

CHAPTER 4

LOST INNOCENTS

4.1 This chapter provides a complete listing of the recommendations of the *Lost Innocents* report and the government responses. Recommendations that were not considered in chapters 2 and 3 are also addressed in this chapter.

4.2 Many of the recommendations set out below did not attract extensive comment or evidence through the course of the inquiry. There are a number of reasons that this may be so:

- the specific issue has been addressed or is for other reasons less relevant than at the time of the previous inquiry;
- the specific issue is a subset of a more general recommendation that was commented on; or
- the recommendation was rejected by the government and the relevant issues are substantially unchanged since the time of the original inquiry.

4.3 As noted in Chapter 2, the Commonwealth government has expressed a commitment to review the responses to the *Forgotten Australians* report, which apply to former child migrants who spent time in institutional or out-of-home care.

Recommendation 1

That the Commonwealth Government urge the State and Territory Governments to undertake inquiries similar to the Queensland Forde inquiry into the treatment of all children in institutional care in their respective States and Territories; and that the Senate Social Welfare Committee's 1985 inquiry be revisited so that a national perspective may be given to the issue of children in institutional care.

Government response

The government supports this recommendation and will bring the recommendation to attention of the Community Services Ministers Advisory Council, acknowledging that children in institutions are the primary responsibility of the States and Territories.

The number of children in institutional/residential care has decreased markedly from approximately 27 000 in 1954 to less than 2000 currently. Most states and territories have phased out large institutions, with the majority of residential care now provided in small facilities caring for three to eight children.

Implementation

4.4 The implementation of this recommendation is addressed in Chapter 2.

Recommendation 2

That British and Maltese former child migrants be treated equally in accessing any of the services currently provided or as recommended in this report, including access to travel funding.

Government response

The government supports this recommendation and agrees that former British and Maltese child migrants should be treated equally in accessing any existing or new services proposed in this response (Refer recommendations 17 and 22).

The government, through the Department of Immigration and Multicultural and Indigenous Affairs, (DIMIA) has funded the Child Migrants Trust to provide counselling and family reunification services for former child migrants since 1990. Services provided by the Trust are open to both UK and Maltese former child migrants. The Trust provides support and assistance to approximately 750 UK and Maltese clients per year.

Implementation

4.5 The implementation of this recommendation is addressed in Chapter 3.

Recommendation 3

That the Commonwealth Government establish the means to accurately determine the numbers of child migrants sent to Australia during the 20th century to assist in determining the level of support services and other assistance needed for former child migrants.

Government response

The government considers that statistics on the numbers of child migrants sent to Australia during the 20th century are unlikely to help to determine the level of support and assistance that child migrants living in Australia today might require. Child migrants are not a homogenous group in terms of their needs – some may be happily settled and not want to be identified or need assistance, some may be living abroad, or deceased. The government's focus has been, and continues to be, on addressing needs through the provision of counselling where child migrants have presented seeking support.

In terms of providing further statistical information, DIMIA provided as accurate an estimate as possible of the numbers of child migrants to Australia in its submission to the Senate Inquiry. The statistics were taken from quarterly statistical bulletins published from 1947 to 1961. After 1961 these statistics were no longer published in this format and instead were aggregated with other more general migration statistics, presumably because the numbers of child migrants had declined substantially by that stage.

DIMIA also provided post 1961 statistics, taken from various reports to Parliament recorded in Hansard over the next decade. However these reports were intermittent and did not provide exact numbers involved. In view of this, DIMIA is unable to provide more accurate historical figures than those already provided to the Committee. Future focus will therefore be on identifying levels of need for services, based on those former child migrants seeking them.

Implementation

4.6 The Commonwealth Department of Immigration and Citizenship (DIAC) advised that it could provide no further comment or update on the previous government response.¹

4.7 The Western Australian Department for Child Protection advised:

The Department for Child Protection has identified the exact number of child migrants that came to Western Australia as part of the work in creating the Former Child Migrants Referral Index. The total for Western Australia is 2,941 child migrants.²

4.8 The Committee did not further consider this recommendation.

Recommendation 4

That in accordance with the 'Statutes of the Most Excellent Order of the British Empire', the Commonwealth Government initiate the process for Francis Paul Keaney's membership of the Most Excellent Order of the British Empire to be cancelled and annulled.

Government response

The government notes the concerns expressed by some former child migrants in relation to Francis Paul Keaney and sincerely regrets the injustices and suffering that some former child migrants may have experienced in institutional care. However the precedents for cancellation of awards of British honours are based on proven criminal offences and would generally result once due appeals processes were exhausted. The serious allegations against Francis Paul Keaney have not been tested through court or appeals processes and cannot be now that he is deceased. The award of OBE ceased with his death. As a result of this, it is not possible to pursue this recommendation.

