Senate Inquiry into the implementation of the recommendations of the Lost Innocents and Forgotten Australians Reports.

Introductory comments.

Broken Rites is providing this submission to assist the Senate Committee with its current inquiry. Some Committee members will know that the organisation provided detailed submissions as well as supplementary information and data to each of the inquiries in question. Our submission to the Senate inquiry into the child migrant schemes and thee testimony that was given during the Committee's hearings was in fact a key step in the bringing about of the second inquiry into children in institutions Senators were made aware of thee fact that large numbers of Australian-born, non-indigenous children had been placed into the same institutional arrangements as child migrants. This history is briefly outlined in Attachment 1 - "Genesis of the Forgotten Australians Report".

This submission will focus mainly upon the responses and the absence of appropriate responses to some recommendations made in the report "Forgotten Australians". I will however consider briefly the earlier Report "Lost Innocents: Righting the Record". I expect that other organisations and individuals who work closely with, and support former child migrants in Australia are in a position to provide much more detailed information about how specific recommendations have been responded to, as well as the outcomes from such responses. The Committee should know however that in the years since the Lost Innocents Report was tabled, we have received only one request from a former child migrant for assistance and advice. We take this to be an indication that recommendations have been responded to by government(s) and agencies in ways that were appropriate and that the outcomes for most child migrants have been positive and progressive.

The Forgotten Australians Report.

<u>General comments.</u>

The organisation's experience of telephone calls, meetings with clients and meetings with representatives of other support organisations after the release of "Forgotten Australians" is in contrast to what we experienced following the release of the Lost Innocents Report. In the past four years contacts made to our phone service by Forgotten Australians to would number in the hundreds. In regard to any improved interface between this large group of citizens and the Australian government, very little real change seems to have come about in areas other than access to records.

Having the last coalition government respond in a positive way to the recommendations was always going to be problematic because it could always fall back on the accepted division of responsibilities between the Commonwealth and State/Territory governments. The impacts of this division have probably been exacerbated by the fact that for the past decade or so, a conservative government was in power at the national level whereas state governments had been formed by the ALP. Any person reading the "Australian Government Response to the Committee's Report" will see this. Time after time a recommendation is responded to in the negative with the addition that the matter could

be pursued further with a state/territory government. With other recommendation the advice given by the Australian government is for parties to go direct to the next level of government or to the churches, charities and other religious organisations.

In preparing our submission to the Child Migrants inquiry, I used the quote made by Nelson Mandela during his attendance at the Melbourne Rally for Reconciliation in 2000. It was very pleasing to see that the Committee in turn, chose to use this same quote on a face page of its "Forgotten Australians" report. The values and insight being expressed by Nelson Mandela are important here. **If a sovereign government cannot accept some level of responsibility for the care, welfare and safety of a nation's children, then who can?**

It would appear that for whatever reason, the Australian government under former Prime Minister John Howard decided that it was not prepared in anyway to show leadership in this matter.

Specific recommendations.

There are specific recommendations that will be commented upon.

Recommendation 2. – *The making of public apologies.*

By now all state governments, some churches and some agencies have issued apologies. This organisation considers some of these to be genuine while others have been so sanitized and legally framed that we question why the party ever bothered. Furthermore, circumstances surrounding the making of particular apologies were very disappointing to many Forgotten Australians. Two of the worst examples are the apology given on behalf of the government of Victorian and a more restricted apology given by Pope Benedict XVI.

With the government of Victorian, the former Premier saw the event as an opportunity for a media stunt. More than three hundred Forgotten Australians were invited and about two hundred and sixty turned up at the Parliament of Victoria expecting that they would be in the chamber gallery to hear and witness the Premier's speech. Some had travelled from parts of Queensland and from Perth. Some were at the Parliament building by 11:00 am on the particular day. Only about thirty people were allowed into the gallery just before 2:00 pm and the rest were ushered around to a marquee that had been erected behind the Parliament. With seating available for only about fifty people only, many elderly Forgotten Australians became understandably angry. At the completion of the speech, the Premier was not prepared to go out to the marquee so the Leader of the Opposition and the Minister for Community Affairs did so instead.

