COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

COMMUNITY AFFAIRS REFERENCES COMMITTEE

Reference: Children in institutional care

WEDNESDAY, 4 FEBRUARY 2004

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SENATE

COMMUNITY AFFAIRS REFERENCES COMMITTEE

Wednesday, 4 February 2004

Members: Senator Hutchins *(Chair)*, Senator Knowles *(Deputy Chair)*, Senators Humphries, Lees, McLucas and Moore

Substitute members: Senator Murray for Senator Lees

Participating members: Senators Abetz, Bishop, Carr, Chapman, Coonan, Crossin, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Lightfoot, Ludwig, Mackay, Mason, McGauran, Murphy, Nettle, Payne, Tierney, Watson and Webber

Senators in attendance: Senators Humphries, Hutchins, Knowles, Moore and Murray

Terms of reference for the inquiry:

To inquire into and report on:

(a) in relation to any government or non-government institutions, and fostering practices, established or licensed under relevant legislation to provide care and/or education for children:

  (i) whether any unsafe, improper or unlawful care or treatment of children occurred in these institutions or places,

  (ii) whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection, and

  (iii) an estimate of the scale of any unsafe, improper or unlawful care or treatment of children in such institutions or places;

(b) the extent and impact of the long-term social and economic consequences of child abuse and neglect on individuals, families and Australian society as a whole, and the adequacy of existing remedies and support mechanisms;

(c) the nature and cause of major changes to professional practices employed in the administration and delivery of care compared with past practice;

(d) whether there is a need for a formal acknowledgement by Australian governments of the human anguish arising from any abuse and neglect suffered by children while in care;

(e) in cases where unsafe, improper or unlawful care or treatment of children has occurred, what measures of reparation are required;

(f) whether statutory or administrative limitations or barriers adversely affect those who wish to pursue claims against perpetrators of abuse previously involved in the care of children; and

(g) the need for public, social and legal policy to be reviewed to ensure an effective and responsive framework to deal with child abuse matters in relation to:

  (i) any systemic factors contributing to the occurrences of abuse and/or neglect,

  (ii) any failure to detect or prevent these occurrences in government and non-government institutions and fostering practices, and reporting mechanisms

  (iii) any necessary changes required in current policies, practices and reporting mechanisms

In undertaking this reference, the committee is to direct its inquiries primarily to those affected children who were not covered by the 2001 report *Lost Innocents: Righting the Record*, inquiring into child migrants, and the 1997 report, *Bringing them Home*, inquiring into Aboriginal children.

In undertaking this reference, the committee is not to consider particular cases under the current adjudication of a court, tribunal or administrative body.

In undertaking this reference, the committee is to make witnesses and those who provide submissions aware of the scope of the inquiry, namely:

(a) explain the respective responsibilities of the Commonwealth and the states and territories in relation to child protection matters; and

(b) explain the scope of the committee's powers to make recommendations binding upon other jurisdictions in relation to the matters contained in these terms of reference.

WITNESSES

Committee met at 8.35 a.m.

EAGLES, Mrs Maureen, Director, Children and Youth Services, Centacare Catholic Community Services

HOYLES, Mr Bill, Senior Manager, Youth Services and Aftercare, Barnardos Australia

POWER, Mrs Jayne Sheridan, Senior Services Manager, Youth Off The Streets

RONGE, Mrs Shirley Ann, Director, Barnardos Australia

SARLOS, Ms Susan Jane, State Manager, Out of Home Care Services, Wesley Mission Dalmar

SCOTT, Mr Eric McEwan, Manager, Policy and Membership, Association of Children's Welfare Agencies

WALKERDEN, Mr Stephen Keith, General Manager, United Protestant Association of New South Wales

WOODRUFF, Ms Jane Catherine, Chief Executive Officer, UnitingCare Burnside

CHAIR—I declare open this public hearing and welcome everyone who is present today. The Senate Community Affairs References Committee is continuing its inquiry into the very important issue of children in institutional care. The committee has now received over 400 individual submissions, both publicly and confidentially, as well as a range of submissions from academics and religious, government and non-government organisations and child welfare agencies, some of whom are represented here today. The committee is grateful for these submissions and the valuable insights they bring into the question of institutional and out-of-home care of children, both past and present. The first session today is in a panel discussion format in order to maximise contributions in an orderly and free flowing debate. The agencies represented in this session provide care and protection for children today, and a number have a long history of providing care for children.

I welcome representatives of the various agencies. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee prefers evidence to be heard in public, but evidence may also be taken in camera if you consider such evidence to be of a confidential nature. The committee has before it your submissions. I now invite each group to make an introductory comment, to be followed by questions from the committee to which you are encouraged to contribute. Who would like to go first? There is no particular order.

Mr Hoyles—I am happy to go first for Barnardos. I would like to make a few comments, and I have based these comments on evidence that has been read into *Hansard* previously covering some of the issues that the committee has raised with other groups. Barnardos looks at the experiences of the past and uses feedback from our old boys and girls to guide our current practice. We are particularly interested in how this committee will view current practice in the light of evidence given by ex-clients of various agencies. We are involved with peak groups like

CAFWA in advocating improved payments for foster carers, particularly those caring for adolescents.

We have implemented the Looking After Children case management system, which has been mentioned by Berry Street representatives in previous evidence to the committee. I would particularly ask the committee to look at that system as a way of improving practice today. We were one of the first agencies to support CLAN financially. We have provided books for their library and distributed publicity about CLAN to all of our ex-residents that we are in contact with, and one of our board members, Shirley, who is with me today, was a committee member of CLAN. We have an active working relationship with CREATE, an organisation that has been involved in the training of our workers.

With regard to caring for those children and ensuring that they have an independent advocate, we have a current residential unit which receives visits from the community visitor. We have an active after-care service. We have provided information in the development of resources for tracing, such as the *Connecting kin*: *guide to records* booklet. We are aware of cases of abuse that have occurred within Barnardos and have attempted to deal with them in a sensitive manner. In cases of historical abuse in particular, we have tried to ensure that the people concerned have been supported through counselling and through reparation where appropriate. In terms of our current programs, we are one of the first agencies to be recommended for the new five-year accreditation through the Office of the Children’s Guardian and we have submitted documentation to the previous inquiry on child migrants.

CHAIR—Mrs Ronge, would you like to add to that?

Mrs Ronge—As well as being a director of Barnardos I am an ex-client of theirs. I was in institutional care. Barnardos has really listened to us old boys and girls so that the bad things that happened and the pain that children felt in past years will not happen these days.

Mrs Power—Youth Off The Streets has eight farm based properties, mostly concentrated in the Southern Highlands of New South Wales, with the capacity to care for 45 young people. As an agency that does not receive core funding or block funding from the Department of Community Services, we are often referred young people as a last resort agency. By the time they come to Youth Off The Streets their stories are indeed lengthy and fairly terrible in terms of the experiences that they have suffered within the foster care system. A major issue for us in bringing these young people in and beginning to help them to turn their lives around is the repeated systems abuse that they relate to us. By systems abuse, I mean that many of these young people have been taken into care at a very early age. They have had unplanned placement changes and they have had major placement breakdowns. The majority of these young people have the highest needs and are the most disturbed, again often from a very early age.

Our position is that there is not adequate planning or adequate acknowledgment of the fact that these young people can be difficult, if not impossible, to care for within the foster care system as it is currently set up. There should be perhaps a consideration of the professional foster care model. I know that has been raised in many states, considered and rejected—I believe mostly on financial grounds. So young people are inappropriately placed. When they are placed, there are insufficient resources on the ground to support those placements. You can predict from that point onwards that inevitably they will rotate in and out of foster care placements until they are deemed ‘unfosterable’. Then, when they are teenagers, we see the result. Some may come to us. Approximately 60 per cent of the young people in our care currently are also in the care of the Department of Community Services. Others end up on the streets as a result of the systems failure that they have experienced throughout their care history. It is then a very difficult job indeed to begin to work with those young people.

Mrs Eagles—I appear here today as a representative of Centacare Catholic Community Services. We would like to thank you for giving us the opportunity to lodge a submission and to appear here today. Centacare appears as an organisation that has not provided institutional care but has had a history of working with religious orders in the Catholic Church that did provide institutional care. Our role with them was to assist a process of deinstitutionalisation from large convent care through to smaller group home care and foster care. Our agency has been a provider for the last 30 years of adoption and foster care models of care, and we continue that. It is from this body of knowledge and practice that we can comment here today.

Our other interest and our understanding of the issues within the terms of reference stem from the operation of three Centacare services that deal with people who have had a history of care. These include our current after-care service, which is one of the nominated state after-care services. That obviously deals only with people who have been in care up to the age of 25. We also run a Catholic children’s home inquiry service, which is a central register of details for all children who were in Catholic children’s homes. That is a point of reference for them so that we can start that work on their history and provide some counselling to them around those issues. The third service we have is our post-adoption support service. We mention that because it is a model of service that also recognises that for people who have had a history of adoption it is ongoing. They and their families are affected by adoption for the rest of their lives, and therefore there is no time limit on age.

Mr Scott—I represent the Association of Children’s Welfare Agencies, which is a peak body, not a service provider. Our membership is made up of service providers and we are involved in information research and training and policy development in the area. We welcome the inquiry, because we believe it provides the opportunity for people who have been in care to be listened to and have their circumstances acknowledged. It also provides the opportunity to provide input into the future direction of quality improvement. People need to be heard, whether they are making allegations of abuse or have simply lived in an institutional environment that failed to meet the needs of individuals in a care situation. We believe that out of this inquiry can come some allowance for the services these people need. They are currently living in the community mainly as mature adults without having adequate coping skills for society today.

We also believe that the current system can be enhanced by listening to what children have to say and putting into effect laudable ideas such as participation, which is specifically mentioned in the New South Wales legislation. We believe there is a place for national standards and a need to work towards quality care and to ensure that past practices cannot recur and that services continue to improve in the future. A key element for the future will be leaving care and after-care so that people departing the care experience can do so positively and be assisted in the community as adults. We look forward to the committee’s report and its contribution to the future improvement of services.

Ms Sarlos—Since 1893, Wesley Mission and its forerunners have provided substitute care to children and young people unable to live with their parents. Some 8,000 to 10,000 children have been in our care over the years. Wesley Dalmar, as part of Wesley Mission, acknowledges that, while in our care, some children were beaten, exploited, kept apart from their siblings or from visiting parents, denied educational support or raised without affection. There may also have been instances of sexual abuse. Wesley Mission views all these acts as unsupportable. Through our child and family services, the intent of the mission has always been to protect vulnerable children and provide them with positive opportunities for experiencing family life and for developing the skills they need to support themselves as adults. At no time was it the policy of the mission to harm children in this way. We deeply regret that some children suffered these experiences while in our care.

The deprivations and abuses described so vividly by many of the submissions to this inquiry have clearly had lifelong consequences. Many care leavers of the past have suffered relationship difficulties, educational deficits and problems with self-esteem, leading to drug and alcohol abuse and other addictions. The abuse and harsh treatment described occurred for a number of reasons. Some of the practices were widely regarded by society at that time as acceptable methods of disciplining or managing children. The necessity for detailed scrutiny and training of applicants for jobs involving the care of vulnerable children has only been recognised in recent years. Our records seem to indicate that in the 1950s and 1960s there was a belief that references from upright citizens were sufficient to ensure that suitable people were recruited to do this work. For many years, lack of external funding led to the homes being reliant on the labour of the children who were living there. Wesley Mission’s present management feels sympathy and regret for those who suffered during and from this period in our history.

Today Wesley Dalmar offers many preventative programs for families under stress but has also persevered with the provision of out-of-home care, for the need for it has not diminished. We have tried to learn from the past to provide children in need of care away from their families with a safe, nurturing experience. Our staff and our foster carers are carefully assessed, trained and supervised. They are all motivated by the desire to help children in need and they do a magnificent job. Today New South Wales has a complex structure of standards and appraisals to ensure that out-of-home care services are accountable.

Wesley Mission has established an after-care service to assist past clients who wish to read their files, find information about their past and locate support services. Some 30 people a year make use of this. As there is no external funding for this service, it is necessarily limited in scope. Complaints relating to the past are handled individually and Wesley Mission is committed to resolving each one to the satisfaction of the complainant.

Our recommendations to this inquiry relate to three areas: first: enhancing preventative care opportunities so that fewer children come into care; second, enhancing the opportunities for care leavers through after-care; and third, attracting and maintaining foster carers. In relation to these three areas, I would highlight the following: firstly, our support for an independent support agency for care leavers of all ages, which will assist with the search for birth families where this is needed and provide other support services, such as counselling and remedial education; secondly, the need for the funding of community respite programs—we find that there are an abundance of families willing to offer weekend care to vulnerable children but few funds available to employ the staff needed to run such programs; and thirdly, I note our support for a national inquiry into the future viability of foster care and alternative models of out-of-home care.

The perception of the past varies from one individual to another. I need to close by acknowledging, along with the pain, the resilience of past care leavers, many of whom tell us that, while it was tough, they view their experiences at Dalmar with affection and gratitude. A visiting care leaver recently told me, ‘I do remember the terrible times, but I turned it around and made it positive.’

Ms Woodruff—Thank you very much for the opportunity to appear before this community. UnitingCare Burnside is an agency not unlike some of the others people have spoken about today. We have over our history had around 11,000 children and young people in out-of-home care, starting of course in institutional care right back in 1911. Currently, we still have 145 children who we care for through a range of out-of-home care services, plus a number of after-care services which we either fund ourselves or receive government funding for. However, over the period of time we, like other agencies, have shifted our focus very significantly so that we are also looking at the needs of families, children and young people before the requirement for out-of-home care becomes necessary or indeed is forced because of a lack of services.

We welcome the approach of the committee in looking at the past experiences, looking at the experiences of the present generations of young people and children in out-of-home care and looking towards the future. In terms of the past, we would like to focus on the importance of acknowledging, listening to and learning from the experiences of people who have been in out-of-home care. We think it is important to make a distinction between people who were put in situations of unsafe, improper or illegal care and people who may have experienced harm or neglect as a result of what were seen as acceptable welfare practices at the time—although they may now seem to us to have been unnecessarily harsh or perhaps to have failed to understand the importance of attachment and the importance of caring for children as individuals.

We think it is also extremely important that where there have been situations of unsafe, improper or unlawful care there are mechanisms which support the person through a proper and appropriate investigatory process. We also think that there needs to be reparation for those people in some way. Part of that reparation may be acknowledgment and the right to be heard. Although we have those policies within our own agency and within the Uniting Church now so that there is some consistency in the way we approach these issues, we would like to see a much broader system put in place.

With the current system of care, we are all looking for a system of quality care and support. I think many of my colleagues share my view that that is not the system we have now, despite the terrific work that is done by many individuals, carers and agencies. We would like to see a system where the focus is on the supported care of the child rather than on the program types or components of the system. We wish to see a range of care options. We want to see well-developed case plans—that may be New South Wales jargon rather than national jargon—but we want to see a way of ensuring that the child or young person is involved in the development of their own plan and that there are appropriate ways of making sure that what has been written down in the plan actually happens for the child.

We look to stability of placement, emphasis on education and a system where the situation and outcomes of children and young people are regularly reviewed and monitored. We also believe it is hugely important that there is an effective and supported after-care system for children and young people leaving care. Our comments about this come from the research evidence, from the experiences of young people who are in our after-care programs, from the stories that have been told to us by people who have been in care with us in the past and from our understanding of good practice.

For the future, Burnside’s particular focus will be on disadvantaged children and young people. We would like to reiterate the recommendations we made at the poverty inquiry, because if we are to stop children and young people coming into out-of-home care then we must have some changes in government policy and practice which tackle the systemic issues which create disadvantage for this group of children and young people. We have talked in the past about the relationship between poverty and child abuse and neglect. We will look to specific strategies, such as respite care, family support and opportunities for children to access child care.

There are three other things I would like to talk about because they have implications for the sort of evidence we are giving today. Firstly, and I presume this is by coincidence, we are non-government agencies. It is important to acknowledge that the out-of-home care system does not belong to either government or non-government agencies but exists in the relationship between the two. There were a very significant number of children and young people that were in government-run out-of-home care facilities. It is important we ensure that there is also a voice heard from them and from government.

Secondly, there is the inevitable conclusion that must be drawn in relation to Aboriginal children and young people. Disproportionately, Aboriginal children and young people have always been in the out-of-home care system. Whether that was by policies of active removal or whether that is the case now, there are complex and various reasons. But it is certainly clear that Aboriginal children and young people still continue to be in out-of-home care in disproportionate and unacceptable numbers. That obviously has some implications for the past and some other inquiries that have been undertaken by government and also for the sorts of strategies we need to put in place now.

The third area I wish to refer to, and I know you will have people who are much more directly involved in this here later today, is children with disabilities. The advantage for many people who have been in out-of-home care who are able to become members of CLAN is that they do have the capacity to speak for themselves. Many of those children with disabilities do not. For those children, the decisions that have been made around their lives have been just as significant and, conceivably, even more dramatic in their outcomes than they have been with this more vocal group.

Mr Walkerden—Thank you for the opportunity to speak. I will not reiterate our submission; I would just like to make a few comments. Our experiences as an organisation of listening to stories of abuse and harm that occurred whilst people were in our care have broken our hearts. Our experience is that it was only after that occurred that we were able to listen fully to their experiences and to respond in an understanding and compassionate way. That has led us down a number of tracks, and the sorts of services that have been spoken about here by other providers are similar to those that we offer within the United Protestant Association.

The outcome of the inquiry, of course, is up to you, but I think it is worth stating that an apology and an acknowledgment are crucial, both from the government and on behalf of the non-government sector. Compassion is needed in our response. I think that too often there is a defensiveness that creeps in, both at a government level and at a non-government agency level. It is entirely inappropriate, in my view. Services and support are needed. A large group of our population have experienced this and, when you take into consideration the flow-on effects to the next generation and the next, it is timely and most important that support services are established to help these people, who are not just young people leaving care but adults and older people as well.

I would also like to speak a word in support of the Care Leavers of Australia Network. They are an excellent group. They have a great track record. I was privileged to attend their inaugural meeting back in 2000 or 2001. They, I think, are well positioned to take a lead. It is in my view entirely inappropriate, although it is necessary, for past providers to be taking on any formal advocacy type role. It is just impossible in many respects. They should provide support services to past clients, yes, but the people who are in care need to be empowered. They need to have that resource given to them to be able to meet the needs of their friends. I would just add a word of encouragement to the inquiry along those lines: arising out of this, adequate resources should be made available to the Care Leavers of Australia Network. They are a national group. They are really a fledgling group in many ways at this stage but, with the resources behind them, I think they are a group that will do an enormous power of good, and I look forward to seeing that happen.

CHAIR—Thank you. Mr Scott, your association gave an excellent summary of the development of care for children in those circumstances. Throughout a number of the submissions—and you might be able to help explain this to me and the rest of the committee—there is a particular history up until the seventies: there were children placed in care who were caught shoplifting or whatever else, and then there were children who were placed in institutions because there was a breakdown in the situation of the family—for example, the mother had died or dad or mum was a drunk or a schizophrenic—and the parent or parents could not look after their four or five children. We have had reports that mum and dad—or dad alone—used to pay money each week to the organisations. Is that what happened? There are obviously people who were put into homes because dad or mum or both could not handle the position and they were paying some kind of boarding fee. Then there were others in the same home for whom, because they were in a difficult situation, no-one paid any boarding fee at all.

Mr Scott—I cannot speak for every organisation that operated in, say, the first 20 or 30 post-war years, but certainly there was a view that, where it was possible to recover some kind of financial support from a parent, it was morally desirable to do so because it reinforced to that parent their responsibility for caring for the child. I myself worked for the Department of Community Services under its various names back in the seventies, and it was the practice then that, when a child was made a ward, if the father was able to make a financial contribution he would be approached to make such a contribution. It did not necessarily make a great impact on the budget for the state care of children; it was seen more as reminding him of his responsibilities and, to some extent, keeping a link between them. It was abandoned because it was sometimes seen as punitive. It was expensive to collect. It was punitive of people who were in poverty and difficult circumstances, and it really did not contribute to the quality care of the child. For various reasons at that time it was seen as desirable that parents maintain a financial contribution.

CHAIR—Would you like to comment on that, Ms Woodruff? From Burnside's submission in particular and from some of the other submissions, it looks like some organisations had a lot of money at that time for the upkeep of their children.

Ms Woodruff—I am not sure that it would have been a lot of money, but of course you would have to go back and work that out in terms of the value of money at that time to be sure. Most of the agencies, and certainly Burnside, started off effectively taking children in voluntary care—in other words, somebody requested that they provide the care to the child. In the early days, that would never have been the state because the state did not take that active role in terms of child protection or other issues to do with children. Initially, Burnside started off by taking children who were literally orphans, but it became apparent very quickly that that actually was not the social problem that was facing people. The social problem that was facing people, I think we would now say in retrospect, was that there was no form of income security for single parents. If you were a single parent you had to work to survive, unless you had an extended family to support you. And if you had to work there was no child care, so you could not look after your children. Most of the placements were around some sort of arrangement like that.

We might now see a significant percentage of those children as having been neglected or at risk of child abuse, but that was not the predominant reason why children were placed at that time. Because it was a voluntary relationship, there was an expectation that people would contribute to the care of their child. However, where people could not do that or where people were not able to provide the penny pocket money that every child in Burnside got—because every child got treated exactly the same, irrespective of what their needs were—then that would have been supplemented by Burnside, I am sure. The big changes in the patterns have been the shift from voluntary to court ordered care as a result of the growth of child protection systems, the supporting legislation and so on and also the introduction of income security and changes in views in society and the family about children staying with the family rather than being raised by some form of institution. I think it was a bit like a boarding school for some people.

CHAIR—I remember someone saying—and maybe I am wrong about the actual period—that they paid 20 shillings a week for their child to be there. That was the figure. Back in the fifties, you could probably have sent your girl to SCEGGS for something like 20 shillings a week.

Ms Woodruff—I do not know if that was from Burnside's submission—

CHAIR—No.

Ms Woodruff—Part of the Burnside commitment always has been on the basis of need, irrespective of religion, nationality or creed. However they might have set the system up, I think probably the intention was not to make it a paying system for the sake of making it a paying system. It certainly did not cover the costs.

CHAIR—In much of the evidence we have been given it appears that people who are in their 40s, 50s and 60s now have the impression that their parents, because of those difficulties, actually said, 'Will you look after my children?' Is that on their files?

Ms Woodruff—Yes. I can only speak for Burnside. Burnside had an admissions committee which collected all of that information at the time. A bit later into the period they would have had social workers doing assessments of need and so on. All those records are kept and are still kept, and people have access to those files if they request them.

CHAIR—Are there files there where children have been taken from their parents?

Ms Woodruff—Yes, and sometimes the areas are quite grave. There are numbers of situations, for instance, where a child might have been placed voluntarily and then gone home, and then a year later whatever the department of community services was at that time requested placement. It is not always black and white, but sometimes it is.

Ms Sarlos—Within the Wesley Dalmar records the financial aspect of it comes up quite strongly, in that if, say, a year has gone by and the agreed payments from the parents have not been coming in, it may well be at that point that the government supported the children. It was really driven by the finances in terms of trying to make sure that there was some income coming in to support each child.

CHAIR—In those days did they know that each child cost, say, £5 a week to run?

Ms Sarlos—I have not seen any breakdowns like that, but certainly there is a constant theme of financial stress in the post-war years. Wesley Dalmar were supported by parishes within the Wesley Mission and also by the money that came in from parents. They had the dairy on the site, and they grew their own vegetables. That was how they held it all together: through those various enterprises. There was no other external funding at all.

CHAIR—I do not know if you were here yesterday or whether you have had the opportunity to see the *Hansard* from the previous hearings, but a number of the people that were in the institutions talk about slave labour. Is it reasonable to conclude that they were, in a way, farmed out as labour to assist in their upkeep? To extrapolate from that, as important as it is to put bread and butter on the table and clothing on them, may their education have suffered?

Ms Sarlos—The records we have show that people were offering homes to children. I have no indication that they were requesting labour for their farms or whatever. They were offering homes to children. I think the system probably broke down because a lot of the placements were a long way from Carlingford. A lot of them were in the country, and there was very little supervision of those placements. Some of them, we now hear from testimonies, did not attend school or were treated as labour on those farms. But at the time, the understanding is, management believed that they were going to people who wanted to give them a home.