Implementation

4.9 The Committee received no evidence on this matter and did not further consider the recommendation.

1 *Submission 27, p. 3.*

2 *Submission 11, p. 2.*

Recommendation 5

That the Commonwealth Government continue to provide funding for at least three years directly to the Child Migrants Trust to ensure that the specialised services of tracing and counselling are provided or accessible to former child migrants living throughout Australia.

Government response

The government supports this recommendation. The government will continue to fund the Child Migrants' Trust for the next three years at an amount of \$125,000 plus associated administrative costs per annum.

Implementation

4.10 The implementation of this recommendation is addressed in Chapter 3.

Recommendation 6

That the Commonwealth Government urge the British Government to continue financial resources for the National Council of Voluntary Child Care Organisations (NCVCCO) for the retention and expansion of the Child Migrant Central Information Index.

Government response

This recommendation will be brought to the attention of the British government.

Implementation

4.11 The Committee received no evidence on this matter and did not further consider the recommendation.

Recommendation 7

That the Commonwealth Government urge all State Governments to establish a comprehensive signposting index similar to that established by the Western Australian Government.

Government response

The government supports this recommendation and will refer it to the Community Services Ministers Advisory Council for consideration by State and Territory governments.

Implementation

4.12 The Committee received no evidence on this matter and did not further consider the recommendation. However, Chapter 3 considers the issues of

identification of and access to records of former child migrants and care leavers more generally.

Recommendation 8

That the Commonwealth Government urge all State Governments to co-operate to establish a national index of child migrants.

Government response

The government supports this recommendation and will refer it to the Community Services Ministers Advisory Council for consideration by State and Territory governments.

Implementation

4.13 The implementation of this recommendation is addressed in Chapter 3.

Recommendation 9

That the Commonwealth Government urge State and Territory Governments to publish directories of information to assist all former residents of children's institutions to access records similar to the directories published by the New South Wales and Queensland Governments.

Government response

The government supports this recommendation and will refer it to the Community Services Ministers Advisory Council for consideration by State and Territory governments who have not published such directories. The government notes that there are already several directories in existence:

- *Good British Stock: child and youth migration (Barry Coldrey, National Archives of Australia 1999), which describes records held by the National Archives of Australia about child migration and provides information about how to access them;*
- *Connecting Kin Guide to records: a guide to help people separated from their families search for their records, (NSW Department of Community Services, 1998); and*
- *Missing pieces: Information to assist former residents of children's institutions to access records, (Families, Youth and Community Care Queensland, 2001).*

Implementation

4.14 The implementation of this recommendation is addressed in Chapter 3.

Recommendation 10

The Committee recommends that a national group of all receiving agencies, other relevant bodies and Commonwealth and State Governments be established to develop uniform protocols for accessing records and sharing information relevant to former child migrants, their families and descendants and to coordinate services for former child migrants.

Government response

The National Archives of Australia will raise the issue of developing uniform protocols for accessing records, coordinating services and sharing information at future meetings of the Council of Federal and State Archives (COFSTA), a national forum of government archivists. The National Archives will also promote discussion of the recommendations of the Inquiry within the archival community, which includes government and non-government archivists, to increase understanding of the issues and ways of assisting former child migrants.

The Archives has arranged for an article on the recommendations of the Senate Committee to be published in the Bulletin of the Australian Society of Archivists, the archival professional association. The issues will also be raised in professional seminars and workshops.

The Privacy Amendment (Private Sector) Act 2000 (Commonwealth) signals the Government's commitment to the principle that an individual should be able to access records about him or herself. The legislation came into effect on 21 December 2001. It grants a right to individuals to access information about themselves held by a range of non-government organisations. Although there are some exemptions to this right of access, the Government urges non-government organisations holding records about child migrants to make them available to those migrants.

As noted in Appendix 5 of the Report, the Government recognises that much has already been done in both the government and non-government spheres to assist former child migrants to access records and services.

The Commonwealth, Queensland and New South Wales Governments have published guides describing records about child migrants held in their jurisdiction and providing information about how to access them. The Western Australian government has produced the WA Former Child Migrant Referral Index which assists child migrants to that State locate relevant records. State and Commonwealth Governments actively assist former child migrants to access records and provide, or fund, a range of other services including counselling. Many receiving agencies also facilitate access by child migrants to records (see Appendix 5 of the Report).

In view of the administrative and legislative arrangements already in place and the other initiatives outlined above, the Government does not consider it necessary to establish a national group of receiving agencies, Commonwealth and State Governments and other bodies.

