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24 February 2005

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Secretary

With reference to the Inquiry into the *Privacy Act 1988*, the Care Leavers of Australia Network (CLAN) would appreciate the Senate Legal and Constitutional References Committee giving consideration to a matter of concern for many of its members.

CLAN has little quarrel with the intent or the principles of the *Privacy Act*. However, of concern to us is the varying practice of this Act, notably, the manner in which its provisions can be used to hinder those wishing to access information relating to their time spent in institutional and other forms of out-of-home care, especially that concerning their biological identities.

In this respect, of particular interest to us in the terms of reference for this Inquiry is part (a)(iii):

“any legislative change that may help to provide more comprehensive protection or improve the current regime in any way”.

About CLAN

CLAN was founded in 2000 by Leonie Sheedy (Victorian state ward) and Dr Joanna Penglase (NSW Home inmate) to fill a service gap in Australian welfare provisions. It is a national self-help support and advocacy group for older people who grew up or spent time during their childhood in orphanages, Children's Homes and other institutions, whether as state wards, Home or foster children.

Currently, we have over 600 members across Australia, the majority of which are people who grew up in care. The membership also includes two Federal politicians,

one State Liberal leader, government departments in four different states and child and family agencies in several states. We also have overseas members.

CLAN is an incorporated body with a constitution. It has an ABN and is registered with the ATO as an income tax exempt charity. Our office, which is located in Bankstown NSW, is staffed by one full-time paid worker, Ms Sheedy, who is assisted occasionally with part-time voluntary help. We pay an accountant to keep the CLAN books to ensure that all monies are accounted for.

Initially CLAN was funded entirely by membership fees and donations. However, towards the end of 2002, we were successful in obtaining grants from several members of Australian Child Welfare Agencies and from some State Governments.

Shortly after the release of *Forgotten Australians*,¹ the Senate report of the 2004 Inquiry into Children in Institutional Care, the Minister for Family and Community Services, the Hon. Kay Patterson, announced a substantial injection of funds (\$100,000) to CLAN. This grant from the Federal Government will go some way to easing the increasing and onerous workload we carry in assisting those raised in care.

The Search for Identity

One of the main services CLAN offers, which is pertinent to this Inquiry, is assisting members to obtain information about the institution/home/s they were in and more importantly, information about their families of origin.

For these people, having been raised in care means lost contact with parents, siblings and place of origin. It also means a loss of identity and self, critical elements of a stable and functional human being.

The loss of identity emerged as a major issue from the above inquiry and forms the whole of Chapter 9² in the *Forgotten Australians* report. It reveals that losing contact with family, siblings and place of origin:

... is not only a heartbreaking experience but also one that has a major impact on an individual's sense of self and identity. There are no siblings to share birthdays or anniversaries, There are no photographs, no medical histories, no school reports or personal mementos. Many care leavers have been described as leading adult lives as 'parentless people', feeling that they belong nowhere, isolated and being unable to establish attachments which the majority of people take for granted.³

Similarly, in *Lost Innocents: Righting the Record*,⁴ the Senate report of the 2001 Child Migrant Inquiry, the profound impact that a loss of identity has for those raised in care is covered in Chapter 6.⁵

¹ Senate Community Affairs References Committee, *Forgotten Australians*, A report on Australians who experienced institutional or out-of-home care as children, August 2004.

² See 'Identity and Records', pp.253-86.

³ p.253.

⁴ Senate Community Affairs References Committee, *Lost Innocents: Righting the Record*, Report on Child Migration August, 2001.

For many former child migrants the greatest hardship was loss of identity. Many witnesses told the Committee that not knowing who they were was the hardest for them to bear, harder than all the abuses. The sense of dislocation and not belonging, of loss of family and of emptiness has had a profound impact on their lives and on the lives of their partners and children.⁶

Although CLAN has some former child migrants as members, the Child Migrants Trust is one of the principal organisations offering vital tracing and reunification services for these people.

Much of CLAN's work is involved with assisting members to search for their past through records held by both government and non-government agencies. Freedom of Information legislation and a greater willingness of some organisations that have cared for children to make records available have improved access to records. Nonetheless, problems still exist. These include:

- the destruction and fragmentation of records;
- lack of assistance to access records;
- poor record keeping;
- unsympathetic staff; and
- privacy restrictions.⁷

It is the problem of privacy restrictions and varying processes that this submission addresses, including different interpretations by departments, private, charitable and church bodies.

Privacy restrictions

There have been instances of people finally accessing their records only to discover that large amounts of information had been withheld, particularly in relation to accessing records of other family members. In some cases, these records are thought to contain vital information in the quest to trace family members or the person's history.

Under Privacy legislation, family information is considered information about a third party and is treated differently to the personal information of the searcher. For instance, the Manager of the Heritage and Information Service of the MacKillop Family Services stated that:

We release records according to the privacy legislation, which would mean that we could not release information about a person to somebody else unless that person has given permission for them to receive it or unless that person was deceased.⁸

⁵ See 'The Search for Identity', pp.137-76.

⁶ p.137.

⁷ See *Forgotten Australians*, pp.256-280.

⁸ *Committee Hansard*, 12.11.03, p.29.