The apology by Pope Benedict was given only after Broken Rites ran a major campaign with the Australian media during the whole of the Pontiff's visit to Sydney. Catholic Church officials in Australia were requested to permit Broken Rites to provide a list of persons (including Forgotten Australians) who would be invited to meet the pontiff and witness any apology however this was ignored. Instead, the Pope met with three persons who were victims of sexual assault within the church.

Recommendation 3. **-** *State governments' review of Statutes of Limitations.*

State governments have not been prepared to respond to this recommendation. With existing Statutes of Limitations, Forgotten Australians have considerable difficulty in pursuing a claim for civil damages – particularly against a church or religious organisations, even in circumstances where an alleged offender has been convicted of a criminal offence. While this recommendation is an important one, members of the Committee need to be aware that in civil matters, **Forgotten Australians face a significant number of legal obstacles that are additional to problems with statute of limitations.** These are detailed in an article prepared by Ms. Angela Sdrinis who is a solicitor working in the area. A copy of the paper is included as Attachment 2.

Recommendation 4.

This organisation urges that this recommendation be considered by the new Australian government. We have the present situation where churches in the USA have been required to pay large amounts in compensation but in Australia these same churches are able to use the courts in ways that result in justice being denied to people who have experienced the same forms of abuse and the same crimes! These people, including manu Forgotten Australians have significant health, housing and social support needs. Under present arrangements, these and other associated costs are borne entirely by taxpayers. **Meanwhile the churches continue to operate commercial businesses and expand property portfolios while having special taxation status and being prepared to leave Forgotten Australians on the edges of society.**

All organisations that are major service providers to governments and which for years, have been able to access special treatment under Australia's taxation laws, must be made fully transparent and accountable.

It is acknowledged that the Australian Government did canvass some options in its response; to the best of our knowledge, no progress has been made on these issues.

Recommendation 5. **-** *Whistleblower legislation.*

Broken Rites is not aware of any progress being made here even though the Australian government did support the recommendation.

Recommendation 6. **-** *A National Reparations Fund*

Although this recommendation was not supported, it must be considered again by the new Australian government. If a national reparation program with an ability to receive and assess claims and to make monetary reparation is not established, then this issue will not be resolved.

The matter requires national leadership so that the quality of life for thousands Australian citizens can be improved for the few remaining years of life that the Forgotten Australians can expect.

It is acknowledged that this will be problematic for a government that has already indicated that compensation will not be paid to the Stolen Generation. Should a reparations fund be established, some groups in Australian society will ask why one groups (Forgotten Australians) has access to reparation while others do not. The answer is simple: contributors to the fund will be the past providers of so-called "care" and the owners and operators of the institutions.

Recommendation 7. *Responding to allegations*

The response of the various bodies to this recommendation has been patchy at best, and sometimes against the intent of the recommendation. While attention has been directed towards the development of internal codes and procedures, a big failure here has been the absence of clear information on website home pages that there is a process available. None of the churches, religious organisations and charities has been proactive in this regard.

The Salvation has never been prepared to provide such information while with the Anglican Church; information appears on the home pages for some dioceses. In the case of the Catholic Church, information was available on the home page before the release of the Senate Committee Report then, all of it was removed when a new website was developed and installed.

It would appear that these organisations continue to have difficulty with the facts that some of their members were in the past, and are, the embodiment of evil and even criminal. One easy way through this dilemma is to shut Forgotten Australians out of any information loop.

Recommendation 8. - *An external complaints review mechanism.*

This recommendation was not supported by the Australian Government. It should now be considered again by the present government.

Many Forgotten Australians have had and continue to have major problems in obtaining justice and proper compensation when they enter a church-run process that is essentially internal. Members of this organisation have advocated for many Forgotten Australians with claims against the Catholic Church, the Anglican Church and the Salvation Army. The Salvation Army's process is essentially a litigious one while the Catholic Church operates two different processes.

