be able to secure help or justice to redress any problems of abuse or neglect. Often an individual's impairment may result in an inability to understand what is occurring and to know who to approach for help. Compounding these factors is that any reporting of abuse against care givers can be difficult given a person's dependence on care givers for their basic needs.¹⁰⁹

5.85 PWD quoted studies, reports and inquiries from various countries and institutions which identify some aspects of the vulnerability of this group of people:

abuse and neglect is perpetrated by care workers, including those who prey on vulnerable children

abuse and neglect is sanctioned by inappropriate formal or informal policies and guidelines, such as behaviour management strategies that rely on physical punishment and restraint, timeout and medication

abuse and neglect is a result of the design of the institutional system, which relies on isolated environments, untrained or inadequately trained staff, lack of monitoring or accountability of both staff and the institution and lack of attention to the medical, health, nutritional, developmental and privacy needs of children.¹¹⁰

5.86 The Disability Council of NSW argued that emotional abuse from abusive and neglectful environments leaves children growing up without any consistent carers to nurture and affirm their relationships, resulting in them having no power about decisions or choices and being more vulnerable to abuse and 'powerless' in asserting their needs and wishes.¹¹¹

5.87 PWD noted that the Aboriginal Child Placement Principle outlines an order of preference for the placement of Aboriginal children who cannot live with their families so that placements should be within the child's extended family, community or failing that, with other Aboriginal people. PWD advised that despite national recognition of the Principle, it appears to have only limited application and services often fail to provide the necessary support for Aboriginal children with disability to remain in their own communities.¹¹²

Examples of abuse in care

5.88 The Committee received substantial evidence about abuse of children and young people with disability in out-of-home care, including details of a Community Services Commission (CSC) report of physical and sexual abuse, in institutions for

109 *Submission* 165, pp.22,25 (People With Disability Australia Inc).

110 *Submission* 165, p.10 (People With Disability Australia Inc).

111 *Submission* 77, p.8 (Disability Council of NSW).

112 *Submission* 165, p.20 (People With Disability Australia Inc).

children with disability where children could be unsafe and in extreme cases, children died. The CSC noted the behavioural management strategies of some institutions:

...[in] 1997, Community Visitors noted that the incident report file for a four-year-old resident recorded eight incidences of 'time out' being used for 'naughty or non-compliant' behaviour over a ten-week period. Using what amounts to solitary confinement on such a young child to control behaviour that most four-year-olds exhibit is a serious infringement of human rights.¹¹³

5.89 Categories of abuse reported to the National Disability Services Abuse and Neglect Hotline have been wide ranging and related to various places such as immigration detention centres, hospitals and mental health facilities and juvenile justice facilities. Cases of abuse have included physical, sexual, psychological, legal and civil, as well as financial abuse.¹¹⁴ Family Advocacy noted that in NSW, a number of independent, quasi-judicial reports show that in the last few years in some institutions, children 'have starved almost to death and that some of them have died':

That has occurred because the staff ratios and the staff training have not permitted those children to eat sufficient nutrition to be able to survive.¹¹⁵

5.90 A specific example of abuse in care relates to an institution in New Zealand conducted by an Australian group, the St John of God Order:

Campbell attended from 1966 to 1974...I was increasingly concerned at how withdrawn he became over these years. Also of concern was the dishevelled and grubby state both he and his clothes were at term holidays...He was always very reluctant to return after the holidays and I would literally carry him into the plane and do up the seat belt and walk out leaving him screaming. We weren't allowed to take him back by car from Central Otago where we lived. In hindsight I see that rule as an attempt to keep us at arms length. Never in eight years did one Brother speak longer than two minutes with me and when we took him back after 5 years of him having left Marylands they just didn't want to know him or us which I felt strange at the time!...In late January 1995 I mentioned to Campbell that a certain Br Bernard McGrath was in jail. 'What for?' asked Campbell. I told him for sexual abuse 'did he ever touch you', pause then he replied 'I don't think so'. Eight weeks later he hung himself dressed in 'female clothing' which sexual abuse advisers assure me is indicative of having been abused.¹¹⁶

113 *Submission 77*, p.7 (Disability Council of NSW), citing Community Services Commission (CSC), *Suffer the children: the Hall for children report*, NSW Government, Sydney, 1997, pp.4-7.

114 *Submission 165*, p.5 (People With Disability Australia Inc).

115 *Committee Hansard 4.2.04*, p.83 (Family Advocacy).

116 *Submission 288*, p.1.

5.91 The Committee notes a recent decision in the Downing Centre Magistrates Court in Sydney to extradite to New Zealand a priest and brother from the Order to face child sex charges arising from allegations of abuse perpetrated during the 1960s and 1970s at the Marylands school in Christchurch which cared for many boys with an intellectual or learning disability. The men were tracked down in Australia after Christchurch authorities began collating complaints from alleged victims in 2002 thereby sparking a full-scale investigation.¹¹⁷

5.92 The Order of St John of God has also been the subject of many reports of abuse of children in their institutions in Australia. The Order's homes in Cheltenham and Lilydale, Victoria, were cited as places of substantial abuse of boys with some form of intellectual disability including Down Syndrome, as Broken Rites noted:

We have received many stories from the former residents of the Cheltenham Home about the operations of a ring of paedophiles who were Brothers in the Order. Allegations have also been made about one or two of the male employees at the home being paedophiles. A second group of callers to Broken Rites have been the parents and relatives of intellectually disabled men who were in residential 'care' at Yarraview. They too were making complaints and allegations about the activities of paedophiles taking place in the eighties. Again the alleged offenders were Brothers in the Order.¹¹⁸

5.93 As mentioned, people including children and young people with certain types of disabilities, are often unable to communicate or report any instances of abuse towards them, to anyone who may be able to help them. The Committee received concerning evidence about the abuse of a young Down Syndrome person in a Queensland care facility where he had been placed by his ageing parents, with the financial assistance of a Queensland Government grant. Initially, the young man was very happy and settled in well. His parents had chosen the facility for a number of reasons including that it was small and was able to provide the specialised communication program which had been successful for him.¹¹⁹

5.94 Some months after, however, the young person returned home with discernible behavioural changes including being very subdued, withdrawn and lacking his communication and independence skills. He also had substantial health concerns such as infectious sores, gingivitis, psoriasis, problems with his central nervous system and a hearing impairment from being hit across his ear over a long period. He was subsequently diagnosed with Post Traumatic Stress Disorder. His parents found that their son had not only been sexually abused by two alleged paedophiles, one of whom was a volunteer from interstate, but had also been cruelly treated including via regular, inappropriate manipulation to his mouth, tongue and jaw as part of the volunteer's technique to teach him to speak.

117 AAP, 'Catholic priest and brother to be extradited to NZ', 14.2.05.

118 *Submission 79*, p.8 (Broken Rites [Australia] Collective Inc).

119 *Confidential Submission*, pp.1-2.

5.95 The young man refused to return to the facility. He was so afraid of sleeping alone that he slept on his parents' bedroom floor for seven months, only returning to his bedroom when in the company of his dog. Among the legacies of his time in the facility are a fear, with one exception, of male carers and a refusal to go anywhere near large crowded centres or even to his 'beloved library', for fear of reprisals from the men who abused him and also had threatened harm to his parents.¹²⁰

5.96 Apart from the obvious concerns about paedophiles in the care facility, the young man's parents have highlighted other problems such as the employment of inexperienced people, increased numbers of inmates and a marked decline in attention, and the attempted manipulation of them by management. They also expressed reservations about the government department including its seeming inability to control the use of the funds which it allocated to the facility and its acceptance of the young man's signature on a form, despite that he is not really equipped to sign, particularly concerning given that it related to the expenditure of large sums of government money. They also stated that the care facility had previously been the subject of complaints to the government department including by another child about the same carer, who, it was claimed, 'was now employed by Disability Services Queensland' and that those previous complaints had not been acted upon.¹²¹

5.97 The Queensland Government provided information on another matter relating to abuse. It advised of investigations in 1993 by the former Criminal Justice Commission into allegations of abuse and neglect of clients in the Basil Stafford Centre, a government-run accommodation and care institution for intellectually disabled people, including children. The investigation uncovered evidence of serious wrongdoing. In March 1995, the Honourable DG Stewart recommended its closure. At the time of the Stewart Inquiry, 17 residents at the centre were children aged under 16 years. The Queensland Government advised that Mr Stewart's recommendations were reviewed first in 2000 and again in 2001; findings did not uncover allegations of maltreatment of children in the centre.¹²²

5.98 The Queensland Government also noted investigations into management and service delivery practices of the Cootharinga Society which provides disability services such as accommodation to children and adults. The Government advised that an examination of the services found them to be of a high standard, with no evidence of abuse or neglect of children cared for by the society.¹²³

120 *Confidential Submission*, pp.1-2, 5.

121 *Confidential Submission*, pp.8-12.

122 *Submission 125*, p.6 (Queensland Government).

123 *Submission 125*, p.7 (Queensland Government).

Conclusion

5.99 There is substantial unmet need for children with disabilities including for those living at home with their families. It can be hard to obtain national figures on the numbers or other information on children and young people with disabilities in out-of-home care, for various reasons including that any material on disability issues tends to be about adults. It can also be difficult to gain a clear picture of the differing responsibilities in the provision of disability services between the Commonwealth and State and Territory governments. A point made by the Western Australian welfare agency, Mofflyn, perhaps best describes this situation:

There are many services offered to children with disabilities; they tend to be very *ad hoc* and it is difficult to know which agencies are offering which services at any one time.¹²⁴

5.100 The Committee agrees with the view that the lack of services for families with children with disabilities is an abuse in itself especially since such groups have greater needs than the rest of the community for counselling, support with housing, financial management, connections to other services and respite care.¹²⁵

5.101 Further, families and individuals with a child with severe disability face many problems including personal and financial stress, a limited social life, reduced time and energy for other family members, reduced career opportunities, extra demands of school holidays, physical and emotional tiredness and feelings of low esteem.¹²⁶ If ever there is a sector in the community that needs assistance it is people, including children and young people with disabilities. However, at times, the system seems stacked against them and they seem to be often overlooked by policymakers. The Disability Council of NSW suggested that it is possible that because of notions developed over time that parents do not need to 'bear the burden' of raising a child with a disability, such children are being overlooked in public policy and community debates.¹²⁷ As well, PWD highlighted the difficulties for the disability sector which is competing for resources with other needy areas requiring government assistance.¹²⁸

5.102 The Committee has considered many suggestions put forward on ways to improve the lives of children and young with disabilities and their families and has identified some specific areas of need. These are discussed below.

124 *Submission* 160, p.11 (Mofflyn).

125 *Submission* 160, p.12 (Mofflyn).

126 Bain 1998, 169, pp.598-600.

127 *Submission* 77, p.3 (Disability Council of NSW).

128 *Committee Hansard* 4.2.04, p.81 (People With Disability Australia Inc).

Need for family support and assistance

5.103 There is a need to explore options that could work for families to ensure that they can keep their children, whether that be on a full or part-time basis, perhaps with the assistance of an appropriate small institution. For families, any decision to place their children with disabilities in care is simply a 'no-choice' one, made only after a great deal of personal pain and anguish. Many families do not have any family support; often they have other children to care for; their homes are not set up to care for children with disabilities, and, in many service areas, support is lacking. Realistically, the term 'voluntary' is a misnomer.

5.104 Assistance for families to keep their children at home if they wish is vital. Evidence has served as a reminder of many possibilities or combinations of options which could suit a number of family circumstances. Assistance options might include shared care arrangements such as a mix of houseparents and natural families, combined with support for parents and families to have contact with their children if they wish. Obviously, smaller residential care environments with small numbers of children and young people would be preferred, especially if that allowed for a consistency of adult carers and easy access to a child's or young person's parents and extended family.

5.105 While a family may be happy to have their children at home, the care required is stressful, demanding, labour-intensive, constant, costly, tiring and mostly unacknowledged. A 1993 United States study found that families who placed their child in a residential facility were more likely to continue a high level of contact with their child than did previous generations. Tangible benefits for other family members occurred when the child with disabilities was placed elsewhere, including being able to access better employment and educational opportunities.¹²⁹

5.106 Some parents may want to use group homes with rostered staff particularly if they provide long-term security, have trained staff and allow birth parents influence over decisions about the child's welfare. Rostered staff carers can resist 'burnout' and often develop a familiarity and attachment to the child, even when it is not strongly returned. A successful situation of 'permanency' might be achieved if the child lives in such a home with ongoing contact with their birth family on important issues for the child such as educational and medical matters. However, studies have shown that developmental opportunities claimed for special foster care are unlikely to be realised for children at the lower levels of intellectual functioning.¹³⁰

5.107 Among key issues for permanency planning success are that culturally appropriate services should be provided and that children live with a family most of the time. As mentioned, the use of residential services especially those that provide individualised attention to the child's social-emotional and cognitive development,

129 Bain 1998, pp.598-600.

130 Bain 1998, pp.598-600.

may be just as good as other options such as alternative family care. Certainly, the success of Anglicare's Kingsdene School has demonstrated this theory, and may well be a model worth emulating across Australia.

5.108 There is a need for diversity in the provision of out-of-home care for children and young people with disabilities. Many children and young people can have their needs met by staying with their families, along with support and assistance measures. For some children with high needs, a level of care is required that can only be met by residential care staffed by highly-trained professionals and in that sense there may need to be more in-house care, provided it is properly staffed and staff are monitored. Therefore, a continuum of options and various forms of respite care will be required.

Consideration of legislative and policy issues

5.109 Legislative protection for children in out-of-home and residential care is especially pertinent to children with disabilities as they are more likely than other children to live in voluntary care. The Committee considers that all legislation relating to children and young people with disabilities needs to take account of factors such as the rights of children with disabilities, services required, culture and identity issues, especially for Aboriginal and Torres Strait Islander children and those from non-English-speaking backgrounds and the special needs of children and young people with disability to ensure access to services such as education, health, rehabilitation, transition to employment and opportunities for social integration and individual development. Simply, children and young people with a disability must have the same basic human and legal rights as other children and young people in Australian society.

5.110 The Committee agrees with recommendations put forward that legislative coverage for children with disabilities should apply to care facilities and services where children with a disability reside as well as to advocates and advocacy services.

5.111 In that context also, PWD has noted a need for improvements in aspects of the standards, laws and government policy processes relating to the needs of children and young people with disabilities, including those relating to having: better systems of enforcement regarding complaints and investigative powers; the development of effective cross-government and inter-agency responses to the abuse and neglect of children; research on Aboriginal and Torres Strait Islander children with disability; a comprehensive framework of independent individual and systemic advocacy for children and young people; better education of judiciary and legal profession to ensure consistent understanding and commitment to meeting the needs of children with disability.¹³¹

5.112 There may well be a need for better collaboration among policymakers conversant with the needs of children with disabilities and Australia's law-making processes, in the day-to-day oversight and administration of the law and for the

131 *Submission 165*, p.25 (People With Disability Australia Inc).

assistance of legal practitioners with knowledge of disability issues and a familiarity with the wide-ranging problems for children with disabilities. It may be that training is required to ensure that lawyers and members of the judiciary are more cognisant of the everyday lives of children and young people with a disability and the impact of aspects of legislation and common law decisions on children's lives.

5.113 A review of policies and practices as well as research into the laws, legal framework, practices of the legal profession and judiciary and teaching and courses of university law schools, as they relate to children and young people with disabilities, would be worthwhile. It would be useful to ascertain how the barriers to accessing legal assistance might be broken down for such groups and become better understood for children and young people with disabilities and their families. Such reviews could be conducted in conjunction with other areas of social policy and disciplines.

Deinstitutionalisation assistance

5.114 It is imperative that whatever form deinstitutionalisation take, that the necessary supports are in place to ensure its processes can work. In that sense, policymakers would need to consider ways to make deinstitutionalisation work with the necessary supports for young people in group homes and community settings. Obviously, such situations will require professional staff to ensure that residents of community homes are properly cared for with regular meals, monitoring of activities and in administering medicines and treatment. For children with disabilities, who cannot live with their birth families, it is important that policies be directed to assisting with placements with family environments that recognise childhood needs and where possible, maintain shared care with birth families.