Ms Woodruff—Many of those adults who were children in Burnside at the time would probably say that the tasks they were required to do to keep the system running, like cleaning the floors, getting the wood and so on were onerous. We were like Wesley Dalmar—in fact, I assume we were unbelievably similar to Wesley Dalmar—in that we had our own farm and all the rest of it as well. The boys would go down and bring the cows up in the morning. They were taught to milk the cows and so on. I think many of them would have seen that as being onerous, and it may well have been. But I think it was probably fairly consistent with what working class children would have been expected to do in their family homes. Of course, it was seen as character strengthening. If you happened to come from a Presbyterian background, as Burnside people did, then that was one of the things you did.

But certainly all the children went to school. I suspect that their educational opportunities were not as great as they were for other children, but I think that was more because the concept was one of a total institution. It was quite late when high school students, for instance, started going to the local high school rather than having some form of extension education from the Burnside school. The Burnside school always had children from the local community in it as well as Burnside children, so it was a bit of a mixed picture, I think. It was not slave labour in the sense that it paid for their keep.

Senator KNOWLES—As you would know from our previous inquiry, we have a number of former and current care providers who provide virtually uncapped counselling. Take C-BERSS, for example. They recognised and acknowledged the faults of the past and the errors of their ways and they have made public apologies and offered counselling. Could I run through with all of you what sort of facilities you are all now providing for those who might need it, bearing in mind that a lot of them do not want to go back to the scene of the crime, so to speak. But, for any of those who may wish to go back and cleanse themselves plus get counselling for the future, could I just see what you are doing at the moment?

Mr Walkerden—The United Protestant Association of New South Wales is offering counselling. We do not put any limits on that. It is entirely driven by the individual; they steer that. We fund that counselling relationship and they then use that for as long as they feel is needed. We provide resources in the form of file reviews and access to the file information that we have, although at times that can be very limited through poor record keeping back in the early days. We also fund travel expenses for people to and from the place that they were brought up in or spent a significant amount of time in if they want to come and visit. We will look at meeting other expenses as well.

Senator KNOWLES—If that includes someone who says: ‘I don’t want to come back to you, because I think I’m scarred. I would like to go somewhere else,’ what options do you give them under those circumstances?

Mr Walkerden—We would try to find an appropriate person satisfactory to them, preferably local to where they are.

Senator KNOWLES—And still pick up the tab?

Mr Walkerden—Yes.

Ms Woodruff—Very similarly, we employ an after-care worker that we fund ourselves. We also have a couple of DOCS funded after-care services. They are not just for Burnside young people up to the age of 25 but for anyone in the system up to the age of 25 in those geographical areas. We provide counselling, but we also financially support people who choose to have counselling externally and we provide for other costs for people, such as medication and so on, if that is appropriate. We have an annual reunion so that we have an opportunity for people to come back should they wish to do that in some sort of formal and somewhat celebratory sense. Because many of our buildings have now been sold, we have arrangements with the people who have purchased those buildings over time to have the buildings opened up on the day. That sense of place for people is often extremely important, so we make sure that happens. We have a museum which honours people’s history. People often make contributions to that museum, and it also recognises the various phases that Burnside has gone through in providing care. We have an archivist who manages our files and makes them available to people. If somebody comes in with a photograph and says, ‘That’s me. Who’s that and what’s happened to them?’ they will undertake—within a reasonable privacy framework—to find people, link them up, identify things for people and so on.

We also have a policy which enables any formal complaint to be properly investigated, and there is within that a capacity for that to be an external investigation. We have a policy which guides that process and so on. That is linked into the Uniting Church, because we are of course an agency of the Uniting Church. I think that is probably about it.

Senator KNOWLES—And there are no time barriers on that?

Ms Woodruff—No.

Senator KNOWLES—Thank you.

Ms Sarlos—Similarly, we have an after-care worker who assists with access to files and with links to support services. We offer to fund counselling for a limited amount of time, the focus of that being to help people cope with the reactions that occur when they see their files for the first time. We are not currently offering long-term counselling—we have been linking people up with community resources in that regard—but that is under review currently within our organisation.

Senator KNOWLES—What do you do in circumstances where you identify an incapacity to pay for an ongoing counselling requirement by an individual?

Ms Sarlos—We look for available community resources. It might be a family support program close to where they live or it might be a community health centre—the community funded resources that are available, generally.

Senator KNOWLES—What would change Wesley’s attitude to providing uncapped, ongoing counselling for people who have clearly been damaged by events of the past?

Ms Sarlos—I need to take advice on that. That is currently under review by the Wesley Mission.

Senator KNOWLES—When do you expect a decision on the review?

Ms Sarlos—I would expect it within the next few months.

Senator KNOWLES—Who is undertaking the review?

Ms Sarlos—The issue is before the management committee of Wesley Mission at the moment.

Senator KNOWLES—Is that review focusing on those in care in the past, as opposed to those in care currently, or both?

Ms Sarlos—It is focusing on those of the past.

Senator KNOWLES—Thank you.

Mr Scott—As a peak body we did not have children or young people in our care, but we have been involved in advocacy in this area. We were key in setting up the State Network of Young People in Care, which later became SNYPIC, and we are currently supporting CLAN to enlarge and provide the services they see as necessary. Occasionally we do get people who find us because of the name of our organisation. While our primary constituency is the industry, members of the public do find us. We would refer them to a range of options: to the agency which cared for them, if they feel comfortable about that, to CLAN or to community based services where no fee might be payable. There are a range of counselling services funded by state and federal government throughout the community. So we would try to refer people to somewhere we believe they would get assistance. That is not a big part of our work, because our primary interaction is with the industry, not with the public. But we work with CLAN to assist them to meet the needs of those people, and we would refer people to CLAN.

Senator KNOWLES—Thank you.

Mrs Eagles—Centacare has one of the designated funded after-care services. For young people—if my maths is right—who have been in care since 1979, that service is able to give them assistance up to the age of 25. That sort of service has the ability to do file reading, file searching, planning and advocacy and to use brokerage funds to assist them to gain practical and material aid as well as to purchase brokered services to meet their needs. But, as I said, the cut-off point for that is 25. For the rest of the people we may come into contact with who come back to Centacare—people who have been past clients, in foster care with us—we just use our existing personnel resources to assist them in any way that we can. Usually that does mean locating their file, reading their file and preparing their file for them and with them, if that is their wish, and often providing counselling services and support with that. Centacare has a range of counselling services, so we are able to link them up to use those in an ongoing way for whatever needs they have and for as long as they need. We also have resources—

Senator KNOWLES—Free of charge?

Mrs Eagles—Yes. We also have resources within the organisation that we can link them to, for other areas of their lives, that may be of assistance for a need they have at present. We may not be able to supply them ourselves, but we may be able to. Because Centacare is national—we are all separate but it is national—we have had situations where we have called upon one of our representative agencies in another state or in another part of the state to assist us. Just recently Centacare Adelaide asked us if we could assist a woman who is now in her thirties who is residing in Sydney but who was in care in Adelaide. They want to send the file over for us to do the work. So we are open to being able to link with other agencies and assist in whatever way we can.

Mrs Power—As an agency established in 1991, the issues are quite different for Youth Off The Streets. We are endeavouring to learn from the experiences of the past and to set up systems that are going to provide truly comprehensive care for the young people who reside with us. To this end we have embarked on a five-year quality improvement path with the Office of the Children's Guardian. There is a strong emphasis on professionalising within the service, actively encouraging young people to participate in the day-to-day case planning, case management and running of the programs and working very much on a strengths based perspective in empowering those young people.

In terms of the continuum of care, during the last 12 months we have established a semi-independent living program recognising young people who are preparing to exit care. I need to clarify that we have a combination of people who come to us voluntarily—and we receive no payment for them—and young people who are placed by the Department of Community Services or juvenile justice. We really endeavour to support them at every point of the way. We have recently employed a psychologist. We would very much like to be able to have more psychologists and counsellors on our staff to work within the McIntosh House semi-independent living program. This is a point at which we are obviously preparing them to go out into the world but it is a point at which I feel we may be letting down some of these young people if they have not received adequate support and counselling and their needs have not been addressed, although we have endeavoured to fully address them in the time they have been with us. We would like to be able to identify those needs and continue to meet them.

We are also currently in the process of developing an exit program which will involve follow-up for at least two to three years, obviously at the young person's request. We have an open-door policy. A lot of young people come back 10 years later and bring in their children, but what worries us as an agency are perhaps those who have left us feeling that they did not have the best experience with us or that perhaps we failed them in some way. As part of that exit program I would like to see a formal system of tracking young people when they leave us and perhaps more family workers to begin to help them in that program of reintegrating into the communities that they choose to live in.

Mrs Ronge—We have had an after-care section ever since we brought girls and boys here in the 1920s. We are always in touch with them if they want to be in touch with us. We have old boys and girls who are now in their nineties who are still in touch with us. It is pretty good.

Mr Hoyles—I am mindful of Senator Murray's questions at the committee's inquiry into child migration. I have tried to put some figures on the after-care service. In the last calendar year we have had 58 visitors to the office, 461 phone calls, 49 faxes, 1,036 emails, 192 deliveries of mail, most of which were files from the UK, and eight unsolicited donations totalling $515. We have had three reunions and one thanksgiving service. We also refer clients to CLAN and, where we have no service in a particular geographical area, we would either seek to provide professional counselling, which we would pay for, or find an appropriate service in a particular area.

Senator KNOWLES—Thank you. I am glad to know Senator Murray frightened you! I will come to some of the things that may or may not be happening today. I think we have all been alarmed over the years that there were suggestions that people had been acting inappropriately in various state departments that had a duty of care to children in care and were meant to be monitoring their treatment. We had evidence yesterday that some of those people were able to just walk away instead of being brought before the law. What is the situation today with the state department and the monitoring that they may or may not do? If there is a question of inappropriate behaviour by a care giver, what is the process that they are then confronted with? Will they face the law?

Mr Scott—Allegations of abuse in care in New South Wales are now covered specifically by legislation pertaining to the New South Wales Ombudsman. All agencies that provide care are required to inform the Ombudsman of any allegations. The Ombudsman will oversee the matter and may take it into its own hands to investigate the allegations if it seeks to do so but will largely require the agency to report to it all stages and outcomes of the investigation. So agencies have legal requirements in and external scrutiny of how they handle these things. That is a change that has occurred in the last few years to provide that level of external scrutiny. That requires that every agency have a system within its organisation to pick up, respond to and investigate allegations. Part of the Ombudsman's work is to make sure that all agencies have a robust and workable system. That level of external scrutiny did not previously exist. I think that, while it can be onerous and demanding on agencies, it provides a level of protection that most people believe is necessary. It vastly reduces the chances of abuse by employees or care givers going unnoticed or being swept under the carpet.

Senator KNOWLES—What is the opportunity for people to still slip through the net or to cover up? For example, if the claim has been made against a senior person within an organisation and others less senior are fearful of losing their jobs or whatever, do you feel that there is a watertight system where that person will be brought to account regardless of what position they have in the organisation?

Mr Scott—It would be interesting to see how the Ombudsman has evaluated this to find out if that is possible. I would think that the risks are fewer, because most people have a range of communication options, which would mean that they would not necessarily be entirely under the thumb of one supervisor. The area of risk is not so much within the structure of the administration but rather where children do not get heard in the first place. If a child were in a foster home or group home and if the allegations were against the carer and a professional worker visited from time to time, then that is where the risks would be, if the children were not listened to.

I think that the major change in practice in recent years is that children are respected and seen as valuable individuals, not as some kind of deserving poor who are being cared for by the parish. They are seen as people who have rights and needs of their own and who are being nurtured for the future. Therefore, any agency nowadays would have caseworkers who would spend time individually with the child, would get to know the child and would try to create an environment where they were able to pick up any hints of things that were going on or have a situation where the child felt free to speak up. It is in situations where the child is not listened to and not acknowledged that abuse could continue today. Administratively, within management structures, most people would probably feel comfortable that (a) the system is there to protect them and (b) the needs of the child are too important to allow any sense of intimidation to continue to put that child at risk.

Mrs Power—I do not believe any system is watertight. The extent to which staff are empowered and encouraged to report depends a great deal on the culture within individual agencies, even if the report may, for example, be against the CEO. To try and overcome this within Youth Off The Streets we have placed a great deal of emphasis on mandatory reporting training with youth workers and staff at all levels within the organisation, emphasising that, as mandated persons, it is their personal responsibility to report any concerns for children to the Department of Community Services, which then triggers a whole process involving the Ombudsman, further reporting and possible police involvement depending on the severity of the situation. I am not saying that we never miss anything in our agency, but I am beginning to be more confident that when staff observe something they are unhappy or uncomfortable with they will pick up the phone and ring the helpline themselves—they do not seek permission. I think it is a matter of establishing the culture that children are important and that, if inappropriate events take place or there are any concerns at any level, it does not matter if it constitutes a formal notification or not—it is their responsibility as workers providing care for these young people.

Senator KNOWLES—There is also a question of balance because, while someone might be making the allegation, the allegation could be completely unfounded.

Mrs Power—And this is often the case. But I believe that every allegation has to be treated seriously and fully investigated. I think it is inappropriate to be making that decision if a child makes an allegation against a staff member, against another young person in the program or against a senior person. I believe that we have to accept what they are telling us and handle that investigation. In our case, it always triggers a formal investigation process. Very often we do find that the allegation was malicious or in some way distorted. We may find the allegation unfounded but we go through the proper processes, as Eric explained. The Ombudsman oversights the investigation and we have to report very comprehensively. For those charged with conducting the investigation, it means a lot of work in terms of agency resources and time. But I believe in order to have sufficient checks and balances we have to begin by believing the child, if the allegation comes from a child, or the staff member who has observed something. We have to start that process.

Senator KNOWLES—Is everyone satisfied that, the way it stands at the moment, there are enough checks and balances to protect both sides of the equation or are there areas where it could be improved?

Mr Scott—I think that, at the casework level, caseloads and workloads are such that many caseworkers believe that they do not spend enough time, for example, with foster care, visiting the placement with the child. So the processes are adequate but it is a matter of how frequently one can have contact. Unlike institutional care, where staff are there around the clock and people are on the premises, community-based care leaves children in the community. The level of scrutiny, support, supervision and assistance will vary according to how often the caseworker in an agency can visit that household to support the carer and see and listen to the child. I do not think that many people would believe that we have got to the point where that is adequate across the board.

Senator MURRAY—The fairly considerable experience I now have has drawn me to the conclusion that those responsible for inspecting and being involved in managing children in institutions and in care last century still do not accept full responsibility for what went on in those institutions and you are hard put to find anybody who will ever admit that they did wrong. We had a witness yesterday who spent 40 years in the system and it definitely was not his fault!

No-one takes full responsibility. We constantly pick up the remark that standards or laws then were different to those existing now. But we all know that this is a country founded on Christian values and that state institutions were designed with those values in mind—and, of course, non-state organisations were often run by religious organisations—and yet what was done in those institutions was neither good nor Christian.

In making those remarks, in this first question I am going to separate out, although I think you should not do so, the physical care of children from the emotional care of children. There is a statement on page 5 in the Barnardos submission—which is selected just because it is typical, not because it is peculiar to Barnardos—where they say:

> We know that the conditions of care in 1970 ... were not of a standard that would be accepted today ...

The fact is that those standards were not accepted then. It was not only against the guidelines and all the regulations of the state but against the law to isolate a child beyond a certain time. It was laid out as to how you could administer corporal punishment. Most practices of corporal punishment far exceeded that and constituted criminal assault. Sexual assault was obviously as illegal then as it is criminal now. The failure to educate a child was contrary to the guidelines of the state. The cruelty inflicted on children was absolutely contrary to the guidelines of the religious organisations, the states and everywhere else. In other words, the standards were not different then, in terms of law, to what they are now. There was an immense gap between law and practice. My question is really: is there still a gap between law and practice? The fundamental issue is that the people who ran, managed and inspected these institutions failed to apply the law and the standards. The fundamental problem is that those directly within the institutions—with notable exceptions, I might say—were unsuited to them, at the least, and sometimes predatory and perverted, at the worst. Therefore, if there is a big gap between law and practice, it is the nature of the people who can close that gap or open it.

We have had evidence from Anglicare in Melbourne, I think it was, that they have recognised that problem and that they are paying great attention to the selection and recruitment of people for the care of children. That does not mean mistakes cannot happen, and we all understand that, but they have really beefed that up. They understand that what you have to get right is that the people who actually deal with children are suitable. Even in the institutions, with all their limitations of resources and awful buildings, if they had been kind, decent, good, Christian people, the kids would not have had such a tough time—and they recognise that. So my question to all of you, because you are all still involved in dealing with children in situations of care, is: have you taken steps to share knowledge between yourselves and to institute processes to ensure that people who deal with children are suitable and, as far as we possibly can, that they are not likely to be predatory or perverted? That is the question.

Ms Woodruff—Perhaps I can start by saying that we have a different sort of legislative framework to address some of those issues through the Working With Children Check. That is one of the things in New South Wales which is significant. It certainly does not solve all the problems, but its intent is to weed out the predatory, where it is possible to do so because of known police records et cetera. All of us are required to apply a Working With Children Check to any staff or volunteers who work with us, and we all do. So that is in a sense a big change in the legislative framework. It is the first hurdle that people have to jump.

In terms of recruitment, training, support and supervision for staff, I think the situation is staggeringly difficult. I am aware from a recent investigation in Burnside that, in the late sixties—I think I am right in saying that—there were no written policies and procedures. So in one sense you would not know whether the staff were doing what they were supposed to be doing because there were no guidelines about what they were supposed to be doing. That would be a very different situation now. Another one of the legislative changes is the accreditation process for out-of-home care that a number of people have referred to today. That actually has a range of things which are to do with the providing of quality care and how that is monitored and so on, both at the individual level and the organisational level.

We have specific requirements for staff in terms of specific skills. We have recruitment processes which almost always in out-of-home care involve a young person from our out-of-home care system sitting on the interview panel so that we are trying to make visible and real the idea of listening to the voices of young people. We have specific induction and training for our out-of-home care staff, and we have a very high level of supervision. For instance, our caseworkers in foster care would have fortnightly supervision with their supervisor. Again, I do not think that is unique at all. What we have done is to build a body of better practice over time.

We certainly do share information with others, and in New South Wales that is very largely through the Association of Children's Welfare Agencies as our peak body. Many of us are members of that, sit on the committees and share information through a whole range of forums. ACWA also has a major training arm, which is offering training in this area right across the government and non-government sectors.

I think the other area that is really important is the recruitment, support and supervision of foster carers, and in that area there are much more standardised processes that Eric is probably a better person to speak about. I do not think there are any foolproof systems either, and I am sure there are people who slip through the net. That is one of the reasons we need the Ombudsman reporting and we need children to know how to make a complaint directly so that they do not have to go through the fear of reporting to a supervisor et cetera, and that is why we have reporting of people to the Commission for Children and Young People when there are question marks or substantiated allegations in any way and so on. I think we are moving in the right direction, but it is the sort of environment where, because you are working with people who are vulnerable, you need eternal vigilance and you need both internal scrutiny and external scrutiny. Eric, do you want to talk about foster care?

Mr Scott—Yes, through our training. We are involved in providing a range of short courses for professional development of staff. We have also developed core packages for training foster carers, which we encourage all agencies to use—and most of them are doing so—and which go right from the start of selecting potential foster carers and training them. Abuse in care, as you might hear from any foster care representatives, is a big issue at the moment. No carer in New South Wales would be unaware of the responsibilities they have or of the processes that would go into place if there were allegations. They would be aware of the importance of listening to children and making sure that every step is taken to investigate an allegation so that children are protected, even if that means some risk of disruption to the foster carers, because they are providing the services to the children, whose needs should be met. An agency using the appropriate training and complying with the accreditation and the Ombudsman's requirements would be well advanced towards having a greatly enhanced protection system.

Where it can fall down is that, while there are no large-scale institutions nowadays, where there is a less stable environment there is an opportunity for children to be at risk. We continually regret that there are still many environments where the casualisation of the industry results in a turnover of youth workers who come and go and who perhaps are less qualified and receive less supervision. Part of the work that ACWA, in conjunction with agencies and the Department of Community Services, is undertaking is to try and improve the structure of the system so that services are planned, rational, funded and secure. Bouncing around from one placement to another with a succession of casual youth workers puts children at risk. That is when people can potentially be abusers and are less likely to be found out.

In a well managed and well supervised system the risks are greatly reduced, but they will never disappear. People do not have criminal records until they have committed their first offence. It is always difficult. But I think the vigilance is there. Many of the improvements to the system are largely geared to addressing this, because children cannot get the benefits of education, care and nurturing, or mature into happy and well functioning adults if they are being abused. That has to be addressed before people can help children and young people move on.

Ms Sarlos—The question goes to the viability of foster care as a primary way of looking after children in out-of-home care. The more we demand that foster carers be trained, be available for close supervision and so on, the more we restrict the numbers who can offer that service. These days, to fit fostering into the lives of two-parent families in which both parents are working is a considerable ask. While I understand the need to professionalise the service, if you like, and have that degree of training available to foster carers, it also means we are limiting the numbers of people who will put themselves forward as carers.

Senator MURRAY—Although I do not reject the idea of training, my instinct is that good people do not need training. The real issue is recruiting good people who have the right psychological and emotional attitude to children. You can supplement that with training. But you cannot take a bad person and train them to be a good person. You can take a good person and train them to be better. My question was about the first threshold of ensuring that carers have basic psychological and human characteristics which make them appropriate for children, and then adding the training. I fear sometimes that the focus is moving the other way.

What impressed me about what Anglicare told us—and I have no way of testing it, obviously—was that they did seem to pay a great deal of attention to that threshold and trying to ensure that the selection of people was as good as possible. That was the point of my question. Following up that question, are there things you would want the committee to recommend that might assist agencies such as yours to improve in some way your ability firstly to select good people and then, obviously, to reinforce inspection—the vigilance side and the training side?

Mr Hoyles—On the visiting side, we only have one residential institution left, and that has a community visitor from the Ombudsman's office who visits approximately once every three months, sees every child individually and seeks out complaints. So it is not a passive process where the young person has to approach the community visitor; it is the community visitor who seeks out complaints. I think the scheme works really well and would recommend it.

Ms Woodruff—We need to start from the needs of the child or young person. There are some things we know about that, like the importance of stability and attachment. If they are the sorts of things we are going to try and provide to children who are in out-of-home care then, working backwards, the crucial issue is having the range of choices and services that will meet different needs over different age groups. So there is also that sense of having some flexibility in the system.

We have a lot of experience, for instance, with children for whom a foster care placement is really important when they are young but where that may break down in adolescence. It does not mean the foster care family does not continue to care or have some involvement, but that the children need a different type of service as they move into late adolescence. So I would say the issue for the committee is: how do we construct a system that has a range of options and choices in terms of need?

The other bit of the puzzle is that, in order to do that, we have to be able to attract people into the system who can meet your criteria. That means we have to be able to pay foster carers adequately to do the job. The comments that Sue made are very pertinent. If we ask foster carers to do more—particularly if we move into a model of professional foster care for some very troubled young people and children—then they are not going to be able to have a second job at the same time, but the employment statistics would tell us that most people need a second job in order to survive. So there is some crossover of government policy that needs to be looked at there.

The other thing we need is financial viability within the out-of-home care system, because if you do not have the resources to be able to do the recruitment and the training, provide the stability, encourage the attachment and so on then, at the end of the day, kids are going to miss out. It is really about have a viable system, and that is about how you attract people, how you retain them in the system and how you keep the system financially viable. And they are the bits where we have the biggest challenges now, because we have got some of the other bits in place—like accreditation, like standards through the accreditation process, like the areas we were describing for you with the monitoring through the Ombudsman’s office and so on.

Mrs Eagles—I would like to congratulate Jane on everything she said then and totally endorse it. I do not think there would be many of us who would not agree with what she said. I also wanted to reiterate a point that Eric made earlier about ratio, if you like: how many cases can a caseworker have and still be able to adequately support people and do the job properly, vigilantly and on an ongoing basis? The other thing we know about children in care is that the relationship with the agency or caseworker is integral to them in terms of belonging. For that relationship to continue and be well resourced, it means time spent out there linking with the child and their significant extended network, whether it be family or other agencies and institutions that they are part of. For me that is another issue that we really need to uphold.