It is acknowledged that the Catholic and the Anglican churches have directed a lot of effort towards the development of their internal protocols and procedure for responding to people making claims that they have been abused. These church processes are available to Forgotten Australians. The Catholic Church's "Towards Healing" was to be a non-adversarial process that would operate across Australia. It is available to all Forgotten Australians except any person who was abused in any way by a priest of the Archdiocese of Melbourne. For such cases the claimant has to use the so-called Pell Process which involves a meeting with and them possible further inquiry by a church-appointed Senior Counsel. Provisions for compensation and support offered to claimants differ between the two processes

In respect of the Anglican Church in Australia, there still appear to be several processes operating in different dioceses although each of these follows the protocols that were passed by the Synod.

The processes being operated by both churches have some similar features:

- They lack transparency.
- Some processes do not always conform to Australian law, Equal Opportunity provisions and/or codes relating to discrimination.
- It is often very difficult to separate the Church from the church insurer.
- Church authorities do not always comply with the official process.
- Church personnel with the authority to review an outcome (as a result of a complaint) have no power over a non-conforming church authority.
- Caps are placed on compensation amounts in an arbitrary way.
- Compensation amount vary widely between dioceses. For example the upper limits for financial compensation from the Anglican Dioceses of Sydney and Brisbane are $70,000 and $25,000 respectively.
- For claimants with poor reading and writing skills, and who are not represented in any way, the "Towards Healing" process can operate like a lottery.
- Catholic Church authorities have used unauthorised persons to investigate claimants.
- Catholic church authorities have at times used coercion against claimants

Recommendation 9. *Public disclosure of data relating to claims of abuse.*

No progress has been made in respect of this recommendation. Essentially, the churches and religious organisation focus upon keeping as much information as possible away form public scrutiny. This has been their position with respect to internal, civil and criminal cases.

Recommendation 11. *Openness of churches and charities*

Comments made in relation to *Recommendation 7.* are relevant here.

Regarding a Royal Commission, the position of Broken Rites for over a decade now is that real progress will only come about after the conduct of a Commonwealth-initiated Royal Commission. The terms of reference of such a commission should be broad enough to enable it to inquire into the roles, actions and activities of state government agencies as well as charities, churches and the institutions that they operated. It must inquire into what was done to so many children, how governments, charities and churches benefited and to where these benefits were distributed.

Recommendation 31. *Voluntary identification and data collection about Forgotten Australians.*

This is a very important recommendation and yet apparently no progress has been made despite the fact that it should not be difficult to make some simple process changes. The benefit from implementing the recommendation is that it should enable various parts of the Australian government to get reasonably accurate data of the cost of various services that are accessed by Forgotten Australians. In view of the high dependency needs of these people in out society, these costs are probably very high. Furthermore, in the present vacuum in terms of data, government has know way of determining whether current services are effective and whether more client-specific services would result in better outcomes for Forgotten Australians.

Dr Wayne Chamley.
for Broken Rites

Attachment 1.

Genesis of the Senate report "Forgotten Australians".

Since about 1993, **Broken Rites** had been making claims in the media that there was a large group of Australians whose childhood years had been spent in a variety of institutions and who had experienced extremes of abuse, neglect and exploitation. By 1999 we had been contacted by nearly 2500 people and analysis of the contact records showed that about one third of the contacts were Australian-born adults who had spent all or part of their childhood years in institutional care. At the time, we had no way of determining what the number of people in this situation might be and we decided on a guestimate of around 30,000 people. Prior to 1999, very few officials were prepared to acknowledge this.

On Monday 30th August 2004, the report **" Forgotten Australians"** was tabled in the Senate chamber of the Australian Parliament. This report was prepared by members of the **Community Affairs References Committee of the Senate** following the conduct of its Inquiry into Children in Institutions. During the conduct of its Inquiry, Senate Committee received 614 written submissions and of these 174 remain confidential. Committee members held hearings and received testimony from 156 witnesses.

The genesis of the report starts with the election of **Prime Minister Tony Blair.** Upon taking office in the UK, one of his very early actions was a request to the **House of Commons – Health Committee** to conduct an inquiry into **"The Welfare of former British Child Migrants".** Many children had been sent to **Australia**, **Canada and Rhodesia** under government-sanctioned child migration schemes. Before becoming Prime Minister he has given such a commitment to **Mr. David Hinchcliffe MP**, a government member who had been a Child Migrant. The House of Commons Committee visited Australia and while they spent most of their time in Western Australia, one of our members, Wayne Chamley, was able to speak to them at some length..