Recommendation 10

5.115 That the State and Territory Governments consider the information in this report and use as a base on which to assist in providing more flexibility in accommodating and caring for children with disabilities, particularly where families can have their children at home. Such considerations would include an examination of a mix of living arrangements such as institutional care combined with options for children to return to families at particular times; week-day residential schools; and other options including various combinations of living at home with families, residential and respite care and foster care, along with a mix of carers and support. Where required, options could include the use of high-level residential care facilities and highly-trained professional staff and with an emphasis on ensuring that where necessary, the quality of care and actions of the staff are monitored.

Recommendation 11

5.116 That State and Territory Governments enlist the expertise of policymakers in disability and other areas of social policy when formulating laws for children and young people with disabilities, so that legislative provisions take account of the special needs of children and young people with disabilities and

are broad ranging in their application, including in relation to residential facilities and services for children with a disability as well as to the actions of advocates and advocacy services.

Recommendation 12

5.117 That the Commonwealth, State and Territory Governments examine ways to break down the barriers to legal assistance for children and young people with disabilities and their families; make the law more easily understood for such groups; and harness the expertise of practitioners in social policy and other disciplines to formulate laws to better serve all people with disabilities.

Recommendation 13

5.118 That the Australian and/or State Law Reform Commissions conduct research among legal practitioners to ascertain their knowledge and expertise in areas of disability and the law. The outcome of such research would highlight the need to introduce measures to educate lawyers so that they are better able to advise clients about laws affecting the lives of people with a disability, particularly in explaining the impact of certain legislative provisions and common law decisions for children and young people with disabilities. Such investigation might also include examining ways to encourage legal practitioners to offer *pro bono* services to children and young people with disabilities, who cannot afford legal fees.

Recommendation 14

5.119 That, where applicable, all jurisdictions amend their *Disability Services Acts* to ensure that terms relating to people with a disability, specifically include children and young persons, as well as adults. This may require additions to legislation to include principles and applications for children and young people with a disability.

Recommendation 15

5.120 That the Commonwealth Government encourage the New South Wales Government to take note of the evidence presented to this inquiry and proclaim ss.155 and 156 of the *Children and Young Persons' (Care & Protection) Act 1998*, so that all children with disabilities in care, including those who have been voluntarily placed, have broad-ranging legislative protection and monitoring of their care.

CHAPTER 6

CHILDREN AND YOUNG PEOPLE IN JUVENILE JUSTICE AND DETENTION CENTRES

Children and young people in juvenile justice centres

6.1 The Committee received evidence relating to children and young people in juvenile justice centres. The following discussion provides a broad outline of some of the many issues facing children and young people in the juvenile justice system.

Legislative framework

6.2 Across Australia, State and Territory legislation provides a framework to deal with young people who are suspected or convicted of committing a criminal offence and applies to situations where young people may be placed in a juvenile justice centre. As with aspects of Australia's mainstream care and protection laws for children and young people, their provisions vary among jurisdictions. Examples of legislative provisions outlined to the Committee include the following. The Tasmanian Commissioner for Children noted that under s.124(1) of the Tasmanian *Youth Justice Act 1997*, children and young people in custody at a juvenile justice facility, either on remand or for a conviction, are the responsibility of the Secretary of the Department of Health and Human Services.¹ The Western Australian Department of Justice submitted that that State's *Young Offenders Act 1994* recognises that juvenile offending is transitory and minor, and that young offenders should not be given a greater punishment than an adult for a similar offence.²

6.3 The Commonwealth has direct responsibility for young federal offenders, who are dealt with by procedures laid down under the *Crimes Act 1914* (Cth). Offences for which a young person may be charged under the *Crimes Act 1914* (Cth) include damaging federal government property. The Commonwealth has also assumed responsibilities relevant to juvenile justice processes under international instruments. Articles 37 and 40 of the United Nations Convention on the Rights of the Child have set down principles for the treatment of young suspects and offenders and require States Parties to develop and maintain a separate juvenile justice system.³

6.4 The Australasian Juvenile Justice Administrators endorsed the Standards for Juvenile Custodial Facilities in March 1999.⁴ The standards are based on the United

1 *Submission 277*, p.1 (Office of the Commissioner for Children Tasmania).

2 *Submission 177*, p.8 (WA Department of Justice).

3 Australian Law Reform Commission (ALRC), *Seen and heard: priority for children in the legal process*, Report No. 84, Human Rights and Equal Opportunity Commission, 1997, p.467.

4 Australian Institute of Criminology – <http://www.aic.gov.au>

Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the UN Convention. Included in the standards' objectives are those to ensure a safe and secure environment where detainees can be assisted to address their offending behaviour. For example, Western Australia's Department of Justice advised that it had adopted the Standards for Juvenile Custodial Facilities in July 2000 and managed juveniles in detention in line with such principles.⁵

6.5 The Queensland Commission for Children and Young People advised of its legislative responsibility to receive, seek to resolve, monitor and investigate complaints about services provided to children under child protection or juvenile justice orders, in government and non-government organisations which are in receipt of government funding. As such, services received by children in youth detention centres are matters of complaint which may be received by the Commission. The Commission advised that under its Community Visitor Program, 24 community visitors State wide visit children in out-of-home facilities such as youth detention centres and authorised mental health services.⁶

6.6 Jurisdictions have a range of options for dealing with young offenders who come before a court. These include community-based and custodial orders. Custodial orders result in young offenders being sent to a variety of juvenile justice facilities.

Children and young people in the juvenile justice system

6.7 Young people may be in a juvenile justice centre for a number of reasons. They could be on remand and awaiting a court appearance and as such, have not been sentenced. Alternatively, they have been sentenced for an offence.

6.8 Over the years, that children who had not committed offences have often been placed in juvenile justice centres in Australia, is well known, as noted in *Forgotten Australians*:

Children could be placed in juvenile detention centres despite not having committed a criminal offence...the mixing of welfare and criminal cases in detention centres became a hallmark of dealing with young people in the juvenile system...the by-product of such indiscriminate mixing of children in detention centres 'bred' criminals.⁷

6.9 Submissions commented that nowadays young people are at times placed in juvenile justice centres because there is nowhere else for them or because of system failure, as the following excerpt demonstrates:

I was 13 when I went to stay at Minali for what was to have been one night and turned into 8 and a half months of hell. The co-ordinator who escorted

5 *Submission 177*, p.8 (WA Department of Justice).

6 *Submission 72*, p.2 (Queensland Commission for Children and Young People).

7 *Forgotten Australians*, p.38.

me kept telling me to stop crying and shut up...[my caseworker said] I would only be there for the night and to calm down. This caseworker left a week later...and my case file was not handed on to anyone else, and as my computer file is a secure file it is locked with a password and most people cannot access it.⁸

Numbers and background of children and young people in detention

6.10 Evidence indicates that there was a general decline in the number of young people aged 10 to 17 years in juvenile detention in 1994-2003. At 30 June 1981, there were 1352 young people detained in juvenile detention facilities, whereas at 30 June 2003 only 640 juveniles were recorded as detained.⁹ The NSW Commissioner for Children and Young People noted that 'a greater awareness of the limited rehabilitative power of detention for children and youth and great legal protections for them are reflected in the declining numbers detained'.¹⁰

6.11 The ALRC has noted that many children and young people in the juvenile justice system have had extensive experience of the care and protection system.¹¹ Youth Off The Streets stated that 'the difficulties encountered by children and youth placed within the child protection system (often shared clients with juvenile justice involvement) are mirrored within the juvenile justice system'.¹² The NSW Commission for Children and Young People cited 1993-1994 figures from the Community Services Commission that males were 13 times more likely and females 35 times more likely to be admitted to detention centres if they were state wards, than if they were not.¹³ Centacare-Sydney noted studies showing a strong link between the care system and the juvenile justice system and a subsequent link between the juvenile and adult justice system.¹⁴ Evidence from the WA Department of Justice cited statistics showing a high likelihood of juvenile detainees later becoming adult detainees in the justice system.¹⁵

6.12 Significant numbers of children who have come under the care of the State and Territories' care and protection systems because of child abuse and maltreatment, may have a 'direct path' to instances of juvenile offending. An Australian Institute of Criminology (AIC) study of 41 700 Queensland children who had been the subject of substantiated cases of child maltreatment or classified as being 'at risk' found that

8 *Submission* 69, p.9 (CREATE Foundation)

9 Australian Institute of Criminology (AIC) 'Juvenile detention rates 1994-2003', *Crime Facts Info*, No 87, 14.12.04.

10 *Submission* 35, p.7 (NSW Commission for Children and Young People).

11 ALRC 1997, p.103.

12 *Submission* 81, p.4 (Youth Off The Streets).

13 *Submission* 35, p.7 (NSW Commission for Children and Young People).

14 *Submission* 82, p.6 (Centacare-Sydney) quoting Vinson 1974 and CAMA Report 1996.

15 *Committee Hansard* 9.12.03, p.77 (WA Department of Justice).

children who have suffered maltreatment, particularly physical abuse and neglect are more likely to offend than other children. The AIC examined situations for indigenous and non-indigenous offenders, taking account of factors such as gender, types of abuse, children's and young people's ages when abused and children's particular vulnerability. The study acknowledged that many incidents of maltreatment are not reported or do not proceed to court (which has obvious effects on the data). Its findings included that:

- children with one or more substantiated maltreatment notifications were more likely (17 per cent) than children with no substantiated maltreatment (10 per cent) to have a later offending record;
- children with out-of-home placements, likely to be predictive of severity of maltreatment, are more likely to offend than children who do not receive an out-of-home placement; and
- while maltreatment did not seem to account for differences in male and female offending...more females than males experienced persistent maltreatment or maltreatment only in adolescence.¹⁶

6.13 In the light of the above AIC research, the following excerpt aptly describes the circumstances that often provide a pathway to juvenile detention for young people:

If you were interested in creating a criminal you would have a pretty good chance if you took a young person from a seriously troubled home, put them into a series of foster or group homes, changed their primary worker on a regular basis, let them run away from 'home' at an early age, allowed them to drop out of school and enabled them to develop a drug and/alcohol addiction. Your chances would improve if, somewhere in their lonely and painful existence, they had been sexually, physically or emotionally abused. If in those few instances that they sought help you would ensure that there were no accessible services, that the workers they encountered were rushed and overwhelmed by heavy caseloads, and that they would be seen first and foremost as trouble rather than troubled, is it surprising then that these young people would become perpetrators or victims of crime?¹⁷

6.14 As a 1990 South Australian study found, most of the young people in custody on remand, came from a '...chaotic social background and were without education and family support'.¹⁸

16 Stewart A, Dennison S & Waterson E, 'Pathways from child maltreatment to juvenile offending', *Trends and Issues*, No 241, AIC, October 2002, pp.1-6.

17 Korn Y, 'Strategic directions in the prevention of youth crime', Paper presented at the juvenile crime and juvenile justice: Towards 2000 and beyond conference, AIC, Adelaide, 26-27 June 1997, p.2, citing Youth Voice from the National Youth in Care Network quoted in 'Young People Say' NCPC 1997, p.1.

18 Kosky R, Sawyer M & Gowland J, 'Adolescents in custody: hidden psychological morbidity?', *Medical Journal of Australia*, vol 53, July 1990, p.24.

Experiences of children and young people prior to detention

6.15 As has been widely documented, including in *Forgotten Australians*, many young people in juvenile justice centres, had experienced situations of having no one to turn to for help in the face of abuse, neglect, family tragedy or serious disruption to their lives. The following example of a child's experiences of neglect and family breakdown where the children were dispersed to institutions after their mother died, exemplifies the many stories received about how children and young people became involved in situations that led to their detention. Once in an abusive and harsh institution and without proper care and attention, many children got into further trouble:

...I was fostered out for a short time...I was sent to Mittagong Boys' Home...Mr Saville was cruel, and he used to cane up the hand and across, he opened my wrist on one caning...After absconding I was sent to Albion Street, then to Glebe from Glebe to Mount Penang, a high security boys' home. At this time I was about 13 years old...I was transferred to Muswellbrook Boys' Home...I was not accepted by the inmates or the management...I ran away...next morning I was sent back to Mount Penang, from where I was transferred to Tamworth Boys' Home, which was a former prison for men...I was sent to Tamworth to be 'broken', that's what it was used for by the child Welfare Department of NSW...I was about 14½ at the time.¹⁹

6.16 The correlation between a child's life experiences and entry to the justice system has been recognised and it would be worthwhile for centre managers to know about young people's prior abuse and life circumstances so that treatment and support can be provided. However, the Western Australian Department of Justice emphasised the difficulties in obtaining such data including young people's reluctance to disclose information, a lack of exchange of information across departments and privacy rules.²⁰ Youth Off The Streets noted that:

Community placement and support options, and sentences in detention often do not adequately take account of the young person's history of abuse and the emotional problems driving their criminal behaviour.²¹

Indigenous children and young people in juvenile justice centres

6.17 Many reports into child protection across Australia have revealed that a significant proportion of detainees are people from indigenous backgrounds. Figures from a 2003 ACT Legislative Assembly inquiry showed that the Territory's crime trends are broadly on a par with national trends and also noted, that as with other

19 *Submission* 463, pp.1-4.

20 *Committee Hansard* 9.12.03, pp.75-76 (WA Department of Justice).

21 *Submission* 81, p.4 (Youth Off The Streets).

jurisdictions, indigenous youth are grossly over represented in crime statistics.²² At February 2003, indigenous detainees represented 74 per cent of the 125 juvenile detainees aged 10-18 years in Western Australia. In the same period there were 579 juvenile justice community-based court orders for 541 distinct juveniles. Aboriginal males (41 per cent) had the highest number of orders followed by non-Aboriginal males (29 per cent) with Aboriginal and non-Aboriginal females recording lower rates.²³ The AIC noted that while the rate of detention of indigenous young people had declined between 1994 and 2003, 'the ratio of over-representation has remained relatively stable; with indigenous persons aged 10 to 17 years still almost 20 times more likely to be in detention than non-indigenous persons of the same age group'.²⁴ The large number of indigenous young people in juvenile detention across Australia varies according to the concentration of indigenous communities in particular jurisdictions. As well, in some States such as Queensland and Western Australia, it may be necessary to place a young person facing charges in custody, in order to ensure that he or she is taken to court.²⁵

6.18 Various welfare agency workers outlined their first-hand experience of the high numbers of indigenous young people in Australia's juvenile detention centres:

...[in] the Brisbane Youth Detention Centre you would probably find that 60 per cent of the young people there at this moment are of Aboriginal and Torres Strait Islander descent. We criminalise these young people a lot earlier and we prolong their criminal career because of that.²⁶

It is commonly recognised that young people from Aboriginal and Torres Strait Islander and Culturally Linguistically Diverse backgrounds are over represented in national statistics on school dropout rates and within the care and criminal justice systems.²⁷

6.19 The Corrections Health Service referred to a study of inmates in NSW correctional centres, which included 235 indigenous inmates, that found that indigenous people removed in childhood had almost double the imprisonment rate of those not removed. The Service expressed concern that while the study did not show why the children were removed, the fact that 82 per cent of the removed indigenous prisoners were removed before the age of 10 years, suggests that juvenile justice

22 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, p.71.

23 *Submission 177*, pp.2-4 (WA Department of Justice).

24 AIC, 'Juvenile detention rates 1994-2003', *Crime Facts Info*, No 87, 14.12.04.

25 Norden Fr Peter, 'Are some states or territories more delinquent than others? Inter-jurisdictional comparisons', Paper presented at: Juvenile justice: from lessons of the past to a road map for the future conference, AIC in conjunction with the NSW Department of Juvenile Justice, Sydney, 1-2 December 2003.

26 *Committee Hansard* 12.03.04, p.46 (Father Dethlefs).