Senator MURRAY—You have moved on, and I thank you for that, to the next area that I want to deal with in questioning: that of relationships. I call it the emotional area. It strikes me as extraordinary that, although we have known for thousands of years that love and nurturing are essential to the development of a sound human being, so many of our practices have pushed that aside. If you listen to the care leavers, what they focus on most is the need for a restoration of self, through nurturing, relationships or things to do with their psychology and their emotions. Counselling is about exactly that. Some people say, ‘You don’t need counselling.’ Lots and lots of people do, because it is about suffering and emotion. I am well aware that effect and attachment theory analysis research is relatively modern, but it is just looking at, essentially, thousands of years worth of knowledge. What is known about children and what is done to them is separated out.

When we talk to people, they say, ‘If you harm the child, you harm the adult.’ We had a 71-year-old here crying yesterday for things that happened to him as a child. He had borne that pain for 55 or 60 years. The social and economic costs of that are massive. I am still appalled when we have witnesses before us who are just out of the foster care system who tell us how they have been shipped from foster carer to foster carer. I think one said he had been shifted around 30 times in their lifetime. It is an astonishing number. Everybody knows that that constant separation and uncertainty produces a very damaged human being.

My question to you, because you are right at the coalface dealing with these issues to do with children, is: why is this still going on? Why are children being put in situations where they are in touch with their caseworker, who is a young person who has popped out of university—perhaps with ideals, perhaps not—for a year, and then they change? Then their foster carer is somebody and then they change, or they might get sent back to their mum. Their mum might not be capable of caring for them and so they go back to their foster carer. You are just getting such damaged people from this process. Why is there no acceptance or understanding yet of effect theory or of attachment research, and a true understanding of what damages a child and the consequences of it? What is happening there in the mentality of people dealing with children that this still going on?

Mrs Power—I think you have asked a very pertinent but extremely complex question. When we are dealing with children who are in foster care placements, there is the agency and the statutory child protection body, and you are often working with courts, so matters can become very protracted. You can be going through the children’s court while the child protection agency is battling it out in court with the natural parents. Matters do take a great deal of time to resolve. Unfortunately, the children are the victims of the complexity of what I see as a fairly ponderous system.

We are all aware that multiple placement changes are very damaging and are going to harm those children. We are all aware that after a period of 12 months in care that young person will have begun to form or will have formed, depending on where they are at, a significant attachment to that carer and that situation. But when you are ordered by a court to return the child to the parent or parents, and you know full well that it seems very unlikely that that situation is going to succeed in the family home, it is simply a matter of waiting. It is very heartbreaking for both statutory workers and agencies involved with these children to wait for them to come back. You can reasonably predict, although a magistrate may have made a decision to send a child back home, that it is not going to work. But these matters have to be proved in court, and rulings are made that affect children.

Senator MURRAY—I will give you an answer and let me see if, from your own experience, you think it is true. I do not think anybody in the system—that is, the people who run juvenile correction centres, the people within the state departments or the people coming out of universities, as there is not a single child protection development faculty in 38 universities in this country—understands and appreciates the real meaning of the attachment theory and the affect theory. I do not think the courts know of the insights we get—and we on this committee are no experts. The insights we get are from the people who have been affected and then from our readings. I think that is the difficulty. People do things without understanding the consequences of what they are doing. That is the only conclusion I can come to.

Ms Woodruff—From a systems point of view, it is easy to describe where the difficulties and the failures in the system are. It is harder to know how to fix them because they are very complex. Some of the complexities may be the issues you have raised but there are some other complexities in there, such as how the court system interacts with the statutory child protection system and non-government and government agencies. My suggestion would be that we look at where it works well because there are situations where the out-of-home care system has worked extremely well for children and young people. Many young people and adults in this country whose experiences have been difficult—because they came from difficult situations and they have had very difficult things to deal with in their lives—are stunning successes in our society.

It would be very useful to look at where the system works well and then try to work out what the elements of that are and how we might replicate those. I think we do know how to do it well and there are situations where it works well for children and young people. The difficulty is that it is patchy and whether you end up in the bit of the system that works well or in the bit of the system that works badly is a bit hit-and-miss. My suggestion to the committee would be to seek out some examples where it has worked well for individuals and where the system has also worked well and supported itself.

We have relationships with the Department of Community Services, and that is crucial in this area. We cannot do this without the department; we have no statutory authority. They have the statutory authority, so we are clearly in this together. We have some situations where the relationship is absolutely child focused, and the outcomes are about one million per cent better than they are where you have people who are overworked or who have not even opened a file because their case load is too high or because other things are getting in the way of the relationship. My suggestion would be: let us find out what works, let us learn from what works and let us try to replicate that. That is not a denigration in any sense whatsoever of the experiences of people where the system has not worked. We have all acknowledged and would continue to acknowledge that that is very important.

Mrs Ronge—I know how it feels, because I was in Barnardos from when I was four years old until I was 15. I understand exactly what you are saying, Senator Murray, about the separation and the pain you felt when one of the staff that you really loved left or when one of the kids went back home. I do know how it feels. Sometimes we think the old boys and girls at homes, as we knew them, with the right sort of staff would be better than if they had six or seven foster situations. We had boundaries. We knew what we could do and what we could not do. A lot of us are still in touch with each other—people we knew 40 and more years ago. I think this lack of permanency, this going from pillar to post and back again, is absolutely dreadful.

Interjector—I would like to say something from the back here to assist the inquiry. I had a gentleman come this afternoon, a retired director general of a counselling service. If the inquiry would like to speak to him, I am sure he would assist you.

ACTING CHAIR (Senator Knowles)—Thank you. Unfortunately we have a pretty full program for today, but the committee will certainly take note of your suggestion.

Mrs Eagles—I would like to say a little more about the notion of trying to plan and have a system that allows for planning for children rather than a reaction to crisis and a reactive strategy all the time—which means multiple placements and not always well-formed placements. What does not help us at times is that we have somewhat of a rigidity in our system that funds and resources us. This allows us at times to be locked into a program delivery. If a child's life changes—and we hope it does; we hope it changes for the better, but it will evolve and change throughout a long-term placement—a program is locked in to only providing what they initially took on. There is not always the resourcing then to be able to modify that and change with that so that you can continue meeting that child's needs such that you do not have to then remove the child from that program because it is no longer meeting the need. So I think there is some work to be done on the system in terms of being a flexible provider able to cater for the child in an ongoing way with the child, the child's family and the systems the child is interacting with rather than one that I think at the moment is somewhat rigid and does not help with planning, permanency and matching of appropriate need for children.

Senator HUMPHRIES—The terms of our inquiry include inquiring into an 'estimate of the scale of any unsafe, improper or unlawful care or treatment of children in such institutions'. This has been a very difficult issue to get a grip on in the course of our discussions. We have heard some chilling stories of what has happened to some individuals in the system. Some individuals, when asked, have said they believe that what happened to them was typical or representative of what happened in some institutions. Mr Scott, in your association's submission you make the statement:

> It is important to note, however, that most children—

and I assume this means in the institutions, across the board, that the association represents—

> were not abused and that many were assisted to grow and learn in a caring environment.

We need to get some idea of whether that statement can be supported. Is there any evidence for that being the case—that most children in institutions were not abused in some physical, emotional or even sexual way? Can you give us any comfort in taking that statement as being accurate?

Mr Scott—By the word 'abuse' we were thinking of abuse in terms of physical or sexual assault. In hindsight, and in light of everything that has come to light from people who prompted this inquiry, the whole environment was abusive. It was abusive to be kept in an institution separate from your family. It was abusive to be denied rights as a human being, such as affection and relationships. It was abusive to be required to get up at five o'clock in the morning and milk the cows or have a cold shower. Much of the environment was abusive. That was something that would not be allowed now and we look back and think it was terrible. As far as we can ascertain, the majority of people who were in care have not made allegations that they were specifically assaulted. For many of them, while the care might have been rigid and harsh, they received some childhood that they can look back on.

I was involved with the Fairbridge Foundation at the time when the Child Migrants Trust was being set up, and I visited Fairbridge in Molong for a reunion. That brought home to me a classic contradiction in lots of people being encouraged to speak out about the circumstances in which they lived but at the same time not being willing to deny their own childhood. It was the only childhood they had. It was not great, but when somebody came along and told them: ‘Your childhood was terrible. Why are you sitting here at a reunion being happy about it when you had a terrible childhood?’ people were replying: ‘Bits of it were terrible but bits of it were okay. I had my friends. I grew up. I’m here today. I want to look back and remember the good bits. Don’t assume that it has to be all good or all bad; it was a mixed environment.’ Many of the people who received harsh treatment perhaps do not have allegations of specific assaults and injuries and want to look at the fact that that was the only childhood they had and they cannot throw it out and dismiss it.

I cannot offer you any statistics other than the fact that, anecdotally, the minority of the people we hear from give specific instances of sexual assault or physical abuse. We could perhaps define the whole environment as abusive and say that everybody was abused because it was abusive. I came into the industry at the end of that era. I saw some practices which I was very uncomfortable with as a young person entering the system. I am pleased to say that most of those people left. But somehow society looked upon these children as perhaps second-class citizens. They received treatment that would not have been acceptable for any of our children—any of the children of the middle classes or the successful in society. But somehow if you had been helped—it goes right back to the days of being helped by the parish—you were expected to be grateful, accept what you got and accept a lower standard. That must never happen again. The children in care today must receive the highest standard of care and indeed a higher standard than anybody else. But somehow at that time it was not considered a problem to treat children like that, because they were being helped and if you were being helped you took what you got. I cannot give you statistics on abuse but I would like to differentiate between the environmental abuse and the specific instances of assault or sexual assault. From what people tell us, the majority of people do not claim they were specifically assaulted.

Senator HUMPHRIES—I am glad you made that distinction. I think that is an important one. But isn’t it also true to say that a majority of people who went through the institutions you represent are not in a dialogue with those organisations? You only have contact with a minority of the people who went through those places.

Mr Scott—I guess people come forward either for positive or negative reasons—positive because they want to make contact with their family or negative because they have some issues they wish to deal with. Many other people function to some extent in society—well or less than well—and do not come forward to ask about or to report their story.

Senator HUMPHRIES—Is it fair to assume that the majority do not make contact with these organisations because they nurture unhappy feelings about the time when those organisations cared for them?

Mr Scott—I would not presume to summarise the potentially many reasons why people do not come forward.

Senator HUMPHRIES—I have been listening for several weeks now to evidence about the nature of the treatment of young people in these institutions. Senator Murray made the comment that no-one has taken responsibility. There is a point to that. With respect, all of the people at this table in a sense came in at the next generation. You are dealing with the problems of the past.

You are picking up the pieces and trying to make things better retrospectively, but we are trying to find out why things happened in the past and at least the scale on which they happened.

There is a question that has crossed my mind several times. Why in these institutions was it always the case, from all of the evidence we have heard, that children were not to have any personal toys? We have heard people say that any personal toys were removed from them. Only very small children—and nobody else—had toys for a period of time. That would seem to be a particularly cruel thing to do to a child. Does anyone have any reason they can give as to why that would have been the practice in those institutions?

Ms Woodruff—My suggestion would be to have a look at some of the work that was done many years ago by Erving Goffman about total institutions. It is actually about the way that institutions function. I think you would find there are boarding schools, which you might want to define as out-of-home care facilities, that function that way. There were and there still are residential services for children with disabilities where that occurs. It happens in other forms of institutions as well, including aged care facilities. It was another one of those instances of the system taking over from the needs of the individual. The reason would have been very practical: toys get lost, toys get broken, children have fights over toys. Therefore, it would have been seen as better to take things away from people because then those things would not arise. I am making a judgment but, of course, I do not know; I was not there and I was not part of that.

I do not think it was any different from what has happened in aged care facilities, psych hospitals and other institutions. It is about a depersonalisation of the person within an institutional setting. It is exactly the same as the fact that all children wore the same clothes and had the same pudding-basin haircuts. It is the same. It is easier to deal with people as a group than it is to deal with them as individuals.

Senator HUMPHRIES—Can I come to the question of how organisations at this table are dealing with not necessarily specific but generic cases in the past of mistreatment and abuse. In looking at the submissions that are before us now, I observed only one agency that specifically made an apology to those who had been through its doors and been abused at its hands. That was the United Protestant Association. Its submission reads:

> UPA accepts ... that abuse occurred and unreservedly apologises to any former children in UPA care who may have suffered harm.

I acknowledge first of all that there is a variety of views about the value of an apology. Some people attach some weight to it; others say it is meaningless. Addressing those people for whom there is some significance attached to that: can I ask the organisations at the table what their policy is about a generic apology to those who were mistreated at the hands of those organisations?

Mr Hoyles—We have indicated in a previous inquiry that we give an unreserved apology for any abuse that took place in Barnardos care.

Mrs Power—I suppose in the case of Youth Off The Streets there is no policy because we are a relatively young agency. However, when abuse of a young person does occur while they are in our care, we believe we can handle the matter. There are policies and procedures in place for how that matter is handled and how the young person is counselled, supported and dealt with. While that may not take the form of a formal apology, it goes a long way towards ensuring that whatever damage may have been done by that event is minimised as far as possible.

Mrs Eagles—As I said at the beginning, Centacare itself has not run institutional care but the Catholic Church has. I am aware that Catholic Welfare Australia put in a response to this inquiry, and there may also have been responses from individual religious orders. I am not aware of which ones. However, I know the Catholic Welfare Australia submission alluded to and included a copy of the Catholic Church’s procedure and book of principles and objectives, called *Towards Healing*. One very short paragraph in the beginning of the introduction to the document says:

> As bishops and leaders of religious institutes of the Catholic Church in Australia, we acknowledge with deep sadness and regret that a number of clergy and religious have abused children, adolescents and adults who have been in their pastoral care. To these victims we offer our sincere apology.

Mr Scott—Because we have not been a care provider, our role has been slightly different. We are aware that a number of our member agencies have documented apologies, and we are certainly supportive of the inquiry leading to some more collective and more public apology. I think lots of apologies that are not necessarily known about or that do not reach the people who need to hear them are of less value than something that is more coordinated and public. Perhaps that can flow from the work of the committee.

Ms Sarlos—In my opening statement I referred to our deep regret and sympathy for people who were exploited and abused as part of our care system. Our practice in this area is guided by the New South Wales Ombudsman’s advice in relation to apologies. There is a practice note, which is available to all New South Wales services, about the legal implications of apologies. The wording of apologies within our organisation relates to that particular advice.

Senator HUMPHRIES—I am not familiar with what the Ombudsman has said about that. Does he say that a full apology amounts to some sort of legal admission of liability?

Ms Woodruff—We now have civil liability legislation and the Ombudsman’s advice relates to that piece of legislation, so it was an advice to agencies and to government about the capacity now to make an apology without there being certain attendant liabilities. I am sure both the legislation and the Ombudsman’s advice could be provided to you. It is quite recent—within the last 12 months.

Senator HUMPHRIES—So, in the case of Wesley, are you saying that deep regret amounts to an apology or that it does not?

Ms Sarlos—I believe it does.

Senator HUMPHRIES—Okay.

Ms Woodruff—Burnside has not made a generic apology, as in a statement to all people who may have been in out-of-home care, but we do apologise both face to face and in writing where there is a formal complaint that has gone through any sort of process, whether that be an external investigation—of which we have only ever had one—or whether it has been managed within the agency; and the person has a copy of that, of course.

Mr Walkerden—I would like to add that I think all of us who represent agencies where abuses occurred—without being certain, I think that probably includes every single agency—recognise that the first step towards reconciliation and healing is for the people who have been abused to hear that agency, or somebody with authority on behalf of that agency, say sorry.

Senator HUMPHRIES—Looking to the future, some of those who made submissions to us suggested that there is a crisis looming with foster care which is a manifestation or a replication of the crisis that occurred in the past with institutional care. You have described the systems in place that are designed to prevent abuse on the scale that occurred in the past happening in respect of foster care. But, of course, foster care has the disadvantage that it is much more compartmentalised and it is easier for things to happen behind closed doors, I suppose, than it might have been in an institution. Do any of you share the concern, which I think was expressed by a Melbourne based child advocacy organisation, that there is a crisis of a similar proportion potentially looming in foster care in Australia?

Ms Woodruff—Are you asking about the likelihood of abuse within foster care or are you asking a more general question about numbers of foster carers as a viable part of the service?

Senator HUMPHRIES—The comment, as I recall, was about the number of situations of abuse that occurred in foster care and therefore the likelihood of an inquiry in 20 or 30 years time, like this inquiry, into abuse of children in foster care situations. Do you see that as being a likely scenario or are we likely to see a scale of problem which is much less significant than we are dealing with now?

Ms Woodruff—The difference in New South Wales is the Ombudsman’s legislation. There is a requirement that there be a notification and a report which is then signed off by the Ombudsman’s office. Whilst those situations may occur, they get recorded, investigated and tracked. There is a feedback loop in that process. It is not simply, ‘Thank you very much; you’ve investigated that now. Go on doing what you’re doing.’ There is actually a feedback loop that requires removal of the staff or person, notification of the staff or person and a change in the care plan or whatever it happens to be. That is really the biggest significant difference. It is inevitable, I think, that we will get more complaints about lack of care and/or abuse within foster care simply because more children are in foster care now than are in institutional care. So the balance of where the children are has shifted. I do think that probably the checks and balances around the system have increased.

It is an extremely difficult area. We are asking foster carers to raise, care for, love, nurture and be attached to children, and at the same time we are trying to work out the balance of intrusive supervision. I do not know whether you have had submissions from foster care associations and so on, but it is likely that they will have raised those issues, because it is a very difficult path to walk. In fact, what we want is children to grow up in loving environments which are as close as possible to the ideal family in which we would wish all children to live.

To make a comment, it just crossed my mind that an area which none of us have actually spoken about today but which I think would be of concern to all of us is the area of kinship care—that is, children being placed with relatives, with less support than they would get if they were placed in foster care.

ACTING CHAIR—Are you able to expand on that thought?

Ms Woodruff—It did literally just strike me then. We have been talking about out-of-home care, but none of us, as it happens, have mentioned the group of children and young people who are now in kinship care. In New South Wales at least, that is the most rapidly growing group, partly in response to the decline in foster carers. But we have different rules and regulations around the supervision and support of those various categories of people.

For instance, somebody mentioned community visitors going into residences. That is one of the external checks and balances that we have in New South Wales through the Ombudsman’s office, through the community services division. But they do not go into foster care placements. They do not go into foster care placements for very good reasons—because you are trying to maintain a family. But then you have kinship care, where you may not even get any professional support, let alone any monitoring. What really struck my mind was that if we are going to ask the question about where our concerns are now, it is important to look right across the whole system and to look at what the checks and balances are in each part of the system, because they are different.

ACTING CHAIR—Before we proceed, I would like to put an apology in for Senator Hutchins. We have dispatched him this morning for a personal matter that will involve some sleepless nights in the near future, so I hope you will forgive him. He will probably be back fairly shortly. I did not want people to think he was simply missing in action. He is in a lot of action.

Senator MURRAY—I want to talk to the witnesses about another area where I spent a lot of my professional life, and that is economics and finance. I know from long experience that agencies such as yours have their noses right up against the realities of very hard and intractable social problems and are endemically short of money, so you know the realities of life very well. In your applications for funding, is there an understanding on the part of your funding providers of cost-benefit analysis?

I will briefly explain that there are two sets of costs that you would look at with regard to children progressing into adulthood. One set is that of indirect costs; the other is that of direct costs. Indirect costs might be described as opportunity costs. If you do not give a child the opportunity to be educated or to fulfil their potential as an adult, there is a cost to society and to themselves. That is an opportunity cost that can be measured economically, although I am not sure it has been. The direct cost, of course, is that the costs of suicide, alcohol and drug abuse, welfare dependency and crime are simply massive. A large proportion of people in jails have been in care. It costs anything between $120,000 and $150,000 a year to keep a prisoner in jail.

So the question to you is: when you are asking for funding, do the people you are applying to appreciate that if they give you enough funding they may in fact be saving the country or the state a great deal of cost later on? For instance, in my state—Western Australia—we are fortunate enough to have the wonderful Professor Fiona Stanley, who is dedicated to work to emphasise the importance of early intervention and investment in children. She has made presentations to the cabinet and so forth. There is a growing understanding that we need to invest in children and to nurture them to avoid costs later on. That is a long introduction, but I need you to understand the context in which I am putting what is essentially a funding and resourcing question to you. Do you have any sense of those connections being made, both within your own organisations in your applications for funding and with those who are providing you with funds?

Mr Scott—I do not think it is made at the level of funding of individual programs. All of us receive funding in some shape or form, whether by grant, contract or fee for service, from the New South Wales government. They might argue that they take that into account in their range of programs. They have various programs. For example, they have the Families First program, which is aimed at prevention and long-term reduction of things like abuse, family dysfunction, crime and so on. But, in the funding of any programs offered by people at this table, our constant battle is to get enough to carry out day-to-day tasks. Historically, funding was a contribution towards what agencies spent. It was a percentage of the agency’s money or a contribution by government. Now it tends to be not so much an agency asking for money as a government putting a sum of money on the table and inviting agencies to express interest in providing a service with that money.

Senator MURRAY—A tendering process?

Mr Scott—It tends to be called an ‘expression of interest’ now rather than a tender, but the concept is the same. The challenge is trying to make sure that the money is enough to provide the service that is required, and some agencies may choose not to express interest in taking the money if they do not believe it is going to be enough. Examples of that in the past have been in small-scale residential units where the funding did not allow enough staff during the day because it was assumed that young people were at school, and agencies found that they had to put on extra staff to care for six kids who were sent home suspended from school and had to be cared for, but that was not in the budget they had received from government.

After-care is a broad, ill-defined concept that is supposed to be provided by all agencies to people leaving their care. I know of one agency that is funded to provide accommodation for six young people but, in the relatively short time it has been going, eight young people have left the program and are still receiving support from the core money that was there to provide accommodation for six. So as time goes on and more and more leave, that agency could find it has a house with six young people living in it while it is out in the community supporting 20 who have left the service and who are still perhaps under 21 and in need of support, yet the funding they receive is to provide the day-to-day care for staff, electricity and rent for six young people. We are at that level rather than the grand concept of cost-benefit analysis, except when the state government takes the bigger picture approach and looks at things like preventative programs and funds early intervention and Families First. For all the programs that we run, we seek to get enough to meet the day-to-day costs.

Senator MURRAY—In an earlier set of public hearings, Senator Moore and I questioned a number of witnesses about the need for very detailed and extensive research to get these relationships and understandings going so that governments can understand that it is in their financial interests—speaking coldly—to put a lot more money into prevention rather than deal with the consequence of a lack of care. As a body of people who need statistics to justify your applications for funding and your need for service provision, do you find there is a great shortage of good, authoritative research in a number of key areas?

Ms Woodruff—Yes.

Mr Scott—Yes. I will answer again, only because we are a peak body involved in this area. Most of us would like to undertake more research than we can. While we can get government funding for the provision of direct services, getting funding for research is more difficult. Many of the organisations at this table fund their own research or we engage in partnerships with universities to try to get ARC grants, but that is a complex process and the money does not flow terribly readily. The Association of Children's Welfare Agencies has recently received a grant from the Ian Potter Foundation to undertake an audit of currently available research in out-of-home care. One of the primary aims is to find out what is out there—there is no point undertaking research that is going to replicate something we do not know about that was done in another state.

We are getting to the point where we should have a comprehensive audit and listing of all currently available research in Australia on out-of-home care. That would show us what was not being researched and we hope that would give us ammunition to support research projects where we could demonstrate that those areas were not being adequately researched. State governments sometimes commission research to assist in their own planning processes but, between that and grants from ARC and other bodies, I would venture to suggest that research is less than we would want it to be and we would welcome increased resources for research, whether it is from government bodies or whether it is from philanthropic or corporate organisations.

ACTING CHAIR—Thank you all on behalf of the committee for spending so much time with us this morning. It has been most helpful and will certainly aid in our deliberations.

Proceedings suspended from 10.45 a.m. to 10.57 a.m.

MURRAY, Mr John Christian, Foundation Member, Positive Justice Centre

ACTING CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr Murray—I am a foundation member of the Positive Justice Centre and someone who has spent 12 years studying international abuse of children. I have some recognition in the international sphere in regard to that. I also appear as a care leaver—I had 11 years in care.

ACTING CHAIR—Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee prefers evidence to be given in public, but should you want to give any evidence in camera please ask the committee and the committee will give it consideration. We have before us your submission, so we ask you to make any comments that you wish to make additional to your submission. At the conclusion of that, I will invite senators to ask you questions.