Implementation

4.15 The Committee received no evidence on this matter and did not further consider the recommendation. However, Chapter 3 considers the issues of identification of and access to records of former child migrants and care leavers more generally.

Recommendation 11

That the National Archives of Australia be provided with sufficient funding to ensure continuation of the program of digitising its records relating to child migration.

Government response

The government supports this recommendation. The National Archives has recently introduced a digitisation service for archival records held in its Canberra office and there are plans to extend the service to National Archives offices throughout Australia, enhancing the accessibility of its collection for all Australians. The Archives has a proactive digitisation program targeting records for which there is high demand.

The National Archives has already made digital copies of 34 key files relating to Catholic institutions responsible for child migrants available, in response to a recommendation made by the WA Christian Brothers' Province Archivist in her submission to the Senate Inquiry. The National Archives guide Good British Stock: child and youth migration identifies over 400 records in the Archives collection about child migration. The Archives will investigate the number of publicly available records listed in the guide that remain to be digitised, assess priorities and arrange for these records to be considered for inclusion in its digitisation program.

Implementation

4.16 The Committee received no evidence on this matter and did not further consider the recommendation.

Recommendation 12

That the National Archives of Australia liaise with the Genealogy and Personnel Records Section of the National Archives of Canada in relation to the technology, protocols, processes and procedures the Canadians have implemented to facilitate access to their records for former child migrants and their descendants.

Government Response

The government supports this recommendation. The National Archives of Australia is aware of a number of the activities of the National Archives of Canada concerning access to child migration records by former child migrants and their descendants and has taken these into account in developing its own policies and procedures. To ensure

that the National Archives is aware of details of the technology, protocols, processes and procedures the Canadians have implemented, the National Archives has approached the Genealogy and Personnel Records Section of the National Archives of Canada as recommended by the Senate Committee. The National Archives looks forward to receiving a response and to incorporating useful approaches into its policies and procedures.

Implementation

4.17 The Committee received no evidence on this matter and did not further consider the recommendation.

Recommendation 13

That the Commonwealth Government provide at least three year funding to those agencies engaged in dedicated tracing in the United Kingdom to assist former child migrants to locate their families, based on applications by agencies undertaking that work.

Government response

The government agrees that supporting former child migrants to trace and locate their families in the United Kingdom is an important and practical form of assistance. However the government already does so through its funding of the Child Migrants Trust. The government has given an undertaking to continue to fund the Trust for the next 3 years (refer recommendation 5).

Implementation

4.18 The Committee received no evidence on this matter and did not further consider the recommendation. Recommendation 5 is discussed in Chapter 3, 'Delivery of services'.

Recommendation 14

That all organisations holding records pertaining to former child migrants make these records available to former child migrants or their authorised representative immediately and unconditionally.

Government response

The government supports this recommendation in principle. The principle of an individual accessing records about him or herself is consistent with Commonwealth, State and Territory archival, privacy and freedom of information legislation and administrative arrangements.

The Archives Act 1983 (Commonwealth) provides a legally enforceable right of access to Commonwealth records over thirty years of age. The majority of records pertaining to former child migrants have now passed the thirty year mark. Where

Commonwealth records contain information that is not suitable for public release under the Archives Act (for example, sensitive personal information), access is given only to the subject of the record or their authorised representative.

Commonwealth records less than thirty years of age are generally available to the subject of the record under the provisions of the Freedom of Information Act 1982 (Commonwealth) and the Privacy Act 1988 (Commonwealth).

As noted in responses to recommendations 10 and 15, amendments to the Privacy Act made by the Privacy Amendment (Private Sector) Act 2000 (Commonwealth) grant individuals rights of access to information about themselves held by a range of non-government organisations. The amendments commenced on 21 December 2001.

Implementation

4.19 The Committee received no evidence on this matter and did not further consider the recommendation. However, Chapter 3 considers the issues of identification of and access to records of former child migrants and care leavers more generally.

Recommendation 15

That where any organisation holds primary documents, including birth certificates, relating to any living former child migrant without their express permission, former child migrants be entitled to recover that document from the holding organisation.

Government response

The National Archives of Australia holds many primary documents relating to the interaction of individuals with government although this is more the exception than the rule in the case of child migration records. Such records would more likely be held by those organisations that exercised the role of guardian to child migrants.

The Government notes this recommendation may have differing implications for government, non-government and community organisations holding these records, (see recommendation 14), depending on the legislative framework in which these organisations operate. Recovery of documents held by State and Territory authorities is obviously a matter of consideration for those governments. In the Commonwealth context the National Archives would, in most circumstances, consider these primary documents to be Commonwealth records and therefore would need to comply with the Archives Act 1983 to transfer ownership to another party. It would not be consistent with the Archives' role as custodian of records of archival value to do this.