27 *Submission 81*, p.6 (Youth Off The Streets).

proceedings were not a primary reason. The organisation also noted that the HREOC report, *Bringing them home*, documented the over-representation of indigenous children in removals for welfare reasons which in most jurisdictions were not subject to legal review.²⁸

Children and young people with disabilities in juvenile justice centres

6.20 A large percentage of juvenile detainees have a disability. People with Disability Australia (PWD) noted many reports indicating that children with disability, particularly those with mental illness and/or intellectual disability are over-represented in the juvenile justice system. PWD stated that in 1993 HREOC found that the lack of assessment, treatment and services for children with mental illness means that many of these children fall through a range of service systems and end up in the juvenile justice system, 'consigned to incarceration rather than treatment'.²⁹ A 1997 South Australian Government study, noted that many of the young people then entering that State's juvenile justice system could be classified as intellectually impaired; 28 per cent were of borderline or below average intellectual functioning.³⁰ PWD noted the links between systems failures and the placement of young people with disabilities in juvenile detention:

These findings link failures in the mental health, child protection, disability and community service system with the increased risk of children entering the juvenile justice system. These failures include lack of support services, appropriate treatment and behaviour intervention programs, family based care services and accommodation options; the use of inappropriate and harmful service practices, such as physical restraint and medication; the risk or actual occurrence of physical and sexual assault; and the reliance on the police to resolve challenging behaviour. There is also evidence to suggest that the lack of support services for children and appropriate policies and practices to deal with challenging behaviour often leads services to rely on or view juvenile justice facilities as 'providing a stable and secure care environment and...as a solution to a complex problem'.

Once in the juvenile justice system, the emphasis is on punishment of the crime and rehabilitation rather than on appropriate assessment, intervention and support services. Many children with disability are not even identified, which means their specific support needs are not addressed. The design of facilities and the environment can also contribute to a decreasing emotional and mental state.³¹

28 *Submission 80*, p.2 (Corrections Health Service).

29 *Submission 165*, p.17 (People With Disability Australia Inc).

30 ALRC 1997, p.109.

31 *Submission 165*, pp.17-18 (People With Disability Australia Inc).

Longer term health issues

6.21 A study of young offenders in custody in 1988-1999 in Victoria showed that such youth are likely to have many health problems, ranging from mental and behavioural disorders to blood-borne infectious diseases including Hepatitis C. One in 25 were dead within three years of leaving custody. The mortality rates were almost 10 times higher in the young males than that of their counterparts in the mainstream population and in females 40 times higher than a comparison group. Drug overdoses accounted for deaths in about half the instances while suicide and accidental injury made up the remainder.³²

Treatment of children and young people in detention

6.22 The Western Australian Department of Justice reported very few cases of substantiated abuse of children and young people in that State's centres.³³ The Department also noted that:

I think it is fair to say that in juvenile custodial services we deal with the most volatile of young people who are at the most crucial stage of their lives. When they come to us, quite often in a state of great stress, it can often be related to their own situation, their family situation or, indeed, to drugs – which is the case with a large majority of the young people we deal with...in caring for these young people, there are often conflictive situations with staff where the staff have the responsibility to ensure that these young people, who are often in conflict with each other on the outside, do not pursue that on the inside of the detention centres. So there are, from time to time, occasions where it is necessary to restrain a young person. In those cases, if there is any thought that that restraint has not been carried out in a proper way or any comment has been made by the young person regarding that restraint, the internal investigations unit is requested to investigate that matter.³⁴

6.23 Senators were concerned at evidence presented by the Western Australian Department of Justice that investigations of alleged sexual or physical abuse are undertaken by the department rather than by an external body. As well, a senator found it 'inconceivable' that in the last 50 or 60 years that there would have been no cases of mistreatment in Western Australian juvenile detention centres.³⁵

6.24 The Victorian Government submitted that in its young offenders' corrective centres, punishments are expressly forbidden that involve unreasonable physical force,

32 *Submission 19*, p.1 (Centre for Adolescent Health) - based on: Coffey C, Veit F, Wolfe R, Cini E & Patton G, 'Mortality in young offenders: retrospective cohort study', *British Medical Journal*, vol 326, 17.5.03.

33 *Submission 177*, p.6 (WA Department of Justice).

34 *Committee Hansard 9.12.03*, pp.72-73 (WA Department of Justice).

35 *Committee Hansard 9.12.03*, pp.74-75 (WA Department of Justice) and Senator Humphries.

corporal punishment, psychological pressure to intimidate or humiliate, physical or emotional abuse and discrimination. Punishments may entail withdrawal of privileges such as accessing television, but not of rights such as having visitors, food or clothing. The Government emphasised the 'numerous checks in the system' nowadays in its juvenile justice centres:

As part of deliberate policy, the detention centres are not closed systems. People from outside the centre regularly visit and provide a range of services...recreation activities are provided by the YMCA, an external agency provides health services at the Melbourne Juvenile Justice Centre and Parkville Youth Residential Centre, volunteer visitors are encouraged and mentors are provided through external agencies. Staff from the office of the Ombudsman in Victoria visit all detainees on a monthly basis. Each centre also has a chaplaincy service. Detainees all have a community-based case manager. Those who have been sentenced are regularly reviewed by the Youth Parole Board and most are paroled to serve part of their sentence in the community under the guidance and supervision of a parole officer.³⁶

Experiences of children and young people in detention

6.25 The Committee received many submissions describing significant abuse and cruelty in juvenile justice centres. The following information from a 43-year-old man provides some insight into his experience, albeit 30 years ago:

I was 11 years old when I was first sentenced to nine months detention at Mittagong Training School for Boys. The second time I was sentenced was at the age of 13 to again nine months at Daruk Training School for Boys at Windsor near Penrith now the John Moroney Jail...this "hell hole"...worse than a concentration camp...I was degraded, tortured, starved and deprived of any human rights at the age of 13 like all the other boys...[I tried to escape once]. I was hunted down like a wild animal, being chased by screaming "store boys" with madness in their eyes, like a contest to see who gets you first.³⁷

6.26 This former detainee went on to describe many experiences of a 13-year-old boy's torture such as having to stand or sit in the one place for 24 hours at a time in extremely harsh conditions, wearing very few clothes and with only a blackboard and a piece of chalk 'to amuse your diminishing mind'. His other descriptions include:

You are checked every hour and must be standing at attention with your face to the wall as soon as you hear the keys or you have a bucket of cold water thrown over you. No blankets, no heating, just left there to freeze...[or] lined up in a graveyard full of flies and forced to drink the next cup in line whether it had a fly in it or not...[being] lined up with no clothes on.³⁸

36 *Submission 173*, p.22 (Victorian Government).

37 *Submission 480*, p.1.

38 *Submission 480*, p.1.

Prevention and support measures for children and young people

6.27 As noted above, young people in juvenile justice detention may be on remand awaiting a court appearance and not sentenced, or they may have been sentenced for an offence. An experienced advocate in Victoria's juvenile justice system, Father Peter Norden, has noted that situations where young people are incarcerated for non-serious offences but have not taken the option for release on bail are often strong indicators of factors including a young person's socio-economic status and homelessness. Such instances can also be an illustration of a lack of community support services outside the criminal justice system. Father Norden has emphasised that lessons might be learnt from Victoria where the rate of indigenous detainees aged 10-17 years is relatively low compared to the national rate, figures which Father Norden has attributed to a wide network of alternative community services in that State. These measures include school-based and housing support and accessible community mental health diagnosis and treatment which are likely to have positive results for the young person and the wider community.³⁹

Intervention Programs

6.28 The WA Department of Justice submitted details of its juvenile detention centres and programs to address offending behaviour and substance abuse including those to break offending cycles, deal with anger and take account of victims' situations. The department also cited mechanisms for detainees to register complaints including processes that involve the Ombudsman or Minister for Justice. The department's programs for indigenous children and young people include supervised programs at Bell Spring, East Kimberly, and Banana Well, West Kimberly, accommodating young people on bail with supervision in their own communities as well as the Yandeyarra Regional Supervised Bail Program in the Pilbara Region which is managed by the Mugarinya Community and monitored by the community and the local Department of Justice. It aims to minimise the incidence of the removal of young people from regional areas if they are involved in the justice system.⁴⁰

Diversionary, restorative justice and conferencing programs

6.29 The following information illustrates the workings of diversionary programs to assist in keeping young people out of detention. Jurisdictions provide many options for dealing with young offenders both before entering a custodial facility and while in custody. In Victoria, a strong 'diversionary focus' exists in juvenile justice legislation. This includes, where appropriate, diversion from court, diversion from statutory orders, diversion from juvenile custody and diversion from the adult custodial system. Police, through the police cautioning program, can divert young offenders from the court system resulting in about only 25 per cent of police contacts proceeding to court. Of those who appear in the Children's Court, only about one in five are placed on

39 Norden 2003.

40 *Submission 177*, pp.2-5 (WA Department of Justice).

orders that require statutory supervision. Other forms of diversion in Victoria include the Group Conferencing Program, court advice, the Youth Parole Board, the Koori Justice Program, bail support and the legislatively-based sentencing hierarchy.⁴¹

6.30 While the welfare and justice models of the past emphasised rehabilitation and accountability for offenders, the restorative justice model encourages offenders to accept responsibility for their criminal behaviour and the consequences for other people. It focuses on the involvement of the victims in dealing with the offence and subscribes to the rationale that offenders owe a debt to the victim, for which restitution might be made.⁴²

6.31 Restorative justice encompasses a variety of practices at different stages of the criminal process, including diversion from court prosecution, actions taken in parallel with court decisions, and meetings between victims and offenders at any stage of the criminal process. Most jurisdictions have introduced legislation incorporating conferencing in their responses to youth crime.⁴³ For example, the *Juvenile Offenders Act 1997* (NSW) diverts all but the most serious offender from court and ultimately from custody and provides opportunities for community groups and individuals to participate in cautions and youth justice conferences, in ways that are rarely present in formal legal processes. The Act also recognises the high representation of indigenous young people in criminal justice settings and sets out a graduated scheme of responses for increasingly serious offending behaviour by children and young people.⁴⁴

Restorative justice and conferencing - effectiveness

6.32 There are various schools of thought about diversionary programs. Critics may consider that such programs are aimed mainly at early to mid-adolescent clients who essentially self select themselves into the programs. Yet, other criminology professionals emphasise the importance of early intervention assistance for families to help prevent young people's gravitation to crime, particularly where at-risk families have ongoing comprehensive support.⁴⁵

41 Thompson J & Carrol M, 'Program Initiatives within Juvenile Justice Victoria', Paper presented at the Juvenile Justice: From lessons of the past to a road map for the future conference convened by the AIC in conjunction with the NSW Department of Juvenile Justice, Sydney, December 2003.

42 ALRC 1997, p.476.

43 Daly K & Hennessey H, 'Restorative justice and conferencing in Australia', *Trends and Issues*, No 186, AIC, February 2001, p.1.

44 Barga J, 'Diverting ATSI young offenders from court and custody in New South Wales – practices, perspectives and possibilities under the *Young Offenders Act 1997*', Paper presented at the best practice interventions in corrections for indigenous people conference, convened by the AIC, Sydney, 8-9 October 2001, pp.4-5.

45 Korn 1997, pp.3-4.

6.33 The benefits of diverting young people from the courts via cautioning and family group conferences include a reduction in trapping young people with unblemished records in the juvenile justice system.⁴⁶ Youth justice conferences have also been shown to be beneficial for young indigenous people, and their families and victims including occasions where young offenders have worked on local projects and connected with their Aboriginal cultural heritage and victims have been given the opportunity to illustrate their stories and the harm which they have experienced.⁴⁷

6.34 However, the *Bringing them home* report noted that Australian models fail to understand the complexities of indigenous communities and ignore fundamentally the principle of self determination and that the level of police involvement in most conferencing is problematic for indigenous communities.⁴⁸ Other factors can affect indigenous youth. For example, services identified in the conferences are not always available especially in rural areas. At times, Aboriginal legal service lawyers advise Aboriginal children not to admit to offences, resulting in Aboriginal youth missing out on opportunities to be cautioned by police or respected community members under the *Young Offenders Act 1997*, which is contrary to the Act's aims of diverting young offenders from the courts. Some indigenous youth are unable to complete outcome plans when they have agreed to write apologies to victims but have not disclosed to the conference their inability to read and write.⁴⁹

6.35 An evaluation of the effects of diversionary restorative justice conferences on repeat offenders in the Australian Capital Territory undertaken in 1995-2000 showed positive aspects. The Reintegrative Shaming Experiments (RISE) considered recidivism among 1 300 cases and compared the effects of standard court processing with that of restorative justice intervention (diversionary conferencing) for: drink driving (over .08 blood alcohol content) by offenders at any age; juvenile property offending with personal victims by offenders aged under 18 years; juvenile shoplifting offences by offenders aged under 18 years detected by shop security staff; and youth violent offences by offenders aged under 30 years.⁵⁰

6.36 The evaluation drew on various theories including those regarding the effects of formal court processes in stigmatising offenders and subsequent difficulties for offenders' capacity to live responsibly in the community. It took account of many factors including what might contribute to the levels of re-offending by court-assigned

46 ALRC 1997, pp.477-478.

47 Bagen 2001, p.11.

48 ALRC 1997, pp.484-485, citing National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families (*Bringing them home*), HREOC, Sydney, 1997, pp.521 & 525.

49 Bagen 2001, pp.9-11.

50 Sherman LW, Strang H & Woods DJ, *Recidivism patterns in the Canberra reintegrative shaming experiments (RISE)*, Centre for Restorative Justice, Research School of Social Sciences, Australian National University, November 2000, pp.3-4.

and conference-assigned offenders and the types of offenders who were included in the RISE tests. The study also analysed repeat offending effects and before-after differences in offending rates. The team factored in many elements and variables that could distort findings or give false readings that could mask differences in the volume of crime in the community.⁵¹

6.37 The study's results varied. Youth violence offenders who were assigned to conference subsequently offended at substantially lower levels (38 fewer offences per year per 100 offenders in the first year after conference) than those assigned to the courts. This was not true for the other experiments. For drink-driving offenders, a very small increase in detected re-offending was found for the conferenced offenders, relative to court. Across all experiments, conference-assigned offenders reported that their treatment was more procedurally fair than did court-assigned offenders. However this translated into higher levels of compliance with the law only in one out of four offence categories, at least in the one year before and after standardised comparison periods. This experiment concluded that the dynamics of each type of offence may create a different emotional climate and basis for legitimacy of legal intervention using court or conference processes. It substantively concluded that restorative justice can work and even reduce crime by violent offenders but it is not guaranteed to work for all offence types.⁵² As well, Father Norden has noted the ineffectiveness of punitive approaches in their ability to assist young people to modify their behaviour, and has cited Victoria's successful restorative responses that work towards social cohesion and the recognition that young people's problematic behaviour is often an indication of their social exclusion and disadvantage.⁵³

Conclusion

6.38 As discussed above, many factors can precipitate a child or young person's incarceration in juvenile detention. Many youth experience a wide range of unjust and abusive situations which may lead to their gravitation to criminal activities. Once in the system, problems can escalate and circumstances come into play including the propensity to mix with already seasoned offenders and learn further criminal activities. While in detention, many young people experience serious health problems, miss out on an education and start on the ever-spiralling road to negative events, which could see their continuous return to detention or graduation to the adult prison system. Given that initially the nature of juvenile offending tends to be for petty offences, the results from an AIC study based on NSW data from 1991-1996 are particularly pertinent. That study found that early intervention and supportive programs are vital in stopping an escalation to more violent offences.⁵⁴

51 Sherman, Strang & Woods 2000, pp.5-7.

52 Sherman, Strang & Woods 2000, pp. 15, 18-19.

53 Norden 2003.

54 Carcah C and Leverett S, 'Juvenile offending: specialisation or versatility', *Trends and Issues*, No. 108, AIC, April 1999.

6.39 That administrators are placing young people with mental illness and disabilities in detention further compounds already serious problems. Therefore, it would be logical to institute prevention programs to ensure that children are not involved with the justice system in the first place.