Mr Murray—I will make an opening statement. While our submission is broad brushed, we have tried to illustrate the failure of the many service streams and institutions that impact on state wards and care leavers. Where possible, we have relied on and cited recent Australian information, but where that does not exist we have called on evidence available from similar Western style democracies. One of the main points that we would hope to get across to this committee is that institutional abuse is still very much a part of today's systems. The institutions may have changed over time but the systems that have allowed the abuse to go on continue today. In many instances, the causes of institutional abuse have long been recognised but have not been dealt with.

We would like the committee to understand that this institutional abuse does not stop when we age out of the system. Once in contact with the juvenile justice system we have a 90 per cent chance of becoming adult criminals. We have a one in three chance of leaving care at 16 as women or girls pregnant or already with a child. We have a one in two chance of being homeless within that first year. Only one in 100 of us will get to university, but one in three of us will have attempted suicide. We are also highly likely to wind up addicted to drugs, engaged in prostitution, unemployed, mentally ill or incapable of sustaining loving relationships.

So you would expect to see us overrepresented in many of the social services that are supposed to overcome these problems, but we are not; we are apparently invisible. The continuing institutional abuse of care leavers is shown in the fact that social services refuse to admit that we exist. We make up an overwhelming proportion of the clients across their services, but there has never been an admission that care leavers make up a distinct group within those services requiring special forms of redress. For example, Burdekin found that 50 per cent of homeless children had been in the care of the state but, barring some miraculous transformation for care leavers, you would not know this from the homelessness and SAAP services. Apart from a few inquiries, you will find absolutely no reference to care leavers in the literature generated by the service providers. There are no policies, no programs and no research that looks into our needs, even though this is the core businesses of those services and would increase the likelihood that they would achieve their publicly stated goal of reducing homelessness. We argue that the reverse must be true—that through failing to address our special needs they are ensuring that there is a continuing population to administer. And what better group to do this to than people who have had all social and familial ties destroyed?

This is typical of all the services in which it could be reasonably expected that wards and care leavers would make up a significant proportion. For example, while one in five adult prisoners and one in three juvenile prisoners have been in care, no acknowledgement of this exists in the criminal justice system. The failure of organisations such as the courts, the New South Wales Bureau of Crime Statistics and Research, the Australian Institute of Criminology and all the various schools of criminology in universities across this country to even recognise that this representation exists shows how effective the total exclusion of care leavers is. It also represents a major missed opportunity to develop crime prevention policies and programs that actually work. What is needed is an acknowledgement that care leavers exists in disproportionate numbers across myriad social services. Research and programs commensurate with that representation rate must follow. Anything less would be a continuation of the practices that have consigned wards and care leavers to the garbage tip of society.

Another major problem for wards and care leavers is that the social services on offer are generally run by the very organisations that failed us in the past. It is not enough to say that the times and practices have changed or that we, as victims of their abuse, should move on. It should not be up to the victims of institutional abuse to just get over it and then turn to those abusive services for help for the problems that their abuse actually caused. The reason we have suffered this lack of programs and effort is that the agencies responsible for creating our problems in the first place have sought to hide that fact. They have done that by denying our experiences as children and our existence as adults.

In effect, we have been further abused by having to access services that refuse to recognise our plight. It is for this reason that I stress our recommendation in our submission to the committee that these services should have no role in continuing to administer us. I say this primarily because we should no longer have to suffer at the hands of rank amateurs. There is absolutely no reason why care leavers could not be assisted to set up services to help themselves. It is only through the provision of such services that we can ensure that we will not be marginalised and excluded again. For years, organisations, service providers and social workers have spoken on our behalf. They have pretended or claimed to represent our interests, and thus have silenced us. We should not be compelled into a situation where they are given power over our lives yet again.

ACTING CHAIR—Thank you, Mr Murray. Are there any questions?

Senator MOORE—Mr Murray, I really appreciated your submission. I found that it actually went through many of the kinds of questions with which we have been struggling and put into focus the areas that are so important for our research. There is no area that is more important than another and I know other people have questions, but I am really interested in what you said about statistics and research and how you recommend that documentation be kept across a whole range of areas. Would you care to make further comment on that specifically in the way that you believe that currently there is insufficient data on which to base programs to move forward?

Mr Murray—Certainly. There is a lack of information. The DOCS CIS system in New South Wales, as we show in our submission, has had recommendations made for decades. We only went through the last 20 years of that and there is absolutely no data. The child welfare system seems to me to pride itself on basing programs on anecdote and speculation and there are just no real facts and figures to inform what they are doing. In New South Wales in this last decade we have seen three major changes in direction of the department. The first was to try to keep children in their families, then there were prevention services, which came after the Wood royal commission, and already that is gone; that is only five years. So they did an about-turn and went in another direction, and now we are seeing that they are trying to extinguish parental rights and push kids into adoption, under the guise of permanency planning. Not one of those directions has been fulfilled. Plans have not been evaluated or tried and the system just chops and changes and moves around willy-nilly. Any other area in society basically has this type of information to inform what it does and how it goes about achieving its results. We find it appalling that there is nothing in existence.

Senator MOORE—Do you have any understanding of why the recommendations previously suggesting a better process of documentation have not been fulfilled?

Mr Murray—No. I just think it is not in the interests—

Senator MOORE—It can be done. In your understanding, working in the area, is there any reason why this documentation cannot be kept?

Mr Murray—There is absolutely no reason. We have agricultural departments that look at the consumption of orange juice. They can do trends and plot seasonal availability and things like that. There is absolutely no reason why this documentation should not exist.

Senator MOORE—I have one more question, which is on the issue of education. You have put data in there about education. I think one of the things we found across all states we have visited so far is that there is a disproportionate number of people from care backgrounds who have bad education outcomes. Is there any reason that that cannot change?

Mr Murray—In my submission I show how the orphan schools were the first schools in New South Wales. Governor King started them up. The orphan school lands that were attached to those schools to fund those schools were then subsumed into the Church and Schools Corporation, and within the space of about eight years that organisation collapsed in dysfunctionality and those lands were subsumed back into the crown lands, and what was a great resource for those kids had been lost. I find it amazing that the state that makes laws governing parents’ responsibility to ensure that children attend school does not actually fulfil that responsibility itself. You can see that happening right across the board. The New South Wales government passed the parental responsibility act and then gave the dispensation to the Department of Community Services that it would not be responsible for the children in its care. As I think we have shown, these children make up most of the hardcore crime element in New South Wales society. We should have received excellent education. The state provided it. The churches that looked after us have some of the greatest colleges and universities in this country. I have heard from orphans that they were actually attached to those schools and were cleaners and tip staff basically, looking after the running of the schools. Yet they did not get any education from those institutions.

Senator HUMPHRIES—You make the point in your submission about the need for us not to use the excuse of ‘That was a different time, different age, different standards apply, and therefore we should look at things in a different way.’ You make that very clear. You say that it is an excuse. What implications does that view have, were it to be carried forward, for individuals who were part of that system? A lot of them are either very old or dead now, but some of them are not.

Mr Murray—I am a criminal justice activist, and I do not like the idea of anyone going to jail, except in exceptional cases, or suffering harsh penalties, but the reality is that these people took on a very moral role in society—they were often pillars of society—and they used that position to cover up what they were doing. If you take that argument that those were different times to its logical conclusion and you look at the role of the church in trying to stop single parent benefits, trying to stop the acceptance of homosexuality, trying to stop Sunday trading, trying to stop all sorts of things because they thought they would lead to a decay in society, you see that the church are actually stating that they would have the systems today exactly as they were back then. That is the logical conclusion of that argument, and it really must be contested.

Senator HUMPHRIES—To come back to the question I asked: what implications would that approach you have just articulated have for those who were part of that system? They made moral decisions; they might have tried to justify them in terms of what was the standard and acceptable and what was going on elsewhere in systems at the time—if the line you have articulated should be sustained, what should we be doing about those sorts of people? Should authorities be considering whether they should be prosecuted?

Mr Murray—They should. I would prefer to see some other sort of process, like the truth commission that occurred in South Africa. But state wards and care leavers are not in the position that the Africans were in, where they are actually now in power and able to exercise choices and say, ‘No, we’re not going to do nasty things to these people.’ We are not in a position to make that decision. I think the state has a responsibility to fulfil its role in prosecuting those people and, unless there is some other process that is acceptable, I am afraid that some individuals may have to lose their standing in society; they may actually have to face prison time. Certainly there should be some court function of actually saying, ‘What you did was wrong.’ We are seeking to enunciate that and to say to society that we will no longer stand for those practices, because those practices are continuing. The child welfare system is as dysfunctional as it ever was. It is intermeshed with the state and the church to a huge extent. If you really look at it, you see that kids in care are living under a system from the Dark Ages. A court makes an order to put the child in the care of a minister, and then the courts say: ‘We can’t do anything about the care and custody of that child after that. We have no role to intervene.’ The state and the minister then delegate the responsibility to the public service and, through them, to the church. So we are at the behest and under the control of the major institutions of our society. Some of those institutions have to own up to some very unpleasant facts. Other sections of those institutions, such as the criminal justice system, have to do their jobs as well.

Senator HUMPHRIES—You say that the system today is no better, that there are still serious problems. I did put to a witness in the earlier session: ‘Is there a crisis looming in foster care of the same scale and order as occurred with institutional care?’ and the view was put that safeguards and inspectorial functions these days were of a high enough order to prevent the size and the scale of the problem that occurred in the past. You would seem to disagree with that analysis.

Mr Murray—Yes. I do not want to cast wild aspersions against people, but the commissioner of the Community Services Commission, before it became defunct, had spent years working in the social services arena, so he has colleagues who in the past have provided care and in the present provide care, and in the future he may end up back in a position where he has to work alongside those people. So he is going to have some sort of reservation about fulfilling the entire functions of his position—that position has now gone. Part of that incestuous relationship between the church and the state and the non-government organisations and the state is that one day you can be assistant director-general of the Department of Community Services and the next day you can be actually running a service—say, Anglicare or Centacare—or vice versa: you can be running Anglicare and Centacare and the next day you can be assistant director-general. Situations like that, where people have conflicts of interest and those conflicts of interest are not addressed and recognised are very dangerous when you are talking about the most marginalised and excluded individuals of our society.

Senator HUMPHRIES—Senator Moore was asking questions about research. If there was one research exercise that was more important than any other in terms of understanding what has gone on and what we need to do in the future to fix problems of this kind, what would it be?

Mr Murray—I previously tabled, in the New South Wales parliament, a research plan called a multiple service usage survey. What that would do is go back over the years—say, every decade—and choose from the child court registers, or the DOCs registers, children who were in the care of the state and take a sample of those individuals—maybe 20, 50 or 100—and actually track them through the services. So instead of doing a prospective survey from now—which everyone would love, of course, because they say, ‘We’re not going to know for 20 years’—you do what I call a historical prospective analysis. You cannot influence what has taken place but you can run it through a survey, an analysis, that pretends that it had not taken place and then look at the outcomes. You can look at mental health, imprisonment, court records and drug and alcohol issues. You can look at coronial records and see how many people died at young ages, and at Centrelink records—all those sorts of things.

Not only can you put a dollar figure on what it costs to administer—we are still administering the system—but you can find out the outcomes of that. You will find things through doing that. As I said, the department’s directions change willy-nilly: every time there is a bit of a crisis they are off in another direction. They pull something off the shelf from another country, generally, where they have recently had a royal commission and then say, ‘We’ll introduce that here.’ You could use analyses to say that some of these programs seem to have some pretty major effects and you then start to be able to inform your current practice from that. Something like that might cost $40 million, $60 million—I do not know—but I think it is worth it. The expenditure on child welfare in this country runs to billions annually. Surely we as a society, to inform what we are doing, can expend two per cent of one year’s budget to do that.

Senator MURRAY—On the same theme, it has struck me throughout the long period I have been studying these matters—now internationally as well as domestically—that the two aspects of cause and effect and of scale have not been captured. To put it into international frameworks, there are now hundreds of millions of people who have been affected by being child labour, being child soldiers, being child prostitutes, being deported, moved and transferred, and through institutions and so on. So you get a lot of people whose childhood determines their adulthood. That is really the essence of it. I have been startled to start to think that there might have been well over, or as many as, half a million Australians last century who went through institutions and care. That is where the numbers seem to be moving.

Mr Murray—If you look at the impacts of the abuse and even just of the systems, of not being loved and things like that, you are looking at effects similar to war trauma in returned vets. You are looking at people with post traumatic stress disorders and lots of behavioural difficulties that have never been addressed. They have long been recognised and have actually been used to label or pigeonhole these kids and then, because of that, to not give them services. I do not think we have a figure of how many people are still alive who have been through these systems but it could well be 700,000.

Senator MURRAY—I want to explore a little more your idea—which has been also put in other interchanges with witnesses—of taking a scientific population and tracking them and working out cause and effect, cost benefits and all that sort of thing. One of the proposals we have had is that, for everybody in a circumstance of welfare, prison, needing access to a particular mental service or whatever, there should be an automatic question: ‘Have you been in care?’ Personally I think the question should be: ‘Were your parents in care as well?’ because we know that there are generational, knock-on effects of these things. But a lot of people object to being questioned. In a sense, if people have been through institutions they get very prickly about being labelled or questioned. Your idea of a scientific population approach probably avoids that problem.

Mr Murray—And we can get rid of identifying information from that sort of thing.

Senator MURRAY—How do you react to problems that people might have with regard to privacy or prying?

Mr Murray—I understand it. If you have been administered all your life and have been in the hands of bureaucrats since a young age then you are not going to feel comfortable with them asking for that information. But if there was some sort of education process that said: ‘This is not going to be used against you. It may not even help you, I am afraid’—it probably will not—‘but it will inform the processes so that we can ensure that we do not do this again,’ I am sure that most people who have been the through the care system would readily accept giving that information.

I am horrified every time I hear of a husband who murders his wife, or vice versa, and know that those kids are going to enter care. I was horrified when I heard about these kids who had their four-wheel drive roll over. I hope that they have got strong families to look after them, but I doubt it, and they will end up in care and will go through the same systems that I went through. I might not get redress myself but if I can change that system in any way to make those kids’ lives better and put them in a position where they at least get similar services to other children in society then I feel that I will have actually achieved something.

Senator MURRAY—I guess you have some support. Do you have an academic background at all? I did not see it in your submission.

Mr Murray—No. I spent 11 years in care. I only have a year 10 background and a very obscure trades certificate in hydrography from the Royal Australian Navy, which is of no use to me today unfortunately. I have attempted university on a couple of occasions but have just not been able to succeed at that level, I am afraid.

Senator MURRAY—Did you write this submission?

Mr Murray—With a bit of assistance, yes.

Senator MURRAY—It is very well written, and I do not mean that patronisingly. To me that is an indication that even having a disadvantaged background does not mean that people end up being unable to do well.

Mr Murray—No, it does not. I would say that that sort of thing is my addiction. If you look at my first submissions to, say, the children of imprisoned parents inquiry in New South Wales, you can see that they were shocking. So I have basically learned what bureaucrats want and how to write things that will get noticed. My first few submissions were absolutely ignored; they were quite atrocious. I have studied child welfare; I lived in it for 11 years. My life after I left was quite shocking, and certain things happened to me—alcoholism and other things like that which I was lucky enough to overcome. When I realised that my problems actually stemmed from my childhood, I took off down the road of trying to find out why it had all happened. So that is basically how you have come to have that document there.

Senator MURRAY—That leads me on to something that has surprised me and, I might say, has surprised Senator Knowles. The two of us sat on an inquiry that was looking into child migrants. We discovered that the child migrant system had begun in the 17th century, when child migrants were first sent to America. All over the world there are now literally hundreds of thousands of children who were deported from the British Isles, yet the academic research and the historical attention are extremely limited for such a massive social event.

The same is true of institutionalisation in Australia—the effects, the numbers and the nature of it. When we are dealing now with many hundreds of thousands of people, we think, with the sorts of effects that you have just outlined, we as a committee are startled that the academic and historical interest, the serious interest on the research side, are very limited, particularly given what I think, and I suspect we think, are the marked consequences of it. Do you have any thoughts as to why that should be so? Why has there been so little interest?

Mr Murray—It is a very poor situation. I was just talking about it recently in relation to informing a criminological theory. We have a population of people who are overrepresented in the prison system by 100 to 200 times. You have these academics who sit around drinking their port and going off around the world to conferences, giving their papers that argue about little fluctuations—for example, someone who was born three months premature might have 0.6 per cent more chance of becoming a criminal. They all argue about this sort of stuff, and here we have a population that is 200 times more likely, thousands of per cent more likely, to be in the prison system and it is absolutely ignored.

The first Premier of New South Wales set up the foster care system, and he called it the 'great experiment'. I have not seen any analysis of that experiment. It has been running now for 90 years and there has been no analysis. I think he probably meant that it was an experiment and that it was to have been analysed, and it just never was. I would say that, because we have not traditionally gone to universities and have not been able to influence those institutions in that sort of way by having a presence there and because we have always been administered by professionals, we are easy to ignore.

Senator MURRAY—It is a fault of mine that I look for reasons for things, but I have noticed that many people who have been through institutions or care are ashamed and embarrassed about that having been the case. They do not like to talk about it and do not like to tell people about it. When they eventually come out with it, it is a tremendous emotional trauma to confront and to be up front about. You will see that in a lot of the stories, and it is probably true of your own life. Do you get a sense that the reason it has not been investigated and exposed, historically analysed and properly researched, is the shame and embarrassment there is in society, or is it something else?

Mr Murray—I do not know what it is. I have asked myself often why we have these people who say they are looking after children and they are not. Why is it that they do what they do? Is it because they think they are doing something moral and good, that they are not looking at what they are actually achieving?

I went through the Anglicare Australia submission to this inquiry just a couple of days ago. I was absolutely astounded to see that they said they have a $500 million annual budget and that they are asking this committee to define abuse and neglect. I ask myself why. They have been operating child welfare systems for 180 years. They should not need this committee to make that definition for them. I think there are a lot of questions. There are lots of whys. Why has it happened? I have devoted 12 years to studying it, and I do not know. I have not even got close to forming an understanding of it.

Senator MURRAY—What does your funding come from?

Mr Murray—We have only ever existed on two funding grants. The highest one was $15,000. We do not want funding. Even when we got that little $15,000 one there were strings attached and the government body that gave it to us was not happy with what it received, although 80 per cent of the recommendations of that report were implemented. That included an ICAC investigation into case management in New South Wales prisons, and I know that some of the recommendations of that report are still being undertaken. The report was into women’s imprisonment. We are just a bunch of people who are very committed to social justice, and we prefer to keep independent at that level.

Senator MURRAY—How many do you mean by a bunch?

Mr Murray—At the moment, only four. In the past, we may have had 15 or, at certain times, 20 or 30 people working on projects with us. We find that four is a good number, because if you have four committed people who are willing to put in lots of work they actually get things done without other people weighing you down.

Senator MURRAY—That is another sign that individuals can make a difference.

Senator KNOWLES—Mr Murray, I have a final question which you may or may not choose to answer. Are you happy to tell the committee what turned your life around? You said that, after you left care, you did a whole heap of dreadful things, including becoming dependent on alcohol. What was the turning point for you to become the man you are, sitting before us today?

Mr Murray—I think it was something that was in the child before that. It was just a recognition of that, really. I was diagnosed with severe depression at about the age of eight and did not receive any treatment for that. Also, another thing that they diagnosed me with was internalising what was taking place with me and dealing with it as something away from me. I dealt with it academically or theoretically. I think that after I went through all the troubles that I went through, I went back to the thing I had as a child. I do not know what it was. It was not another individual and falling in love with someone. It took a long time before that was able to happen—another eight years, I guess—before I could maintain a good, strong relationship. I wish I could say it was love; I honestly do not know what it was.

I would like to make a couple of observations. I mentioned in our submission that we had been diagnosed as all sorts of things, not having insight into our ‘adjustment problems’ and all that sort of stuff. I am sure the committee is aware of the Parramatta girls training school reunion. I would like to bring to your attention to the fact that the New South Wales Department of Community Services *Inside Out* for January-February 2004 discussed that there was an emotional reunion of former Parramatta girls and how wonderful it was, et cetera, but that DOCS supported the reunion as an acknowledgment of the need for some of the women to reconcile the past. I think there are a lot of adjustment problems there—DOCS has to learn to reconcile the past.

I have another document here that I think is very illustrative. I am not sure if the committee have got their hands on a piece of writing by the present Director-General. It is a position description for the recruitment of the Deputy Director-General, Performance Planning and Review, Senior Executive, Level 6. He describes what are termed the ‘Major challenges and constraints’ of the department and he lists certain things, such as:

> DoCS has very little capacity in the policy and program reform area and no economic analysis capacity. The child protection system is dysfunctional due to out of control demand pressures and is also in a phase of major change.

He goes on:

> The Out-of-Home Care system has three major problems: significant increases in demand, a lack of resources to service that demand, and a service system with a limited range of service types and locations that contributes to placement breakdowns and consequent high cost options for children.

That is in variance to what the department are saying at the moment regarding breakdowns. They are trying to put the blame back onto the original parents, saying that the parents front up to the Children’s Court and get the kids back and that that is why all these placement breakdowns are occurring. He further goes on:

> Both the child protection and Out-of-Home Care systems rely heavily on services provided by the non-government sector that are funded in whole or part by government. These services vary substantially in availability, quality and efficiency. Many are still funded on historical funding approaches—rather than a service purchasing approach. Over half DoCS’

> budget goes to the non-government sector (ie $483.8m in 02/03 rising to over $650m in 06/07). The non-government sector is more accurately described as an antagonist than a partner in delivering services to DoCS' clients.

I would like to bring that to the committee's attention. Problems in the child welfare system today are just as bad as they have ever been. They tell you that they are doing a good job and all of that sort of stuff but they are clearly not. These are the Director-General's own words. Would the committee like a copy of this?

ACTING CHAIR—That would be most helpful. Thank you, Mr Murray. I would like to thank you on behalf of the Senate for giving us your time today. Your contribution and your submission have been absolutely first-class. Thank you very much.

[11.38 a.m.]

PENGLASE, Dr Joanna, President, CLAN—Care Leavers of Australia Network Inc

SHEEDY, Ms Leonie Mary, Secretary, CLAN—Care Leavers of Australia Network Inc

ACTING CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee prefer evidence to be heard in public but evidence may also be taken in camera if you consider such evidence to be of a confidential nature. We have before us your submission. We now invite you to make some brief opening comments, at the conclusion of which honourable senators will be invited to ask you some questions.

Dr Penglase—Leonie has asked me to start, so I will. We decided that we would not make a long opening statement because you have our submission with its recommendations, and we are very happy to answer any questions that you would like to ask. That is what we are here for. The points I am going to raise have come out of some of the things that have been said by other people yesterday and today.

First of all, I would like to make a comment on the fact that DOCS, the Department of Community Services—once the New South Wales Child Welfare Department—which governs the lives of so many of us, has not made a submission to this inquiry. Because this is not a royal commission you cannot subpoena anybody from DOCS to ask them questions about their duty of care in the past. There is nobody from DOCS management here today. There is somebody here from DOCS; she is a supporter of CLAN. She is the ward worker for adoptees—there is no ward worker for former wards—but she has the interests of all care leavers at heart and she is here partly as a gesture of support for CLAN.

My second point relates to this. I watched you, Senator Knowles, yesterday trying to get an answer to that very puzzling question about why the Parramatta girls were not educated. The schools were there. Didn’t people check? Didn’t people know how they were going? I could see that the only answer that is possible, not surprisingly, did not occur to you—perhaps it did later. There is only one answer to that question, and that is: nobody cared. Nobody cared whether those girls were educated or not. Is DOCS not here today, and have they not put in submission, for the same reason? That is a question I raise.

Yesterday a care leaver said that if you treat somebody like a dog, after a while they behave like a dog. That made me start thinking about something. I thought: if you treated a dog the way some children in the care system—many children, from what we hear at CLAN—were treated, I think the RSPCA would have stepped in and you would not have been allowed to go on caring for that dog. But people did not step in and stop people treating children the way they were treated.

The 1939 New South Wales Child Welfare Act, as Peter Quinn mentioned yesterday, does specify quite minutely—and he outlined why—the punishments that were allowed to be dealt to children. I went home and I looked up the act because I thought that that was very interesting. I remembered something about the details of punishment that was allowed. This would have governed the state institutions and presumably the homes that were licensed. Homes—apart from those that had children over seven—would have been governed by these same regulations, presumably. It is at part XI of the 1939 act, and you can take a copy if you wish. It is very specific. Here is a very interesting part of the act:

> Corporal punishment must not exceed a maximum of three strokes on each hand.

That is very interesting. The act says:

> Every effort should be made to enforce discipline without the use of corporal punishment.

