

Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports

JUSTICE FOR HISTORICAL ABUSE & NEGLECT IN 'CARE' ... WHAT JUSTICE?

Submission by Cherie Marian

The writer is an advocate for the establishment of redress schemes to compensate Forgotten Australians for historical abuse and neglect in institutional and out-of-home 'care', with a particular focus on Victoria. Various stakeholders have assisted my efforts to lobby for redress, however, I make this submission as an individual and not as a representative of those organisations. I have worked in the community services sector in a variety of roles over the past 16 years. I made a submission to and subsequently gave evidence at the Inquiry into Children in Institutional Care. A number of my recommendations to the committee were incorporated into the *Forgotten Australians* report.

Scope

The scope of this submission is limited to the terms of the inquiry as they relate to the *Forgotten Australians* report and the State of Victoria (except where otherwise stated). It primarily explores the Victorian Governments failure to establish a redress scheme to deliver justice to survivors of historical neglect and abuse in institutional and out-of-home 'care'.

For the purpose of consistency with the Inquiry into Children in Institutional Care (hereby referred to as the inquiry / ICIC) the phrase 'historical abuse' refers to abuse perpetrated prior to the introduction of the *Children and Young Persons Act 1989*. The phrase 'abuse in care' shall be read to be inclusive of neglect, psychological abuse, physical and sexual assault in institutional and out-of-home care.

Background

I commenced advocacy for the establishment of a Victorian redress scheme in collaboration with key stakeholders in 2006 whilst employed as the community development officer at Fitzroy Legal Service (FLS). FLS provides critical analysis of legal issues within a broad social context and serves members of the community whose access to legal resources is limited. Whilst employed at FLS, clients presented to the service seeking legal advice for abuse in 'care'. I assisted these clients to apply for records, and access appropriate support services. FLS solicitors have represented survivors of abuse in 'care' in Victoria and interstate and continue to do so.

Since the expiry of my contract with FLS in 2007, I've continued in a volunteer capacity to lobby for redress. The following individuals and organisations have assisted my efforts:

- Adrian Snodgrass - solicitor formerly of St Kilda Legal Service
- Fitzroy Legal Service
- VANISH
- Leonie Sheedy OAM & Frank Golding – Care Leaver Australia Network
- Angela Sdrinis - Partner, Ryan Carlisle & Thomas
- Dr Vivian Waller - Waller Legal
- Federation of Community Legal Centres - Victorian state peak for community legal centres.
- Bernie Geary OAM – Victorian Child Safety Commissioner

As part of this work, in April 2008, the Federation of Community Legal Centres passed a policy motion stating that the Federation supports the call for the establishment of a 'non-adversarial compensation scheme' for survivors of historical abuse in institutional and out-of-home 'care'.

In 1993-94 as part of my studies in community development I conducted a small qualitative research project into the life outcomes of females 10 -15

years post-release from state care.¹ All key areas of life chances were examined including health, education, employment, income, housing, and perpetrator / victim of crime status. Emerging themes in my research were: homelessness & exposure to domestic violence upon exiting care, educational deficits, criminal offending, adolescent parenthood, substance abuse, mental health issues and both sexual and physical assault in 'care' and post-release.

Whilst the paucity of research into the life outcomes of care leavers has been widely acknowledged by the committee and others (p. 332), these themes are consistent with more recent findings. For example:

- 42% of Australia's homeless youth have a 'protective care' history.²
- 23% of a sample of 291 Forgotten Australians had experienced primary homelessness³
- Once entering the juvenile justice system, 90 % of 'protective care' clients will graduate to the adult criminal justice system. ⁴
- 65% of the Victorian female prisoner population have a 'protective care' history.⁵
- 33 % of females will leave the protective care system at age 16 pregnant or already with a child.⁶

¹ Marian, C. *Where Are They Now: who knows, who cares? What becomes of young women post - release from protective care?* November, 1994. (unpublished)

² Chamberlain, C. Johnson, G. & Theobald, J., *Homelessness in Melbourne: Confronting the Challenge*, Centre for Applied Social Research, RMIT University, February 2007.