Following the Committee's visit, former residents of the Christian Brothers' orphanages in Western Australia approached the Australian government for a similar parliamentary inquiry and **Senator Andrew Murray (Democrats)** took up their case. Eventually he was able to gain the support in the senate for his Notice of Motion calling for an inquiry to be held.

Wayne put to the Broken Rites Executive that this was the key to getting a subsequent inquiry set up to investigate the experiences of Australian-born children. He reasoned that the number of child migrants would be a relatively small number and that the members of the Senate Committee should be made aware of the fact that many Australian-born children had been kept in the same institutions as the child migrants. Wayne argued that if the Senate had supported the conduct of an inquiry about child migrants, then it would have to do the same in relation to Australian-born children.

Release of the **Forde Inquiry** report "**Abuse of Children in Queensland Institutions"** was another important development. Its importance was twofold:

- It gave former residents of institutions in Queensland the opportunity to have stories of their childhood experiences put onto the public record.
- It provided an independent analysis of the extent to which one state government had also been involved in the running of institutions for children.

Just before the Inquiry into Child Migrants was announced in June 2000, a new organization **CLAN** (Care leavers of Australia Network) was established in Sydney. Because the terms of reference for the **Senate Inquiry into Child Migrants** would not allow the Committee to consider personal stories from persons who were not child migrants, it became important to make the members of the Committee aware of the fact that these Australian-born survivors existed in large numbers.

Page 1 of the Broken Rites submission to this inquiry urged the Committee to conduct a second inquiry. Wayne drafted three versions of a pro-forma letter in which the signatory simply informed the Committee members that he/she has spent childhood years in such and such an institution and that the person had suffered from this experience.

Copies of the pro-forma letters were sent to four organizations, Broken Rites, CLAN, Vanish (Victoria) and the Esther Center (Queensland) who in turn distributed copies of the letters to their respective membership urging people to sign a letter and post it to the Senate Committee.

In the **Senate Report "Lost Innocents: Righting the Record"- Report of the Inquiry into Child Migration,** the Committee acknowledged that 102 submissions had been received from persons who had been state wards. This fact is recorded on page 252 of that Report and one pro-forma letter is printed in full.

The tabling of "Forgotten Australians" should be seen as testimony to the fact that our democratic system can be made to actually work and that individuals, able to pick the right moment, target the right parliamentarian(s) and construct the right arguments, can activate a process that provides entry points for Australians who have been marginalized for years.

It must be acknowledged that Senator Andrew Murray and his advisor Dr Marilyn Rock did an enormous amount of work within the Parliament to get another inquiry established and history will applaud them for their efforts and the report "Forgotten Australians".

Chris MacIsaac.
President – Broken Rites.

Attachment 2.

Sdrinis Article

LEGAL BARRIERS TO SUING FOR INSTITUTIONAL ABUSE

Angela Sdrinis, Partner, Ryan Carlisle Thomas Lawyers, Dandenong, VIC

I have lost count of the number of times I have had to tell victims of institutional abuse that despite their hardship and suffering, they may not be entitled to any compensation.

This paper explores some of the legal barriers faced by victims of abuse from a civil law perspective. There are other problems faced with the criminal law and punishment of the many predators who it seems were given "carte blanche" to abuse.