It also says:

> Punishment by way of isolated detention shall be used only in exceptional cases, and subject to the following conditions ...

And there are lots of conditions, including some that I think our members would be justified in laughing at if it were not so tragic. They include:

> (b) the room used for the purpose shall be light and airy and kept dimly lighted after nightfall;
>
> (c) some form of useful occupation shall be provided;
>
> (d) some means of communication with a member of the staff shall be provided.;
>
> (e) if the isolated detention is to be continued for more than twenty-four hours the circumstances shall immediately be reported to the Director;
>
> (f) no inmate shall be placed in isolated detention for two or more consecutive periods in any one fortnight.

There are even specifications about the type of cane used to inflict corporal punishment. There is nothing about rubber hoses or iron bars or throwing children against the walls or hanging them up on hooks and punching them in the stomach and those sorts of punishments which, of course, to us at CLAN are very familiar.

I am just going through some of the points I started thinking about after reading peoples' submissions and listening to the discussion. There is the question of an apology. We respect everyone's opinion here and some members would like an apology—an apology that we know is sincere and from the heart. For example, there was one from the past providers whom you spoke with this morning—the UPA submission had an apology. We know, because Steve Walkerden is a great supporter of CLAN, that that is sincere and that when people go to UPA they get whatever help UPA can offer. An apology is worthless if it is not tied to an admission of liability and an absolute willingness to acknowledge and to carry out whatever reparations are required. We watched the *Four Corners* program 'The Homies' in which the Salvation Army were terribly regretful about what had happened to the children in their homes and we also know from first-hand experience through our members that they fight tooth and nail through the courts using every measure they can to deny justice to those same people that they say they have damaged and that they regret so strongly. Apologies have to be tied to practices that demonstrate sincerity.

The law is not the answer. That is perhaps my final point here. The law for us is not the answer. You should not have to go into a court of law and prove that you are not lying about the events you are describing. You have only to look at the consequences in people's lives to know that these are people who have been abused. We have to find another way to acknowledge it. Acknowledgment and belief are what we struggle against. The lack of acknowledgment and the disbelief are why it has been so difficult to get this history heard. We do not want to believe that the system of care that was standard throughout most of the 20th century was of itself abusive to children. If we had cared about children we would not have put them into warehouses and storage dumps for inmates, and we would not have separated them from their brothers and sisters. We would not have made visiting from parents so difficult. We would not have hit them and punished them for having feelings. That is the abuse, and that is what has to be acknowledged, that to treat children in this way is devastating, and devastating means to lay waste.

I read a judgment where a psychiatrist was asked about a girl who had spent all her life in care and had eventually attempted murder. The psychiatrist was asked what his diagnosis was and he said: 'I could give you all sorts of labels but they are just silly labels. What I will say to you is this: her capacity for relationships was vandalised by what was done to her as a child.' And that is what happened to so many of us. Our lives were vandalised. I will stop there. Thank you.

ACTING CHAIR—Thank you. Ms Sheedy, do you wish to add anything?

Ms Sheedy—I would like to add something personal that I would like recorded in the *Hansard*. I am a Victorian state ward, number 75641. I am one of seven Sheedy children. We went to 26 Victorian institutions. That is not conducive to raising mentally mature adults. I have waited all my life for this day, and I am so glad that we have got a Senate inquiry—but we need a royal commission into this. I would like to read this statement that was given to me as a result of yesterday:

> The Senate Committee has heard evidence from a Mr Quinn. Here we have a person who spent 41 years with the child Welfare Department. He rose to a position of importance within the department. He rose to a position where he controlled staff. His position gave him power to make decisions. To give directions. He had access to all reports. He could call for reports. He could take action.
>
> He went to all of the state run children institutions. He went to all the church run institutions. And what did he have to tell the inquiry.
>
> He told you—
>
> He saw nothing of any magnitude wrong. He did not receive any report that was bad. "Well not really. No one was ever prosecuted."
>
> He stated that the act required him to ensure that children under seven (7) years of age were being properly cared for. They all were. They had sufficient food. They had clothes.
>
> And when asked: "Did you speak to any child—individually?"
>
> His answer—"No. The Act does not specifically state that I would have to."

And when asked: "We have received many submissions from children in the department's care. Have you taken time to read any of them?"

Answer—"No."

He was more than willing to tell the Senate when each place was built. But of the inmates: I know nothing, I saw nothing and now I speak nothing.

ACTING CHAIR—Thank you, Ms Sheedy.

Senator MURRAY—It just shows that some of them were well educated. That was well written. They were educated in the story of life, I think. To turn to numbers first, numbers matter to people like us because without them we cannot press the buttons of governments to say that there is a big enough problem to put money into. Your organisation is a fledgling organisation. If my memory of your submission is correct, you have received a grand total of a one-off grant of $10,000 from New South Wales, a one-off grant of $10,000 from Victoria, nothing from the federal government yet—hopefully this inquiry will change that—and a few other bits and pieces from other people. Your budget this year I think is $60,000, mostly funded by former members of the institutions. That is correct, isn't it?

Ms Sheedy—Yes.

Senator MURRAY—The difficulty of arriving at numbers is great, but you have provided some numbers. I think they are starting to head in the right direction. They are far greater than I and other members of the committee thought at the commencement of this inquiry. One of the precise figures we got was from Mary MacKillop homes, who told us that under their umbrella of homes—and I forget how many homes there were—since the 1850s, 115,000 children went through their institutions. You have indicated that in New South Wales from the period 1883 to 2001 there were 135,000 children. You acknowledge that is not an exact figure. Roughly extrapolating, generally speaking New South Wales is considered one-third of the country. If you multiply that by three, you are up to half a million people.

Dr Penglase—Those are state wards. We were not all state wards in homes. At one stage, in 1961, Norma Parker estimated that there was exactly the same number in non-state care. So how much we can extrapolate is very difficult.

Senator MURRAY—The request you have made is that the committee make the best effort it can to arrive at a calculation. I am quite certain that our secretary will do that but for the purposes of this interchange between us, if you took that figure from 1883 to 2001 of 135,000 in New South Wales and said that New South Wales is a third of the country, which broadly speaking you can say, you are easily up to half a million children who have been through institutions. You have only got, I think, 400 members.

Ms Sheedy—We have got about 450 now.

Senator MURRAY—At page 6 of your submission you said:

> ... it is clear from anecdotal evidence that people often deliberately leave the scene of their childhood to escape its unhappy associations.

Again and again we have heard from witnesses that they have retained no friendships from and no contact or relationship with their past because it was so painful. That is my summary of their reasons. If there are half a million children who went through institutions and there are only 400 members of your organisation—although of course I am aware of some Aboriginal organisations and the child migrant organisations, and there are institutional associations people belong to—that is a relatively low number. Is it that same problem—that is, people want to escape, not belong and not have their pain? Why isn't there a community swelling? Why aren't there the equivalent of RSLs for all these people? What is the reason for a lack of community visibility of this group?

Ms Sheedy—I think the loss and trauma of being separated from your family and being institutionalised lasts a lifetime. There has been no acknowledgement for us. Many people are so stigmatised and ashamed of their childhoods. It takes courage to pick up the phone and ring CLAN. Many people do not know that we exist. The government departments are not telling people about CLAN when they send out a state ward file. There is no covering flier about CLAN, so people are not even being told about us.

Senator MURRAY—These are words I am putting in an imaginary person's mouth so do not take this as an attitude that I have heard, but hard-headed politicians or bureaucrats would simply say, 'If there was a community need there would be a community outcry and there would be lots of organisations campaigning,' because the experience of politicians and bureaucrats is that when there is a problem people get up and go hard at it. There is a big society for road trauma victims and there is a big society for people who suffer from whatever the modern term is for schizophrenia, because they do not like that term. There are all those organisations. Therefore, perhaps one of the reasons governments have not been responsive enough to what I can see is a massive unmet need is because of a lack of community outcry or organisation.

Dr Penglase—I think the experience of care is the reason that there are so few people jumping up and down. A lot of us are dead, in jail, alcoholics or having difficulty just getting through life. There is stigma, shame and a lack of education. Every so often a friend will join up somebody and that somebody will ring us up and say: 'I do not want to be a member of the group. Take my name off.' A lot of people do not want to be identified or acknowledged in this way. They do not want to acknowledge it to themselves.

Speaking personally, of course this experience has dominated my life. I did not start my PhD until 1990. I am now 59, so I was middle aged. The first time I got up at a conference to speak, in about 1993, I thought I would faint. My voice shook and I was absolutely terrified—of what? We grew up in such an authoritarian system, which was not conducive to speaking out. It is only through my very intensive therapy that I can sit here today. It was Leonie who said, 'Let's start a support group.' I met Leonie through my thesis. It is very, very difficult to stand up and be counted when you come from this background. I think that is part of the reason.

When you talk about other groups who jump up and down and have high visibility, they are educated people and they have people to speak on their behalf. I do not think schizophrenics are speaking up on their own behalf, but other people have their families. Where are our families to speak up for us? Where are the voices of the parents who had their children removed or who were not able to keep and support them? We never hear of the shame and the guilt of those parents. We are voters but we do not jump up and down, so the government does not respond. I think people do not want to know: ‘Put it behind you. Forget about it; you are not a child anymore,’ et cetera.

Interjector—‘Get over it.’

Dr Penglase—Thank you: ‘Get over it. Why can’t you get over it?’ No-one ever says ‘get over’ your happy childhood, but we should get over our devastating childhoods, our loss, our grief. With that lack of social support a lot of us have great difficulty making friends. When we do make friends we are afraid of alienating them by talking about our experiences, that if we speak up something terrible will happen to us. What is it? I do not know—it is that ‘authority’ out there that will somehow come down like the Monty Python foot and crush us. I think that is why we do not have visibility.

The second reason that CLAN have a very small proportion of members compared to the number of care leavers is that we do not have the funds. If we spent every dollar we received taking out full-page ads all over Australia we would probably get a lot more members. What could we do for them? We would not have a penny left to do anything at all. As it is, what can we do? Leonie is on the phone day and night—and I mean that: day and night—and on weekends; she is in our office on Sunday morning sometimes.

What can we offer people? We write the newsletter and send it out. We cannot offer therapy or link-up services for searching. We are two people with a small committee, so we could not service many more members. I am sure that if we could fund greater visibility we would have more. This has to be a proactive enterprise: you have to invite people to be helped, if you like, or to be visible. Some people will always choose not to be.

Senator MURRAY—That is why your outreach recommendation is an important one. There is a mechanism for reaching out to people who are very difficult to reach, both psychologically and because of their positions in society—a lot of them are not readers of major newspapers, they are out in the country and those sorts of things.

ACTING CHAIR—I think also many of you might underestimate the level of empathy that would be shared by many who did not have your type of life, if they only knew. I have been personally touched by what has happened, not having come from that background, and therefore those with whom I associate have equally been touched and they in turn spread that message. I know many of our colleagues at the time of our previous inquiry were just absolutely astounded at the things that were happening under their noses—or under their parents’ noses—and they knew nothing about it. So sometimes I think that we all underestimate the level of support and empathy that is in the community for people like you. They simply do not know, and therein lies the challenge for all of us, I think: to increase awareness so that the pressure is there for something to happen. I am sorry to have interrupted you, Senator Murray. It just seemed the time there to say that we all need to look at ways and to look outside the four dots.

Senator MURRAY—It is a useful comment, because throughout both the submissions and the evidence today is the understanding that people who go through this circumstance end up feeling alone and therefore feel that others cannot relate to how they feel. It produces that barrier. By the way, in passing, I am not surprised by the effect of Ms Sheedy on your life, Dr Penglase. I told her brother that she was a one-off: she has that effect on individuals. Of course, don’t get carried away—I did not mean it kindly, Leonie! I quote from page 23 of your submission, and this is researched and is recorded; it is not anecdotal. It is the case:

> ... that older Care Leavers are disproportionately represented in the national statistics for relationship breakdown, drug and alcohol addiction, mental and emotional problems, incarceration, early death, and suicide.

Many people who are asked at present—and would be asked, hopefully, in an increasing rate in future—to intervene to minimise this or prevent it or deal with the consequences of it, would not be people who went through institutional care. We had a confidential submission in Melbourne in a confidential—or in camera—hearing from a person who had been through institutional care and had become a professionally trained and professionally educated counsellor. He indicated that he felt he was able to do far more for these people because he had been through the system. If I can give an analogy, it is a little bit like a Catholic priest trying to talk to people about marriage: it is not really credible.

The question I ask you is: if there are so many people out there who have been through institutions, is one of the things we might look at methods of involving them in care assistance and help—after-care if you like—for damaged people? Effectively, that is what you two do, through your own understanding and your own abilities—and it is spelt out in your submissions: you help others come to terms and deal with and assist them through their problems. Is that something we should be recommending—the active seeking out, paying and training of people who have been through institutionalisation to, in turn, themselves become carers and counsellors and so on?

Dr Penglase—Peer support.

Ms Sheedy—Yes. I think there is a very real role for care leavers to be involved in a service that is going to help them: it has got to be relevant to us. We can all help each other by sharing our stories. Who is best going to understand our pain? It is another homie.

Senator MURRAY—It is part of your recommendation 2 that CLAN be funded as a national service for older care leavers—but the peer support area is a subsection of that. The reason I am asking the question is that the problem is so great that you actually need large numbers of people and large amounts of money.

Dr Penglase—I would not like to see that used as an excuse to do it on the cheap. I think if care leavers are going to help other care leavers they need support and training. This brings up a lot of issues for oneself. I have had really intensive therapy, otherwise I would not be able to do this. I see an analyst. I have been doing so for nearly nine years. I might not be alive today if I had not done that. So care leavers themselves need support with their own issues, which are going to be brought up anew and afresh by helping other people. A lot of support is needed there, and quite a lot of money has to go into that support. But I do agree that we can best help each other, so that is a good suggestion.

Ms Sheedy—It is: who supports the supporters?

Senator MURRAY—Another recommendation of yours is for the aggregation of information by governments on an automatic basis as to whether people have been in a care situation. As I remarked to an earlier witness, I suspect it should be not only the question of whether you have been in care but also whether your parents were in care, almost in the sense that often in unemployment statistics they establish whether there is a history among the parents of the children who are unemployed. But there is the question of privacy and people objecting to those sorts of questions, particularly if you see on a form 'Have you ever been in care?' or 'Are you legitimate?' or 'Did somebody assault you?' As people get aggravated if it is not put in a proper context, how do you propose that be dealt with?

Ms Sheedy—People have a choice as to whether they tick a box, but the box does have to be on those government forms. We acknowledge that Torres Strait Islanders and Aborigines come from a disadvantaged background. It is time this Australian society acknowledged that if you grew up in care you were equally as handicapped as the two other groups that we have just described.

Senator MURRAY—It was not clear in your recommendation. Your recommendation is that such a question would be optional.

Dr Penglase—We have not really thought this one through. If we can make it more visible—as Senator Knowles said, if there is greater awareness—that must also lessen the stigma. I imagine a lot of members of the stolen generation did not speak about it until it became visible and there was a forum and people said, 'I'm part of the stolen generation.' It is not said with pride—because that is not the appropriate way—but with a conviction that comes from the knowledge that this will be accepted as it is known—'People know what I'm talking about and they know what I mean when I say that I had a traumatic childhood.'

Senator KNOWLES—Yes, they mean two things.

Dr Penglase—Yes, so it is: 'That is who I am; that is where I belong.' If only the day could come when we could say, 'I grew up in care,' and people could say: 'That would have been terrible. We know that, because it is now visible.' I think it is a cumulative, gradual thing and then people will not be so reluctant to tick that box. So it involves a change of community attitudes, and that is about awareness. Physical impairment is more visible in that people admit to physical impairment. With disabilities, it is: 'You are disabled, so you are entitled to support from your society.' We are emotionally disabled—that is what has happened to us—and it is visible unfortunately in ways that get us more and more stigmatised. We then get labelled 'mentally ill' or 'alcoholic' or 'bad parent', but that is the effect of emotional instability inflicted on you as a child. So it is about throwing some light on all of this. Perhaps Leonie's suggestion is the right one: that it is optional.

Senator MURRAY—You are aware of the limitations of this committee in that it is a Senate inquiry into what are often state matters and that many of our recommendations will require federal-state cooperation to get going. But there are a number of recommendations you make which could be actioned by the federal government on their own, and the area I specifically draw attention to now is the area of education, awareness, knowledge, research and so on, which the federal government can easily fund. One of the reasons the community is so aware of Aboriginal and Torres Strait Islander disadvantage is education, awareness, statistics, publicity and so on. I assume when you are recommending things like a Museum of Australia exhibition—

Dr Penglase—That might have been a bit extravagant!

Senator MURRAY—I am not so convinced. It seems odd to me that more space and attention is given to dinosaurs than to half a million Australians.

Dr Penglase—Yes.

Senator MURRAY—But, just as an aside, on the question of very publicly exposing, developing and exploring this matter, we have discussed in this committee an oral history program; there are museums and research and so on and so forth. Your intention, I assume, is not so much historical, not so much a memorial—as important as that might be—as an understanding of consequences. Is that right? As awful as it is that there are people who are dead and gone who have suffered, I must confess to you that my prejudice is with the living. What can we do about people now, and the people who are yet to come?

Dr Penglase—I think it is both. I think it is very important to have this written into history because that is what then gets passed down. I think one of our recommendations was that there should be a plaque in every state of Australia that is a memorial to children who grew up in care. I think that makes history visible. One of the reasons we are thrilled about the inquiry is that this is now on the public record—we cannot say we did not know about it. But, yes, the consequences need to be known too—that is part of it. I think it is both, though. The consequences of growing up in care need to be on the record and then written into policy; that is where the consequences are dealt with and the allocation of funds is made. But I do think it is terribly important to have this history written and acknowledged.

There is a book called *Australian Childhood*—it is a history of Australian childhood. We are not in there; we are not in there at all. It is a recent book—it came out a couple of years ago. There is a book called *The Country of Lost Children* by Pierce; we are not in there either. If ever there were lost children, it is us. We are not in histories; we are not in accounts of childhood. There is no account of child welfare in Australia, no actual volume called ‘Child Welfare in Australia’. There is a lot of isolated research that is not collected. There is no interest. There was a wonderful library associated with the New South Wales child welfare department; it was broken up in 1990. It was everything they had collected over the years of the department from the late 19th century. Some of it went to a university; most of it disappeared. Most of the records in the archives of the child welfare department, apart from the state ward files, have gone—the records of homes have gone. They have kept a few where there were problems.

When I was doing my thesis and I rang up various agencies to ask: ‘What have you got on the history of your homes?’ most of them said, ‘Oh, I don’t know.’ They would find me a few pages. You would get the occasional official history about what a wonderful job the agency did in rescuing these poor children. But the interest is not there; that is why the research is not done. As a couple of other speakers have said, these are children—these are families—who were not considered interesting or important enough to even have their records kept. One of the problems our members have is looking for their records. There are problems even when they find them. One of our members wrote very eloquently in one of our newsletters about finding them. She discovered where the records of her home were: in the Victorian State Library. She got there bright eyed and bushy tailed, and what did she get of her entire life in care? Three lines. That is all there was. But at least she got a record: she knows she existed. The records of the home have gone.

Ms Sheedy—I spoke to somebody from South Australia who still works in the department, and she told me that in South Australia they only kept five per cent of their records. In New South Wales they randomly selected state ward files and destroyed them.

Dr Penglase—We do not matter. That is the message we get: ‘You don’t matter.’ So it is important to have this on the historical record and visible.

Ms Sheedy—Senator Knowles asked about visibility and getting out there for the public. One of the recommendations in my personal submission was that I wanted to see a museum dedicated to orphanage life and children’s homes. If we want to educate the public, in what better way can we do that? Get the dinosaurs out of the Australian museum, for once, and dedicate it to orphanages and children. Let our histories be visible. I want my children to be as conversant with this story as they are with the stolen generations and the child migrants.

Dr Penglase—And the dinosaurs!

Ms Sheedy—And the dinosaurs, yes, and the birds and whatever else. Australian society does not know this history.

Dr Penglase—It perpetuates the stigma because if you cannot look out there and say, ‘There’s my history,’ then you continue to feel: ‘Maybe it was me. Maybe it isn’t worth talking about. Maybe I should just remain quiet about it, as I have all my life.’

Senator MOORE—I have lots of questions, but I will restrict myself to two. One is a general question about the organisation in terms of the fact that you have evolved through community involvement, which is how most good organisations happen. From your point of view, how then are you perceived by the people and the organisations with whom you need to work—DOCS, the various care providers and those organisations that you need to work with in order to get your story heard? Can you, from your point of view, say how you think CLAN is perceived by those various bodies?

Dr Penglase—I think we are generally well regarded. I will restrict my comments about DOCS! The current minister is supportive. It was with a change of minister that we got our funding. CLAN actually has an advisory committee with a few members from agencies. These are the agencies who helped us get the funding—who supported us through ACWA originally. It is not all, but it is some. So we are well perceived and we have our advisory committee. I think there is a willingness to meet with us and to work with us. But of course it varies across agencies and across—

Senator MOORE—States.

Dr Penglase—We cannot answer for other states. We have made a couple of trips with our limited funding. We went to Victoria and addressed the Children’s Welfare Association of

Victoria. One of their members only gave us a small amount of funding, but the Victorian government has been quite supportive compared to others. We made a trip to South Australia—and the ACT—and the minister gave us a small amount of funding.

Where we can afford to go and meet face to face and put the issues in front of people, we get a response. My feelings about the past providers, though, is that it should not be optional. I think we can learn here from the Forde inquiry, where they were invited to contribute to the trust and I think they have just declined. So it should not be optional. It is a good time to bring up one of our recommendations: that the current funding of past providers be tied to their willingness to address the needs of past care leavers. Agencies are well disposed to CLAN. It is all very well to give us a handout but there should be obligations; it should not depend on the people running the agencies and whether or not they support us. As children our lives depended on arbitrary factors like the benevolence or the sadism of our carers, and we should not again be in the position where past providers are allowed to choose to address these issues, for which they are responsible equally with states. I feel we can work with other states and agencies, but it has to be in a climate where what we are trying to do is acknowledged as essential, not just a nice thing that we are doing.

Ms Sheedy—As I said at the beginning, I was a Victorian state ward. The Victorian government have actually been the most proactive of any of the states: they have funded a 1800 number; they have two ward workers in the Department of Human Services, and that is wonderful; they do send out your state ward file by registered mail, and that is wonderful; you can have counselling over the phone if you live interstate, and that is wonderful; they helped me find my brother after 40 years; they gave us $10,000 and they have also given $70,000 to an organisation called VANISH, which is primarily a post-adoption resource centre; and they have given money previously to do searching.

However, $70,000 to provide counselling for state wards is a teardrop in the ocean. The head of VANISH rang me just before Christmas. This money has been at VANISH for a couple of months. I decided that I would find the answers to a few questions about this funding. I never felt that I should be entitled to use some of that money. I was paying $120 a week for my psychotherapy out of my own pocket and the nuns had paid for a considerable amount of psychotherapy. I felt that I was not entitled—I felt that I was in a better position financially than many other homies from Victoria and it would not be right for me to use this money. Anyway, the phone call came through before Christmas. I spoke to the director and asked her what the procedure was to go through to get this money. She said: ‘Leonie, you don’t have to fill out any forms; it is all confidential. We just need to know who your psychotherapist is and we will have a conversation with her.’

The forms arrived on 7 January—my 50th birthday. The forms are absolutely appalling. For a lousy $450, which will only get you five sessions of psychotherapy, your psychotherapist has to write a report on you, you get a client number—it is all supposed to be confidential—and then you have to tick the boxes relating to counselling. They want to know about physical abuse, institutional abuse, relationships, gambling, records, family violence, sexual abuse, financial issues, parenting, health, family contact, emotional abuse, compensation, substance abuse, suicidal ideations and sexuality. I want to know: why does VANISH need to know about what I am discussing with my personal psychotherapist in order for me to get a lousy $450? That is like abusing me again. That is making a file on Leonie Sheedy again. Does that go along with my state ward file? Does that go to the Minister for Human Services to see if I ticked the compensation box? That I have sexuality issues? Nothing on the form asks: ‘Is Leonie having treatment because she didn’t have a mum and dad and she suffers trauma, loss and grief?’ Aren’t they interesting topics to put on this form? It is an appalling way to treat somebody. So that is what you get for $450. I hope that answers your question.