Given the links between childhood abuse and social disadvantage and children's contact with the juvenile justice system, a need exists for specific prevention and intervention programs to assist families in this regard. As AIC research on the correlation between childhood abuse and juvenile offending concluded:

Preventing child maltreatment in the first place is likely to produce a larger reduction in offending. By directing attention to those children who are maltreated and ensuring that the maltreatment is not repeated, significant benefits in crime reduction and outcomes for children can also be obtained. Understanding more about what maltreatment experiences lead to offending would help direct crime prevention approaches to transition points in the child's life or to risk factors so that greater success might be achieved. It is anticipated that further analysis with the present data will make a significant contribution to these important endeavours.⁵⁵

6.40 Conferencing schemes may help to prevent such large numbers of children and young people entering the system but warnings and cautions are also significant. The development of culturally appropriate conferencing programs for indigenous youth would have merit. However, diversionary criminal justice measures alone cannot claim to 'control' or significantly reduce juvenile crime.

6.41 The Committee notes the opinion of some experts in diversionary justice programs that many measures including those that help to improve the social capital in disadvantaged and dispossessed communities, will, in the long run, be more effective and appropriate and that efforts are required to keep young people in school and in programs that provide opportunities for employment and activities that engender self esteem. For Aboriginal young people and families and communities, measures that respect and support their full participation in the framing and operation of these measures at all levels are critical in addressing the over representation of Aboriginal young people in criminal justice interventions.⁵⁶

6.42 It is also critical to assist the health issues of youth in juvenile justice centres, especially since many health problems would be caused by inappropriate practices such as inmates using the same needles for drugs. The Committee considers that programs to inform young people about health issues are critical.

55 Stewart A, Dennison S and Waterson E, 'Pathways from child maltreatment to juvenile offending', *Trends and Issues*, No 241, AIC, October 2002, p.6.

56 Bagen 2001, p.11.

Recommendation 16

6.43 That the Commonwealth Government take note of the merits of restorative justice programs in helping to keep young people out of the juvenile justice system (and later gravitation to the adult prison system), and increase its involvement, support and funding for such programs, to ensure that the coverage of such programs across Australia is wider than is presently the case. It is recommended that the Commonwealth Government introduce restorative justice programs that would assist in reducing the high numbers of indigenous youth in juvenile justice centres.

Children and young people in immigrant detention centres

6.44 The Committee received a number of submissions relating to children and young people in immigration detention centres and expressing concern at the potential for damaging outcomes for children in immigration detention.⁵⁷

6.45 The Committee noted that the Human Rights and Equal Opportunity Commission (HREOC) was at the time conducting a National Inquiry into Children in Immigration Detention and presented its report in April 2004.⁵⁸

57 *Submissions* 29, p.2 (ChilOut); 35, pp.25-26 (NSW Commissioner for Children and Young People); 74, pp.3-4,31-36 (Western Young People's Independent Network and Catholic Commission for Justice Development and Peace); 165, pp.19-21 (People with Disability Australia Inc); 396, pp.5-6 (A Van Boeyen).

58 Human Rights and Equal Opportunity Commission, *A last resort? National Inquiry into Children in Detention Centres*, April 2004. The report may be accessed at: http://www.hreoc.gov.au/human_rights/children_detention_report/index.html

CHAPTER 7

THE FUTURE FOR CARE LEAVERS

Introduction

7.1 Ensuring that all children and young people are protected from harm and abusive situations to help reduce the need for placement in out-of-home care is overwhelmingly supported. As discussed through this report, the Committee received many calls for a more national and co-operative approach among governments and other sectors, to tackle child abuse issues in Australia. Many ideas that were proposed are intertwined. In addition to the many child abuse and prevention issues that were raised, the need to capture data about care leavers, irrespective of their age group, was identified as a fundamental issue so that care leavers needs can be addressed by policymakers. Underlying such ideas is a need for an ongoing national education program for the prevention of child abuse. Ideally such a strategy would emphasise the value of children and young people and how they should be treated, rather than only what is often occurring in children's lives at present.

National approach to tackling child abuse

Cooperative approaches

7.2 Families Australia provided a comprehensive 'way forward' strategy where the Commonwealth would lead in conjunction with the States and Territories to combat child abuse and neglect. Its suggestions include the introduction of an expert group to oversee a Prevention of Child Abuse and Neglect Strategy and an inter-departmental committee to review and improve child abuse and neglect policies and programs, including those for children with a disability. The organisation's more practical ideas relate to:

- grants for out-of-home care children for services such as educational assessments and specialised health care to deal with trauma from child abuse and neglect;
- support and programs for grandparents, relatives, kinship and foster carers who have responsibility for children who have been abused or neglected;
- education and awareness programs relating to indigenous child abuse; and
- a national 1800 help line for carers of children in out-of-home care.¹

7.3 The AMA has called for a Commonwealth and State-Territory national approach to prevent and deal with child abuse, neglect and recovery. The AMA has also cited the importance of multi-disciplinary approaches among medical, nursing,

¹ *Submission 175*, pp.6-8 (Families Australia).

teaching, childcare, social work, law and non-government and government agencies.² The NSW Commission for Children and Young People has also emphasised that good outcomes for children and young people in care depend very much on the collaboration of agencies such as health and social security, educational services, the judiciary, and the courts and law enforcement systems. The Commission noted the importance of breaking down the present barriers which are preventing resources from being shared:

...training and development activity needs to occur for workers from different sectors in collaborative teams...where...the federal, state and non-government sectors work together to develop professional relationships and to develop a better understanding of each other's practice domain.³

Research

7.4 A consistent theme in submissions related to the need for research and data about care leavers, given the lack of data on even the existence of care leavers using services as well as information about the effects for them of having been brought up in out-of-home care. The Positive Justice Centre (PJC) commented on the lack of information on people who have been in care:

Apart from a few inquiries, you will find absolutely no reference to care leavers in the literature generated by the service providers. There are no policies, no programs and no research that looks into our needs, even though this is the core business of those services and would increase the likelihood that they would achieve their publicly stated goal of reducing homelessness...through failing to address our special needs they are ensuring that there is a continuing population to administer.⁴

7.5 The PJC has suggested ways to assist care leavers, including the instigation of longitudinal research on adult care leavers to determine what programs and policies are needed. Their research design ideas include those to ensure policy evaluations to identify what works and to inform policy making as well as to advise agencies on dealing with problems generated by the child welfare system now, rather than in 10-20 years time.⁵

7.6 The PJC also indicated that while one in five adult prisoners and one in three juvenile prisoners have been in care, there is no acknowledgment of this in the criminal justice system. They consider that groups such as the Australian Institute of

2 Australian Medical Association, 'More must be done to protect our children from abuse and bullying – AMA', *Media Release*, 17 September 2004.

3 *Submission 35*, pp.27-28 (NSW Commission for Children and Young People).

4 *Committee Hansard 4.2.04*, pp.30-31 (Positive Justice Centre).

5 *Submission 122A*, p.21 (Positive Justice Centre).

Criminology and Australian universities' criminology schools are missing a major opportunity to develop crime prevention policies and programs that 'actually work'.⁶

7.7 CBERSS emphasised that research on care leavers is important provided that it is the right type of research and not merely for the sake of someone's PhD thesis, for example. The organisation also noted the dearth in research particularly that which is relevant for effective policymaking:

Most of the research has been done with highly biased population, often psychiatric populations, from which the major concern is trying to identify risk factors in terms of diagnoses, such as: what are the risk factors inherent in child abuse experiences that may predispose someone to developing a personality disorder? Economic costs and some of the social costs of those experiences are often simply not addressed at all, and there is a great paucity of literature in that area.⁷

7.8 CBERSS quoted major impediments to ascertaining details of the true extent of child sexual abuse for various reasons including that little is known of the sequelae of children who are not brought to the attention of authorities or health professionals.⁸

7.9 As noted in *Forgotten Australians*, some care leavers consider that agencies such as Centrelink do not know how to deal with people who have been in institutions and that 'Have you been in care' type questions should be on forms used by such agencies so that staff are able to provide the right sort of assistance in a way that is sensitive to care leavers, many of whom have had a traumatic childhood.⁹

7.10 An audit of Australian out-of-home care research was conducted in 2004 by Judy Cashmore and Frank Ainsworth. The researchers identified 94 research projects over a 10-year period and produced a comprehensive directory on a State and Territory basis of completed and current research projects, including details of projects' anticipated completion dates.¹⁰ However, the Positive Justice Centre was critical of this report contending that the authors failed to undertake certain research in the past that would be critical of a system they helped put in place.¹¹

7.11 Many other suggestions were raised in evidence. The National Children's and Youth Law Centre has called for continuing research and exploration of alternatives for children and young people who have experienced a breakdown in

6 *Committee Hansard* 4.2.04, p.31 (Positive Justice Centre).

7 *Committee Hansard* 9.12.03, pp.44-45 (CBERSS).

8 *Submission* 49, p.9 (CBERSS).

9 *Forgotten Australians* 2004, p.322.

10 Cashmore J and Ainsworth F, *Audit of Australian out-of-home care research*, Child and Family Welfare Association with support from the Ian Potter Foundation, 2004, p.9.

11 *Submission* 122A, (Positive Justice Centre).

their family or living arrangements.¹² The Australian Institute of Family Studies (AIFS) has suggested measures such as ensuring a long-term plan for the child; supporting the placement so that it does not break down; counselling, support and treatment for the child to address the trauma that led to the need for alternative care; and engaging a 'mentor' from outside the protective system to maintain contact with the child throughout his or her moves and on return home.¹³

7.12 Work is also being undertaken by the National Child Protection and Support Services data group to broaden the national data collection including the introduction of a new national framework to count responses to calls to community services departments in relation to the safety and wellbeing of children, including responses that occur outside the formal child protection system.¹⁴

The value of children

7.13 Apart from moral questions about children's worth and ensuring that children are properly cared for, that such high levels of child abuse are continuing in Australia raises questions about the value which society places on children and in economic terms for all concerned including the nation. There is significant financial cost from the ever-increasing substantiated cases of child abuse in Australia. The AMA has noted that child abuse and neglect are serious public health issues that can scar people from childhood through to their teens and adult life.¹⁵ Dr Michael Rice from the AMA, has made the point that the harm and neglect of children need to be viewed as a public health issue. When referring to the increase in the number of substantiated cases of child abuse in the 12 months ending 2003, he stated:

...if we had an increase in the incidence of tuberculosis in this country of the same number and same rate, there'd be a national outcry...the public would be up in arms, demanding that something be done about it.¹⁶

7.14 Undoubtedly, the considerable strains on the public purse of child abuse include long-term costs of hospital treatment, correctional systems, drug and substance abuse programs and income support payments. CBERSS advised of a study where Family Court expenditure statistics were used and arrived at the 'conservative' estimate of tangible costs in 1998 to the federal government of \$2,200 per victim of child abuse.¹⁷

12 *Submission 70*, p.6 (National Children's and Youth Law Centre).

13 *Submission 67*, p.16 (Australian Institute of Family Studies) – citing Tomison & Stanley 2001.

14 AIHW 2005, p.12.

15 AMA, *Media Release*, 17 September 2004.

16 Taken from a media conference transcript on the AMA Summit on Child Abuse, Canberra, 19 February 2004, p.1.

17 *Submission 49*, pp.11-12 (CBERSS).

7.15 Professor Fiona Stanley who has extensive experience of Australian children's deteriorating health, including from abuse has dubbed this issue as 'real brain drain'. She emphasises the correlation between child abuse and neglect and other issues such as missing out on education and employment opportunities and experiencing mental health and substance abuse problems. Professor Stanley has emphasised the importance of a stable childhood not only to achieve better situations for individuals but for the nation's 'social capital'. She pointed out that despite Australia's wealth and increasing Gross Domestic Product, problems exist for many children. Professor Stanley noted:

If you start off compromised, then your whole-of-life chances are affected and if you start off healthily and well nurtured then you are much more likely to reach your genetic potential.

The trends I have described suggest that this brain drain is continuing to rise...Failure to invest in all stages of human development, particularly in the early years, is being recognised by organisations such as the World Bank to negatively affect future economic prosperity.

Children who have good early childhood experiences before the age of six, in stimulating, nurturing environments have better outcomes throughout their life and the earlier they have these experiences, the better the result. They have better school grades, better self esteem, fewer social problems, and fewer health problems and less likely to be teen parents, use drugs or be involved in crime.

Most parents want to be good parents and want the best for their children but they need to be equipped and capable to do so. We also need to look beyond the family to neighbourhoods, workplaces.¹⁸

7.16 Professor Stanley has emphasised the importance of nurturing social environments from birth and programs that enhance child development and has endorsed the use of early-intervention programs for children. She has noted the importance of a whole of community effort and the interaction of social, biological, family, child development, educational and health for life patterns:

Even if we don't particularly care about kids (which I do), even if we have not got children of our own, even if we only judge everything by an economic bottom line – this 'brain drain'...is the most concerning and worrying problem we have.¹⁹

Public awareness and education - child abuse

7.17 CBERSS has noted the effectiveness of campaigns to stem child abuse citing an American survey of child sexual abuse in 1992-1999 showing that over 50 per cent of the participants mentioned the effectiveness of prevention programs and

18 Stanley AC Prof Fiona, *The real brain drain – why putting children first is so important for Australia*, National Press Club Address, 6 August 2003.

19 Stanley AC Prof Fiona 2003.

public awareness campaigns.²⁰ The AMA considers that governments must provide support and education for parents to help prevent child abuse and neglect.²¹ The Tasmanian Commissioner for Children considers that an acknowledgment of the causes and effects of child abuse would encourage public awareness and an understanding of the consequences of such abuse, resulting in a resolve to prevent or minimise the future abuse of children in care.²²

7.18 A campaign could be beneficial in educating people about being good parents; informing them of programs which could assist young people such as care leavers; acting as internal marketing within Commonwealth departments and agencies such as Centrelink to ensure that staff are aware of care leavers' needs and reminding society of the high personal and financial costs to children who are abused, and to the nation as a whole. A campaign could promulgate information about penalties for abusing children and serve as a way of deterring potential abusers.

7.19 An evaluation of a FaCS education campaign to promote positive, caring attitudes among adults towards children, showed that Australians have little understanding about the scale of substantiated child abuse in Australia and that few people rate child abuse as a community issue of concern unless prompted. Of the parents surveyed, 80 per cent want more information about how to improve their relationship with their children, 71 per cent struggle to find the time to enjoy activities with their children and three out of four parents do not believe that parenting comes naturally. These findings are supported by evaluations of the campaign's parenting seminars showing that parents need information and support for their parenting roles. A further evaluation is to be undertaken later in 2005.²³

7.20 As mentioned, concerns have been raised that often people are not aware of programs which may be able to assist them. Families Australia noted that often, young people are not aware of any support which may be available to help them.²⁴ Evidence has also demonstrated that people who provide care for children may not know of their entitlements as the following information shows:

I was unaware that I was entitled to financial assistance from DoCS as the children's carer, I was unaware that I was entitled to what DoCS refer to as an establishment fee of 1 400 per child to help meet the costs of setting up a home...I was only informed about these entitlements when I met with a Family Law Court solicitor.²⁵

20 *Submission 49*, p.11 (CBERSS).

21 AMA, *Media Release*, Attachment, 17 September 2004.

22 *Submission 277*, p.9 (Office of the Commissioner for Children Tasmania).

23 Department of Family and Community Services, Additional information, 23.2.05.

24 *Submission 175*, p.19 (Families Australia).

25 *Submission 511*, p.4.

7.21 In any public education campaign, good quality developmental research is a critical element on which to base the strategy. A wealth of knowledge about children's experiences in out-of-home care has been gathered in forums such as the Senate inquiry. This could assist in informing policymakers with a national strategy which could entail a range of communication avenues including via the promulgation of specific messages in pamphlets and other communication products through groups such as GPs' offices, baby health centres, schools and government offices such as Centrelink, as well as via material tailored for mainstream print and electronic media outlets and the Internet. Other professionals who have contact with children such as members of the clergy, police and legal professions, the judiciary and foster carer associations and representatives, could also assist in disseminating information and grandparents are an important group in this regard. Families Australia quoted 1997 Australian Bureau of Statistics data where approximately 12 000 children aged 14 years and under, were living with their grandparents.²⁶

7.22 The Committee considers that a role exists for the Commonwealth Government to instigate a multi-media public education campaign to help reduce child abuse across Australia which could be conducted by a lead agency of the Commonwealth. If a national commissioner for children and young people were established, as recommended later in this chapter, any national education campaign could come within that office's responsibilities.