As noted in response to Recommendations 10, 14 and 16, government archives are responsible for ensuring access to such records and protecting the privacy of child migrants where needed. The Privacy Amendment (Private Sector) Act 2000 (Commonwealth), which came into effect on 21 December 2001, grants individuals

rights of access to information about themselves held by a range of non-government organisations.

Implementation

4.20 The Committee received only two submissions on this issue. New South Wales advised:

The NSW Government has...amended the *Children and Young Persons (Care and Protection) Act 1998* so that original birth certificates, school reports, medical reports and photographs, greeting cards and similar personal records on archived ward files can now be removed and given to former wards. This amendment prevails over the provisions of the NSW *State Records Act*³

4.21 The Western Australian Department for Child Protection advised:

The Department for Child Protection has made every effort to return birth certificates, where held, to former child migrants. The Former Child Migrants Referral Index created by the Department also indicates where the Department holds a birth certificate.⁴

4.22 The Committee did not further consider the recommendation. However, Chapter 3 considers the issues of identification of and access to records of former child migrants and care leavers more generally.

Recommendation 16

That all sending and receiving agencies be required to extend access to their records to descendants of former child migrants.

Government response

The Government urges all receiving agencies in Australia to continue to assist descendants of former child migrants to access records and so facilitate family tracing and reunion. The Government will convey this recommendation, together with the report, to the UK Government for the information of sending agencies in the UK.

As noted in recommendation 14, Commonwealth records held by the National Archives of Australia about child migrants are already made available to former child migrants or their authorised representatives on request. Where records sought are not suitable for public release but the applicant is the subject of the file or can demonstrate a close relationship with the subject of the file or a particular need for access, the National Archives of Australia will consider granting access to that person, subject to the protection of privacy of third parties. Similar arrangements apply to State government archival records.

3 Submission 24, p. 5.

4 Submission 11, p. 5.

In the case of non-government organisations which hold records about child migrants, the Government suggests that such organisations consider allowing access by descendants provided such disclosure does not amount to a breach of any person's privacy.

Implementation

4.23 A number of organisations identified the provision of access to descendants of former child migrants as being problematic. Barnardos advised that it rejected the recommendation on the basis of consultation with its members as well as practical experience with this issue. Mr Bill Hoyles, Senior Manager, Youth Affairs, observed:

We have taken advice from our own child migrants and many of them are unhappy about the idea of having their personal information released to their relatives after they die, particularly recently because a number of books have been published in which they have told their story and the story that they have told is not necessarily reflected in the files that we have. In many cases they have reinvented their past. They believe that many other people in the community do not have files kept on them. I do not have a file kept on me of my early childhood. I could be anybody that I wish. They want to have that same opportunity.⁵

4.24 Ms Margaret Humphreys OAM, International Director, Child Migrants Trust, acknowledged the issues of individual privacy and choice around the granting of access to third parties to former child migrants' records. The CMT currently dealt with this issue on a case-by-case basis.⁶

4.25 The Committee did not further consider the recommendation. However, Chapter 3 considers the issues of identification of and access to records of former child migrants and care leavers more generally.

Recommendation 17

The Committee recommends that the Commonwealth Government:

- **confer automatic citizenship on all former child migrants, with provision for those who do not wish to become Australian citizens to decline automatic citizenship; and**
- **that a special ceremony conferring citizenship be conducted for former child migrants.**

Government response

The government does not consider that automatic conferral of Australian citizenship is always in the best interests of former child migrants. Automatic conferral could

⁵ *Proof Committee Hansard*, 7 April 2009, p. 26.

⁶ *Proof Committee Hansard*, 8 April 2009, p. 22.

have implications, for example, for a former child migrant's existing citizenship/s as well as any legal or other claims they may have overseas.

The government will, however, examine ways to fast-track applications for grant of Australian citizenship from former child migrants, and extend to Maltese former child migrants the fee exemption currently available to British former child migrants. This fee exemption for applications for grant of Australian citizenship is currently available to British former child migrants who entered Australia from the United Kingdom between 22 September 1947 and 31 December 1967. The Government believes that this is an appropriate and symbolically important concession.

The Government will arrange special citizenship ceremonies for former child migrants as appropriate.

Implementation

4.26 DIAC provided the following update to the previous Commonwealth government response:

The Australian Government did not agree to automatic conferring of Australian citizenship for former child migrants.

There is no provision in the *Australian Citizenship Act 2001* for automatic conferral of Australian citizenship on former child migrants. However, the fee exemption for Australian citizenship applications, which was available to British former child migrants, was extended to include Maltese former child migrants from 1 July 2005.