Senator MOORE—I want to touch on one other area briefly. One of the things we have found in a number of our consultations is that the families of the people who have the background of being in care are also working through these issues. It is often the current partner who is helping a person come to grips with what has happened and working through this journey with them. I am wondering whether, through the CLAN process, there is some kind of support for the family members, who are sometimes opening up doors that they did not know about at all.

Ms Sheedy—We get a lot of emails and telephone calls from the husbands, partners, wives and adult children of homies. One of the first things I do when I speak to them is thank them for caring about their husbands and understanding their issues of being institutionalised. I invite the partners and the families to join CLAN and to write a submission to this inquiry. They need to know what it is like to be married to somebody like us—what is the effect on you? We encourage them to write their personal story for the newsletter. We can barely keep up with the support we are giving to homies let alone the husbands, the wives and the children.

Senator MOORE—I want to say one more thing, on behalf of all of us in many ways. The kind of publicity your group has given this inquiry has been invaluable. Many of the people who have contacted me have said they heard about the inquiry through CLAN.

Senator HUMPHRIES—I want to ask a couple of questions. I worry about the number of people who are not caught by the CLAN network. You make a very compelling case for there to be better information out there to tell people where to go when they want assistance, information and support. Even if the number of such people has increased, the bulk of the iceberg is still apparently below the surface—people who are not regularly in contact and who are not disclosing what the nature of their problems are. You give figures in your submission about hundreds of thousands of children who have been through the system in recent years who would still presumably be alive. Is there a need to do more than simply advertise better and improve services to those who self-select? Do you think there is a need for us to be conducting some research to seek out and find those people and ask them what their needs are?

Dr Penglase—We did touch on this earlier when I think you were not in the room, so you can refer to *Hansard* later for some of the other things we said. As I said, this is certainly a proactive enterprise. We are often asked by journalists, quite understandably: ‘What would you like? What do you want?’ We have certain answers. We want support services, search services, therapy and so on, but we probably firstly need to do some research about just what people do need and where in their lives they are in greatest need. But, as I said earlier, in reaching out to people we need the funding to support the greater number of people we might draw into our net.

Ms Sheedy—When we advertised in the Melbourne paper—CLAN paid for two ads to be put in for which the Senate inquiry kindly refunded $100—we were just swamped with emails, letters and phone calls. From those two ads we got very close to 100 responses. We could put those ads in every paper in every capital city but we do not have the workers to service those people. We are not talking about a 10-minute phone call. One of the things they say to me when they ring up CLAN is: ‘I can’t believe there’s a support group for us.’ They will question me first about my background. Sometimes they think I am a social worker and then I say, ‘Come on, I’m a homie just like you.’ You have to develop their trust. You have to be prepared to give them time.

Dr Penglase—It is very intensive work, and then there is the follow-up. We often talk about this late at night. We are very aware that when someone comes to Leonie with a really terrible story—and there are thousands out there—and they have finally opened up and they say, ‘I can’t believe someone wants to hear this and I can’t believe there’s a support group,’ then we know—but then what? For example, somebody emailed me and said, ‘I’d like to come to the inquiry.’ We encouraged him to write his story, and he did. He sent it to us, we sent it on, and he said, ‘I’d like to come to the inquiry but I don’t think I can do it.’ He is a guy with a family and he is holding down employment but he is just hanging on by his fingernails. There are legions of people like that, walking around apparently living normal lives and only just managing. We can be there but we cannot be there 24 hours a day, just the two of us. What can we offer? We can listen, but there are terrible gaping wounds—we both know the feelings—that get opened up and need really intensive care.

Five sessions of counselling is actually quite dangerous. It opens up the wounds. You feel you have found someone you can talk to and then you have to go because you cannot afford to keep paying for it. So what is very important is therapy. It is not counselling; it is therapy. Not everyone will want that, but if they are suffering then we need—if we have services in every state—a drop-in centre for them and a network whereby they can connect with other care leavers. You could have frequent socials or they might come to a talk on a Saturday afternoon when someone comes along and the CLAN office in that state says, ‘On Saturday afternoon there’s a forum on anger management.’ Someone who says, ‘I don’t want therapy,’ might say: ‘That could be interesting. I’ll just go and sit in the back and have a listen.’ So you could help in these more informal ways people who do not want intensive therapy or any sort of therapy or counselling. It is offering a range of services like that that will draw people in, and peer support. Meeting other homies and wardies is the best thing of all.

Senator HUMPHRIES—I have just one other question, following up that point about opening up. Perhaps it is only a small part of the process of addressing those wounds you talked about, but people being able to tell their story appears to be important. In the few days of a Senate hearing only a few people can give their story, and some will not want to use that opportunity. People have mentioned before in hearings the idea of an equivalent of the oral history program, where we would send out people to record people’s accounts, orally given, of what happened to them. I assume you would support a recommendation to fund something along those lines.

Dr Penglase—Yes, certainly, and along with that is something we are trying. We have a fledgling project going with our web site to try and set up a database of homes across Australia. It would be good for people to see their home and think, ‘Yes, that’s my home.’ Those records have to be collated and we are trying to do that with our wonderful web site designer, Kylie Norton. She is very keen to help us do that, and we rely on information from members and so on. But that is not available so people could just look it up and say, ‘Yes, this was my home.’ People start to even doubt their own experiences when there is no record of their home and when no-one wants to know their stories. Sometimes their family does not want to know because it is too confronting. That is the great benefit of telling your story—putting it out there, making it visible. Then other people hear it and believe it.

Ms Sheedy—I want to talk about elderly Australians who are care leavers and are being faced with the prospect of going into a home. I personally have told my kids, ‘You’re not putting me in a home when I get old; I’ve already been in one and I’m not going back to one.’ I watched a program on SBS about the Holocaust survivors. This nursing home had all these wonderful programs for the Holocaust survivors, and I thought, ‘Wouldn’t it be wonderful if the people who work in aged care knew how to treat us when we got old?’ Do not touch us on the backs, because we used to get belted on the backs. Do not touch us on the backs, because we used to get poked on the back a lot. They were really sensitive to those Holocaust survivors.

I rang up a fellow who has lots of degrees and titles behind his name, has written a book and is called before parliamentary inquiries. He had not even put our issues in his book. I have never ever received a phone call back from him. I spoke to his assistant and I sent him a flyer. The people who make their living from looking after the aged need to be aware of our category of people because some of us are going to end up in nursing homes and we are going to be depressed at Christmas time, on our birthdays, on Mother’s Days and on Father’s Days. How are the staff going to be able to meet our needs if they are not aware of us?

CHAIR—I am sorry I missed your presentation, but I have read your submission. Thank you for coming along today. I can only echo the views and thoughts of my colleagues with respect to how wonderful it has been to read about what you have done and what you have achieved. We hope you will kick more goals. Thank you.

Proceedings suspended from 12.44 p.m. to 1.33 p.m.

HARNISCHMACHER, Ms Vanessa, Project Coordinator, After-care Resource Centre, Relationships Australia (NSW)

LEWIS, Mrs Pamela, Manager, Youth Services and Acting Clinical Director, Relationships Australia (NSW)

TOWNSEND, Ms Michelle, National Coordinator, CREATE Foundation

Phillip, CREATE Foundation

Corey, CREATE Foundation

Kristy, CREATE Foundation

ACTING CHAIR—I welcome representatives from CREATE Foundation, Relationships Australia and some young people who have joined us. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee prefers evidence to be heard in public but evidence may also be taken in camera if you consider such evidence to be of a confidential nature. The committee has before it your submissions, and I would like to call on both organisations to make some opening comments. If Cory or Phillip wish to make some additional comments, they too would be welcome, then the senators will ask questions.

Mrs Lewis—I am not sure how much you all know about Relationships Australia and the history of the aftercare helpline. Would you like me to firstly fill you in about that or do you think that you know enough so that I do not need to say anything?

ACTING CHAIR—We have your submission and most of us have been exposed to Relationships Australia, so maybe you would like to make some additional comments. We are aware, as well, of the way in which you operate in other states.

Mrs Lewis—Okay. Are you aware that the helpline was funded because of people’s submissions to the Wood royal commission?

ACTING CHAIR—Yes.

Mrs Lewis—Okay, so I do not need to go into anything about that. Last year the helpline received some increased funding. Are you aware of that?

ACTING CHAIR—Yes.

Mrs Lewis—It was a small amount of funding, which went to Relationships Australia after the Wood royal commission, and the service that we were able to provide was telephone counselling support and referral. It was a tiny amount of support for people that needed it. Last year the aftercare services in New South Wales were restructured and the helpline received more funding and we were able to employ a counsellor two days a week. We also have a small amount of brokerage money which we can use to assist people in family reunions or to have counselling, if we cannot provide it for them because that would be outside our resources. I am now going to outline our experience of working with clients who have come to the helpline with their reports of how their life has been affected by being in institutional care. I will conclude with our recommendations, which are pretty much as in our submission.

Our submission has addressed the terms of reference based on experience gained through working with clients who contacted the aftercare helpline. It is based on the belief that our clients' accounts of their care experiences are true and real, despite their varying memories as to actual dates and places. There is a consistent theme that runs through all the accounts that gives credence to their recollections of their time in care as children. Building on this belief is my experience of attending a reunion, held at Parramatta Girls' Home late last year, as a support person. I was struck to see the buildings that clients had described in telephone conversations and particularly the rooms in them, such as one that they called 'the dungeon', an underground room that, as several clients described, was used for punishment. My understanding also was increased on that day as I met some of the people who described themselves as having been naughty girls who had been sent to Hay, to an institution that was for the 'badder girls'. I would also like to mention that the majority of our helpline clients did not put in submissions to this inquiry because the emotional toll would have been too great for them.

We, as an organisation, have no doubt that unsafe, improper and unlawful treatment of children occurred across a range of government/non-government institutions and fostering placements in New South Wales. Adult clients who have contacted our service have reported a range of physical, sexual, psychological and emotional deprivation abuse and neglect, not just from their carers but from the system itself. In many cases helpline clients have said that, when they reported their abuse experience to those whom they considered to be responsible adults, they were not believed or were punished for speaking out. Visits by welfare officers, who should have checked on the safety of children in placements, were often not thorough enough to include speaking to the child alone when investigating claims made by children about their carers. They have also reported that as children they were charged through the courts as a result of circumstances over which they had no control, circumstances that should have been the responsibility of adults.

There has been no longitudinal research that we know of that documents the treatment and care of children in New South Wales prior to the Chasmore and Paxton research published in 1996. The research found that young people who had left state care were disadvantaged in many areas of their lives, including education and unemployment opportunities, resulting in financial hardship. They were more likely to suffer depression, attempt suicide and become young parents. They reported that they felt feeling vulnerable when leaving care and were given little or no support to establish themselves independently. The only other records of institutional care experiences are personal accounts published by individuals about their time in care. Their stories include having their babies removed at birth or their peers being released from homes at night. Such separations happened with no opportunities for goodbyes or support to grieve.

In the absence of historical records, many individuals rely on their departmental records for a sense of who they are and why they were placed in care. Mechanisms within government departments to facilitate care leavers accessing their history and funding for support are cumbersome and inequitable. For example, in some areas people have had a very good response to requests and in others they have had to wait for periods of time, sometimes years. This morning I had a phone call from someone who has asked for their records in southern New South Wales. It has taken two months for them to get to the office, and now they have to wait because there is no-one available to actually go through the records with them as they are too busy. This is a common story told to us. The archival authority responsible for holding records of children who were in care destroyed all but a small percentage of the records. This has meant that, for many adults who are searching to make sense of their history, there will never be answers.

As a result of their care experiences, many clients and their family members report that they are all affected by the care leaver’s experience of abuse and neglect. Most of those who have been in care have often spent the majority of their childhood without parents as appropriate role models. They lived in an environment if insecurity and uncertainty. The long-term consequences for both the care leaver and their children of being deprived from growing up in a secure and loving family are reflected through their inhibitions in emotion risk taking, difficulties forming and maintaining trust in their relationships and feelings of low self worth. This impacts on their ability to provide secure and stable family environments for their own children in many cases. Many express feelings of shame around the abuse and fear of being rejected should those they love know of their past history. For many, this becomes a cycle as, lacking a sense of security and parental role models, they are unable to provide those vital foundations for the next generation.

Our clients present with depression, anger, substance abuse, homelessness and unemployment as well as relationship difficulties. The legacy of childhood trauma is often misdiagnosed and mistreated in the mental health system. They are labelled as being personality disordered, and often that is a wrong diagnosis. The neglect of educational opportunities often results in a lifetime of financial hardship because of the subsequent difficulties in securing and maintaining employment. Many are confined to manual labouring due to their low levels of literacy and difficulties in social interactions. When, as adults, they wish to fill the gaps in their education, care leavers express their difficulties in sustaining both education and maintaining employment to supplement their expenses while studying. Many do not have family networks to assist them if the balance of their life changes. At present, there is no explicit pathway for them to seek assistance from their former care provider.

Relationships Australia believes that there is now adequate evidence to indicate that the experience of those who were removed from their families as children suffered deep, lasting consequences to their lives. They should be relieved of the burden of having to provide proof of abuse in care. The anguish experienced through separation from their family of origin as well as their experiences of systemic abuse should be acknowledged as historical fact. The healing process would be aided if the agencies responsible for the care of children were to issue a broad statement that recognises the wrong that was done in the past and acknowledges the suffering experienced by children who were placed in care. There is also a need for the provision of support to address the legacy of childhood losses.

We also recommend the establishment of historical records, using oral, written and pictorial material and the provision of accessible and properly resourced support and specialist counselling services that are responsive and available when problems emerge for care leavers and their families at their different life stages. Quite often people can keep stuff packed away until, for example, their emotions are retriggered by their child reaching the age when they were removed or by their child having a child. We recommend prosecution where possible of those who perpetrated the abuse, provision of resources for a support group such as CLAN and recognition of the systemic disadvantage experienced by those who have been in institutional care. We often talk about some sort of weighting system in policies on education, housing, health services, income support and legal assistance to help those who are trying to overcome disadvantage. We recommend financial compensation where appropriate.

To close, I would like to say that the ARC helpline staff witness on a daily basis their clients' heroic struggles to rebuild their lives after living through the trauma of institutional care as children. I urge the committee when considering its recommendations to bear in mind the words of an 80-year-old care leaver: 'They stole our childhood, they stole our lives. My children are scarred through me.' Thank you.

CHAIR—Thank you, Mrs Lewis. Ms Townsend, would you like to make an opening statement?

Ms Townsend—Yes, thank you. Firstly, I would like to thank the committee for giving us the opportunity to present here today. I would recognise the organisations, in particular CLAN and the people who are here today and have gone before us for sharing their story. I would also recognise both Phil and Corey, who have come along today and will briefly share some of their experiences of institutional care.

The overview I will give today is on CREATE's approach. CREATE is a national organisation, and the submission we have provided to the committee takes a national approach. It is based on the feedback we have had from children and young people in care across Australia. So some of the things I may refer to will not necessarily have occurred only in New South Wales. We will focus mainly on the experience of institutional care that young people are having now or have experienced in the last seven years or so since leaving care. We strongly believe that some of the needs and key issues that this group is struggling with are not dissimilar to those of other care leavers, but our area of experience is with young people who are in care now or who have left. So that is what we will be focusing on.

In terms of that focus I would like the committee to consider that there are young people and children now in institutional care situations in Australia. Unfortunately we as a society have not learnt enough from our past mistakes and we still need to do a lot more to ensure that those young people and children are safe and able to reach their potential as adults.

Our submission talks about 12 key things that we believe need to be focused on to ensure that we achieve positive outcomes for children and young people in institutional care. The first couple of things go to ensuring the participation of children and young people in decisions about their lives. Across the care system young people are now being placed without having had any conversation about where they would like to be placed or who they would like to be placed with—whether in foster care, kinship care or any other type of care. There is still a huge lack of conversation with young people. Often they do not know that their placement has changed until their caseworker arrives on the doorstep, and they are not told the reason for that change of placement. We cannot continue to do that. We need to actively involve them in why decisions have been made. Wherever possible, we need to give them the information beforehand so that they can have input into that decision and put across their wishes on what they would like to happen in their own lives.

We also believe that the critical thing missing in every state and territory is consistent caseworkers who are employed, sometimes within non-government organisations and sometimes within statutory departments. They are the people who need to advocate on behalf of these children and young people. They need to have a relationship with them. They need to know who they are and what they want out of life. They need to know the situation of their family, their extended family, their school and what is happening for them and go into bat for them to ensure the best outcomes and the best placements for these children.

We did a survey recently and 20 per cent of young people could not identify who their caseworker was, so they do not have a relationship with them at all. A lot of them who could identify who their caseworker was had only had their caseworker for a couple of months. Unfortunately, there is a huge turnover within this field, which means that the relationships are not there. It is also really important, firstly, in a case management process that plans are set in place for young people and that they are reviewed regularly and that the children, the young people and their families are able to input into that process as well. We have also seen far too many times that institutional care type placements are a last resort because there is nowhere else to place our children and young people. Many departments which are struggling with young people or children who are displaying challenging behaviours place them in institutional care because at the end of the day they have no other options. There is a huge need for consideration and resourcing to get a lot of other intensive placements that can be within family based homes or within small group homes and to explore that, because it does not happen now.

We would also argue and recommend that there is vigorous recruitment of people who work within institutional care and residential care type places. The feedback we have had from young people is that the staff there are not always professional in their manner of dealing with children and young people. A number of staff have come from juvenile justice type backgrounds and bring a certain framework of working. If they have worked within the juvenile justice system or the adult system, those work practices are inappropriate to bring into the lives of children whom we are attempting to protect and keep safe. There is also a great deal of favouritism that goes on and competing for attention. These children and young people who end up in institutional care often have no significant adults in their life. They have no-one to turn to. There is a need for and they will seek to have a strong relationship with the workers there, but that can also be used in a way that is not positive.

We are also in agreeance that there need to be strong after-care provisions for young people, up to the age of 25, but then there needs to be ongoing support and counselling for young people post 25, which would also include accessing case files down the track and the support to be able to do that and the support for legal action if they wish to take that. There is a need for a real priority focus on education because the education of far too many children and young people who have been in care has been seriously broken up. Many of them will leave school quite early; many will leave without year 10 or year 12 qualifications and many will leave having very poor literacy and numeracy skills. They struggle very hard and we see a lot of them in the work that we do. For them to try to get back into education, the door is often shut and there is no support to do that. There is no base or foundation for that. We would say it is really important that we redress the problem for those who have already left care who wish to return to education, that they are supported and given every opportunity to do that and, for those who are in care now, there is a real focus on them staying at school so that they are able to reach their potential within the education system.

Another area that has come up a lot is when young people end up in institutional or residential care environments because there is a lack of adolescent mental health services. They cannot access the adult services and, as there are no other options, they often do not get the treatment they need and are placed within residential care type placements. Finally, we would really like to see some national standards set for residential and institutional care in Australia that cover abuse in care and complaints protocols, as well all the other standards and expectations that should be met to provide a safe environment for children and young people.

Corey—I was in institutional care for a very short period when I was young, about eight or nine years old. It was just used as a place to put me until they could find somewhere else to place me. I still have memories of being there and the abuse that went on around me. There was not too much study going on in there. I cannot remember any education at all while I was there. It was just used pretty much as a holding cell for me; that is how I look back on it. Although I was only there for a couple of weeks, it still scars me to this day. As for me now, I am still struggling with employment, life, housing and things like that. That is about all I can really put in.

CHAIR—That is fine, thank you.

Phillip—I was in all that while I was little and right up until I was about 18. It has been really hard. I don’t know what to say. There is nothing to say. Everybody has covered everything I think.

Senator MURRAY—What you have to remember, Phillip, is that a lot of the people you are looking at have been in trouble in their lives too; in fact, we are still causing trouble. You should talk to us straightforwardly. Some of us have been there done that.

Phillip—I do not know what to say. Because it has been so hard, I just do not like talking about it.

CHAIR—When did you go into care?

Phillip—When I was around nine, I think.

CHAIR—And you were there until you were about 18?

Phillip—Yes. I am still ongoing with it, even now.

CHAIR—In an institution?

Phillip—No, with ARC and DOCS and stuff like that. I am still involved with all that sort of stuff.

CHAIR—How many institutions were you in?

Phillip—Too many to count—lots of them.

CHAIR—More than five?

Phillip—Yes.

CHAIR—Do you recall where you stayed the longest?

Phillip—Renwick, I think.

CHAIR—What is Renwick?

Phillip—A boys home up in the country, which was where I stayed the longest.

CHAIR—Where is that?

Phillip—Mittagong.

CHAIR—Is that run by the Department of Youth and Community Services here?

Phillip—It used to be; it is not anymore. It is closed now.

Interjector—They ought to bulldoze the whole lot.

Ms Townsend—I think that is an interesting point about bulldozing the whole lot. A lot of our young people are in the age group that went through Ormond and Minali, which were quite notorious within New South Wales. Minali has now been bulldozed, and we have talked about the need to have something significant there for the young people who had that experience. Most of them never want to go back there, but the fact that it had been bulldozed—a couple talked about just dropping some flowers and about the power that place had over them. A lot of them were there for short periods of time but that experience has stuck with them. Some very young children were placed in Ormond and Minali, as well as older children.

One of the young women, referred to in our submission, was placed in Minali. We did quite a lot of support work with her and linking her in because after she did the work with me around the submission it brought a lot of things back for her. So she went and sought counselling and put some other things in place for her to be able to move through that—or to make some move through it; I do not think you can fully move through it. I gave her the opportunity of coming and speaking today and she said she just could not do it. These are issues which go to the core and it is very hard for young people to share some of the experiences they have had in institutional care.

Senator KNOWLES—Corey, you say that you are still experiencing a few problems. Would you be kind enough to tell the committee what your problems are and what you think could be done to help you overcome them?

Corey—I pretty much have no level of education behind me. I am in and out of jobs which never really have any security to start with—it is only an income; there is no future. It is really hard to get going with anything that I try, pretty much—for example, employment and relationships. I am not a very good talker. A lot of the time I will sit by myself. To this day, and I am almost 22, I am a very quiet person. I am not very interactive with people. I think it has affected me a lot.

Senator KNOWLES—Would you like to be able to have some education, job assistance or an apprenticeship?

Corey—I have actually gone out and tried for a couple of apprenticeships, but the places I went to said that I was too old—I was 19 or 20. They were looking for someone younger. When I see that, it makes me want to give up; but I keep pushing on—to no avail.

Senator KNOWLES—What do you think would help you? Who do you think could help you? CREATE are obviously there supporting you all the way through. What other structure could be put in place to give you a bit of a hand?

Corey—That is a really hard question to answer because I really do not know what could help. I have had things pretty much just show up on my lap and they have fallen through. So I do not know; I would not have a clue.

Senator KNOWLES—If we were to say to you, ‘Next week you can start a course to give you better English and maths and learn to write better, things like that’, would that appeal to you?

Corey—I actually did all right in school. I did not finish year 12 but I finished year 11. I was quite gifted in a couple of subjects. The main thing is employment these days. I have just moved into a house with my girlfriend. She was behind rent already, but I have to catch up on rent. I have no income at the moment at all.

Senator KNOWLES—So help with employment is your main thing?

Corey—Yes, help with employment is the main thing. I need something behind me like a trade or anything like that. I have nothing.

Senator KNOWLES—How about you Phillip?

Phillip—I never went to school.

Senator KNOWLES—So if someone said to you, ‘Would you like to learn a few things?’, would that appeal to you?

Phillip—Yes.

ACTING CHAIR—How old are you now?

Phillip—I am 23.

ACTING CHAIR—Have you had any work?

Phillip—No.

ACTING CHAIR—What sort of things do you like doing?

Phillip—It depends.

Senator KNOWLES—What do you think would help you?

Phillip—I don’t know. It is hard to say.

Senator KNOWLES—You just need people to be able to support you and encourage you?

Phillip—Yes, stuff like that. I never went to school.

CHAIR—You said you are 23 now. What sort of jobs have you done in the last few years?

Phillip—Nothing.

CHAIR—You have never done any labouring work?

Phillip—I have never done anything.

Senator MURRAY—Phillip, this committee has had some pretty ugly stories put to it, but also some stories that kind of encourage you. There was a man yesterday—I forget his age, but he was probably in his late 50s—who cried when he told us his story. His wife was with him. He told us about his life in institutions and so on right from being a baby. He could not read or write, but he had ended up running his own business and making money. Although it had not got rid of the pain of his childhood and upbringing, it was something that made him very proud. The point is that a number of the people speaking to us through this inquiry have told us that they cannot read and write. You just said that you have never been to school. Can you read and write?