Paper presented at the Forgotten Australians Forum, Canberra August 2005

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I have lost count of the number of times I have had to tell victims of institutional abuse that despite their hardship and suffering, they may not be entitled to any compensation. This paper explores some of the legal barriers faced by victims of abuse from a civil law perspective. There are other problems faced with the criminal law and punishment of the many predators who it seems were given "carte blanche" to abuse. Criminal Law The difficulties with prosecuting many predators includes the delay in many victims coming forward. This means it becomes more difficult to prove "beyond reasonable doubt" that the criminal conduct occurred. For this reason, police are generally not interested in prosecuting these cases, particularly where resources are scarce. In my experience however, predators do not stop until they are dead or in gaol. More needs to be done to help police understand why victims delay in coming forward. In this paper however, I will focus on the significant barriers to compensation that victims face if they seek redress through our legal system as it currently stands. These impediments include the following: Limitation Periods. All Australian states have statutes of Limitations which significantly restrict the time within which proceedings can be issued in relation to claims for damages for personal injuries. The harshness of this legislation varies from state to state. Every Australian state and territory has these limitation periods which apply to all claims unless the person seeking to bring the claim is under a disability ie minors and the intellectually disabled. Where the injury has occurred to a child or minor, these limitation periods vary from three years to six years from the date of majority ie from the age of 18 years. Generally, the legislation allows for an extension of time to be granted. The circumstances in which such extensions will be granted are however extremely restrictive. Applications for an extension of time within which to issue proceedings are costly and there is no guarantee that leave to issue proceedings will be granted. The nature of the injuries suffered by potential claimants means that it is often decades after the actual abuse has occurred before individuals have the psychological fortitude to pursue these claims. Often, those most severely damaged have spent years self medicating to deal with their distress turning to drugs and/or alcohol. It is not until addiction is cured that they can confront their problems. Others spend years in denial and often there will be a critical event which will cause them to take action. A recent Victorian case has showcased how difficult it is for a victim to obtain leave to issue proceedings out of time. In this case two women sought leave to sue Geoff Clarke former leader of the ATSIC Commission. They alleged that they had been raped by Clarke, one in 1971 and the other in 1981. Both women won the right to sue in the lower Court and Clarke appealed to the Court of Appeal which found that both women were too late but more worrying determined that s5(1A) of the Limitation of Actions Act did not apply to psychological injuries but had been put in the legislation by Parliament to deal with cases of insidious disease such as asbestosis and mesothelioma. These are illnesses where exposure to asbestos may not result in disease for 20 or 30 year. Clearly it makes sense in these cases to apply the limitation period from the date the victim became aware they had suffered injury ie from the date of diagnosis. For some reason, the Court of Appeal decided that this section could not be used in cases of psychiatric injury even though medical evidence before the Court