³ CLAN *Care Leaver Survey* July 2007 (data collected in 2006) Primary homelessness is characterised as 'living on the streets'. Of note, undoubtedly, a great many more Forgotten Australians have experienced secondary homelessness which is characterised by use of emergency accommodation and staying temporarily with others, and tertiary homelessness which is boarding house accommodation that does not offer security of tenure provided by a lease. These definitions of homelessness are used by the Australian Bureau of Statistics and were developed by Chamberlain, C. and MacKenzie, D. (1992) 'Understanding Contemporary Homelessness: Issues of Definition and Meaning', *Australian Journal of Social Issues*, 27(4), 274-297

⁴ Senate Community Affairs Reference Committee Inquiry, Committee Hansard, 4 February 2004, p.30 cited in Senator Andrew Murray and Dr Marilyn Rock, *The Impact of Childhood Trauma Across the Lifespan: Historical Denial – Current Challenges*, September, 2005.

⁵ Colvin, K., *The Women and Poverty Report: More than Half – Less than Equal*, Victorian Council of Social Services, October, 2001, p 15.

⁶ Senate Community Affairs Reference Committee Inquiry, Committee Hansard, 4 February 2004, p.30 cited in Senator Andrew Murray and Dr Marilyn Rock, *The Impact of Childhood Trauma Across the Lifespan: Historical Denial – Current Challenges*, September, 2005.

- 53 % of a sample of 291 Forgotten Australians report having been physically assaulted by so called 'carers' whilst in 'care'.⁷
- Almost 29 % of a sample of 291 Forgotten Australians report having been sexually abused by a staff member working in or running of a facility in which they resided.⁸
- 33 % of a sample of 291 Forgotten Australians have attempted suicide.⁹
- Fewer than 4 % of a sample of 291 Forgotten Australians completed secondary school to year 12 or equivalent.¹⁰
- Fewer than 8 % of a sample of 291 Forgotten Australians completed an undergraduate degree to university level.¹¹
- 53 % of a sample of 291 Forgotten Australians were income support recipients¹².
- Of these, 25% were on a disability pension.

This litany of disadvantage is a powerful indicator of what it is care leavers are seeking redress / compensation for. It may be "difficult to formulate a cause of action for neglect recognised by our tort law".¹³ But make no mistake: neglect has caused Forgotten Australians as much exponential harm through educational deficits and homelessness for example, as have more overt forms of abuse in 'care', *if not more*, due to its greater prevalence.

My work as an advocate for the establishment of a Victorian redress scheme is ongoing. It includes educating the community sector about the plight of Forgotten Australians, liaison with various stakeholders including community

⁷ CLAN *Care Leaver Survey* July 2007 (data collected in 2006) Physical assault defined by the category 'boxed on ears' a colloquial term indicating blows to the side of the head.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Sdrinis, A. *Why an Apology is Not Enough*, 9th of September 2008 p. 2.

legal centres representing abuse in 'care' clients, and lobbying for justice for care leavers at state and federal levels of government.

Inquiry into Children in Institutional Care (ICIC)

The *Forgotten Australians* report of the ICIC found that the “unsafe, unlawful and improper care of children, including “failure of duty of care,” and “serious and repeated breaches of statutory obligations” was “widespread” across Australia over the past century (p.126).

Types of abuse documented include unlawful medication experimentation, child slave labor, and psychological, physical and sexual abuse, some of which lawyers argue constitutes torture (p.xix and p. 113-114).¹⁴

Recommendation 1

Recommendation 1 of the inquiry called upon the Commonwealth Government to issue an apology, “on behalf of the nation”, to survivors of abuse in care for the “hurt and distress” they have experienced and “harms suffered” as a result of the abuse (p. xix).

A Commonwealth apology for abuse in 'care' is yet to be forthcoming. It is hoped that this will be prioritised as an outcome of the current inquiry which presents the Rudd Government with a golden opportunity to exercise much needed leadership in delivering justice to Forgotten Australians.

Critically, the Commonwealth must fully acknowledge its role in failing to adequately monitor the States handling of responsibilities for the provision of institutional and out-of-home 'care'.

Recommendation 2

Recommendation 2 of the inquiry called upon State Governments, churches and agencies to “issue formal statements ... apologizing for the physical psychological and social harm caused ... and the hurt and distress suffered ... particularly by children who were victims of abuse and assault (xix).”

¹⁴ Sdrinis, A. *Letter to the Premier*, the Hon Steve Bracks, 17th May, 2007.