Conclusion

7.23 This report provides information on current practices in the area of child protection in Australia and the system of out-of-home care. It is evident to the Committee that while many improvements in child protection have been made in recent years, a great deal remains to be achieved. A national approach to child care and protection was discussed in chapter 2.

7.24 Recent inquiries in the States and Territories have identified deficiencies and shortcomings in their child protection regimes. The States and Territories have responded to recommendations made by these inquiries. For example, the Queensland Government has adopted a whole-of-government approach to child protection with the central component the creation of the Department of Child Safety. The Department will progress a reform agenda to implement a number of initiatives including training and support for foster carers and improved external and internal accountabilities with the Department and the broader child protection system. In the ACT, the Office of Children, Youth and Family Support was created with the Government aiming to improve practice and reporting standards.

7.25 The Council of Australian Governments (COAG) has placed family violence and child protection on its agenda as a significant area of national interest. COAG has focussed on family violence and child protection in indigenous communities

which it sees as a matter of 'grave concern'. Governments have agreed to the National Framework on Indigenous Family Violence and Child Protection. The Framework is underpinned by bi-lateral agreements and jurisdictions will work cooperatively to improve how they engage each other and with indigenous communities to prevent family violence and child abuse.

7.26 The National Plan for Foster Children, Young People and their Carers has been endorsed and released by the Community and Disability Services Ministers. Work is currently under way to progress the National Plan's key areas for action.

7.27 There is no doubt that these are significant developments and that jurisdictions are committed to improving the child protection system. However, the Committee considers that this is but a 'good start' and much more needs to be done, and can be achieved, to ensure that all children in Australia are protected from abuse and neglect. The huge social and economic costs if our children's care systems fail are readily apparent in future failed and unfulfilled lives.

7.28 While it is acknowledged that the main responsibility for the implementation and administration of the child protection system rests with the States and Territories, the Committee considers that the Commonwealth must play a significant leadership and agenda-setting role in driving the changes necessary to systems and policies which would more effectively protect children and young people than has been the case to date. Certainly, examples exist where the Commonwealth has taken the lead in policy development and implementation with considerable success, such as, in areas of national competition policy and a recently-developed national blueprint to deal with Australia's water resource problems. The Committee considers child protection issues are no less important, and indeed, are of major importance for the future wellbeing of Australian society.

7.29 The social and economic cost to society of children in care, while unidentified, is enormous. The costs impact on all levels of government: State and Territory government through their care and protection systems and the Commonwealth through various programs and welfare payments to those in care and after leaving care.

7.30 The States and Territories are tackling the particular challenges within their respective systems. However, there is a danger that the need for national approaches to problems, cooperation between jurisdictions and sharing of best practice may be lost as governments focus resources on implementing policies and practical measures to assist children and young people and their families, including the day-to-day administration and handling of child protection issues.

7.31 The Committee considers that it is essential that the reform process goes beyond questions about State-Territory versus Commonwealth issues. Leadership and direction at the highest national levels are required. The Committee considers that the Commonwealth, under the leadership of the Prime Minister and with the

cooperation of all jurisdictions, is in a significant position to take on the national challenge of advancing the child protection agenda across Australia.

7.32 The Committee also considers that the Commonwealth should establish a national commissioner for children and young people. The purpose of the commissioner would be to set the agenda to achieve the framework for a comprehensive national child protection system.

7.33 The Committee does not envisage the commission directing the reform agenda in specific areas but rather to bring together all jurisdictions – the Commonwealth and States and Territories – so that they may identify the areas where greater cooperation is required, greater consistency is needed and where greater sharing of research can be achieved. The Committee considers that some issues for the agenda should include the need for uniformity of child protection laws, consistent definitions and common policy outcomes. There may also be a need to address ways to change the culture of child protection agencies and how they conduct their activities.

7.34 The Committee is all too aware that a national policy may result in a minimum set of standards. However, in recommending a national commissioner to advance an agenda, the Committee trusts that the best outcomes can be achieved in the shortest possible time without constraining the activities of those States and Territories which are embarking on innovative child protection approaches that meet their particular needs and circumstances.

7.35 The Committee considers that we are at a significant point where many jurisdictions have identified problems and shortcomings in their child protection systems and are addressing them. This great impetus within the States and Territories to commit to and implement change needs to be harnessed and enhanced to ensure that there is a common approach, greater efficiencies and effectiveness within the child protection system.

7.36 Child protection will always be required: there are a myriad of causes of child abuse and neglect and any single solution to such contributory factors is not possible. Early intervention, intensive family support and programs to show at-risk families, regardless of their circumstances, situation or coping mechanisms, that help can be available to assist them are also required to reduce the alarmingly high numbers of Australian children who are entering the child protection system with significant, complex and long-term needs.

7.37 The Committee considers that genuine improvements for Australian children in need of care and protection can be achieved under the leadership of the Commonwealth and the commitment of all stakeholders.

Recommendation 17

7.38 The Commonwealth establish a national commissioner for children and young people to drive a national reform agenda for child protection. In doing so, the national commission should

- **bring together all stakeholders, including the States and Territories, child protection professionals and researchers and peak organisations, to establish an agenda for change including the identification of key areas of concern;**
- **encourage the development of innovative models within the child protection system; and**
- **encourage State and Territory Governments to work toward harmonising child protection legislation, including agreement on common definitions.**

Recommendation 18

7.39 That the Commonwealth engage the Productivity Commission to undertake an evaluation of out-of-home care to better determine the real costs to the community of out-of-home care.

Senator Gavin Marshall
Chair

March 2005

APPENDIX 1

LIST OF PUBLIC SUBMISSIONS, TABLED DOCUMENTS AND OTHER ADDITIONAL INFORMATION AUTHORISED FOR PUBLICATION BY THE COMMITTEE

- 1 Pascoe, Ms Patricia (QLD)
- 2 Mendes, Dr Philip (VIC)
Supplementary information
 - *From State Care to Independence: A comparison of the Australian and USA leaving care debates*
 - *Moving out from the State Parental Home: A Comparison of Leaving Care policies in Victoria and new South Wales*
- 3 Harrison, Mr Garry (VIC)
- 4 Eaton, Ms Martina
- 5 Stevans, Ms Leesa (WA)
- 6 McKew, Ms Mim (QLD)
- 7 Guy, Pastor Graham
- 8 Fraser, Ms Georgina (NSW) [also see sub.232]
- 9 No Submission
- 10 Millar, Ms Lee (SA)
- 11 Knight, Mr Ivor Alan (WA)
- 12 Ziino, Mrs Clare (VIC)
- 13 NSW Ombudsman (NSW)
Supplementary information
 - Supplementary submission dated 15.12.03
- 14 Brown, Ms Catherine (SA)
- 15 Miller, Mr Wayne (QLD)
- 16 No Submission
- 17 Keys, Ms Suzette (QLD)
- 18 Golding, Mr Frank (VIC)
- 19 Centre for Adolescent Health (VIC)
- 20 Flett, Mr Ray (ACT)
- 21 No Submission
- 22 Care Leavers of Australia Network (CLAN) (NSW)
A detailed listing of additional information provided by CLAN including personal stories, historical information about and photos of institutions across Australia, and CLAN Newsletters is provided at the end of this Appendix.
- 23 Seery, Mr Patrick (QLD)
- 24 Devereaux-Dingwall, Ms Mavis (NSW)
- 25 Pinnell, Mr Barry George (WA)
- 26 Krol, Ms Teresa ()
- 27 Name withheld
Supplementary information
 - Supplementary submission received 15.12.03
- 28 Kelly, Ms Cheryl (NSW)

- 29 ChilOut – Children Out of Detention (NSW)
- 30 United Protestant Association of NSW Limited (NSW)
- 31 Relationships Australia (Qld) (QLD)
- 32 Helem, Mr Bill (VIC)
- 33 Sheedy, Ms Leonie (NSW)
Supplementary information
- Supplementary submission received 20.1.04
- 34 McGregor, Mr James Albert (TAS)
- 35 NSW Commission for Children and Young People (NSW)
- 36 King, Ms Catherine (VIC)
- 37 Barnardos Australia (NSW)
Supplementary information
- Additional information received 17.6.04
- 38 Cade, Mr Mark (NSW)
- 39 McGuire, Ms Janette (NSW)
- 40 Coldrey, Dr Barry (VIC)
Supplementary information
- 11.5.03: 'Catholic Orphanages in the 1950s and 1960s: An oral history, Neil McIntosh, Monash Uni, June 1985
 - 19.5.03: St Augustine's [Geelong] and the Christian Brothers, An archival history by Peter Chapman, May 1993
 - 7.7.03: 'The special dimension of horror': 'Corporal punishment, severity, criminal assault and sexualised violence in traditional residential care', Barry M Coldrey, July 2003
 - 24.8.03: 'The State of Celibacy Practice in the Catholic Church'
 - 1.10.03: Papers: 'Institutional processes for dealing with allegations of child sexual abuse', Dr Tom Altobelli, UWS, May 2003; 'Apocalypse now': The English speaking church and the sexual abuse crisis at the commencement of the third millenium, B M Coldrey, Independent Papers 3
 - 2.11.03: Information on St Joseph's industrial school, 'Letterfrack', Ireland
 - 7.11.03: Preliminary comments and issues to be discussed at hearing on 12.11.03
 - 28.11.03: Further information on 'Letterfrack' and Ireland
- 41 Walsh, Mr John (QLD)
Supplementary information
- Additional information received 24.9.04
- 42 Name withheld
- 43 Name withheld
- 44 Goddard, Professor Chris
- 45 NSW Committee on Adoption and Permanent Care Inc (NSW)
- 46 The Salvation Army – Australia Southern Territorial Headquarters (VIC)
Supplementary information
- Additional information received 8.6.04; 9.6.04; 27.6.04; 1.7.04 and 26.7.04
- 47 McIntosh, Mr Neil (VIC)
- 48 Dethlefs, Reverend W A (QLD)
- 49 Christian Brother Ex-Residents and Students Services (CBERSS) (WA)
- 50 MacKillop Family Services (VIC)
Supplementary information
- Supplementary submission following hearing 12.11.03
 - Additional information received 22.6.04

-
- 51 Graycar, Professor Reg and Wangmann, Ms Jane (NSW)
Supplementary information
- Supplementary submission received 19.2.04
- 52 UnitingCare Victoria and Tasmania (VIC)
Supplementary information
- Additional information received 5.12.03 and 11.6.04
- 53 Post Adoption Resource Centre – The Benevolent Society (NSW)
- 54 Australian Council for Children and Youth Organisations Inc (VIC)
- 55 Department for Community Development (WA) (WA)
Supplementary information
- Copy of Children and Community Development Bill 2003 provided at public hearing 9.12.03
 - Response to questions following hearing 9.12.03 dated 13.4.04
 - Additional information received 22.6.04
 - Additional information received 13.8.04
 - Additional information received 4.3.05
- 56 Centacare Catholic Family Services (VIC)
- 57 Brownlee, Mrs Mary (NSW)
Supplementary information
- Addition information received 14.8.03; 20.10.03; 24.10.03; 24.11.03; 28.1.04; 3.2.04; 21.10.04
- 58 Wilson-Szoredi, Ms Beth (QLD)
- 59 UnitingCare Burnside (NSW)
Supplementary information
- Additional information received 3.6.04
- 60 Family Advocacy (NSW)
Supplementary information
- Additional information dated 1.7.04
- 61 Mercy Community Services Inc (WA)
- 62 Child Abuse and Adult Mental Health Action Group (WA)
- 63 Penglase, Dr Joanna (NSW)
Supplementary information
- *‘Orphans of the Living’: The Home Children NSW 1939-1965*, Ph.D thesis, Macquarie University, 1999
 - Article: *Victimization, Care and Justice: Reflections on the Experiences of Victims/Survivors Involved in Large-scale Historical Investigations of Child Sexual Abuse in Residential Institutions*, British Journal of Social Work (2002) 32, 541-551
- 64 Van Dyke, Ms Lauren (NSW)
- 65 The Congregation of Christian Brothers (WA/SA) ()
- 66 McCluskey, Dr Una (USA)
- 67 Australian Institute of Family Studies (VIC)
Supplementary information
- Additional information received 2.6.04
- 68 Association of Childrens Welfare Agencies (NSW)
- 69 CREATE Foundation (NSW)
Supplementary information
- Information sheets provided a hearing 4.2.04
 - *Be.ing our best: Report on Australia's children and young people in care*, August 2004
 - *Do No Harm: Towards Good Practice in Protecting Children and Young People in out of Home care from Abuse and Neglect*, May 2004

- 70 National Children's and Youth Law Centre (NSW)
- 71 Catholic Welfare Australia (ACT) (Related submission No.82)
- 72 QLD Commission for Children and Young People (QLD)
- 73 Brady, Mr Bernard (QLD)
- 74 Western Young People's Independent Network and Catholic Commission for Justice
Development and Peace (VIC)
- 75 Maslen, Mr Barry (QLD)
- 76 Bowman, Ms Avis (NSW)
- 77 Disability Council of NSW (NSW)
- 78 Allaway, Mr Allan (QLD)
- 79 Broken Rites (Australia) Collective Inc (VIC)
- Supplementary information*
- Supplementary submission provided at public hearing 12.11.03
- 80 Corrections Health Service (NSW)
- 81 Youth Off The Streets (NSW)
- 82 Centacare – Sydney (NSW)
- 83 Turner, Mr Ray and Turner, Mr Joe (VIC)
- 84 Disability Services Commission (WA) (WA)
- 85 Bradshaw, Mr Paul (WA)
- 86 Abraham, Ms Sandra (NSW)
- 87 Dekker, Ms Muriel Valmai (QLD)
- Supplementary information*
- Additional information received 5.11.03; 5.3.04 and 28.1.05
 - Additional information provided at hearing 12.3.04
- 88 Bateman, Ms Rosemary Irene (QLD) [also see sub.242]
- Supplementary information*
- Additional information consisting of articles on the longterm effect of childhood abuse,
received 10.6.04 and 11.6.04
- 89 Brooks, Ms Denise (QLD)
- Supplementary information*
- Supplementary submission dated 29.1.04
 - Copy of Queensland Health – *Policy Statement and Guidelines on the treatment and
Management of Abuse and Neglect of Children and Young People (0-18 years)*
 - Conclusion and copy of overheads from presentation at hearing 12.3.04
 - Paper on history of Goodwood dated 18.7.04
- 90 McLeod, Mr Wallace Douglas (QLD)
- 91 Pryor, Mr John (NSW)
- Supplementary information*
- Additional information received 25.7.03; 8.8.03 and 14.8.03
- 92 No submission
- 93 Pendergast, Ms Sandra (TAS)
- 94 Forbes, Mr David (NSW)
- 95 Corbett, Ms Pippa (NSW)
- 96 Muller, Ms Samilya (QLD)
- Supplementary information*
- Additional information received 11.3.04
- 97 Maison, Ms Barbara (VIC)
- 98 McMellon, Ms Melissa (NSW)