The department undertook to arrange ceremonies for former child migrants as appropriate. However there are no records to suggest that any special citizenship ceremonies have been requested by former child migrants.⁷

4.27 Barnardos' cited one example of a recent case in which a former child migrant was deported to the UK:⁸

...a child migrant, who had been in the country for 52 years, [was deported] on the grounds that they had committed an offence that was [punishable by imprisonment] in excess of 12 months...[We do not in any way condone the crimes that he committed but it was the fact that he was deported after 52 years in Australia, having served in the Australian Army and having a wife and two children here.⁹

4.28 However, representatives of the International Association of Former Child Migrants and Their Families advised the Committee that the issues around citizenship for former child migrants had generally been resolved.¹⁰ Ms Humphreys advised that

7 *Submission 27*, pp 4-5.

8 Mr Bill Hoyles, Senior Manager, Youth Affairs *Submission 9*, p. 5.

9 *Proof Committee Hansard*, 7 April 2009, p. 27.

10 *Proof Committee Hansard*, 8 April 2009, p. 11.

she believed there was currently fewer than five cases in which former child migrants were experiencing issues related to (lack of) Australian citizenship.¹¹ DIAC was not aware of the cases referred to.¹²

4.29 DIAC advised that it did not have records which could specify the number of former child migrants who have become Australian citizens since arrival in Australia.¹³

Recommendation 18

That the Commonwealth Government urge the United Kingdom Government to extend its contribution to the Child Migrant Support Fund for at least a further three years beyond its anticipated end in 2002.

Government response

This recommendation will be drawn to the attention of the UK Government along with other relevant recommendations. Further funding of the Child Migrant Support Fund is a matter for the UK government to consider.

Recommendation 19

That the Child Migrant Support Fund be supplemented by funding from the Australian Government, State Governments and receiving agencies; and that this funding comprise:

- (a) a Commonwealth Government contribution of \$1 million per year for three years initially;**
- (b) a combined contribution from State Governments of \$1 million per year for three years initially; and**
- (c) a contribution from receiving agencies, and that this be funded by a levy or other means on receiving agencies not currently providing travel assistance, in proportion to the number of children placed under their care as a result of the child migration schemes during the 20th century.**

Government response

As an alternative to supplementing the Child Migrant Support Fund, the government will contribute towards a new Australian travel fund for former child migrants from the UK and Malta. Further details are provided in response to Recommendation 22.

11 *Proof Committee Hansard*, 8 April 2009, p. 18.

12 Additional information, 19 June 2009, p. 1.

13 Additional information, 19 June 2009, p. 4.

Recommendation 20

That the eligibility criteria for access to the Child Migrant Support Fund be broadened to:

- (d) permit visits to family members and other relatives, including aunts and uncles, cousins, nephews and nieces; and for other related purposes, such as visits to family graves;**
- (e) be available for all former child migrants, including the Maltese and those who may have undertaken previous visits at their own expense;**
- (f) provide for two further visits but with a reduced level of assistance, limited to the payment of airfares and associated travel expenses;**
- (g) provide, in exceptional circumstances, travel funding for a spouse, child or other person as an accompanying carer; and**
- (h) be subject to no means-testing requirements.**

Government response

Funding will be contributed by the Government towards an Australian travel fund. Funds will also be sought from State governments. Eligibility criteria will need to be determined in the context of the total pool of funds available from all sources. Refer Recommendation 22.

Recommendation 21

That the Commonwealth Government, together with other stakeholders, undertake a review of its participation in the Child Migrant Support Fund after three years to determine the adequacy of funding from Australian sources for the fund and the extent of continuing demand for travel from former child migrants.

Government response

The government will seek data on the usage and effectiveness of the travel fund in order to monitor the efficacy of the scheme.

Recommendation 22

That, should the Child Migrant Support Fund not be extended by the United Kingdom Government, the Commonwealth Government establish a separate Australian travel scheme to assist former child migrants to visit their country of origin, and that this scheme be funded by contributions from the Commonwealth, State Governments and receiving agencies as detailed in Recommendation 19; and that the scheme have a broad set of eligibility criteria as detailed in Recommendation 20.

Government response

The Government supports the establishment of a new Australian travel fund and will contribute \$1m per year, plus associated administrative costs, for 3 years in recognition of the importance of enabling former child migrants to return to their country of origin to re-establish connections and reunite with family members. The Commonwealth will also ask State Governments and receiving agencies to contribute to the fund.

The administration of the fund will be contracted to a suitable provider, following a competitive process. The scheme will commence in the 2002-03 financial year. Former British and Maltese child migrants who arrived under approved child migration schemes and were placed in institutional care in Australia will be eligible for the scheme.