On the 9th of August 2006 the then Victorian Bracks Government issued an apology which received bi-partisan support.¹⁵ Former Premier Steve Bracks stated in part:

*The experiences of many of these children were distressing and have had an enduring detrimental effect on their lives ... We acknowledge that there have been failures with respect to many children entrusted into care ...*¹⁶

Opposition Leader Ted Baillieu stated in part:

*Forgotten Australians concluded unanimously that many children who spent their childhood in state care in Victoria were the subject of significant abuse... The abuse of a child is abhorrent to us all... When such abuse takes place under the care of the state or organisations acting on behalf of the state it is even more shocking... The impact on the lives of those affected has clearly been profound... We openly recognise the trauma and ongoing emotional torment of these events...*¹⁷

Whilst such comments suggest acceptance of a measure of responsibility by the state, only the Leader of the National Party, Mr Ryan, made direct reference to the issue of compensation:

*... the job is only half done... the issue of compensation to these people must also be explored... If we are going to deliver dignity and integrity to the people who have been subjected to this appalling treatment, the state of Victoria is also obliged to investigate a scheme which would deliver justice to these people ...*¹⁸

The apology may have received bi-partisan support, but the call for compensation apparently did not.

¹⁵ Media Release: *Victorians Apologise to Abused Former Wards*, Office of the Premier, 9th of August 2006.

¹⁶ Mr Bracks, Premier, Assembly Hansard transcript, 9th of August 2006.

¹⁷ Mr Baillieu, Leader of the Opposition, Assembly Hansard transcript, 9th of August 2006.

¹⁸ Mr Ryan, Leader of the National Party, Assembly Hansard transcript, 9th of August 2006.

Accounts from care leavers who attended the Victorian Government's apology are not entirely positive.¹⁹ One described the event as "farcical" and used the analogy of it being like "someone crashing your car, causing injury, and then saying sorry, but not paying for damage to the car or the costs of medical treatment." Others noted that there was no-one present to attend the psychological well being of care leavers, some of whom were distressed at re-visiting trauma associated with abuse in 'care'.

Some Churches and agencies have issued public apologies, however, others have not.²⁰

Recommendation 6

Recommendation 6 of the inquiry called for the establishment of a "national reparations fund" to "award monetary compensation" to victims of abuse in 'care'.²¹

The Commonwealth response to this recommendation was that, "all reparations for victims, rests with those who managed or funded the institutions, namely state and territory governments, charitable organisations and churches" involved in the provision of institutional and out-of-home care.²²

Queensland, Tasmania and Western Australia have responded by establishing redress schemes. South Australia has established a committee to review redress models as part of its response to the report of the Mulligan inquiry into the abuse of children in state care.²³

Victoria and New South Wales (NSW) are the only states which are yet to even *consider* implementing redress. This fact is a sad indictment on these State Governments.

In Victoria, redress seems to be almost a 'dirty word' in government circles; that is, not to be spoken of in public. Some may privately support the call for

¹⁹ Sheedy, L. Radio interview with Richard Aedy Life Matters Program ABC. 25th of September, 2008.

²⁰ It is beyond the scope of this paper to research which churches and agencies have or have not issued public apologies.

²¹ Ibid, p xx.

²² Commonwealth of Australia, *Australian Government Response to Forgotten Australians: a report on Australians who experienced institutional or out of home care as children*, 2005, p 4.

²³ Care Leaver Australia Network, *The Clanicle*, December 2008, p19

redress, but in the absence of the political will of the Brumby Government leadership, such views remain just that – private and unrealised.

States which have established redress schemes are advertising these in Victorian and NSW newspapers. Whilst Victorian and NSW survivors are pleased that their peers in these states have access to justice, it is painful for them to be exposed to these advertisements, in full knowledge that they are currently denied similar reparative measures.²⁴

Barriers to Justice

Survivors of physical and sexual assault are by definition victims of violent crime. The *Victims Charter Act 2006* (Vic) sets forth the right of victims of violent crime “to request that the court order the offender to pay compensation”, and to ‘apply for financial assistance from the Government for harm resulting from a violent crime’.²⁵

In Victoria, eligibility for compensation from the Victims of Crime Assistance Tribunal (VOCAT) is contingent upon the crime being reported to the police.²⁶ Claims for compensation must be lodged within two years of the commission of the crime and if the victim was a child at the time, then an explanation must be provided as to why the claim was not lodged within reasonable time after turning 18 years old.²⁷ If the offender is not convicted or presented for trial there is no legislated right to claim special financial assistance.²⁸

Typically, survivors of abuse in ‘care’ take decades to disclose their abuse,²⁹ much less seek recompense. Many decline to make police reports due to a lack of witnesses and evidence to corroborate what occurred, which they know will go against them. Others attempted to disclose as children but were told they were ‘liars’. Why would anyone believe them now, when they were not believed in the first instance; particularly if as a result of the abuse a person has at times experienced hardship which may be considered at odds

²⁴ Donohue, B. *Time To Face Up To Sins*, Sunday Herald Sun 16th of November 2008

²⁵ *The Victims’ Charter Respecting your rights as a victim*, Department of Justice Fact Sheet

²⁶ State of Victoria, *General Information Brochure*, Victims of Crime Assistance Tribunal.