-
- 99 Carroll, Ms Ilana (NSW)
- 100 Morwood, Mr Ian (NSW)
- 101 Gesch, Ms Mary (QLD)
- 102 William, Ms Katrina
- 103 Rodgers, Ms Lorraine (QLD)
- 104 Smith, Ms June (VIC)
- Supplementary information*
- Additional information received 14.12.04
- 105 Copeland, Mr Peter (SA)
- 106 Pritchard, Mr Ronald (NSW)
- 107 Evans, Ms Pauline (QLD)
- 108 Bissett, Ms Margaret (VIC)
- 109 Stuart, Ms Ann (VIC)
- 110 Francica, Ms Jane Veroncia (NSW)
- 111 Turnbull, Ms Margaret (VIC)
- 112 Snell, Ms Kerry
- 113 Jones, Ms Rosanna (NSW)
- 114 Hyde, Miss Lynette (NSW)
- 115 Children's Welfare Association of Victoria (VIC)
- 116 Green, Mr R W (NSW)
- Supplementary information*
- Additional information dated 25.10.03; 13.1.04 and 15.6.04
- 117 Allen, Mr William (QLD) [also see sub.219]
- 118 Broadening Horizons (WA)
- 119 Sheedy, Ms Pat (NSW)
- 120 Girle, Ms V D (QLD)
- 121 Shortkids Downunder (VIC)
- 122 Positive Justice Centre (NSW)
- Supplementary information*
- Additional information and copy of opening statement provided at hearing 4.2.04
 - Copy of Victorian Department of Human Services, Child Protection Outcomes Project Team – *Child Protection Outcomes – Draft Interim Report* February 2003
 - Copy of Victorian Department of Community Services – *Case Planning and Management Strategy Evaluation Report*, April 27 1999
 - Supplementary submission received 3.11.04
- 123 Cope, Ms Miriam (QLD)
- 124 Shardlow, Ms Kim (WA)
- 125 Queensland Government (QLD)
- Supplementary information*
- Supplementary submission dated 12.3.04
 - Response to Committee's report *Forgotten Australians*, dated 1.10.04
- 126 Klohs, Mrs Rosemary (ACT)
- Supplementary information*
- Additional information 3.3.04, 30.3.04 and 18.6.04
- 127 West Heidelberg Community Legal Service (VIC)
- 128 Hoyle, Mr Bob (NSW)
- 129 Glanville, Mr Bryan Robert (QLD)
- 130 Name withheld

- 131 O'Kelly, Ms Irene; Micallef, Ms Margaret and Biggar, Ms Maureen
132 Lane, Mr Anthony
133 Davis, Mr Hector (VIC)
134 Blayse, Mr Lewis (QLD)
135 Millar, Mr Graham (NSW)
136 Formosa, Ms Bette (NSW)
137 Hewat, Mr Daniel (VIC)
Supplementary information
 - Additional information received 30.11.04
- 138 Wilson, Ms Jacqueline (VIC)
139 Jarvis, Mr Gleann (NSW)
140 Wittmann, Ms Monica (SA)
141 Greenhalgh, Mr Mark (VIC)
142 Grills, Mr Kevin (NSW)
143 McLeary, Mr William (NSW)
144 Uttinger, Mr Brian (NSW)
145 Van Dyke, Ms Janice (NSW)
146 Hogan, Ms Valda (VIC)
147 Cunneen, Professor Chris and Grix, Ms Julia (NSW)
148 Mason, Mr Lindsay (VIC)
149 Millington, Ms Valadia (QLD)
150 Walker, Mr Warren (NSW)
151 Isaacs, Ms Pamela (NSW)
152 Snell, Mr Michael (NSW)
153 Brown, Mr John (VIC)
154 McGee-Sippel, Ms Lorraine (NSW)
155 Coughlan, Ms Brenda (VIC)
Supplementary information
 - Supplementary submission 5.12.03
 - Supporting documents dated 8.12.03
 - Additional information dated 12.1.04
 - Further submission 25.1.05
- 156 Cook, Mr Barry (QLD)
157 Cook, Mr David (VIC)
158 Relationships Australia – New South Wales (NSW)
159 Board of Advice of the Forde Foundation (QLD)
Supplementary information
 - Additional information received 10.6.04 and 5.7.04
- 160 Mofflyn (WA)
161 Rotim, Mr Wal (NSW)
162 Hancock, Mr Owen (TAS)
Supplementary information
 - Additional information received 9.10.03; 19.11.03; 24.11.03; 27.11.03; 28.11.03; 1.12.03; 5.12.03; 15.12.03; 27.1.04, 26.2.04; 16.3.04; 17.3.04; 18.3.04, 7.4.04; 27.4.04; 6.5.04, 7.5.04
- 163 Save Our Souls (TAS)
164 Whistleblowers Action Group (QLD)
165 People with Disability Australia Incorporated (NSW)

-
- 166 Name withheld
- 167 VANISH (VIC)
- 168 Berry Street Victoria (VIC)
- 169 Taylor, Mrs Anne (QLD)
- 170 Whitfield, Ms Theresa (QLD)
- 171 Bradley, Mr Kenneth (NSW)
- 172 Peterson, Ms Margaret (WA)
- 173 Victorian Government (VIC)
- 174 Grundy, Mr Bruce (QLD)
- 175 Families Australia (ACT)
- 176 Bravehearts Inc (QLD)
- 177 Western Australian Department of Justice (WA)
- Supplementary information*
- Additional information following public hearing 9.12.03 dated 19.12.03
- 178 Wesley Mission - Dalmar Child and Family Care (NSW)
- Supplementary information*
- Additional information received 29.6.04; 1.7.04; 28.7.04 and 5.8.04
- 179 Glase, Mrs Ruby (NSW)
- 180 Cook, Mrs Thelma (WA)
- 181 Mann, Mr Douglas Ross (WA)
- Supplementary information*
- Extract on Parkerville Children's Home provided at public hearing 8.12.03
- 182 Davis, Ms Lorraine (WA)
- 183 Foster, Ms Jean (VIC)
- 184 Manning, Ms Lorna (VIC)
- 185 Hunter, Mrs Joyce (NSW)
- 186 Nilsen, Mrs Delma (WA)
- 187 Lohse, Ms Verneta (NSW)
- 188 Shingles, Mr Stephen (VIC)
- 189 Smith, Ms Marlene (VIC)
- 190 Lovely, Ms Gloria (QLD)
- 191 Graham, Ms Marie Renee (NSW)
- 192 Neeson, Ms Karla
- 193 Witchard, Ms Diana (NSW)
- 194 Moffatt, Mr Michael (NSW)
- 195 McNeill, Ms Julie (QLD)
- 196 Tanner, Ms Terri (QLD)
- 197 Worrall, Ms Hannelore Anna (QLD)
- 198 Woods, Mr Brian Alfred (SA)
- Supplementary information*
- Additional information dated 17.11.03
- 199 Douglas, Mr Stephen (NSW)
- 200 Collingburn, Mr Brian (VIC)
- Supplementary information*
- Addition information dated 12.10.03
- 201 Name withheld
- 202 Beggs, Ms Rosemary (NSW)

- 203 Vernon, Ms Pamela (NSW)
- 204 Casement, Ms Jessie (VIC)
- 205 Langham, Mr Terry (SA)
Supplementary information
 - Notes for presentation provided at public hearing 13.11.03
- 206 Smith, Ms Debra Margaret (VIC)
- 207 Gaffney, Ms Kate (VIC)
- 208 Boulter, Ms Patricia (TAS)
- 209 Simmons, Mr Hilton (QLD)
- 210 Lloyd, Mr John (VIC)
- 211 Mead, Mr David John (NSW)
- 212 Copleman, Mr Frederick (TAS)
- 213 Harris, Mr Robert (QLD)
- 214 Name withheld
- 215 McMillan, Mr Don (NSW)
- 216 Clough, Ms Juliet (NSW)
Supplementary information
 - Additional information dated 21.4.04
- 217 Hartas, Mr Bryan (QLD)
- 218 Carter, Ms Helen (QLD)
- 219 Allen, Mr William (QLD) [also see sub.117]
- 220 Cowell, Ms Barbara; Blackley, Ms Mona; Rollins, Ms Peggy (SA)
- 221 Arthur, Ms Lily (NSW)
- 222 Gordon, Ms Pamela (QLD)
- 223 Lowe, Ms Janet (WA)
- 224 Origins (VIC)
Supplementary information
 - Additional information dated 13.12.04
- 225 Adams, Ms Mary (QLD)
Supplementary information
 - Supplementary submission received at hearing 12.3.04
- 226 Anglicare Australia (VIC)
- 227 Davis, Mr William (VIC)
- 228 Treweek, Ms Sue (QLD)
Supplementary information
 - Supplementary submission received 5.3.04
- 229 May, Ms Heather (NT)
- 230 Ashdown, Ms Betsey (QLD)
- 231 Hart, Mr Brian M (WA)
- 232 Fraser, Ms Georgina (NSW) [also see sub.8]
- 233 Howes, Mr William (NSW)
- 234 Herman, Ms Elaine (NSW)
- 235 Name withheld
- 236 Pollard, Ms Teresa (NSW)
- 237 Dam, Ms Helen Mary (VIC)
- 238 O'Brien, Ms Sharyn (NSW)
Supplementary information
 - Additional information received 14.10.04

-
- 239 Behrendorff, Ms Elizabeth
240 Bamfield, Mr Michael (NSW)
241 Matterson, Ms Melissa (NSW)
242 Bateman, Ms Rosemary Irene (QLD) [also see sub.88]
243 Turnbull, Mr W F (QLD)
Supplementary information
• Additional information received 9.12.03
- 244 McLauchlan, Ms Vicki
245 Nicholls, Mr Shane (NSW)
246 Vicha, Ms Elizabeth (NSW)
247 Edwards, Ms Elizabeth (VIC)
248 Walshe, Mr David
Supplementary information
• Additional information received 9.2.04 and 1.4.04
- 249 Murphy, Ms Vicki (NSW)
250 Wilson, Ms Marlene (NSW)
251 Haenow, Mr Ted (WA)
Supplementary information
• Additional information received 9.5.03; 15.8.03; 21.11.03
- 252 Child Migrants Trust (UK)
253 The Law Society of New South Wales (NSW)
254 The International Association of Former Child Migrants and Their Families (VIC)
255 Health Consumers' Council WA Inc (WA)
256 Aftercare Resource Centre (ARC) (NSW)
257 Wilder, Ms Chris
258 Carroll, Ms Caroline (VIC)
259 WINGS Inc (WA)
Supplementary information
• Additional information dated 5.12.03
- 260 Guthrie, Mr David
261 Hughes, Ms Sophie
262 Ashby, Ms Dorothy
263 Hill, Ms Joy (TAS)
264 Donnelly, Ms Joan (VIC)
265 Klimo, Ms Lynn (VIC)
266 McIntyre, Ms Joan Berenice (VIC)
267 Cartledge, Mrs Julie (VIC)
268 Horne, Mr John (QLD)
269 Green, Mrs Beverley (NSW)
270 Gouldthorp, Ms Gladys (NSW)
271 Lin
272 Hughes, Ms Dianne (NSW)
273 King, Ms Michelle (SA)
274 Anson, Mr William (NSW)
275 Mandeno, Ms Melody (NSW)
Supplementary information
• Additional information received 29.1.04 and 9.2.04

- 276 Cave, Ms Jan (NSW)
Supplementary information
- *The Long Way Home – The Story of a Homes Kid*, Kate Shayler, 1999 (received 23.3.03)
- 277 Office of the Commissioner for Children (TAS)
- 278 Name withheld
- 279 Name withheld
- 280 Robb, Ms Wilma
Supplementary information
- Additional information received 23.8.04
 - Video – interview on ABC Stateline on 1.7.04
- 281 Blayse, Ms Sylvia (QLD)
Supplementary information
- Additional information received 2.2.04; 29.2.04; 23.6.04 and 26.1.05
- 282 Doughty, Mr Ralph (NSW)
Supplementary information
- Additional information received 30.1.04
 - Supplementary submission received 30.7.04
 - Additional information received 17.8.04
- 283 Sheedy, Mr Anthony (VIC)
- 284 Giles, Ms Maree (ENGLAND)
- 285 Ottavi, Mr Dino (TAS)
- 286 Luthy, Mr James (QLD)
Supplementary information
- Additional information received 10.5.04, 13.8.04, 15.8.04, 20.1.05
- 287 Carruthers, Mr Geoffrey (WA)
- 288 Hudson, Ms Anne (NZ)
- 289 Close, Mr Ian (VIC)
- 290 Cronin, Mr Bryan (SA)
Supplementary information
- Additional information dated 9.8.04
- 291 Hill, Mr Christopher (SA)
- 292 Freer, Mr Ken (NSW)
- 293 Smith, Ms Rachel Anne (NSW)
- 294 Mulholland, Mr David (NSW)
- 295 Sdrinis, Ms Angela (VIC)
- 296 Carter, Mr Ken (VIC)
Supplementary information
- Additional information provided at hearing 3.2.04
 - Supplementary submission received 2.3.04
- 297 Cremen, Mr Bill (NSW)
- 298 Dravine, Ms Denise (NSW)
- 299 Snell, Ms Gayle (NSW)
- 300 Mathews, Dr Ben (QLD)
Supplementary information
- Supplementary submission, received 11.11.04
- 301 Hegarty, Mr David (NSW)

-
- 302 Foran, Mr George (NSW)
Supplementary information
• Additional information dated 26.3.04 and 9.6.04
- 303 Mick (NSW)
- 304 Name withheld
- 305 Abused Child Trust (QLD)
- 306 Randall, Mr Murray (NSW)
- 307 Kemp, Ms Donna (NSW)
- 308 Cameron, Mr Leslie (NSW)
- 309 Campbell, Ms Margaret (QLD)
- 310 Banks, Ms Shirley (NSW)
- 311 Geldard, Ms Kerry
- 312 Sanderson, Mr John (ACT)
- 313 Liddell, Dr Max (VIC)
Supplementary information
• Additional information received 11.8.04
- 314 Stratti, Ms Regina (NSW)
- 315 Clissold, Ms Colleen (NSW)
- 316 Goodall, Ms Gaye
- 317 Walshe, Ms Thelma (NSW)
- 318 Isles, Mr Wayne (NSW)
- 319 Name withheld
- 320 Hampton, Mr G (NSW)
- 321 Brownbill, Mr Peter Walter
- 322 Goldsworthy, Ms Elaine (QLD)
- 323 Cox, Miss Sheila (NSW)
- 324 Haley, Ms Pauline (NSW)
- 325 Capes, Ms Carol
- 326 Walshe, Mr Frederick James (NSW)
- 327 Jarman, Mr Jim (QLD)
- 328 McIlraith, Mrs Enid (NSW)
- 329 Rees, Ms Kerry (QLD)
- 330 Name withheld
- 331 Horin, Ms Leonie (VIC)
Supplementary information
• Supplementary submission received 10.2.05 and 17.2.05
- 332 Read, Mrs Trish (QLD)
- 333 Warren, Mr Randolph (NSW)
- 334 Meekings, Mr Barry Stanley (NSW)
- 335 Quinn, Mr Peter (NSW)
Supplementary information
• Bibliography and State Archival Resources provided at hearing 12.3.04
- 336 Hepton, Mr John (NSW)
- 337 Ambery, Dr Deborah (NSW)
- 338 Shew, Ms Margaret
- 339 Shew, Mr Nigel
- 340 Bennett, Mr Matthew (NSW)

- 341 Burton, Ms Joan (NSW)
342 Rowlands, Mr Tom (VIC)
343 Name withheld
344 Adams, Ms Carol (NSW)
345 Crawford, Ms Beryle (ACT)
346 Owen, Mr Gibson McM (NSW)
347 Foster, Mr Darren (WA)
348 Green, Ms Maureen (NSW)
349 Spencer, Ms Geraldine (ACT)
350 Pimm, Mr Patrick John (NSW)
351 Bridgland, Ms Rosalie (NSW)
352 Pearce, Ms Gwen (NSW)
353 Anonymous
354 Anonymous
355 Male Survivors of Sexual Abuse Trust (NZ)
356 Donnelly, K G (NSW)
357 McCrae, Mr David (VIC)
358 Pisani, Mr John (NSW)
359 Name withheld
360 Sheridan, Mr Alan Vincent (NSW)
361 Richards, Ms Colleen (QLD)
362 Trafford, Mr Geoff (NSW)
363 Name withheld
Supplementary information
 - Additional information received 26.5.04
- 364 Johnson, Mr Les (NSW)
365 Bent, Mr Peter (WA)
366 Robinson, Mr Denis (NSW)
367 Rebecca
368 Edwards, Mr and Mrs Donald (NSW)
369 Caron (NSW) [also see sub.475]
370 Symes, Ms Margaret (VIC)
371 Dromi, Mr Vincent (VIC)
372 Dromi, Ms Katherine (VIC)
373 Henderson, Ms Robin Ruth (QLD)
374 St Claire, Miss Sonia (QLD)
375 Tombleson, Mr MacAllister John (STH AFRICA)
376 Smith, Mrs Hazel (VIC)
Supplementary information
 - Additional information dated 5.8.04
- 377 Getchell, Ms Ivy May (NSW)
Supplementary information
 - Additional information received 4.6.04
- 378 Kerry (NSW)
379 Cook, Mr Barry (QLD)
380 Hayes, Ms Faye (VIC)
381 McCabe, Mr Brendan (VIC)