Implementation

4.30 The implementation of recommendations 18 to 22 is discussed in Chapter 3.

Recommendation 23

That, to ensure that choice in counselling services remains available to former child migrants, the Commonwealth Government urge agencies and other State Welfare Departments providing counselling services to maintain those services and expand them where necessary.

Government response

The government supports this recommendation and will refer it to the Community Services Ministers Advisory Council for consideration by State and Territory governments. Former child migrants currently have access to counselling services available in states and territories from government and non-government counselling organisations.

Implementation

4.31 The implementation of this recommendation is discussed in Chapter 3.

Recommendation 24

That the Commonwealth and State Governments in providing funding for boarding house and supported accommodation programs recognise the housing needs and requirements of former child migrants.

Government response

The government recognises that some former child migrants may require housing assistance. The Commonwealth provides supported accommodation and related support services to help people who are homeless or at risk of homelessness to

achieve the maximum degree of self reliance and independence through its Supported Accommodation Assistance Program (SAAP). SAAP's goals are to resolve crisis, re-establish family links where appropriate and re-establish the capacity of clients to live independently of SAAP. The government notes that SAAP may be an appropriate response for former child migrants in crisis situations.

The Commonwealth provides funding for housing assistance to the States and Territories through the Commonwealth State Housing Agreement (CSHA). States and Territories are responsible for service delivery under the CSHA, and provide public and community housing as well as a range of other housing assistance. The guiding principles of the CSHA specify that:

- *priority of assistance should be provided to those with the highest needs;*
- *assistance should be provided on a non-discriminatory basis; and*
- *housing assistance should be responsive to the needs of consumers.*

Implementation

4.32 Neither DIAC nor FaHCSIA directly addressed the implementation of this recommendation in their submissions to the inquiry.

4.33 However, the Western Australian Department for Child Protection (DCP) provided some comment on the Commonwealth government's development of a National Affordable Housing Agreement (NAHA), which would incorporate funding for a Commonwealth-State Supported Accommodation Assistance Program (SAAP). DCP described the NAHA as a 'comprehensive long-term national approach to tackling homelessness including early intervention, breaking the cycle of homelessness and connecting the service system'.¹⁴ However, it was not clear that any program under the NAHA would explicitly recognise the housing needs and requirements of former child migrants.

4.34 The Committee notes that the Commonwealth and State government responses to recommendations 25 to 28 of the *Forgotten Australians* report addressed the issue of recognising care leavers more generally in the funding and development of health, housing, aged care and education programs. This issue is discussed in Chapter 3, 'Delivery of services'.

Recommendation 25

That the Department of Health and Aged Care commission a study into the aged care needs of former child migrants; and that Commonwealth funding be directed into areas of need identified in that study.

14 *Submission 11*, p. 8.

Government response

The government will ensure that Aged Care Planning Advisory Committees and Aged Care Assessment Teams are sensitised to the needs of former child migrants. The government believes that the needs of this group are adequately catered for under the aged care planning, funding and assessment processes provided by the Department of Health and Aged Care. In view of this, the government does not consider that a study of this nature is needed.

Implementation

4.35 The Committee received no evidence on this matter and did not further consider the recommendation.

Recommendation 26

That the Commonwealth Government urge the British Government to ensure that former child migrants living permanently in the United Kingdom are not disadvantaged in gaining access to income support payments following termination of the Social Security Agreement with the United Kingdom.

Government Response

The government considers that in practice there is little or no likelihood of any former child migrants being disadvantaged as a result of the termination of the Social Security Agreement. The termination of the agreement made provision that all people receiving payments under the Agreement would continue to receive those payments. The UK Government has announced that it will continue to recognise periods of residence in Australia, accrued until 6 April 2001, for the purposes of claiming contributory benefits under the (former) Agreement.

It should also be noted if a former child migrant from the UK has qualified for an age pension in Australia, he or she may return to the UK and reside there, and still be paid the Australian age pension.

Means-tested income support payments (similar to Australia's social security payments) are also available to residents of the UK. Relevant Australian income support payments continue to be payable in the UK under Australian social security law (the Agreement did not affect their payment or the payment of UK pensions in Australia).

Implementation

4.36 The Committee received no evidence on this matter and did not further consider the recommendation.

Recommendation 27

That the Commonwealth Government provide a prospective one-off grant of \$10,000 to former child migrants wishing to return permanently to the United Kingdom or Malta who can prove that they will permanently relocate in those countries.

Government response

The government is unable to support this recommendation as it poses considerable practical difficulties in terms of establishing proof of permanent relocation and ensuring that the grant is used for its intended purpose. However, should a former child migrant wish to return to the UK or Malta to live permanently, they may be able to do so through the proposed Australian travel fund.