²⁷ Ibid.

²⁸ Sdrinis, A. CLAN newsletter, no 46, August 2008 p 13

²⁹ Sdrinis, A. *Why an Apology is Not Enough*, 9th of September 2008, p 2.

with being a 'credible witness' (i.e. substance abuse or crime)? Indeed VOCAT is required to take the criminal records of applicants into account in its deliberations.³⁰ In all but the most severe cases many struggle with the implications of making a police report, (including primarily, the psychological cost to themselves), and in the end decide it's simply too big an ask.

Of those who do make reports, significant deterrents to civil actions include limitation periods, burden of proof and causation issues (necessitating the resuscitation of wretched memories), and the further stress, expense, risk of costs and delay associated with the litigation process act as further barriers.³¹

The historical nature of the abuse and neglect documented in *Forgotten Australians*, combined with its effects, means that many survivors are of advancing age and poor health. Indeed some are literally dying as they wait in vain for access to justice.³²

With the odds so heavily stacked against them, in the absence of redress survivors are entitled to ask, 'justice for abuse in 'care' ... what justice?'

Costs to State Governments

Many abuse in 'care' litigants are judgement-barred as they are income support recipients and do not own any substantial assets. Thus, legal costs of defendants which may be ordered against them will end up being paid for by the State. This, in addition to the costs of heightened use of various services (e.g. mental health) as a result of *not* delivering justice to Forgotten Australians, means it can be argued that it would be more economically viable for State Governments to establish redress schemes than it will be to continue to deal with cases 'one by one' in the courts.

³⁰ State of Victoria, *General Information Brochure*, Victims of Crime Assistance Tribunal.

³¹ Sdrinis, A. *Why an Apology is Not Enough*, 9th of September 2008 & Commonwealth of Australia, *Australian Government Response to Forgotten Australians: a report on Australians who experienced institutional or out of home care as children*, 2005 p 199 – 212

³² Sdrinis, A. *Letter to Vic Parliamentarians*, 25th of January 2009.

Victims Rights Under Threat in NSW

The 2008-09 NSW mini-budget outlines plans to reduce the amount in legal fees paid from the Victims Compensation Fund.³³ Accordingly, on the 11th of November 2008 NSW Attorney General John Hatzistergos announced plans to cut 'red tape' and 'streamline' the compensation process. Under the proposal victims of crime will have reduced access to legal representation, and current staff at the Victims Compensation Tribunal (VCT) will deal with the extra administration.

VCT is the only option available to most NSW survivors of abuse in 'care' seeking compensation; notwithstanding that similar to Victoria, this option is extremely limited. Jemima Brewer, a solicitor with Fosters Lawyers states that, "reducing the payment of compensation to victims is the real motive behind these measures. Victims will get less compensation for violence and sexual assault by reducing the number of lawyers working on these claims".³⁴ It is feared that victims will be "silenced by moves to remove the right to legal representation". At the very least it is argued that many, (including survivors of abuse in 'care'), will be so "overwhelmed by even a simplified process that they will abandon their claims."³⁵

This development only strengthens the case for the establishment of a NSW redress scheme for survivors of abuse in 'care'.

Redress resources

Redress schemes which have been established are substantially resourced by state governments in those states. (Western Australia = \$114 million, Queensland = \$100 million, Tasmania = \$75 million). In comparison, on the day of the Victorian Government's apology, the Office of the Premier issued a media release boasting settlement of approximately 60 compensation claims since 1995, on a 'case by case basis' totalling \$4.3 million.³⁶ The disparity between these figures is the measure of justice yet to be served to Victorian (and NSW) survivors of abuse in 'care'.

³³ New South Wales, Mini Budget 2008-09, Appendix A – 4.

³⁴ Care Leaver Australia Press Release, *Victims Rights Under Threat in NSW*, 24th of November 2008.

³⁵ Ibid.

³⁶ Office of the Premier, Media Release: *Victorians Apologise To Abused Former Wards*, 9th of August, 2006.