-
- 382 Allison, Mr John (NSW)
383 Name withheld
384 Anonymous
385 Hardy, Mr Doug (VIC)
386 Ewens, Ms Alison (NSW)
387 Kinghorn, Ms Lyn (VIC)
388 Elise
389 Bates, Ms Dianne (NSW)
390 Kemsley, Mr Robert
391 Williams, Mr Max (NSW)
392 San Remo Neighbourhood Centre (NSW)
393 Heather (VIC)
Supplementary information
• Additional information received 21.2.04
394 Name withheld
Supplementary information
• Additional information received 8.11.04
395 Michell, Ms Deidre (SA)
396 Van Boeyen, Ms Ananda (NSW)
397 Graham, Ms Dianne Joan (SA)
398 Burgess, Mr Denzil (VIC)
399 Hale, Mr Jim (VIC)
400 Bellwood, Mr James
401 Harrison, Mr Stephen (NSW)
402 Norris, Ms Elizabeth (NSW)
403 Heycox, Ms Karen (NSW)
404 Lackey, Ms Lois
405 Camden, Mr Charles (QLD)
406 Bray, Ms Maggie (SA)
407 McDonald, Ms Carol (NSW)
408 Stevenson, Ms Pauline (VIC)
409 Name withheld
410 Thompson, Ms Ann
411 Healy, Mr Jack (NSW)
412 Mary T
413 Price, Ms Sylvia (VIC)
414 Davis, Mr Syd (NSW)
Supplementary information
• Additional information received 8.12.04
415 Doe, Ms Jane [also see sub.486]
416 Bryne, Ms Irene (NZ)
417 Carmine-White, Mr Peter (NZ)
418 Blake, Ms Kerry (NSW)
419 Davidson, Ms Margaret (QLD)
420 O'Rourke, Ms Maris and Holton, Ms Evelyn (NZ)
421 Evelyn
422 Johnny

- 423 Campbell, Ms Sandra
424 Hart, Mr Norman John (WA)
425 Findlay, Ms Phyllis (NSW)
426 Anthes, Mr David William (NSW)
427 Irving, Ms Sonya
428 Fisher, Ms Lorraine (NSW)
429 Pearce, Ms Esther (VIC)
430 Links, Ms Liz (QLD)
431 Dunne, Mr J T (NSW)
432 Dean, Mr R M (QLD)
433 Fischer, Mr Steve (SA)
434 Gascoyne, Mr Geoff (QLD)
435 Wardman, Ms Rhonda (NSW)
436 Armstrong, Mrs Gwen
437 Bate, Mrs Terrencia Darlene (QLD)
438 Rowe, Mr William (WA)
439 Green, Mr Dave
440 Name withheld
441 Matheson, Mr Max (WA)
442 Buller, Ms Elizabeth (VIC)
443 Curtis, Mrs Janice (VIC)
444 Ellis, Mr Thomas Lindsay (VIC)
445 Geddes, Ms Barbara (NSW)
446 Name withheld
447 Griechen, Ms Rhonda (WA)
448 Name withheld
449 Findlay, Mrs Deborah (VIC)
450 Mayne, Ms Daphne (WA)
451 Haywood, Mr Robert (WA)
452 Warn, Ms Beverley (NSW)
453 Beauchamp, Mr Carl (NSW)
454 Couch, Mr Kevin Francis (VIC)
Supplementary information
 - Additional information received 6.12.04
- 455 McLennan, Ms Christine (VIC)
456 Forster, Mr Geoffrey (WA)
457 The Eros Association (ACT)
458 Thompson, Mr Richard (VIC)
459 Rimmer, Ms Anne
Supplementary information
 - Additional information received 6.12.04, 20.12.04
- 460 Ungurs, Mrs R (NSW)
461 Dobson, Ms Kim (QLD)
462 Hadway, Mr Robert (WA)
463 Johnson, Mr Edgar (VIC)
464 Street, Ms Ella (NSW)
465 Name withheld

-
- 466 Name withheld
467 Dean, Mr Terry
468 Tonkin, Ms Karen
469 de Bretton, Ms Kathleen (NT)
470 Eldridge, Ms Linda (QLD)
471 Coleman, Mr Alan (NSW)
472 Lambert, Ms June Margaret (NSW)
473 Connolly, Ms Susan
474 Parnell, Ms Jo
475 Caron (NSW) [also see sub.369]
476 Name withheld
477 Moore, Ms Kimm (VIC)
478 Savari, Mr Oswald (VIC)
479 Farrar, Mr Lindsay (VIC)
480 Jenkins, Mr Tom
481 Byrnes, Ms Julie (VIC)
482 Graham, Mr James (QLD)
483 Thomas, Ms Ivy (WA)
484 Olde, Ms Irie
485 Looby, Mr John James (NSW)
486 Cole, Ms Chris (NSW) [also see sub.415]
487 Curtis, Mr Barry
488 Jennifer
489 Sumners, Ms Nareen (NSW)
490 Name withheld
491 Davies, Ms Kate (Norfolk Island)
492 Kitson, Ms Janice (ACT)
493 Adams, Ms Christine (NSW)
494 Ayrton, Ms Tracy (NSW)
Supplementary information
• Additional information received 3.12.04
495 Maher, Ms Mary and Brown, Ms Patricia (TAS)
496 Tulloh, Mr Ernie (WA)
497 Meerman-Vander-Horst, Mrs Cheryl (WA)
498 O'Hare, Ms Kay (NSW)
499 Gibson, Ms Margaret (VIC)
500 Crofts, Ms Maureen (NSW)
501 Hill, Mr Gordon (WA)
502 Carter, Ms Mary Lou (NSW)
503 Moloney, Ms Bernadette (NSW)
504 Smith, Ms Jody (NZ)
505 Seabrook, Mrs Rona (NSW)
506 Steele, Mr Geoffery (NSW)
507 Aitken, Mrs Lynette (NSW)
508 Smith, Mr David Robert (NZ)
509 Carpenter, Mr Bob (QLD)
510 Templeman, Mr Steve

- 511 Name withheld
512 Name withheld
513 Hodge, Ms Brenda (WA)
514 Petrie, Ms Janice (NSW)
515 Radcliffe, Mr Allen William (VIC)
516 Young, Ms Beverley Dawn (NSW)
517 Jeffrey, Ms Valerie (NSW)
518 Undy, Mr Terence Henry (VIC)
519 Head, Ms Sandra (NSW)
520 Turner, Mr Arthur (NSW)
521 Wood, Mrs Shirley (NSW)
522 Robertson, Ms Ethel (VIC)
523 Debra (NSW)
524 Looby, Mrs Jean (NSW)
525 Kelly, Mr Keith (QLD)
526 Middletent, Ms Carmel (USA)
527 Smith, Mr Peter John
528 Name withheld
529 Smith, Ms Yvonne (NSW)
530 Finley, Ms Teresa (NSW)
531 Brown, Ms Lyn (NSW)
532 Crawford, Ms Mavis (SA)
533 Longly, Ms Jeanette (VIC)
534 Roset, Ms Cheryl (QLD)
535 Woods, Ms Annie (VIC)
536 Gilbert, Ms Varina (NSW)
537 McKenna, Mr and Mrs John (QLD)

Additional Information

Altobelli, Dr Tom

Comments on *Towards Healing* protocol received 4.6.04

Anglican Church of Australia

Information on complaints handling received 6.5.04

Anglican Diocese of Tasmania

Information on pastoral support and assistance scheme received 28.6.04

Bacon, Mr Jim MHA, Premier of Tasmania

Correspondence relating to the Tasmanian Government's review into the abuse of children in care dated 11.11.03

Bayman, Mr Peter

Information received following the Perth hearing 8.12.03

***Beyondblue* – the national depression initiative**

Information on *Maturityblues* program

Brough, Mr Mal MP, Federal Member for Longman

Copy of letter to Crime and Misconduct Commission Qld dated 15.12.03

Cashmore, Dr Judy and Dr Frank Ainsworth

Audit of Australian Out-of-Home Care Research, for CAFWAA and ACWA, October 2004

Cunningham, Ms Heather

Information on charitable institutions, dated 20.2.05

Department of Family and Community Services

Information on early intervention and out of home care, dated 4.1.05

Information relating to the 'Every Child is Important' campaign, dated 23.2.05

Department of Veterans' Affairs

Response to questions concerning the Commonwealth running orphanages for the orphans of deceased members of the Australian Defence Forces dated 13 July 2004

Esther Centre, Qld

General information on Centre received at Brisbane hearing 12.3.04

Gandolfo, Ms Geraldine

Background and synopsis to documentary film *Unholy Orders*

Historical Abuse Network

Copy of presentation at Brisbane hearing 12.3.04

Marlee Family Centre

Copy of *Victoria's Children* received 25.10.04

Marlow, Mr Joseph

One Hundred Brothers, Joseph Marlow, 2004

Peake, Mr Andrew G

Records relating to Institutional Care in South Australia

Quinn, Mr Peter

Summary of evidence at hearing 3.2.04 and unpublished article on NSW juvenile correction system

South Australian Department for Families and Communities

Information relating to Screening and Criminal History Check policy dated 1.1.05

Sydney Legacy

Information on Legacy children received 23.9.04

Historical Detail of Legacy Melbourne Hostels received 10.1.05

Tasmanian Department of Justice

Statistics on Tasmanian redress scheme received 30.6.04

Uniting Church New South Wales

Draft policy on complaints handling received 5.7.04

Woodrow, Ms Marjorie

Long Time Coming Home, Marjorie Woodrow, 2001 and information on stolen generation and recovering wages through access to Aboriginal Trust Funds, 2.9.03

Proforma letter

The Committee received a proforma letter from 13 individuals who had spent time as children in different institutions. The text read:

'My experience of this institutional life was terrible and I was subjected to extreme cruelty, deprivation and abuse. Also I was not provided with the appropriate care, protection and education that I should have been entitled to.'

Letters were received from:

Mr Adrian Karl Asher

Mr Victor Camenzuli

Mr Edward P Delaney

Mr Mark Fabbro

Mr Geoff Fitzpatrick

Mr Sean Anthony Flynn

Ms Marie Therese Gould
 Ms Aileen Margaret Murray
 Mr David Randell
 Mr Frank Reddington

Ms Victoria Alice Schultz
 Mr Noel Tweedie
 Mr Walter M Wojcik
 Ms Susan Richmiller

Details of CLAN Submission no.22

22 Care Leavers of Australia Network (CLAN) (NSW)

Submission dated 8 August 2003

Additional information received (em means received by Email):

21.3.03 em – Article on the Sisters of Nazareth from *The Guardian* 10.4.03

28.4.03 em - Extract from letter by ex-pupil of the Masonic School Baulkham Hills 'Reform or Repression? Industrial and Reformatory Schools for Girls in New South Wales, 1866 to 1910', Noeline Williamson, unpublished thesis, November 1979

1.6.03 – *The Unbroken Spirit* Margaret Shields; extract *Like Mother, Like Daughter* Vicki Griffin; articles *The Hidden Parent* Jolowicz AR et al and *We ask for bread and are given stone: The Girls Industrial School, Parramatta, 1941-1961* Quinn P; brochures on aftercare services; and assorted news clippings and articles

20.6.03 - Owen's story; Newspaper articles and and other CLAN member stories

27.6.03 em - Adrian Thatcher's story

7.7.03 - Personal stories which have appeared in CLAN newsletters

10.7.03 – Ron and Nancy Casey's story

14.7.03 - Submissions from Carolann Higley and Wayne Findlay – CLAN members

11.7.03 - Copies of letters to CLAN from 103 people telling their stories

11.8.03 em – Notes from phone responses to newspaper ad

13.8.03 em – Info on Camp Pell, Vic

14.8.03 – Personal stories from Michael Hughes and Des Donley; newspaper articles; and info on aftercare services

5.9.03 – Copy of submission to NSW inquiry from Venetta (O'Hehir) Lohse (see also sub 187) and newspaper reports and channel 9 video of the O'Hehir sisters

2.10.03 – Copy of NSW Legislative Assembly 1904 Report on Roman Catholic Orphanage Manly, and news items

5.11.03 – CLAN Newsletter No.17, October 2003

27.11.03 em – Speech by Dr Penglase at opening of Child Protection Unit, Sydney Children's Hospital, 19.11.03

22.12.03 em – Extract from a Board minute from the Perth Children's Hospital May 1932 concerning tonsillectomies performed on Parkerville Home children

11.1.04 em – Paper by Rosemary Kerr '*Potential inefficients at best, criminal at worst*': *The girl problem and juvenile delinquency in Western Australia 1907-1933* and article 'Silky Oaks:another Neerkol?'

16.1.04 – Copy of correspondence to Human Rights and Equal Opportunity Commission dated 12.1.04, 30.1.04 and response from HREOC dated 22.1.04

21.1.04 em – Photographs – Parramatta Girls Home and Wesley Dalmar Home; Article: *Limitation periods and child sexual abuse cases: law psychology, time and justice* by Dr Ben Mathews (see also sub 300)

28.1.04 – Background material and historical information on Burnside, Dalmar, Dalwood, Winlaton, Albury Homes, Parramatta Homes, St Vincent's Westmead and

Melbourne Orphanage Asylum

2.2.04 em – Fred Seer's story

2.2.04 em - Background information relating to Aboriginal Children's Home Singleton, Randwick Asylum for Destitute People and Ormond House

4.2.04 –List of books/reports found in the State Library of Victoria; Letter relating to access to personal records; Advertisements of people in search of relatives; KRT article – *Trauma victims 'need different treatment for depression than others'*

4.2.04 – CLAN website development 2004 (provided at Sydney hearing 4.2.04)

12.2.04 em – Maggie's personal story

20.2.04 em – Robert's personal story

22.2.04 em – Tina Rickard personal story

23.2.04 em – Debra Harris personal story

23.2.04 - Historical information and newspaper articles relating to orphanages in:

Goulburn; Winlaton; Geelong - St Augustine's, Ryrie Street Orphanage, Bethany Babies' Home and Geelong Protestant Orphan Asylum; St Catherine's Orphanage and Dalwood Home.