Below are a series of remarks made in submission and hearings to the 2004 Children in Institutional Care Inquiry about the impact these restrictions have for care-leavers. We consider by citing these, the Committee will gain some compassion and empathy for the need of care-leavers to piece together their fractured lives.

... to find that I can't gain access to files relating to my brothers from Family and Children's services without permission from their children who I don't know [I] feel that ...part of my identity is missing. When I started the search I thought the ache in the corner of my heart would be erased only to find that it has got larger.⁹

Another spoke of his attempt to locate his brother

First, I wanted to get hold of his file, and then they put obstacles up: "If he is alive we can't do it under freedom of information, but if he is dead and you can show us a death certificate we can provide you with information, ' and stuff like that. To me it is just bureaucratic bungling all the time and I just get frustrated about it because, as I say, they put me in this situation. I am only asking for one thing of them: to say where Ralph is, if he is still alive. He may well be dead. I do not know."¹⁰

And another searching for information about an adopted brother killed in Vietnam wrote that the Adoption Information Service could not provide the brother's name or burial details until his other adopted brother's (deceased) wife gives her permission to disclose the information as she is the next of kin.

Blood is not thicker than ink lines on documents. Sure hope she is not dead and will agree to meet and talk to and with me. As a mature 59 Y.O. it would be my most treasured wish at this time to go to his grave and spend a lot of time talking to him as we never met in his short 22 yrs and 2 days life.¹¹

After the death of her sister, one former care-leaver wrote:

I am not able to get access to her state ward file because of the privacy laws. These records will help me to understand her life as well as my own. Siblings in 'normal' families are able to get access to their family history through parents telling of the family information. However, state wards often only have the state ward file to go back to for family information.

Now that Pat's dead, I have to have her husband's permission to get access to her ... file. I have to seek his permission for the release of 'our' family information. This is NOT his family information ... When this information was gathered, all those years ago, he was not in anyway connected to my sister, yet the law states that this man has the right to release or not release family information which does not pertain to his history or identity.¹²

⁹ Submission 184.

¹⁰ *Committee Hansard*, 3.2.04, p.106.

¹¹ Submission 157.

¹² Submission 119.

Some care-leavers are even denied information about their biological parents. One angrily stated:

The Department decides I cannot have certain information about MY parents. Why should the Department staff get to read the file about my parents and then relate it to me? How dare the Department decide that I cannot read about MY parents.¹³

Privacy restrictions have also hindered care-leavers gaining information about babies they gave birth to and were either forced or coerced into giving them away or up for adoption. This situation happened not just to girls living in care but to single working girls placed in and expected to work for their 'board' during the term of their pregnancy.¹⁴ One person wrote:

The Victorian Government has caused my family and myself grievous emotional/psychological damage by withholding information and records, that prevented my former husband and I from parenting our first born child. When I was an eighteen-year-old adolescent she was abducted from me when I delivered her in a government licensed [institution].¹⁵

And another:

The Victorian Government has continually refused natural parents identifying information about their abducted babies.¹⁶

The *Forgotten Australians* report also acknowledges the problem of the Aboriginal 'stolen generation' accessing third-party information to assist them in forming a family history. It states:

While some agencies are flexible and searchers receive information, others 'continue to interpret third-party privacy restrictively and fail to assist searchers to meet their requirements for third-party consent. The searcher can be denied the very information needed to identify family members and re-establish community and family links.'¹⁷

Overcoming privacy restrictions

As CLAN is of the strong opinion that privacy provisions must not be applied to exclude people from having access to documents and information that assist them in their identity searches, we recommend legislative and or administrative reform in this area.

¹³ Submission 167.

¹⁴ See *Forgotten Australians*, pp.107-09. Also see *Bringing them home*, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, April 1997, p.341.

¹⁵ Submission 247.

¹⁶ Submission 155.

¹⁷ P.278.

Privacy provisions need to be changed so that all Australian State Governments can fulfil their international treaty obligation to the United Nations Convention on the Rights of the Child to which Australia is a signatory. **Article 8** of this Treaty states:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

CLAN considers that this aim can be achieved, as do other organisations. For example, the directory of child care agencies produced for Anglicare, notes that:

Of all the complex and difficult issues around the Stolen Generations, child migrants and former wards, this issue of developing an efficient and effective system for former residents of children's homes to access and family information is surely the most manageable.¹⁸

In this respect, CLAN urges the Senate Legal and Constitutional Committee to be cognisant of and to give due consideration to **Recommendation 16** (9.117 – dot-point 4) of the *Forgotten Australians* report into this Inquiry's recommendations. It reads:

That all government and non-government agencies agree on access guidelines for the records of all care leavers and that the guidelines incorporate the following:

- the commitment to the flexible and compassionate interpretation of privacy legislation to allow a care leaver to identify their family and background.

Should the Committee require any further information, please do not hesitate to contact the CLAN office on (02) 9709 4520.

Yours sincerely

**Ms Leonie Sheedy &
Dr Joanna Penglase**

cc **Child Migrants Trust
Christian Brothers Ex-Residents and Student Services (C-BERS)
Senate Community Affairs References Committee**

¹⁸ See Boyce, J. *For the Record: Background Information on the Work of the Anglican Church with Aboriginal Children and Directory of Anglican Agencies providing residential care to children from 1830 to 1980*, Anglicare, p.15.