Recommendation 21

Recommendation 21 calls for “State Governments, Churches and agencies” to provide “support services and assistance to care leavers and their families”.³⁷

In 2006, the Victorian Government announced \$975,000 to augment counselling and support services to former wards of the state.³⁸ In 2008 stakeholder lobbying resulted in the announcement of a further \$7.1 million over four years for the establishment of a Victorian care leaver service.³⁹ The Victorian Government is to be commended for recognising Forgotten Australians as a specific group requiring targeted services. This quantum of funding, however, pales in comparison to resources allocated by Western Australia, Queensland and Tasmania, and does not include provision for redress. Instead the money is earmarked for the delivery of support services to care leavers and their families.

Counselling and support services may be much needed but thousands of Victorian (and NSW) survivors of abuse in ‘care’ still anxiously await closure. Decades of counselling have bought only more pain as the full extent of the impact of the abuse on survivors and their families has become apparent.⁴⁰ Closure will only ever be possible when monetary compensation for injuries and harms suffered is provided through redress; notwithstanding that survivors will endure the legacy of the abuse for the rest of their lives.⁴¹

Conflict of Interest Issues

The Department of Human Services (DHS) is arguably THE primary perpetrator organisation of abuse in ‘care’ in the State of Victoria, as the highest authority for duty of care to children in institutional and out-of-home ‘care’. It is totally inappropriate for restitution for victims of crime to be handled

³⁷ Senate Community Affairs Reference Committee, *Forgotten Australians: a report on Australians who experienced institutional or out of home care as children*, August 2004, p xxiv.

³⁸ Office of the Premier, Media Release: *Victorians Apologise to Abused Former Wards*, 9th of August, 2006.

³⁹ *A Fairer Victoria* 2008 pp. 42, 44.

⁴⁰ *Give Us Closure*, Letters to the Editor, *The Age*, 15th of November, 2008.

⁴¹ *Ibid.*

by perpetrator organisations, or those associated with them. This marked conflict of interests has been brought to the attention of the Victorian Government to no avail.⁴²

Care leavers do not begrudge DHS finally taking some responsibility for attempting to remedy the systemic disadvantage experienced by many, (but not all), Forgotten Australians. The need for support is substantial and the provision of generalist long-term 'after-care' services is not problematic.

Rather, in the absence of a redress scheme administered by the Department of Justice (DoJ), the current Victorian situation is perceived by many as an attempt by the Brumby Government to avoid the far more substantial costs of compensation / redress.⁴³

The writer has informed the Victorian Government that the proposed care leaver service must be accompanied by a redress scheme administered by the DoJ and that anything less is merely prolonging the considerable pain and suffering of survivors.⁴⁴

Two meetings of care leaver representatives with the Minister for Community Services the Hon Lisa Neville have failed so far to achieve a commitment to redress.

Perplexingly, the notion that abuse in 'care' as a victim of crime issue ought to be the responsibility of the Attorney General / DoJ, rather than DHS, is even less acknowledged by the Victorian Government than the question of redress (and in fact to date has not been acknowledged at all).

⁴² Marian, C. Letters to Premier Brumby, Attorney General Rob Hulls, Treasurer John Lenders, and the Hon. Lisa Neville from 29th August, 2008 and Marian, C. *Justice for Victorian Survivors of Abuse in Care: a care leaver service is no substitute for a compensation / redress scheme*. Submission to Victorian Sector Working Party on Forgotten Australians, August 2008.

⁴³ Golding, F. *Funny Kind of Idea*, Letters to the Editor, The Age, 11th November 2008.

⁴⁴ Letters to Premier Brumby, Attorney General Rob Hulls, Treasurer John Lenders, and the Hon. Lisa Neville from Marian, C. 29th August, 2008 and Marian, C. *Justice for Victorian Survivors of Abuse in Care: a care leaver service is no substitute for a compensation / redress scheme*. Submission to Victorian Sector Working Party on Forgotten Australians, August 2008.

Redress Action in Victoria

Victorian care leavers commenced monthly protests on the steps of Parliament House calling for the establishment of a redress scheme on the steps of Parliament house on the 16th of April 2007. Since this time 19 Victorian protests have been held.⁴⁵ Over time hundreds of care leavers have attended the protests which are organised by the Care Leaver Australia Network (CLAN). Many have also written to the Premier and other members of parliament requesting that a redress scheme be established.