Implementation

4.37 DIAC advised:

The Australian Government did not agree with this recommendation. However, eligible former child migrants were able to travel for family reunification in the UK or Malta with support from the Australian Travel Fund.¹⁵

4.38 The Committee did not further consider the recommendation.

Recommendation 28

That the Commonwealth and State Governments widely publicise the availability of remedial education services and associated adult education courses to child migrants and child migrant organisations.

Government response

The government supports this recommendation and will refer the recommendation through the Ministerial Council for Employment, Education, Training and Youth Affairs for the States and Territories to act upon.

Implementation

4.39 The Committee received no evidence to indicate that this matter was referred to the Ministerial Council for Employment, Education, Training and Youth Affairs.

4.40 Only two States commented directly on this recommendation, with both responses indicating that former child migrants are not specifically targeted by advertising for the remedial or adult education services. South Australia advised:

15 *Submission 27*, p. 7.

The South Australian Government widely promotes supportive educational services so that all citizens who may require assistance are well informed of programs available. The primary Australian support and advocacy service, the Child Migrant Trust, are aware of service provision of the Government and non-government services available in South Australia. Within the Department for Families and Communities, Families SA provides services for individuals who are affected by child migrant adoptions through Adoptions and Family Information Service and for those in State care, the Post Care Service provides information, advocacy and support to meet identified needs, including education.¹⁶

4.41 The Western Australian Department for Child Protection advised:

A range of adult education courses, including literacy and numeracy are available in Western Australia and are publicised on the internet and in print media.¹⁷

4.42 The Committee notes that the Commonwealth and State government responses to recommendations 25 to 28 of the *Forgotten Australians* report addressed the issue of recognising care leavers more generally in the funding and development of health, housing, aged care and education programs. This issue is discussed in Chapter 3, 'Delivery of services'.

Recommendation 29

That the Commonwealth Government urge the Attorney-General of Western Australia to urgently review the recommendations of the Law Reform Commission of Western Australia Report on Limitation and Notice of Actions with a view to bringing the Western Australian law into line with other Australian jurisdictions.

Government response

The government supports this recommendation in principle. The Attorney-General will send a copy of the Senate Committee's report to the Attorney General of Western Australia. However any change to Western Australia limitation law is a matter for Western Australia.

Implementation

4.43 The Committee made this recommendation on the basis that the law in that State did not allow for extensions to limitations periods for the bringing of civil actions related to allegations of historical sexual abuse.¹⁸

16 *Submission 30*, p. 6.

17 *Submission 11*, p. 9.

18 *Lost Innocents*, pp 221-223.

4.44 The Western Australian Department for Child protection advised:

The Western Australian Department for Child Protection concurs with the views previously expressed by this Department...that any retrospective change would need to be treated with considerable caution both because of its effect on the general principles against retrospective legislation and its effect on individual cases.

The *Limitation Act 1935* does not give discretion to the Courts to extend the limitation period for personal injury (other than asbestos disease type cases). Case law such as the decision in *Bennett v Minister for Community Welfare (1993) 176 CLR 408* may, however, allow certain cases to successfully be brought after the expiration of the limitation period for the primary claim on the basis that a common law duty of care is owed by the guardian to the ward in his/her care to obtain independent legal advice on proper instruction in relation to potential actions for damages arising from injuries occurring while the ward was in the guardian's care, and advice that the action might become statute barred. The common law duty is breached by failure on the part of the guardian to obtain that legal advice, and a secondary cause of action, will arise on the expiration of the limitation period for the primary claim. The scope and duration of this secondary cause of action is yet to be tested in the Courts.

Western Australia has in recent years undertaken reviews of limitations law through the Law Reform Commission leading up to the enactment of the *Limitations Act 2005*. The Act makes specific provision for limitations periods applicable to children: Part 3 allowing for the extension of limitation periods beyond 3 years upon application to the Court in certain circumstances. The legislature did not make special provision in the *Limitations Act 2005* for an extension of the limitations period for historical cases of institutional child abuse.

...

The Department is of the view that the implementation of the Redress Western Australia scheme provides a suitable alternative to victims without the need for further retrospective legislative amendments to the *Limitation Act 1935* or the *Limitation Act 2005*.¹⁹

4.45 The Committee does not consider the response of the Western Australian Department for Child Protection to squarely address the intent or spirit of the Committee's original recommendation. The Committee does not expect that potential cause of action identified in *Bennett*, as yet untested in terms of scope and duration, offers sufficient certainty for potential claimants. Given the potential financial and emotional consequences of pursuing an unsuccessful claim on this basis, this cause of action does not appear to the Committee to be an adequate alternative to the reform of the State's limitation act to allow judicial discretion to extend the limitation period for matters involving the sexual abuse of children.