supported the claimants' contention that they did not know they had suffered an injury because of the alleged abuse until many years later. This case is now on appeal to the High Court where I do not expect the Appellant to get a favourable result because this High Court is stacked with conservative men who are unlikely to hand down a verdict favourable to a victim. In Victoria at least it had been possible to use s5(1A) to argue that it is not necessary to seek an extension of time where the victim only became aware in the last 6 years that he or she had an injury which was caused by the act or omission of another party. I give some examples below of why victims delay in cases of childhood sexual abuse. Many victims do not realise they have suffered a psychological injury until their 40's, 50's or even later. One example of this is where one of my clients had been abused by both the Superintendent and Assistant Superintendent in a Victorian Boy's Home. The Superintendent had long been dead however one night when this man was watching TV, there was a news item about how a plane transporting a junior country football team had crashed. There was a brief interview with the coach/manager who was the former assistant superintendent. My client realised with horror that the man who had abused him for years was still involved with young boys. At that point he contacted the police and sought advice regarding his legal entitlements. This man is in his late forties. For others the catalyst is having a child of their own, finally seeking psychiatric treatment or simply feeling sufficiently empowered to seek redress. Almost inevitably however, the realisation and the strength to act will occur well after the relevant limitation period has expired. If the victims seek to bring a claim for damages at this point, there can be no guarantee that an extension of time will be granted. Generally a number of factors must be considered before leave can be given to issue proceedings out of time. These factors include the reasons for the delay, the prejudice that the Defendant has suffered by the delay (eg the destruction of documents or the loss of witnesses) and the merit of the substantive claim. The cost of an extension of time application will vary in different jurisdictions. However, a ball park figure will be $10,000 to $15,000 for each side. If the application is unsuccessful, the Applicant in addition to his/her own legal costs will be liable for the other side's legal costs. Accordingly, an extension of time application can be a very expensive gamble. Liability Even if proceedings are brought within time or an extension within which to issue is granted, claims for damages face significant other impediments. In order to be entitled to damages a claimant must show that she or he has suffered injuries as a result of the negligence of another party. To prove negligence, a claimant must establish that they are owed a duty of care and that there was a breach of duty of care which has resulted in injury. All of these elements ie duty, breach of duty and injury need to be present before there is an entitlement to compensation. 1. Proving Injury In cases of sheer neglect ie a failure to adequately feed, clothe, nurture or educate it is often difficult to show "injury" per se which involves proving physical damage or a diagnosable psychiatric illness. Where injury has occurred, Defendants often argue that it is not the abuse that has caused the injury. Inevitably children are institutionalised because they have no family or because the family cannot care for them or because they are at risk from their actual parents or guardians. Defendants argue that these children were already significantly physically or psychologically damaged and it is impossible to "unscramble the eggs" and therefore identify the cause of any ongoing symptoms, loss or damage. 2. Vicarious Liability Where injury can be established as being caused by the Defendant, the argument will then centre around whether notwithstanding the abuse, the entity in whose care the child was placed is actually legally liable for the conduct of it's agents or employees. An organisation does not rape a child. Individuals are abusers but in the normal course of events, claims are brought against the organisation who had a duty to protect the individual in its care. Practically speaking, suing an individual is a fruitless exercise. Even if the claim is successful it is unlikely the individual will have the capacity to pay. In any event there are strong legal considerations in suing the organisation who either by reason of statutory duty or at common law has the duty to take reasonable care. Accordingly, when these claims are brought the organisation will argue that it did not know that the conduct was occurring and will simply seek to blame the individual abuser and say the organisation had no way of knowing the conduct was occurring. Given that many of these claims are brought years after the event, it is often extremely difficult to show that the responsible authority either knew or should have known the abuse was occurring. Various government departments and religious institutions in whose care these children were placed will argue that they had no way of knowing the extent and the nature of the abuse. Often the abuse will relate to illegal conduct, particularly with reference to sexual abuse. In these circumstances, the organization will argue that they cannot be held liable for the illegal conduct of their employees or agents. This argument has met with considerable legal success. As recently as February of last year the High Court considered the extent to which authorities could be liable in negligence where there was no allegation of fault by the authority but where injury had occurred as a result of the misconduct of an employee. The High Court found that a non delegable duty of care did not extend to illegal conduct or conduct where an employee was pursuing a "frolic of their own". (NSW v Lepore/Samin