In 2008, I wrote to Premier John Brumby (appendix i), Treasurer John Lenders, Attorney General Rob Hulls and the Minister for Community Services the Hon Lisa Neville requesting that the DoJ examine the issue of redress.⁴⁶ I also expressed concern that some or all of the \$7.1 million announced for the development of a care leaver service may be tendered out to past perpetrator organisations and the view that of survivors abuse in 'care' are anxious to ensure that services targeted to meet their needs, are independent of such agencies. The offices of the Premier, Treasurer, and Attorney General each issued cursory replies stating that redress is a matter for the Minister for Community Services, the Hon Lisa Neville to consider.⁴⁷

How it is that redress for crimes for which DHS is arguably vicariously liable can possibly be the responsibility the Minister responsible for this department was not explained in the replies. This is because there is no explanation for such a suggestion, which is highly offensive to survivors of abuse in 'care', and violates all notions of entitlement to fair hearing without prejudice and independence in justice mechanisms.

In the end a reply from the office of the Hon Lisa Neville was never received. Instead, somewhat to my dismay, my letters (all of which were accompanied by a legal discussion paper which clearly outlines the issues⁴⁸ and a

⁴⁵ See <http://www.clan.org.au>

⁴⁶ Letters to Premier Brumby, Attorney General Rob Hulls, Treasurer John Lenders, and the Hon. Lisa Neville from Cherie Marian, 29th August 2008. Letter to John Brumby in appendix 1 is similar in content as letters sent to other MP's.

⁴⁷ Letter from the Office of the Premier of Victoria to Cherie Marian signed by Dan O'Brian, 16th of September 2008; Letter from the Office of the Treasurer of Victoria to Cherie Marian signed by Roland Lindell, 4th of September 2008; Letter from the Office of the Attorney General to Cherie Marian signed by Dallas Henderson, 18th of September 2008.

⁴⁸ Sdrinis, A. *Why an Apology Is Not Enough*, 9th of September 2008

submission regarding the proposed care leaver service)⁴⁹ garnered only a reply from DHS!⁵⁰(appendix ii) Perhaps not surprisingly, this reply declined to comment on either conflict of interest issues with DHS or the Victorian Government's failure to consider redress. Astonishingly, DHS instead merely agreed that a redress scheme has not been established!

In response to concerns that perpetrator organisations might be funded to deliver services to survivors of abuse in 'care' the following was stated:

*I have noted your concerns about the auspice of the new agency; that past provider agencies may seek to provide the new service. This was view was expressed by a number of care leavers at the recent consultation focus groups. However, a number of care leavers expressed the view that they have received valuable support from past providers. It is important that the full range of views is considered in the development of the new service ...*⁵¹

Critically, the issue of abuse in 'care' specifically was not referred to anywhere in the DHS reply. As such, one of only two things is possible. The first is that the proposed Victorian care leaver service will not be targeted at survivors of abuse in 'care' and instead intends to provide generalist long term after-care support to Forgotten Australians. The second is that DHS is of the view that survivors of abuse in 'care' have received valuable support from past perpetrator agencies.

My experience in this area is that vary rarely have past perpetrator organisations taken full responsibility for the injuries caused to survivors of abuse in 'care'. Rather many survivors report dissatisfaction with the few processes which do exist to deal with these issues (such Toward Healing which is provided by the Catholic Church).⁵² Indeed, as a result of new corroborating evidence about perpetrators coming to light after an initial

⁴⁹ Marian, C. *Justice for Victorian Survivors of Abuse in Care: a care leaver service is no substitute for a compensation / redress scheme*. Submission to Victorian Sector Working Party on Forgotten Australians, August 2008.

⁵⁰ Letter to Cherie Marian from Paul Mc Donald, Executive Director, Children Youth and Families, DHS, 8th of October 2008.

⁵¹ *ibid*.

⁵² A number of care leavers spoke of this dissatisfaction and the reasons for it publicly, at the National Surviving Care Conference in Sydney on the 3rd of October, 2008.

application for compensation has been made, some have to go through such processes multiple times, and *still* do not feel that the full extent of abuse which occurred has been acknowledged or addressed. After battling for sometimes for many years, understandably, most in these circumstances eventually cease further action, still dissatisfied, but having decided that the psychological costs of pursuing justice to themselves and their families, are simply too great.

Of note, many care leavers have shared with me their strongly held views that survivors of abuse in 'care' want "nothing more to do with perpetrator organisations; and neither do their families!" I would ask that the committee pay particular attention to this view.

The current situation in Victoria is wholly unacceptable as are the extraordinary lengths which advocates are having to go to in their efforts to secure a commitment from the Brumby Government to establish a redress scheme.

The views put forth in this submission are not outlandish or extraordinary. Evidence that this abuse and neglect occurred on systematic and widespread scale abounds. Restitution is the logical next step to resolving these issues once and for all, to bring to a close this shameful chapter of Australia's history.