Phillip—No.

Senator MURRAY—I cannot remember if he said it was too late for him to really get on top of those skills, but he had found ways around them. Would you feel for yourself, now that you are a 23-year-old young man, that it is too late to give you those skills of literacy and numeracy to give you better equipment to get on with the rest of your life?

Phillip—If it was there I would do it. If I got offered the chance to do it, I would.

Senator MURRAY—How does it need to be there? Again, when you talk to people who have been through these circumstances, they will tell you how they will go along to tech and feel either intimidated or embarrassed—here I am talking about people in their 50s and 60s—because of their inability or they will feel that the people who deal with them lack sympathy and understanding. Is it best done through an institution like a tech or something like that or is it best done on a one-to-one basis? For a person like you, who has probably got heaps of talent which is yet to reveal itself, what is the best way of giving you that educational service?

Phillip—The normal one-to-one way is the easiest way to learn. When you are in a group of other people you just cannot concentrate.

Senator MURRAY—What sort of person? Sometimes—and perhaps it is because the people we are talking to are older—people prefer to deal with more mature people. Some prefer to deal with women and, in particular circumstances, men. For a young man like you, what would make you most comfortable in terms of conveying information—a young person who can connect with you or an older person who has knocked around life; or doesn’t it matter?

Phillip—Just somebody who can understand what I am talking about—stuff like that—and will sit there with me and do it.

Interjector—Exactly.

Senator MURRAY—A lot of people have been through these circumstances.

Interjector—We are all behind you.

Senator MURRAY—Then we get through the education bit and you end up in Corey’s situation: he has an education and he can read and write, but he still cannot get employed—it knocks you back yet again. One of the mechanisms that is out there, as opposed to one-to-one apprenticeships where you go along and a particular company gives you an apprenticeship, is what is known as a group or pool scheme. It is in the building industry, particularly. You might work for lots of employers, but you have an apprenticeship with a group. If you could be certain that you would be placed in that circumstance, how would you feel about going into the building industry through a group training scheme?

Phillip—It sounds like it cannot be guaranteed, though.

Senator MURRAY—It can be guaranteed to be better than a one-to-one situation because an individual employer, as you know, will look at you and say, ‘Hang on, you are a bloke who is disadvantaged—you can’t read and write properly, you come from an in-care situation. I am not going to take the risk.’ That is how some employers think. You know it and I know it. A group or pool situation lessens the risk for individual employers but still provides the trade and the education.

Phillip—Not many people will take that chance, though.

Senator MURRAY—I know. I am asking you this question deliberately because people who have been through your life experience know how unsettled you get from shifting around from place to place. Those kinds of group or pooled apprenticeships mean that you have to shift from place to place. You go from site to site and employer to employer. You are constantly moving about. Would that be unsettling for somebody with your background?

Phillip—Yes.

Senator MURRAY—What about you, Corey?

Corey—Not really. The main thing that unsettles me is not knowing what is going on. I like something to be set in concrete, then I am settled. If I have something set in concrete then I can hold it down myself.

Ms Townsend—There are some states trialling pilots, not exactly the same as you are talking about. In South Australia they had what were called the GOM traineeships, Guardianship of the Minister. They had 50 or 60 young people ex care who were particularly targeted for traineeships in a range of different things within the government sector. It was quite successful. We have done some work with a couple of corporations in New South Wales. They are looking to offer work experience for young people who are in or ex care. The biggest lesson from our experience—we employ trainees who have a care background within our own organisation—is that you need to put support structures in place. There are a lot of things happening in the lives of young people. They are 18 and a lot of them are dealing with the issues that have come up while they have been in care. If you do not put support structures in place it does not work successfully. That is what I would suggest—if you are looking for models like that also think about the support structures that may be needed.

Senator MURRAY—Essentially, what you are suggesting is an after-care caseworker who is the same person. You cannot change faces all the time; there needs to be a relationship. That is what you are saying, isn't it?

Ms Townsend—The job networks have structures for long-term unemployed people and they will do some work once they have been placed in the position—things like how they are going, the transition to working full time, how that impacts and how everything else is balancing within their lives. That is what I would be saying is needed in addition to other issues that are traditionally dealt with in New South Wales through after-care.

Mrs Lewis—We are currently trying through TAFE outreach to set up a program where we recruit people in the community who go through some training to mentor young people. We are trying to get that going to support young people in their jobs while we in the after-care service can help them with their practical and emotional issues. We need more than a one-pronged approach. If you have your own kids you know that if they live away from home and they lose their accommodation they bring all their stuff home. If your garages look anything like mine they are full of stored furniture. These young people do not have anything like that. The minute something falls down there is nothing there to hold them together. They need help on a variety of fronts. We can get stuff started but it is a matter of maintaining it once they get into the work force.

Senator MURRAY—We heard from Corey that he lives with his girlfriend. Phillip, do you live on your own or in a house?

Phillip—I live with my partner and my daughter.

Senator MURRAY—So you are in accommodation of your own. We heard a really tough story in Melbourne from a young woman who left care—I think she was 15 or 16—and ended up on the streets. You all know what that means and what her life was. She was a very brave person and eventually she got it together. But she fell right into the big gap and nobody was there to look after her. The question is whether the committee should be recommending or looking at the provision of accommodation or allowances or something to provide for people who have been in care to live in groups after they have left. But I have the sense that the last thing people who have been in care want to do is live with other people who are in care. They want to get out of that environment and live in the community as a whole. Is that right?

Phillip—That is about it. Most of them want to live by themselves, have their own life and stuff like that, and try to sort it out the best way they can.

Senator MURRAY—Mrs Lewis, at page 4 of your submission you say:

> As at July 2002 there are almost 20,000 children and young people in the care of the state across Australia.

What is the average time spent in the care of the state?

Mrs Lewis—I do not know. I cannot answer that.

Senator MURRAY—Everybody who knows me knows I like numbers. I worked it out very crudely that if on average it was 10 years then this century there are going to be 200,000 children going through the care systems of this country. That is a crude extrapolation of the figures.

Senator KNOWLES—That is from CREATE’s submission.

Senator MURRAY—My apologies.

Ms Townsend—I do not know. The Australian Institute of Health and Welfare will be able to give you the exact figure because they collect data from across the country each year and then pull it together. They just released a report. I do not know the exact figures but the average time in care is less than two years.

We have two groups of children and young people. This is, I guess, happening more—that is, children will come in under the age of five for a very short period of time because their families are in crisis and then they will return to their family. They may then bounce in and out of the system for quite a period of time but the orders being made for children are shorter and shorter. Magistrates are very reluctant to make long-term orders. So you are getting much fewer kids who are being made wards of the state, to use that language. So there is that group.

The other group that we know are those who, it is likely, will spend most of their childhood within the care system. There are some very strong arguments about that we do not plan for their permanency very well at all and we do not look at what options we can put in place to ensure that, if they are going to spend from age two until 18 in the care system, they can have a permanent stable family. Instead we see that they end up having 30 different placements.

Senator MURRAY—The committee has been at pains to get across to many witnesses that we are not just about the past; we are about the future. The committee has been surprised by the huge numbers that went through institutions and who were in care situations last century. These figures say that there are going to be huge numbers this century—just as many really. That means that the submissions you are making are very important in terms of getting a perspective on that. Do you understand that to be an issue?

Ms Townsend—My understanding of the research is that 20 years ago we had much larger numbers of children and young people in care and there were far more in institutional care. Many of the reasons that they went into care were different—for example, families were in poverty and the children were removed—whereas we are seeing from the work we do that by the time young people come pretty permanently into the care system they have been in severe abuse situations for a period of time before the department has intervened. Often these children have been incredibly damaged by the abuse and neglect that they have experienced. Because we have a bit of a focus that the ideal is for them to return to their families, unfortunately we let them down because we return them to an unsafe situation. They then come back into the system because the focus is on, where possible, restoring them to their families.

Whilst, as a society, we agree with that concept, we do not put the resources into the family and then check the mechanisms to ensure that those children are safe. If we say that, yes, the parent has to undertake a drug program, we do not then go thoroughly enough into making sure that they have undertaken that program, that they are clean and that these children are going to be safe when they return to that home. And then, once they are back in that home, there is no monitoring in the home to make sure that everything is going well and there are no alarming characteristics. Most of the young people that CREATE work with have been in long-term care, and I have to say that the outcomes for the vast majority of them are exceedingly poor—whether educational, drifting into juvenile justice or giving up on life with a great sense of total hopelessness.

Senator MURRAY—Just going back to the causes and effects, the consequences: if you treat a child badly, you will have these effects that you have just described. One of the many things that CLAN, the Care Leavers of Australia Network, has been emphasising is that research should be done and a collection of data should be made to establish whether people have been in care—and it seems to me that they are advocating it on an optional basis. When people apply for things and forms have to be filled in, the form could ask, ‘Have you been in care?’—in the same way as a form might ask, ‘Are you an Aboriginal or Torres Strait Islander?’ What is your reaction to that sort of suggestion, because the purpose is to try to accumulate an understanding of numbers.

Ms Townsend—CREATE is always really supportive of data. Once you have the data and the research, we have a basis to get governments to act and do something about issues. It is hard for me to comment without talking to a wider group of children and young people about how they would feel about that. We know there is some lack of willingness to actually identify as having had a care experience. We have certainly experienced that. But we have long argued that, particularly while young people and children are in the care system, the state is their parent and therefore every government department has a responsibility to do whatever is needed to reach that child. At the end of the day, regardless of whether they are in the care of the Department of Community Services here in New South Wales, all departments—the Department of Health, the Department of Transport, the Department of Housing—have a responsibility to give priority access to this child or young person or their families, because they are in the care of the state and the state is their parent.

Senator MURRAY—Is it your experience that children in care now often have parents who were themselves in care?

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

Senator MURRAY—I am not so much implying the automatic consequence, but one of the major things said to us by older care leavers with children is that many of them lack parenting skills—they have relationship difficulties and so they create problems with their kids, not because they want to but because they cannot help themselves. It is not necessarily a question of abuse or assault; it is a question of skills which creates its own problems. The nub of my question is whether those problems then create another generational set of problems.

Ms Townsend—We have been doing a bit of work with Tresillian, which is where parents go when they have young babies for support in different things. They have been referred straight from the hospital over to Tresillian, because they are on the same site, by the Department of Community Services. Some of the issues that they have been raising are similar to what you are saying—they have not had the role models and they are not sure how to cope with different behaviours that are happening with their babies. But one of the big issues they have been finding is that the young women are actually in violent relationships and, while they are perfectly capable of bringing up their babies, they are in situations to do with the relationship whereby it is going to be unsafe for the child and so they end up losing their children because of that choice.

Phillip—Both my parents were in care at the same time, and I got brought up by them really violently and all that stuff. With me having a kid now I am really worried about hurting her or doing what my dad and my mum did to me as a kid and stuff like that. It is a really hard thing to think about.

Senator KNOWLES—How old is your child?

Phillip—Two.

Senator MURRAY—Do you get help? I know the federal government has just put a lot of money into helping people with parenting. On the face of it that sounds crazy but in fact there is obviously a great need for it. Are you conscious that there is someone you can go to or find things out from if you are worried?

Phillip—I am just conscious of one day not even thinking about it—just doing what my parents did to me and not meaning to do it. There need to be things for people whose parents were like that who have kids of their own and do it with their kids.

Senator MURRAY—What is your main source of information? How do governments or agencies that are there to help people reach someone like you? Is it through television? Do you play sport? Is it through chatting with your mates? Where do you get most of your information about what is what?

Phillip—DOCS and stuff like that.

Ms Harnischmacher—One of the difficulties our service experiences is that a lot of mainstream services like family support can be quite judgmental in dealing with people who have left care. It has been my experience that well-meaning hospital social workers will naturally refer a young person they know has a care history to a child protection service, which they would not do for someone who did not have a care history. That is my concern with the question raised about identifying whether someone is a care leaver. If additional support is not offered to people who have identified themselves, that could just serve to stigmatise them. So I think that—and tell me if I am right, Phil—for young people in Phillip’s situation, services that have a good understanding of the history and the very real fears are the first step.

Phillip—The only way I can deal with my daughter is just to forget about my past. That is the only way I can do it.

Senator MOORE—And the first thing I want to do is ask you about your past, Phillip—I am sorry.

Mrs Lewis—We have run parenting groups for young parents who have been in the care system and we have set up places where they can play with their children. Others might speak to this better than me because they were there and I was not, but the news that came back to me was the joy of the parents at actually learning how to play. They had not had that opportunity when they were growing up, so for them to teach their children how to play they had to learn themselves.

Senator MOORE—Phillip and Corey, you have been asked a lot of questions but I am going to ask some more along the same lines. Phillip, when you answered a previous question you said that you had never been to school. Over the last few months we have been talking a lot with people about concerns about education, but those people went through the system in the 1950s and the 1960s, before you were born. How did you not go to school when you were growing up?

Phillip—I was getting moved from place to place by DOCS every three months—here, there and everywhere.

Senator MOORE—While you were being moved around, did anyone ask you about school? Did they ask, ‘How are you going?’

Phillip—No, no-one said anything.

Senator MOORE—So you survived until the end of the New South Wales compulsory school age—at 15 or 16?

Phillip—Until I was 16, yes.

Senator MOORE—You went through that process and no-one bothered to ask you?

Phillip—Yes.

Senator MOORE—Corey, you were going through the system at the same time but you were going to school.

Corey—Yes, I went through quite a few public schools until I was placed at a foster home. I am probably one of the luckiest people you will ever hear about. It was a great home for me and I was there for eight years. I had a great relationship and I still talk to them now. School was all right for me apart from the early years. I only went to two high schools. I was at the first one until the start of year 11 and then I changed when I went back home but that was only short term because things fell through again. Education was all right for me.

Senator MOORE—Did someone from the department talk to you when you were going through the system and ask how you were going?

Corey—No, not really. The foster parents that I was with did. They had tutors for me for classes that I did not do so well in.

Senator MOORE—So you both have partners now, and, Phillip, you have a little girl. Have you spoken to your partners about your past? Have you talked with them about how you were going?

Corey—No.

Senator MOORE—What about you, Phillip?

Phillip—My partner knows most of it.

Senator MOORE—In both your cases, do your partners understand? Did they have similar experiences?

Phillip—No, mine did not. My partner has always been with her family.

Senator MOORE—Are they your family, now?

Phillip—Yes.

Senator MOORE—What about you, Corey?

Corey—My partner and I have only been together for a short time, so we are still getting to know one another. We have problems now.

Senator MOORE—It takes about 60 years.

Corey—Tell me about it!

Senator MOORE—So you are working through those things?

Corey—Yes, slowly.

Senator MOORE—So you were both in New South Wales going through the system at the same time yet you had distinctly different experiences.

CHAIR—A theme that comes through in a lot of hearings is recruitment practices of caseworkers/social workers. You have mentioned that there is a turnover. You have had a shot at social workers—not in an evil way—and in Adelaide we had evidence of the same sort of thing. We had evidence there that the social workers were young and experienced and my notes say, ‘Damaged and disturbed children had been left too long in dangerous situations at home.’ At the other end you say that the children need strong after-care help up until the age of 25 and then ongoing help after that age. So what should people in authority do when on the one hand we have these inexperienced, untrained or too young social/caseworkers, and on the other hand the children are left in dangerous or damaging situations too long? It does not seem that there is any straight path.

Ms Harnischmacher—For me the key is an understanding of the care system and childhood trauma and how that impacts on an individual as they go into early adulthood and later life. I think it is hard to generalise. My comment about the hospital social workers is that there is lack of understanding and a lack of knowledge rather than a concerted conscious effort—

CHAIR—In Adelaide—my colleagues may correct me—we had witnesses talking about the burnout of social workers and caseworkers. They just cannot take it any more.

Ms Harnischmacher—I suppose in our service we have been very fortunate. I have worked in after-care for nearly 10 years and I can see that services which are well resourced and can give staff good training and good supervision mean the best outcome for clients because they get continuity. The higher burnout rates are amongst the worst resourced agencies.

Ms Townsend—I agree. The ratios of young people to workers that we see in the community organisations compared to the departments are dramatically different. Every state goes through a cycle: Queensland has just gone through one, the ACT is having one at the moment, New South Wales had one two years ago and South Australia is heading towards one. You can watch the cycles of us going, ‘Oh my goodness, the system is in crisis. We are not coping with the demands on the system. The government has to do something.’ There is new money put in, but the research is showing that the number of notifications, and the number of notifications that are substantiated showing that abuse and neglect is occurring, are growing in Australia. We are obviously going to have to continue to put our resources and money there. We need to be able to put the money into protecting children and young people and, once they have come into the care system, ensuring they do have a caseworker within the department that does not have 20 other cases to manage as well, because they are only ever going to have a relationship or contact with a child when there is a crisis.

The thing I have seen and really admire about the Department of Community Services is that they are much stronger about saying, ‘This is the quality we need to put in place around our services, and we can only manage this many.’ I also have to give credit to the department in some ways because they do not have a choice, at the end of the day. If this is the need and the resources they have, they are a statutory agency so they have to take on the extra cases; they cannot turn them away to someone else, because that is their responsibility. But they are all struggling with how to manage this.

There is a big focus now—which I guess comes from overseas—whereby we have to put a lot of money and effort into the front end and into working on early intervention with families and supporting them so that it does not then become a child protection case and then require out-of-home care. We are in agreement with. But it is going to take years and years to see the effects of that, and a lot more money than they are putting in now as well as a focus at the Commonwealth level. In the interim there is a huge group that is still going through this care system. We cannot forget about them and put our focus elsewhere because we are going to change the system. That is what I do see happening a lot: it gets into crisis and we say, ‘Yes, we are going to focus very strongly here.’ There is a group out there now that really have no-one within the care system, and those that have left we have failed, as a society, and we need to do something about that.

Senator HUMPHRIES—Just to follow through: Corey, you said that when you were in an institution for a little while you saw some bad examples of abuse going on. Can you tell us a little bit about that? What sort of abuse did you see?

Corey—Fights, harsh discipline towards the kids around me from the supervisors that were there and low living standards.

Senator HUMPHRIES—What sort of discipline did you see being exercised against inmates there?

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

Senator HUMPHRIES—A comment was made, I think by both organisations, about involving young people in the decisions that affect them. I wonder how that would actually work. I know that the Family Court, for example, pretty well takes the view that it will not ask children of a family who are below about the age of 10 to comment on where they want to be when parents are fighting over custody. Is it feasible to involve children under that age in decisions about their care plans, or are we looking at beyond that age before involvement is really possible?

Ms Townsend—CREATE argues that you do look at children under the age of 10. We work with young people under the age of 10. We consult with them around systems issues for different departments. They have very well formed views about what they want. It is really important for children to understand that their input is being sought around a decision but that decision might not necessarily be what they want—that we are seeking their wishes for what they would like to see happen. That means that when you are making a decision you have a bigger scope—you have all the key players involved, including the child and what they really want to happen. Sometimes they will want to be with their parents and that is not the safe thing that can happen for them. We then need to go back and do the follow-up process, to explain why the decision was made and keep them in the loop. Unfortunately, whether or not you put in a cut-off age of 10, we get young people who are 16 who have not ever been to a case conference about their life. All the decisions are being made by adults around them without any input from them about what they would like. Everything—from decisions about their education, to their health, their contact with their siblings, their contact with their birth parents—is being made by adults without any real input from them.

Mrs Lewis—There are two ends of the spectrum. Sometimes the burden is placed on children when it is not right. They should not have the burden of decisions about their lives when they are not ready for it. They need to be consulted. Sometimes as adults, in the system or outside it, we want to step back from being the ones that have to take responsibility. I work with a lot of children and young people who are put in that position unfairly. They need to be consulted, but who takes responsibility for decisions needs to be appropriate.

Senator HUMPHRIES—What would you suggest is the procedure you should use—bringing the children into a case conference or just asking them and feeding that information into the decision-making process?

Mrs Lewis—It is very intimidating for children to speak up amongst a lot of strangers, so wheeling them into a room and asking them their opinion is very difficult. You have seen young people today who have had some experience in speaking out—it is very difficult for them. If you are much younger, that can be really frightening. They need to have people who are trained to listen and who can take a message back, with the child’s permission, to a case conference on their behalf. Sometimes the child can be there to hear it. If they are confident enough, they can be helped to speak. I work with an adolescent family therapy and mediation service as well. That often involves parents who are separating, which is a similar thing. The kids are put on the spot sometimes, but they need to be listened to, then they need their messages brought back, then they need appropriate people to make decisions, then they should be given feedback around that decision and helped to integrate it into their thinking and understanding.

Ms Townsend—I think it has to be in a developmental framework. At the end of the day, young people who leave care when they are 18 are considered adults. They do not have a family home to return to. They have to make all the decisions about their own lives. If we have made every decision for them up until the age of 18, of course they are going to struggle when they get out there and have to make decisions about where they are going to live, what they are going to do and all those sorts of things. We do need to be moving towards getting them more and more involved in decisions about their own lives. It is very much up to the individual. Within the care and protection legislation of most states now there is the principle of participation, and that is a really important factor. I think a lot of people struggle with the practice. Hopefully in time it will improve.

Senator KNOWLES—I just have two points of clarification. The first point is: how is CREATE funded? The second point is: given that you have people about whom you are specifically caring until the age of 25, what happens at 25 and one day? Do they just fall off the end of another cliff? What safety net is there following that?

Ms Townsend—CREATE actually do not provide direct support to children and young people in care. We are an advocacy organisation but at a systems level. Our role is about trying to change the care system in each state and territory and then at a national level. We do not do any individual advocacy of young people in terms of going to their case conferences or things like that. We have 30 staff across Australia, and $1.5 million worth of funding would never even go close to being able to provide that. That is not to say there is not a need, though, for individual advocacy. Our funding is a mix of government and corporate sponsorship, so we receive both federal and state government funding in each state. The insurance industry is one of our major corporate sponsors that support the work we do.

CREATE do two things: systems advocacy and providing programs directly to children and young people in care. We have a whole range of things that are focused on those that are under 12, which are more around connecting them together so that they know that they are not the only children that are in care—that there are other children that have similar experiences. You can be within the school system and not know there is anyone else in care, which is incredibly isolating. We do programs about leadership and self-development, which is basically aimed at 14- to 18-year-olds. What we see is that when they are 12 and under they have some really strong dreams about what they want to do with their life. Often by the time they are 14, 15 or 16 those dreams have been lost along the way. It is about tapping back into that and giving them the skills to be able to go after those dreams and talents, the tools to be able to actually set goals and go after achieving those goals, and the contacts in the community that will support them.

Senator KNOWLES—Thank you.

CHAIR—Thank you very much for coming along this afternoon and sharing your story with us.

Proceedings suspended from 2.46 p.m. to 3.04 p.m.

EPSTEIN-FRISCH, Ms Belinda, Institute for Family Advocacy and Leadership Development

FRENCH, Mr Phillip John, Executive Director, People with Disability Australia Inc.

SANDS, Ms Therese Paula, Senior Policy Officer, People with Disability Australia Inc.

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee prefers evidence to be heard in public, but evidence may also be taken in camera if you consider such evidence to be of a confidential nature. The committee has before it your submissions. I now invite you to make an opening presentation, to be followed by questions from the committee. Who would like to go first?

Ms Epstein-Frisch—I would like to commence. The first issue that I very much want to address is why it is absolutely critical that your committee considers issues concerning children with disability in this inquiry. Children with disability who live in government and non-government institutions certainly fit within the terms that you are looking at. They have experienced unsafe, improper and unlawful treatment in these institutions. They have experienced long-term social and economic consequences as a result of the neglect and abuse that has been part of their everyday lives, and they certainly continue to experience human anguish resulting from that neglect in care.

The abuse and neglect that are suffered by people with disability are due not just to neglect within individual institutions but also to neglect at a societal level and a systemic level. I refer to the neglect of the state to support the families of people with disability, to enable those children to be brought up within families, and the failure of the system to provide an adequate environment and adequate care for the children who are in need of out-of-home care. These institutions across Australia were originally a Commonwealth responsibility. They were initiated, funded and monitored by the Commonwealth government as special purpose nursing homes. It was only in the first Commonwealth-state disability agreement, in 1991, that the special purpose nursing homes were handed over to state governments—with totally inadequate funding. They were then continuing at an inadequate level of funding through the disability services programs in the various states.

The Family Advocacy submission has identified a range of reports that have been undertaken in the last six years in New South Wales, identifying abuse and neglect that has led to the closure of some of those institutions. But these institutions existed well before the Commonwealth-state disability agreement, existing under Commonwealth responsibility, and so Family Advocacy believes very strongly that this inquiry should look at the situations faced by people in those institutions across Australia over many years.