Copy of correspondence relating to a complaint about the care received while living in an orphanage and foster care managed by the Catholic Church

Copy of Melbourne Orphanage Act 1940

Extract from *Social Evils The Army Has Challenged* by S. Carvosso Gauntlett

Copy of the list of papers by J H Litten held in National Library of Australia

2.3.04 em – Personal story 'Scars that never heal'

3.3.04 em – Personal story Jim - 'Nobody's Child'

3.3.04 & 16.3.04 em – Glastonbury Orphanage, Article in Geelong Advertiser; and letters to the editor - Robert Moore and Mavis Kosseck and comments by Dr J Penglase

6.3.04 – Spech by Senator Murray at opening of CLAN office, 6 March 2004

12.3.04 – Qld institutions: historical info and photos; Anderson Dawson; State Library of NSW holdings; Bidura, Glebe; St Josephs and St Johns, Goulburn; Children's homes in the Blue Mountains (provided at Brisbane hearing)

22.3.04 em – Info on Dr Dill Macky Homes; Info on Randwick Destitute Children's Asylum; Photo of football team from St John's Orphanage; Personal story from Carol

24.3.04 – Historical information relating to various Sydney orphanages, including Dill Macky, SA Arncliffe, Bexley, Dee Why, Ardill House, St Anne's, Dalwood

1.4.04 – CLAN correspondence with Qld government and DOCS re records; and info and 1963-64 annual reports from St Catherine's Childrens Home Geelong

2.4.04 em – Sisters of Nazareth and Nazareth Houses

6.4.04 – CLAN Newsletter No.20, March 2004

9.4.04 em – List of Institutions and Homes in which CLAN members grew up

14.4.04 – Information and articles on orphanages, including Society for Providing Homes for Neglected Children, Melbourne Orphanage Asylum, Orphanage Education; Cervini E *Alice Henry investigates* (Brookside, Vic 1899); *Origin and Identity*, Report on the provision of search services for people separated by adoption and other circumstances (NSW 1996); correspondence relating to services and records; copies of MacKillop News; press clippings; State Library of NSW holdings

16.4.04 em – Personal stories – anonymous and seeking information on Burnside;

accessing DOCS records

16.4.04 em – Armidale/New England Orphanages

28.4.04 – *For Their Own Good*, A history of the Children's Court and Boys' Shelter at Albion St, Surry Hills, C Ludlow; *Set Free*, Jan Jones; Our Boys, St Vincents – Westmead; State Wards and Children in Care Support Services; extract from 1962 NSW Parl Debates re Hay; info on institutions including Ormond, Havilah House, St Vincents westmead, Homes in Newcastle and Geelong districts; press articles

4.5.04 em – Access to family information (2)

7.5.04 & 10.5.05 em Photos of Homes in Qld and SA

9.5.04 em – Apology by Irish Sisters of Mercy

10.5.04 em – Children in institutional care and Hay – corres with Channel 9;

11.5.04 em – ADHD and behavioural problems relating to children in care; Photos of homes in SA

12.5.04 em – Photo Victoria Street Orphanage Ballarat

13.5.04 em – Photos and info on Good Samaritan Homes in NSW

14.5.04 em – Info held at Dept of Human Services Library, Vic

16.5.04 em – Info on Burwood Children's Home, NSW; Clarendon Children and Family Services, Tas; Article on St Agnes, Glenroy; extract from diary James Goold February 1866; ABC PM story 3.2.04

17.5.04 – Info and background history on Various Homes: St Aidan's, Bendigo; Ballarat Homes; Methodist Home, Cheltenham; Yarra Bay House; Brougham; Ashfield Infants Home; St Brigid's, Ryde and St Michael's, Baulkham Hills, Armidale; Parramatta; Melbourne Orphanage, Brighton; *The Graduate of Nudgee Orphanage Fred Newton*, Bruce MacGregor; St Vincent's Westmead AR 1968; Towards Healing; personal stories in letters

20.5.04 em – Records available from the State Library of SA relating to SA orphanages

20.5.04 em – Photos of Dalmar, NSW

23.5.04 em – Photos of Dalwood, NSW

24.5.04 em – Vietnam Veterans' Counselling Service: sessions for veterans' children

3.6.04 em – Provision of legal advice by WA Dept; SA parliamentary debate and media articles

8.6.04 em – South Australian orphanage records: State holdings

9.6.04 & 19.6.04 em – Project to improve support and information for children in care who have parents living with a dual diagnosis (NIDS MISA Project)

11.6.04 em – State care of children in Tasmania and Mercury articles

13.6.04 em – Article: *The Limits of Talk* Mary Sykes Wylie, Psychotherapy Networker 2003, Issue No.13; various media articles

19.6.04 em – South Australian gov support for State wards

20.6.04 – Background and history of Homes: Church of England Homes in NSW; Mittagong Homes; Historic Hopewood; Menzies, Vic; Goodwood oral histories; *Improving outcomes for young people leaving care in Victoria*, Sue Green and Amanda Jones, 1999; *Your guide for kids in care*, YACS, 1984; The Wards Project Draft Implementation Plan, DoCS and DJJ, March 1999; extracts from *The Boy Adeodatus*, Bernard Smith; assorted articles.

21.6.04 em – Former residents access to study at QUT – alternative entry pathway

22.6.04 – *Stale bread and stiff cheese*, Reg Mounsey; *Reflections of My Youth: My time at Dill Mackie 1940-47*, Barry Jacka; *Children in Need: Child Welfare in NSW*, Donald McLean, 1955; Info on Homes: Milleewa, Wilson, Margate and Sandgate, St Canice Sandy Bay, memories of methodist homes Cheltenham, St Vincent's Westmead AR 1969; SMH Article on 1960 drowning .

23.6.04 em – CLAN and the Salvation Army

24.6.04 em – DOCS files and personal access

25.6.04 em – Copy of letter to Today show re Salvation Army

1.7.04 em – Info on Rupertswood, Providence and Lutheran homes in Vic

1.7.04 em – List of books on orphanages in Australian libraries

2.7.04 em – finding family file in Tas

4.7.04 em – Tasmania and research work; Margaret's story

5.7.04 em – Limitations of SA inquiry leading to class action and 5AA transcripts of abuse and death in orphanages

8 & 9.7.04 em – CLAN funding and operation

9.7.04 em – Info on Irish Residential Institutions Redress Board

9.7.04 em – Info on Legacy wards

13.7.04 em - Destruction of South Australian wards files

19.7.04 em – State wards and access to files by siblings and direct family

20.7.04 em – Info on Sandgate Home, Brisbane

21.7.04 – Current and historical info on different Homes: Rupertswood, Sunbury Industrial School, Petersham Girls Industrial, Silky Oaks, Menzies Homes, St Joseph's Lane Cove, Pallister Girls Homes, Ballarat Orphanage, Melbourne Orphanage, Lutheran Homes Surrey Hills and Kew, Abbotsford Convent (St Heliers); *Growing Up in Richmond*, Morag Loh; extracts from *A History of Australian Childhood*; Childrens Registers 1864-1965, DHS Vic

23.7.04 em –DOCS and a CLAN member

23.7.04 em – Numbers of children in care

25.7.04 em – 'Airing the dirty linen', article from The West Australian, 24.7.04

29.7.04 em – QUT: former residents access to study – Q-Step Program

31.7.04 em – Correspondence with State departments

1.8.04 em – Info on WR Black Home

5.8.04 em – Personal comments on Salvation Army's conduct of Homes

6.8.04 em – Info on Ballarat Orphanage; Families Australia Child Abuse and Neglect Summit – Update

9.8.04 – Info on St Vincent's, Nudgee, including Centenary; Monte Pio, Maitland; assorted articles.

11.8.04 – Info on Yawarra Boys Training School, Kurri Kurri

15.8.04 em – Update on Australian based applicants for Irish RIRB compensation

17.8.04 em – Responses received by CLAN to article in Herald Sun on 15.8.04

17.8.04 em – Photo of Murray Dwyer Home, Mayfield; info on Monte Pio

21.8.04 em – Children in care by type of placement, Qld 1896-1996

23.8.04 em – Brief info on Myee and Corelli

4.9.04 em – Info on Ballarat Orphanage and Children's Home

12.9.04 em – Letter to Salvation Army Special Search Service

- 15.9.04 em** – Comments re Irish Redress Board
- 22.9.04** – Personal stories; articles and info on homes; Anglican pastoral care and assistance information; CLAN Newsletter
- 30.9.04 em** – Comments from daughter of NSW Dept house parents
- 16.10.04 em** – Info from London Careleavers group
- 19.10.04** – Personal stories from Robert, Gwenda, Janice and Mavis; historical info on St Andrews and Dorcas Homes Manly, Ohio Boys Home Walcha, Croagh Patrick Orange Jubilee; Sydney Anglican information on pastoral care and assistance for victims of child abuse dated August 2004; St Vincent's Adolescent Care Westmead 2003; DoCS glossary of terms used on old files; misc press articles
- 12.11.04** – Info on Homes including Parkerville, WA; Castledare 1929-79; Berry Street, Vic; Kardinia House; Elizabeth Fry Retreat; Kildonan; Attachment and Separation, Vera Fahlberg
- 15.11.04 em** – Letter supporting Positive Justice Centre sup submission No 122A
- 4.12.04 em** – Apology re Scotland from Scottish First Minister (BBC news item)
- 17.12.04** – Magill Methodist Home (Lentara), Adelaide; Presbyterian Boys Home, Manly; Lists of Homes and orphanages; articles and media clippings
- 22.12.04 em** – Working at Winlaton 1968-69
- 13.1.05** – The Haven: Coventry Home News 1950, articles and media clippings
- 23.1.05 em** – Child welfare graves; Photos of Allambie, Vic
- 24.1.05 em** – St Nicholas Boys Home, Glenroy personal comments
- 28.1.05 em** – *Education and 'looked after children'*, experiences of a UK careleaver
- 31.1.05** – Various newspaper articles; anonymous poem and comments by a careworker
- 3.2.05 em** – Photos of Sutherland Homes, Berry St Babies Home, St Cuthberts and Ohio Boys Home, NSW

APPENDIX 2

APOLOGIES



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

December 14, 2004

Statement on Senate Report into Children in Institutional Care

The Australian Catholic Bishops and the Leaders of Religious Institutes welcome the Report of the Senate Inquiry into Children in Institutional Care.

We have been moved by the courage of those who have laid bare their experiences before the Committee. An apology was first made in the 1996 document "Towards Healing", and we formally renew our apology to those whose abuse was perpetrated by Catholic Church personnel.

The revelations contained in the report are the very opposite of all that we would wish to stand for.

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.

We announce the formation of a "Senate Inquiry Action Group". The members of this group will be:

Dr Kristin Johnston, Australian Conference of Leaders of Religious Institutes.
Fr Brian Lucas, Australian Catholic Bishops Conference.
Br Kevin Ryan, Christian Brothers.
Mr Paul Linossier, Catholic Welfare Australia.
Ms Myolene Carrick, Catholic Welfare Australia.

The mandate we have given this 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."

Contact: Debra Way at the Australian Catholic Bishops Conference on 02 6201 9859 or 0414 880 475.



The Anglican Church of Australia

GENERAL SYNOD

6 October 2004

Church apologises to victims of institutions

The Anglican Church's General Synod has issued an apology to people who experienced hurt, or abuse or distress in institutional and out-of-home care provided by the Anglican Church.

At its meeting at the University of Notre Dame in Fremantle, the church addressed the experiences of children covered in the recent senate inquiry into Children in Institutional Care Report, *Forgotten Australians*.

The apology said "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."

Brisbane's Archbishop Phillip Aspinall, supporting the apology, said the church was specifically addressing those who had been harmed in institutions. He said the stories of people hurt in institutions were horrific and heartbreaking.

"It is important that this church acknowledges that it happened, that we express our deep sorrow and regret, and that we get our dioceses to look carefully at the report to check again how well we care for people."

Following the reading of the apology, the Primate, Archbishop Peter Carnley, read the apology on behalf of the church, then called for a minute's silence.

Archbishop Carnley prayed "we seek your forgiveness for the wrongs the church has committed in the past. Give us grace that we may be transformed, and that the church may be a safe and caring place for children."

For more information, contact Robyn Douglass on 0411 075 598

51/04 THE FORGOTTEN AUSTRALIANS

That this General Synod:

- 1 Notes that a report on Australians who experienced institutional or out-of-home care as children – the *Forgotten Australians* report – has been prepared by the Senate Community Affairs References Committee and was tabled in Federal Parliament on 30 August 2004.
- 2 Notes that the report calls on governments, churches and agencies to issue formal statements acknowledging their roles in past institutional care policies and practices and the impact these have had on the lives of many care leavers.
- 3 Acknowledges that many children who were placed in institutional care during the last century experienced neglect, harm and distress; and in particular cases, experienced serious physical and sexual abuse and assault – the effects of which are life-long.
- 4 Extends the following apology to these children:
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.

The recent Senate Inquiry into Children in Institutional Care Report has reflected the stories of many care leavers who demonstrated great courage in describing their experiences in institutional care. A number of these people had been placed in institutions conducted by the Anglican Church and its agencies.

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.

The Anglican Church is committed to ensuring that all children in any of its institutions and all those who come into contact with the Church will be protected. Actions are being taken in this General Synod and in the dioceses to put into place new strategies reflecting this commitment.

The Inquiry Report – Forgotten Australians – has brought into community awareness the serious and long-term effects of such abuse and assault; and the Anglican Church is committed to providing appropriate services, assistance and support to those persons who suffered harm.

- 5 Requests each diocese involved in the provision of institutional care to children to extend an apology in similar terms.
- 6 Acknowledges that the Church is called to assist and support in whatever way it can those persons who have been harmed by and in its institutions; and requests each diocese to consider appropriate strategies – which recognise the personal significance of the harm done to individual persons and their likely distrust of the Church – to encourage those who have been harmed to come forward.
- 7 Commends the report to the dioceses, institutions and agencies of this Church and requests them prayerfully and objectively to consider the report and its implications for current policies and practices which affect all children and young people in contact with the Church to ensure that the past abuse and assault will never again occur.

Phillip Aspinall - 5 Oct 04

The Benevolent Society supports the Senate's Forgotten Australians report

15 October 2004

The Benevolent Society today responded to the Senate Committee's Report, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*.

The Benevolent Society has been providing services to children and families since 1813. Part of our role was to provide residential care for children at Scarba House in Bondi from 1917 until 1986.

The Benevolent Society has a strong commitment to working with children and their families in need of support. It is because of this commitment that we wish to make a public statement of apology about past practices in our provision of residential care. The Board and staff feel strongly that we should acknowledge our history and the role that we played in providing any inadequate care for children placed with us.

The Benevolent Society apologises unreservedly for any abuse, mistreatment or harm experienced by children in our care.

The report of the Senate Committee, *Forgotten Australians*, gives us a clear, highly distressing picture of what life was like for tens of thousands of children who spent all or part of their childhoods in an orphanage or children's home. We believe that it is crucial that such histories are known, heard and acknowledged; and that such practices are never again experienced by any Australian child.

It is now recognised that out-of-home care for children needs to include frequent and meaningful family contact, placement with siblings, consistent care givers, opportunities for children to emotionally process what they have experienced and freedom to express their views and wishes for their future care. 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.

For further information please contact:

Bianca Robertson - 02 9339 8080

Annette Michaux - 02 9339 8065 or 0418 423 283



UNITING CHURCH IN AUSTRALIA
NATIONAL ASSEMBLY

MEDIA RELEASE

Communications Unit
Level 8 222 Pitt Street SYDNEY
PO Box A2266 Sydney South NSW 1935

Embargoed until 1pm, Monday 27 September 2004

THE “FORGOTTEN AUSTRALIANS” REPORT

The Uniting Church today 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.

“On behalf of the Uniting Church and our agencies, I apologise unreservedly for any physical, psychological or social harm that might have occurred,” National President, Rev. Dr Dean Drayton said.

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

Rev. Drayton said the recent Senate Inquiry into Children in Institutional Care highlighted a number of cases where children suffered at the hands of caregivers.

“The Inquiry painted a disturbing picture of life for many young people who lived in institutional care. The Uniting Church through its agencies managed a number of these facilities and sadly, some did not provide the love, nurturing and care that the children in them so rightly deserved.

“The Inquiry highlighted the flaws in institutional care models and the need to ensure they are never repeated,” Rev. Drayton said.

“The Uniting Church, through our family and community services networks, has developed new models for providing care and services to children. The Church is committed to ensuring that children and families receive the best facilities and care possible and we are constantly working to improve them.

“The Senate Inquiry reminds everybody involved in delivering services and care to children that we all need to work together so that the mistakes of the past are not repeated.

“The Uniting Church welcomes the Inquiry and its recommendations – they provide a basis on which Governments at all levels and care providers may move forward together by acknowledging past wrongs and addressing them appropriately. We are committed to working with government to respond to the issues raised during the Inquiry,” Rev. Drayton said.

This statement was endorsed by the National Assembly of the Uniting Church in Australia and the Moderators of the Synods of New South Wales, Queensland, Victoria and Tasmania, Western Australia, South Australia and the Northern Synod.

Rev. Allan Kuchler
Moderator of Queensland

Mr. Jim Mein
Moderator of NSW

Rev. George Woodward
Moderator of the Northern Synod

Rev. Dr Graham Humphris
Moderator of South Australia

Rev. Sue Gormann
Moderator of Victoria and Tasmania

Rev. Gemmel Sherwood
Moderator of Western Australia

ENDS

Media contact: Gavin Melvin, Senior Communication Officer, 0417 416 674