Victorian Charter of Human Rights and Responsibilities 2008

The *Victorian Charter of Human Rights and Responsibilities (2006)* came into full effect in January 2008 and requires the Government and public authorities to take into account the human rights set forth in the Charter in decision making, policy making and law making⁵³. Whilst the charter is not retrospective, it can be argued that given that abuse in 'care' survivors continue to suffer the effects of their injuries, it must be used as a framework for policy and decisions making on the question of redress (with particular reference to clauses against forced labour, medical experimentation without consent, torture etc).

⁵³ State of Victoria, *The Victorian Charter of Human Rights and Responsibilities: Civil and political rights explained*. Victorian Equal Opportunity and Human Rights Commission

Lobbying of the Victorian and NSW Governments to establish redress schemes for abuse in 'care' is ongoing. If a favourable outcome cannot be achieved, the Brumby Government's refusal to authorise the DoJ to consider redress will be referred to the Ombudsman for administrative review under mechanisms in the Human Rights Charter.

Redress schemes for abuse in 'care' must be established by the DoJ as well as by the equivalent department in NSW. Anything less is a miscarriage of justice of the highest order.

Recommendation 19

Recommendation 19 of the inquiry aims in part to "establish a professional national support and advocacy body for care leavers" ... "which is funded by the Commonwealth, State Governments, Churches and agencies."⁵⁴

The Alliance of Forgotten Australians (AFA) is based in Canberra and grew out of the ICIC. The structure of the organisation as a peak body is fair, sound and robust. Currently, however, AFA is staffed by one person for only 1.5 days a week (not inclusive of secretariat / administration support)! This level of staffing to advocate on behalf of a population comprising half a million people, is grossly inadequate. AFA's lack of resources means that the ability to advance the cause of Forgotten Australians, for whom there is still so much to be done, in vital areas such as research and policy development is very limited. Advocates and state based agencies look to organisations such as AFA to provide national leadership. Leadership by those who represent the express interests of care leavers, as opposed to by those who represent the interests of government, churches or agencies, is critical if justice for Forgotten Australians is to be achieved. In order to maximise accessibility and efficacy AFA must be expanded to have a minimum of at least 1 EFT worker 'on the ground' in each state and territory.

Moreover, funding of AFA must be recurrent which it is not at the current time.

⁵⁴ Senate Community Affairs Reference Committee, *Forgotten Australians: a report on Australians who experienced institutional or out of home care as children*, August 2004, p xxiv.

Recommendation 20

Recommendation 20 calls for the “on-going funding of CLAN and other advocacy and support groups.”⁵⁵ VANISH which provides support services to Victorian care leavers receives recurrent state funding. However, CLAN, which receives funding from a range of sources including the Commonwealth, does not receive this. Importantly, CLAN was pivotal in lobbying for the establishment of the ICIC. In addition, to some degree CLAN is less fettered as an advocacy body than state based services because it is largely not beholden to the states under whose jurisdiction abuse of Forgotten Australians occurred. For this reason alone, ongoing funding of CLAN is imperative. Moreover, funding of CLAN must be increased to allow for the national coordination and provision of support services to care leavers.

Whole of Government Response

Recommendations 31, 32 & 33

These recommendations relate to the collation of data to identify care leavers as a matter of course on a variety of forms (e.g. Medicare, Centrelink, prison, mental health and aged care admissions), to inform social policy to explicitly recognise Forgotten Australians as a population sub-group with specific needs across a broad spectrum including “health, housing, welfare and community services” portfolios (p. xxiv).

To date, there is no collection of data on Forgotten Australians on the range of forms or data bases of services identified. The importance of the methodical and targeted collation of this data cannot be over-stated. It is most difficult to argue the case for funding of various services and restorative programs in the absence of the data required to build a strong evidence-base of existing need.

⁵⁵ Senate Community Affairs Reference Committee, *Forgotten Australians: a report on Australians who experienced institutional or out of home care as children*, August 2004, p xxiv.

Housing & Homelessness

Both the Federal and Victorian Governments have demonstrated recognition of the current generation of care leavers as a specific group with particular needs. The Homelessness White Paper *The Road Home*, for example, refers to “turning off the tap” of pathways into homelessness by adopting a “no exit into homelessness” policy for young people leaving state care.⁵⁶ This long overdue policy initiative is significant and will at last stem the flow of vulnerable adolescents into homelessness. The report makes no mention of Forgotten Australians, however, who continue to experience the full gamut of homelessness (primary, tertiary and secondary)⁵⁷ at substantially higher rates than others.