v Queensland/Rich v Queensland [2003]HCA 4). 3. Religious Institutions Many Wards of the State were placed in the care of the Catholic Church and its religious orders or in other Church institutions. Where this has occurred it is apparent when reviewing the files of those abused whilst in these institutions that various government departments essentially washed their hands of these children. It may be that it was mistakenly thought that having placed the children in the "best" possible care ie in the hands of God, it was not necessary to inquire further. In other words, government authorities have argued that they complied with their obligations to these children by placing them with reputable organizations and that it was therefore unnecessary to do more than receive some paper work. That is, there were no systems, or the systems were not adhered to, for the independent auditing or inspection of these facilities. Many clients have also told me that when the "Welfare" was coming children would be ordered not to complain and any contact with the children by the Government Inspectors was strictly supervised. In any event it is clear the Welfare Department did not want to know if there was abuse and there is no doubt in my mind that Governments closed their eyes to the suffering of these children and did not want to know the truth. Further, it is well documented that the Churches allowed many of the children in their care to be subjected to the most horrific physical and emotional deprivation and in many cases to serial and significant sexual abuse. One of my clients has described the "red bathroom" in an orphanage run by a Catholic order of nuns. This is where punishment would be administered. Many girls were beaten when they soiled their underpants. Given that only one clean pair was provided per week that the underpants would be soiled was almost inevitable, particularly when menstruating. The "red bathroom" was where the beatings would take place. The girls would be stripped naked and beaten, often in front of other girls. Another client in another home describes being sat in the corner of the breakfast room with urine soaked sheets wrapped around his head as punishment for bed wetting notwithstanding that he was less than 5 years old at the time. Another reports complaining that his bottom was bleeding after being raped and being told not to lie. At the same time however a rag was thrown at him which he would be required to use as a sanitary napkin so he wouldn't stain his underpants. I have no reason to doubt these and other stories. Many of these stories have been corroborated by other former residents of these homes. In any event, research shows that very few people lie about childhood sexual abuse. Notwithstanding these and other horror stories, the Catholic Church and its religious orders including the Sisters of Mercy, the Christian Brothers and many more deny they can be sued because they argue they are not legal entities but merely religious associations. The affairs of the Catholic Church and other religious orders have been organised in such a way that they are legally incorporated for the sole purpose of the owning and disposing of property and for the accumulation of wealth but otherwise they argue that they have no more legal standing than a social group of the local ladies' tennis club. Again these arguments have met with some success in the Courts and the inability to find an entity that can actually be sued further aggravates the problems faced by those seeking compensation. Further, where wards of the state have been placed in these religious institutions by the state, a process of duck shoving responsibility takes place with the state trying to blame the church and vice versa. 4. The Cost of Litigation The other significant impediment faced by potential claimants is the cost of litigation. Many talk of an American style system where litigation is out of control. This couldn't be further from the truth as far as these claims are concerned. Because both Governments and Churches have played hard ball, many lawyers are dissuaded from even contemplating litigation. Where proceedings are issued both governments and churches brief lawyers from the top of end of town who spend a fortune in strike out applications and other devices to delay a claim and to increase costs. Because of the background of most of the claimants, they are significantly disadvantaged and simply do not have the resources to fight these cases. Lawyers like myself who many call ambulance chasers have to fund these claims and inevitably despite how difficult such decisions can be, proceedings are withdrawn or discontinued because they prove too costly or a matter settles for much less than the claim is actually worth because the likelihood is that the case is almost bound to fail if it goes to trial. A claim in the district courts or various state Supreme Courts where these proceedings are issued can cost many tens of thousands of dollars. Whilst some organizations have set up compensation panels or have processes for dealing with these claims, limits are placed on awards of compensation. Money is always paid with a denial of liability. Apologies are mealy mouthed and extremely general. The victim is made to feel that they are going cap in hand begging for compensation, a situation which reminds many of the attitude they faced when they were in care. Until recently a term of settlement when receiving compensation was inevitably a confidentiality clause which left claimants feeling demeaned and that all they'd received was "hush money". Fortunately most Church groups have been shamed into not requiring confidentiality clauses but the process itself is still demeaning. What is the Alternative? Because of a sense of community outrage and following a detailed Inquiry, the Republic of Ireland has set up a fund to provide redress to victims of institutional abuse. Ireland also has a

common law system and many victims of abuse were unable to recover compensation through the courts because of impediments similar to those outlined above. The Republic of Ireland is a small country and not very wealthy. Notwithstanding this, the Irish Government has put aside a substantial amount of money, with contributions from many Religious Organisations, to provide monetary compensation but just as importantly has accepted responsibility for the pain, misery, humiliation and neglect suffered by the children of Ireland who were placed in its care. I believe the Commonwealth and all State Governments should seriously look at the Irish model as a means of providing redress and healing to those who have suffered. Responsibility needs to be taken, apologies need to be made and where appropriate compensation should be paid. The Residential Institutions Redress Act 2002 established the Residential Institutions Redress Board which administers the scheme. If claimants can show that they were resident in a relevant institution and that they were subjected to sexual, physical or emotional abuse or serious neglect which resulted in injury, an award of compensation will be made. Compensation is for pain and suffering only. There is no limit on the amount that can be awarded and medical expenses can be claimed. It does not matter when the abuse occurred. It is not necessary to prove negligence or breach of statutory duty. The board must of course be satisfied that abuse and injury has occurred and has the power to independently investigate any claim. The initial experience of claimants was extremely positive. Unfortunately, the system has gotten bogged down in the number of claims that have been made. Nevertheless, out of all systems of compensation that I have looked at, including schemes in Canada and Tasmania, the Irish system seems to be the best. Closure is what most victims seek. Unfortunately the current laws leave victims feeling that they have been abused all over again by a system and organizations that promised to care for them but which are still failing the victims they created.