19 *Submission 11*, pp 9-10.

4.46 Equally, the Committee does not consider the availability of the Western Australian redress scheme as representing an alternative to civil claims where any such claim is in part or wholly motivated by a desire to 'see justice done'. The suggestion that to allow the bringing of actions in cases involving the sexual abuse of children is a matter of compensation alone is to fundamentally misapprehend the nature and effect of such offences, as well as the suffering of its victims.

4.47 State statutes of limitation were also addressed in recommendation 3 of the *Forgotten Australians* report. This recommendation is considered in Chapter 5.

Recommendation 30

That the Commonwealth Government issue a formal statement acknowledging that its predecessors' promotion of the Child Migration schemes, that resulted in the removal of so many British and Maltese children to Australia, was wrong; and that the statement express deep sorrow and regret for the psychological, social and economic harm caused to the children, and the hurt and distress suffered by the children, at the hands of those who were in charge of them, particularly the children who were victims of abuse and assault.

Government Response

The government regrets the injustices and suffering that some child migrants may have experienced as a result of past practices in relation to child migration. The government supports the Committee's emphasis on moving forward positively to concentrate on improving support and assistance for those former child migrants who may need or want such services, as noted throughout the recommendations.

Implementation

4.48 The implementation of this recommendation is discussed in Chapter 2.

Recommendation 31

That all State Governments and receiving agencies, that have not already done so, issue formal statements similar to those issued by the Western Australian and Queensland Governments and the Catholic Church and associated religious orders to former child migrants and their families for their respective roles in the child migration schemes.

Government response

The Commonwealth government urges State governments and receiving agencies to consider the importance of this recommendation, in recognition of the hurt and distress that may have been experienced by some former child migrants as a result of former migration and institutional practices.

Implementation

4.49 The implementation of this recommendation is discussed in Chapter 2.

Recommendation 32

That the Commonwealth and State Governments, in conjunction with the receiving agencies, provide funding for the erection of a suitable memorial or memorials commemorating former child migrants, and that the appropriate form and location(s) of such a memorial or memorials be determined by consulting widely with former child migrants and their representative organisations.

Government response

The government supports the concept of a memorial(s) to former child migrants in commemorating the contribution child migrants have made to Australia. The Commonwealth will contribute up to a total of \$100,000 towards any suitable proposals for memorials initiated by State Governments in 2002-03. This funding would be distributed equally amongst those State Governments intending to establish a memorial to child migrants, and it is envisaged that those governments would seek to involve child migrants and relevant receiving agencies in determining the form and location of any such memorial.

Implementation

4.50 DIAC submitted that the Australian government had committed \$100 000 in total to the cost of erecting memorials, divided equally amongst the six States that received child migrants. The six memorials had been completed at:

- Australian National Maritime Museum, New South Wales (23 March 2006);
- St Joseph's Home, Neerkol, Rockhampton, Queensland (5 August 2003). Queensland advised that it had also established a number of other reconciliation and memorial projects relevant to care leavers, which are discussed in Chapter 5 under the consideration of *Forgotten Australians* recommendation 34;
- Migration Museum, South Australia (18 November 2005). The Catholic Church contributed to the statue, which was erected in the grounds of the museum. South Australia advised that it had also dedicated a plaque to British Child Migrants at the museum in February 2001;²⁰
- Launceston Museum and Art Gallery (4 October 2005) and Hobart's International Wall of Friendship, Tasmania (5 October 2005);
- Immigration Museum, Victoria (28 September 2006); and

20 *Submission 30*, p. 6.

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- Maritime Museum, Western Australia (10 December 2004).
 - CBERS Consultancy advised that it had participated in the development of the Western Australian memorial to former child migrants:

The Western Australian child migrant memorial, unveiled in 2004, was the product of wide consultation with former child migrants, undertaken by the Department for Community Development, and largely facilitated through the CBERS newsletter. The newsletter, which is posted to approximately 450 ex-residents and a further 400 agencies and service providers in Australia and overseas, provided progress reports on the memorial project, and gave former child migrants an opportunity to participate in the planning process.²¹

Recommendation 33

That the Commonwealth Government support and promote international initiatives that facilitate the sharing of professional best practice, and that ensure uniformity of protocols relating to work with former child migrants and their families.

Government response

The government agrees that international initiatives which facilitate the sharing of professional best practice and uniformity of protocols are important. For example, this is already being done through the National Archives' approach to the National Archives of Canada (see Recommendation 12) on archival protocols and procedures, as recommended by the Committee.

Implementation

4.51 The Committee received no evidence on this matter and did not further consider the recommendation.

21 *Submission 3*, p. 47.