One care leaver has suggested that homelessness of Forgotten Australians could be addressed by the start up of housing provider services based on a cooperative model of self management by care leavers, which would involve the mutual stewardship of landlord/ tenant responsibilities. Alternatively, nomination rights to transitional housing properties under the national Supported Accommodation Assistance Program (SAAP) could be made available to care leaver support services around the country.

A Fairer Victoria 2008, mentions Forgotten Australians in relation to the \$7.1 million which has been announced for the establishment of a care leaver service⁵⁸. It is heartening to see that at long last Forgotten Australians are acknowledged at the level of state public policy. It is not yet known what sort of support the service will provide. What is known is that in order to meet the level of need (which is known to be substantial but for which data is yet to be properly collated), this funding must be recurrent and expanded such that the

⁵⁶ *The Road Home: A National Approach to Reducing Homelessness*, Commonwealth of Australia, 2008 p 27.

⁵⁷ Chamberlain, C. and MacKenzie, D. (1992) 'Understanding Contemporary Homelessness: Issues of Definition and Meaning', *Australian Journal of Social Issues*, 27(4), 274-297

⁵⁸ *A Fairer Victoria: Strong People Strong Communities* State of Victoria, May 2008, p 42.

provision of support services for Forgotten Australians state-wide, including the provision of safe secure and affordable housing, is adequately achieved.

The lack of coordination of policy drivers between the Commonwealth and the States is clearly evidenced by Forgotten Australians' inclusion in *A Fairer Victoria* and omission in *The Road Home: A National Response to Reducing Homelessness*. The resulting gap between what is possible and the status quo unfortunately remains ad-hoc and urgently requires further research to fully ascertain.

The writer has written to various Senators who participated in the ICIC requesting that a whole of government response to Forgotten Australians be raised at the Coalition of Australian Governments⁵⁹ as per recommendation 33. Replies to these letters have not been received and I am not aware of any developments in this area.

Recommendation 22

Perhaps the most disappointing consequence of the lack of a whole of Government response to Forgotten Australians is that care leavers who were in 'care' one state, remain unable to access care leaver support services in other states where they now reside (as per recommendation 22). This unacceptable situation means that, in effect, Forgotten Australians continue to 'fall through the cracks' of whatever scant services may be available (notwithstanding that not all states / territories have specialised care leaver support services which are independent of State child protection authorities).

Conclusion

I urge the Rudd Government to show much needed national leadership on this wide range of issues. The ICIC raised the hopes of tens of thousands of Forgotten Australians. The time has come to deliver on the promise of that hope, which without further action, is meaningless.

⁵⁹ Marian, C. Letters to Senator Claire Moore 2nd of September 2008, Senator Jan Mc Lucas 2nd of September 2008, Senator Gary Humphries 2nd of September, Senator Steve Hutchins 3rd of September 2008.

Recommendations

1. A) That the Rudd Government issue an unreserved Commonwealth apology on behalf of the nation to Forgotten Australians who experienced abuse and neglect in institutional and out-of-home 'care'.

B) Psychologists with experience in the treatment of trauma ought to be present at the Commonwealth apology to offer support to care leavers who may need this.
2. All states and territories which are yet to do so must implement redress schemes as a matter of urgency to deliver justice and closure to survivors of abuse in 'care'.
3. Develop and implement of a whole-of-government national approach to addressing the needs of Forgotten Australians via the Coalition of Australian Governments.
4. Collate data on Forgotten Australians *at all points of contact with government or government funded services*, in particular, housing, health, welfare, employment, education and income support services, as well via the Australian Bureau of Statistics census.
5. Ensure that services for Forgotten Australians adopt a flexible model of service delivery which can be tailored to the needs of Forgotten Australians in different geographical areas.
6. Provide recurrent funding to AFA and CLAN in order for these services to continue to represent the interests of care leavers at the national level.
7. Increase funding to CLAN and AFA such that services may be expanded and delivered in all States and Territories.

8. A) Seek commitment from all states / territories that specialist services for survivors of abuse in 'care' will be provided *independent of perpetrator organisations* Australia-wide.

B) Ensure that recurrent / adequate funding is made available to existing and yet to be established specialist care leaver support services in all states and territories.

C) Ensure that care leavers are able to access specialist care leaver support services in all states and territories irrespective of where they were in 'care'.

D) Ensure that such services are evaluated in terms of identifiable outcomes.
9. Prioritise the availability of a range of social / public housing options to meet the needs of Forgotten Australians and make specialist care leaver services an entry point to access these options.
10. Ensure that funding for national research on the experience and needs of Forgotten Australians is made available.