I now want to talk about some of the vulnerability of children and young people with disability as a result of these systemic failures. There are two pathways into care. There is the court-ordered care that leads children and young people into the child protection system. Whilst the safeguards for young people in out-of-home care through the child protection system are less than adequate, children with disability do not get the same levels of protection. Adults with disability who have lived in institutions and continue to live in institutions throughout Australia have, in the vast majority of situations, entered voluntary out-of-home care. There has not been a question of it being voluntary for children. Most have moved into out-of-home care at less than five years of age. What it has been about is this: the system has attempted to respond to families and, while social workers and caseworkers across the country have empathised with a family under stress, nobody has stood up for the rights of the child and no-one has examined the situation in terms of the best interests of the child being paramount. So those children have entered institutional care, many of them to spend their entire lives there, and children continue to do so.

I will outline some of the key issues that underpin those concerns. They lack the rights and safeguards that are afforded to children without disability. CROP does not apply to them. The Children (Care and Protection) Act 1987 has afforded them no safeguards. The institutions in which they live did not, and often still do not, comply with standards required for the residential care of children and young people with disability, let alone the standards required for children and young people who do not have a disability.

The services in which the children continue to live make no provision for the unique features of childhood. There is no focus or conscious intent to promote attachment or to foster the development of relationships. There is no provision to experience the ordinary joys and pleasures of childhood. There is a lack of systemic safeguards and assistance to prevent out-of-home care for children and young people with disability, and, as I said, they spend their entire lives there. There is a lack of safeguards to monitor the children with disability while they are in care. In New South Wales, in any case, there has been no system for effective monitoring of services. There continues to be no monitoring in terms of the best interests of the child, even where services themselves are monitored, and there is no focus on restoration to the family or on finding an alternate family.

Institutions, as we know, are an inappropriate model of care. There is no framework of permanency planning, a framework that is used to plan for children and young people without disability who are in need of out-of-home care. Even within these supposedly specialist institutions, there is no ability to meet any additional needs that arise as a result of the disability. So the point I want to put to you is that, through individual and systemic failures, significant numbers of children and young people with disability have been forced to live in institutions where they have been neglected and, in many cases, abused, and they warrant the attention of this committee.

Ms Sands—People with Disability Australia Inc., or PWD as we are commonly called, would like to thank the committee for the opportunity to appear before you today. We are a national peak disability rights and advocacy organisation, and we have a cross-disability focus. We represent the rights of people with all kinds of disability and of all ages. First, we would like to state that we support and agree with the opening remarks made by Belinda on behalf of Family Advocacy. We too believe that it is imperative that this committee recognise and make recommendations to address the historical and present circumstances of the specific institutional care situations of children and young people with disability in Australia, and we have outlined these situations in our submission.

As our submission points out, children and young people with disability are among the most likely in our community to be institutionalised and this is not generally recognised. While institutional care for children and young people may have ended some time ago, for many children and young people with disability, this is still a reality. Yet, institutional care by its very nature is utterly incapable of meeting the emotional and developmental needs of children and young people. Many generations of children and young people with disability have been profoundly damaged by institutional systems of care, and for some children this is a continuing reality. Our submission highlights numerous reports and studies to support this.

We believe the Commonwealth can play a leading role in developing a social policy and legal and political consciousness of children and young people with disability as children and young people first. The future for children and young people with disability, as for all children, must be based on their best interests. It must include the end of institutional care, the end of segregated service systems and the development of a primary care system that provides positive child and family centred services. This is crucial to ensuring that families do not view out-of-home care for their children and young people with disability as the only option. We argue that the Commonwealth has a responsibility and mandate to take on this leadership role. As a signatory to the UN Convention on the Rights of the Child, Australia can do far more to create significant change to the way our community responds to the needs of children and young people with disability and their families.

The recommendations we have provided in our submission aim to identify the action that should be taken. In general, these recommendations urge the Commonwealth to give effect domestically to the UN Convention on the Rights of the Child and to plan and monitor its implementation in a national and coordinated way. It urges the government to develop and implement a national agenda or plan for children and young people that includes strategies to address the specific circumstances and needs of children and young people with disability and that is in line with the UN Convention on the Rights of the Child. In this regard we note that the Canadian government has recently developed such a draft national plan of action for children and young people that attempts to achieve this.

We also urge the Commonwealth to review and amend Commonwealth legislation such as the Disability Services Act 1986 so that it includes specific provisions and principles that specifically relate to children and young people with disabilities and allows for the accreditation of the disability service system. We also urge the Commonwealth to use its influence to affect the policy and practice of the states and territories through such mechanisms as the Commonwealth, state and territories agreements—for example, the Commonwealth, state and territories disability agreement.

CHAIR—Mr French, would you like to say anything?

Mr French—Not at present, apart from what is in our statement.

CHAIR—Various submissions have raised the importance of support for young people when they leave care. Are there any points about the issue that specifically relate to people with a disability that you would like to emphasise?

Ms Epstein-Frisch—In New South Wales people and young people with a disability have not, in the main, had an opportunity to leave care. Only in the last three years has the government announced a policy of devolution and closure of institutions. It has happened extremely slowly, and those people who have left have moved into houses with four, five and six other people with a disability, often people with complex and high support needs. This has actually formed mini institutions and has not enabled people with a disability to move into a greater quality of life as members of the community.

CHAIR—Before you continue, does PWP and your organisation have a view about moving them out of the institutions into those houses?

Ms Epstein-Frisch—We very much welcomed the government's announcement. We would have liked the announcement earlier. We very much support moves to close the institutions. We believe people have a right to be supported as individuals, as members of the community. Our concern about the way in which the devolution program is happening is that people always move as parts of groups and with five or six people living in one house it becomes very difficult to be part of a community. But in terms of your specific question, I think that, yes, young people with disability will need lifelong support when they move out of an institution. Some will need 24-hour support; others, if given the opportunity, will learn to live less dependent lives, receiving a lower level of support. But they will absolutely need support.

Ms Sands—We absolutely believe that children and young people should leave institutional care. We believe they should be placed in family care or family environments. If they are unable to return to their natural family then there must be a system of providing those children with family based care or family environment care. So the group home model that Belinda was talking about is inappropriate. In fact our submission quotes the *NSW Audit Office Performance Report: Group Homes for People with Disabilities in NSW*, which concludes that the group home model is not appropriate for children and young people. It is not appropriate for some adults. It is certainly not considered appropriate for adolescents or young adults, let alone children. So we would emphasise family environments. Family is central to the care of children and young people.

Mr French—Belinda talked about two pathways into care. One is the disability service system and the other is the care and protection system. I would just like to address some comments to the care and protection system. It is not widely recognised but it is very true that something like 40 per cent of children and young people in the care and protection system in Australia are also children and young people with disabilities. They grow up and eventually leave care. In terms of your question about after-care, they are very poorly supported, generally speaking.

There are some specific after-care programs that have been developed, for example, in New South Wales under our new Children and Young Persons (Care and Protection) Act 1998 but, by and large, they address the general population of children and young people and do not address the specific issues that confront young people with developmental disability, intellectual disability for example, or perhaps mental health conditions when they are leaving care. Often people in those circumstances require quite substantial ongoing support, but it is not readily available.

Historically, when the state used to assume responsibility for this group it assumed lifelong responsibility. Under the old care and protection act in New South Wales they were referred to as part 9 wards and there was a continuing state responsibility for their care and support. Those provisions generally have been reformed by modern guardianship legislation and again I use the example of New South Wales. When the Guardianship Act was introduced in New South Wales, there was an undertaking given by the minister at the time in parliament that the care and support that had been provided to that population group would continue notwithstanding that the act had come into force.

In some cases that has happened because the system of adult guardianship has replaced the old part 9 child guardianship model, but there are many people who were discharged from guardianship because they did not have a significant decision making disability per se, which is the trigger that activates modern guardianship law. They have really been discharged into the general community without the support that they need. Where you see this typically is in children’s courts where you see parents with intellectual disabilities, who have often spent their entire lives in an institutional setting, struggling to support their children. Mum and dad might both have an intellectual disability and people assume that they are struggling to care for their children because of their intellectual disability. Often the real reason is that they had no parental model that has taught them how to parent children and the support services that they need to be effective parents are not available. A parallel can be drawn there with many Aboriginal families who struggle for the same sorts of reasons. What Belinda and Therese have said about the disability service system is certainly true, but there is a major problem in after-care arrangements in the child protection system nationally.

Ms Epstein-Frisch—I want to make another comment building on what Therese was saying in terms of family care for children with disability. In Queensland, in the early 1990s, there was an institution called the Xavier children’s nursing home, or a name of that nature, which housed 54 children and young people with disability who were medically frail and had very high support needs. A policy decision was taken to close that institution on the premise that children belong in families. Under that premise, every one of those children and young people was either returned to their birth family or placed in alternative families who were properly supported, as the birth family was properly supported. There was an assumption that they were children first, a belief that it could work and supports were built up to make it work.

Unfortunately, our experience in New South Wales has not been nearly so positive because there is not a framework of permanency planning that says, ‘Children belong in families and we need to plan for them in a lifelong way.’ There is not a system that supports and believes that it can be possible. Therefore, group homes become the mechanism that is developed. But we do have experience even here in Australia that shows it being done successfully, even for children with the highest support needs.

Senator KNOWLES—I agree with virtually everything that has been said. The ideal way to deal with anyone with a disability, children or whomever, is to have them in a home environment. I have actually known some families who have had severely disabled Down syndrome and generally intellectually disabled children combined in varying stages with other disabilities. Now, if we go down the path of closing all the institutions, how best can those people be picked up and not be left just falling between the stools?

Mr French—One response would be to adopt a proposal that the New South Wales Law Reform Commission has recommended to the New South Wales government and that is to establish a hierarchy of support options for children and families in those circumstances. The greatest emphasis should be placed on giving the family the support that it needs to care for the child at home. This is really about very practical interventions like domestic assistance—someone to help with a bit of the housework from time to time. Often the child will generate more washing than other children might. There might be stresses around that so having domestic assistance is helpful. Having some attendant support around mealtimes is often very helpful because the child might take additional time to eat and so forth. Home modifications are often a critical issue. If a child has cerebral palsy or some other significant physical disabilities, young families, especially those in our large cities where housing is a very large cost, would benefit from government intervention that would allow them to modify their homes. Then mum would not have to carry a 50-kilo child upstairs and wreck her back. There is a range of very practical things that can help keep the child in the family home.

If that is not possible then a shared care arrangement might be necessary. Mum and dad are able to provide some of the care but, given the intensity of the child’s needs and perhaps the needs of other family members, they are not able to provide all of the child’s needs. I am thinking here of many children that we work with who have a disability on the autism spectrum disorder. They may not sleep very much and are very active. They can be very exhausting in a family environment so mum and dad might need some genuine support there. A shared care arrangement where mum and dad have some of the care but somebody else—it might be a paid staff arrangement or another family, a foster family—provides the other component of the care is the next best option.

Senator KNOWLES—I would like to clarify a point. What is the situation in New South Wales for precisely what you describe about autism?

Mr French—We do not really have a system in New South Wales that would effectively provide those two options that I have just talked about. This is a major challenge faced by all state and territory governments in Australia, and New South Wales probably has the farthest to go in this area. Victoria is doing it quite well in some instances.

Senator KNOWLES—Some of my colleagues have heard me tell this story before. I am close to a family where mum and dad have separated, primarily through pressures of life. They have four boys under the age of 12, three of whom are autistic and two of whom are non-verbal. Their lives are chaos, to put it mildly, from one day to the next. They are gorgeous kids, but the system does not cope with those kids. I might add that mum, who is looking after them, also has lupus. So it is a really terrific set up! And I might add that mum never complains. She never spends a moment complaining. If there was some miracle way where people like them—and probably even some who are less affected than them—could get appropriate ongoing help, and there were formulas about which you were familiar, then this committee would be very interested to know about that, to try and avoid any of those children being institutionalised through a whole range of circumstances.

Mr French—I will let Belinda speak, but the important thing we would want to leave the committee with is that the things that we are talking about are not rocket science; they are just practical things that need to happen. It is incomprehensible that they have not happened in our service system to date because they do not require a great deal. By and large community based support systems are much more effective in terms of social outcomes and much more efficient in terms of financial outcomes than institutional settings.

Ms Epstein-Frisch—I would like to make a few comments to complement what Phillip has been saying. One is to draw to your attention a report by the Nucleus Group—and I can give the committee the exact reference—which was done for the Commonwealth and state administrators, doing a very large literature search as well as looking at the components of systems in Australia and overseas for supporting families. It seems to me to be a very good, thorough literature review of opportunities; perhaps I can provide that to the committee for your consideration. The other thing I wanted to comment on was a system that has been going in Western Australia and New South Wales, and we are beginning to implement it in Queensland. It is a system called local support coordination.

One of things about the specialist disability service system is that services are delivered through programs and, even with certain rhetoric about flexibility, the systems become very rigid and it tends to become a one size fits all. In the family that you are referring to and in the very vast majority of other families that one size fits all does not make a difference because it is not necessarily exactly matching. What my family would need would be different from what your family would need. It might be the same level of resources but they may need to be used in a different way. This local support coordination system is different from the other formal disability services in that it builds from the person in the community and it builds their informal networks of support and uses resources in a much more tailored away. Each and every individual or family really has a significant control over the way in which the resources that are targeted for them are used. There have been a number of reviews, including by the Productivity Commission, that have shown them to be significant value for money. The system exits across Western Australia and in New South Wales we are starting on a tentative basis.

Senator KNOWLES—Another group that are very disadvantaged are those who have violent children—excessively violent and invariably very strong children, whereby mother and father might simply not be able to physically and emotionally cope with that, not because they do not want to but because they simply cannot do it. Or, mum and dad might be too old to cope with that. Therein lies another problem because, as they get older, they worry about what is going to happen to their child, who might by this stage be 40, 50 or 60. What are you recommending in that sort of context where it is difficult to say we will just put someone into that home who can assist mum and dad? They still have a very physically strong and violent person to deal with who might also just take to the streets at the drop of a hat.

Mr French—There are a couple of ways of approaching that issue which is very real for many hundreds or, dare I say, thousands of families across Australia. Generally speaking, we say that adults with disability ought to be able to meet natural milestones of life, which means leaving the family home at some point in time. We deal with many elderly parents who are afraid. They say to us, ‘We cannot die because we do not know what is going to happen to our child.’ That it is an appalling indictment on our community, if people who have cared all their lives for an adult with a disability say, ‘I cannot die in peace because I do not know that my child will be cared for.’ So, by and large, we need to be able to develop a tertiary service system that provides a range of supported accommodation options for adults with disability that mean they can leave their family home at an appropriate time. There is work being done around this on a reasonably concerted basis under the Commonwealth-state disability agreement, but I think both the state and Commonwealth governments agree that there is a long way to go and that there is a need for a massive injection by both levels of government into that area of the system.

I did want to address this situation as it affects children, which is the thing uppermost in your minds. Therese and Belinda have both talked about the critical need to develop a primary service system in Australia to support children and families. I want to be sure that we are understood in what we mean by that. At the moment our disability service system is a tertiary system. It is an intensive support system so it relies essentially on the out-of-home placement of a child or young person, usually at fairly high cost. It is usually activated when some crisis hits the family: mum and dad cannot cope any more therefore the state steps in, or is forced in, and provides total care for the child or young person. It is usually a very bad outcome for the child and usually a very bad outcome for the family. By this stage the family is usually bruised and battered and it takes a long time to be able to recover the situation.

When we are talking about a primary support system we are talking about the development of family support services that would provide emotional and practical support to families, and the development of clinical services that a family can draw on. In the case that you talk about that means specialised behaviour intervention and support services that can teach families behaviour management skills so that they know how to teach a child who is not able to verbalise other ways to communicate so the frustration does not result in the child lashing out at siblings, perhaps teachers at school or perhaps mum and dad, and a whole range of other components that would be essential to be able to keep kids in families.

Structurally the Home and Community Care program, which is a Commonwealth-state administered program, should be able to deliver large components of this primary care system. However, as you probably know from the extensive work this committee has done in the area, the Home and Community Care program is more and more being targeted towards older people, which is associated with the ageing of the population. That is drawing resources away from the prevention, early intervention or primary care system that we say needs to be developed in Australia for children who have a disability and for families where there is a disability.

The disability service system in most states and territories is trying to develop early intervention and prevention components but, in a context where there is vast unmet need for tertiary services, the amount of money that they can allocate to the development of this primary care system is minimal. It competes with the person who is homeless today and requires some governmental response. Naturally government fear that they will be on the front page of tomorrow’s metro daily unless they do something about it. Most of the resources go into the tertiary area and there is not effective development of this primary system of support.

Senator MOORE—Both submissions refer to previous reports or series of recommendations, which is so depressing. I probably know the answer already but of all the recommendations in the Family Advocacy report, which relates to the detailed review of institutions in New South Wales, how many have been implemented?

Ms Epstein-Frisch—I could not tell you offhand. A number of those institutions closed. The very large report on the performance audit of large residential centres was one of the key factors that led to the government commitment to close the institutions, but at the time when that report was undertaken I believe that there were 2,500 people in institutions. We have a government target of getting the first 400 out by the end of this year. The number that is currently actually left in institutions is—

Mr French—It is 2,300.

Ms Epstein-Frisch—Yes, but how many are actually left out of the 400? Maybe 200; probably not even 200. The vast majority of people are still there. There certainly has been some improvement in the minimum standards in some of the institutions but they are absolutely not places for children. They are not environments where anyone can experience good health and live lives of citizens. They are places of neglect and abuse.

Senator MOORE—That sums it all up: all that work, all those recommendations and not much change.

Senator MURRAY—We have established during our inquiry that there was a great gap between the law and regulations which governed people in institutions and in care—and, I might say, it still goes on—and the practice. Most commonly we have remarked that corporal punishment, for instance, was very clearly frameworked as to what could and could not be done, when and where, and how it had to be recorded, but the practice often constituted criminal assault. It certainly does not come back to law and regulations, because they are pretty well on track; in the end it comes to supervision and enforcement and it comes back to the selection of people.

I suspect and expect that residential care will continue for disabled people throughout Australia; therefore, the supervision and enforcement side still needs to be focused on and the selection of people who are appropriate for those institutions needs to go on. I noted, Ms Epstein-Frisch, you just remarked that institutions are a place of abuse and neglect—which is just dreadful, given what we know. What can the committee do and what should we be saying in any recommendations or commentary to try and get a situation where the rules and regulations of residential care are enforced and supervised and where the people running those places are appropriate for the work they have to do?

Ms Epstein-Frisch—I will make some initial comments, and then, I am sure, everyone will make a comment on that. You referred to the gap between law and regulation and practice. In the situation of specialist disability institutions, they are even outside the law. So it is not as if there is law that in principle is more or less sound but we are not actually implementing it; the institutions do not conform with, in New South Wales, the Disability Services Act, and the government acknowledges that. I think their final acknowledgement of that assisted in the decision to close them. So we are back at that very significant part. In New South Wales we have never had an effective system of monitoring. So we then needed reports by the Audit Office of New South Wales, the New South Wales Auditor-General, and what was the independent Community Services Commission, in order to identify some of these abuses and malpractices.

Senator MURRAY—To stop you there, as I understand it, governments have acknowledged that the buildings and facilities are not what they should be. I do not understand them accepting that children can be criminally assaulted or sexually assaulted or neglected. Are you telling me that governments are accepting that the people running those institutions can do those things?

Ms Epstein-Frisch—Absolutely not.

Senator MURRAY—That is the implication, you see. When you say that the institutions are carrying on and they are places of abuse and neglect, you need to distinguish for the committee what you mean by that. If you mean physical facilities, we understand that; if you mean people practising abuse and neglect, we do not understand that, because the law is very clear that that is not allowed.

Ms Epstein-Frisch—Indeed. Sorry if I lacked clarity. The New South Wales Disability Services Act states as one of its foundation principles that services should be provided that enable people to be integrated into the community. It is well accepted via decisions of the Community Services Appeals Tribunal that the size of many of the residential services for people with a disability in New South Wales does not conform with the legislation.

Senator MURRAY—What about the people running those places? Are they adequate and the right sort of people to be running institutions?

Mr French—I think the situation varies from facility to facility. I do not think anyone would contest the claim that institutions are not very happy places for people with disabilities. They are not very happy places for anyone to work in, either. Many of the institutions across the country have great difficulty recruiting adequate staff. Part of this relates to the industrial categories for people entitled to work in institutions. For example, in most states and territories there is a requirement that the old residential institutions employ only nursing staff. In Australia we have a crisis in nursing staff and, if you have more than one job to choose from, generally speaking you do not choose to work in an institution.

There are dedicated staff who do choose to work with people with disability, but by and large people do not want to work in these services. That means: you are generally dealing with a highly casualised staff force; you are generally dealing with staff who are working multiple shifts one after the other and are often tired and stressed; and you are often dealing with staff who do not necessarily speak English as a first language, who have come to work in the institutions from another place, and there are language and communication issues that affect their capacity to understand and apply policy and so forth. Generally speaking, the work force in the institutions presents major challenges to ensuring a safe place for people with disability to live.

Quite apart from all of those things, you deal with the problem that abuse and neglect—or particular forms of abuse and neglect—of people with disability are not regarded in the same way as they would be if you were abused or neglected in that way. For example, in New South Wales there have been a number of independent, quasi-judicial reports—that is, not reports by advocates like us who are here to make a claim or a statement—that show that in some institutions in this state in the last couple of years children have starved almost to death and that some of them have died. That has occurred because the staff ratios and the staff training have not permitted those children to eat sufficient nutrition to be able to survive. They might take a long time to eat or they might require specific kinds of supplements to food, and by and large they have not been provided. Children with disability post 2000 can die of starvation in New South Wales institutions. You would not believe it but it is true, and you do not need to take our word for that. There are independent, quasi-judicial inquiries which have shown this to be the case.

Assault is another issue. Today I have dealt with two notifications of assaults on children with disability under our care and protection act. We are a mandatory reporting agency under that act. We try and report these assaults to the state Department of Community Services, and the immediate reaction we get is: ‘Don’t bother us with this information. Go and talk to the disability agency about it.’ If it were any other child—

Senator MURRAY—Why don’t you go to the police?

Mr French—We do go to the police, and we have gone to the ombudsman as well, but as a mandatory reporter I am talking about the application of that act. We are a mandatory reporter under the care and protection act. That requires us—that is, it is not a discretion that we have—to report if we know that one person has assaulted a child. The issue of compliance with law is a serious issue, as you say, but there are multiple reasons why kids with disability just do not benefit from the law.

Senator MURRAY—The committee has heard specific allegations on the public record from the Broken Rites organisation in Victoria, which has a long history of careful investigation of these issues, and the allegations are supported by some media investigation. I think Mr Yallop and the *Australian* were the journalist and the media mentioned. These allegations are specifically that in a non-state run set of institutions the physical and sexual assault of disabled, institutionalised children has occurred.

From the evidence we have had, the committee knows that was a problem in the 1950s, the 1960s and the 19706s. Here we are in a new century and the law prohibits that. It does not matter what the reasons are for it. It does not matter whether you are poorly educated, cannot speak English or have to come from the nursing profession and no other profession, the law prohibits you physically criminally assaulting a child or sexually assaulting a child. Of course, a way around that is to remove those who are alleged to have that happen and to take out people who are inappropriate for that job and put in people who are not like that or who are not likely to be like that. Those mechanisms are available to governments. Is your evidence simply that government departments continue to turn a blind eye to matters that are clearly breaches of the law and the regulations?

Mr French—Yes, that is our evidence. But we would go further and say that there are additional structural problems that make it very difficult to respond in any event. For example, across our human services system in Australia we do not have good training for staff in any category. So whether it is in the aged care system or the disability services system in particular, there are not sufficient degree courses or other training programs that give staff the skills they need to work in the area. There are bits and pieces of things, but there is no systematic way of getting the skills that you need independently assessed by somebody else to work in this area.

Additionally, disability services are not required to be accredited. That is an incredible situation that still persists across Australia. If you are a childcare provider you must be accredited. If you are an aged care provider you must be accredited. But anybody can put up a shingle and call themselves a disability service provider and, although there are certainly things called standards and policies, they are not applied as standards and policies, because there is no systematic independent way of accrediting agencies against those standards. So there is a vast gulf between practice and what legislation says should happen, and no means of closing that gap through a system of accreditation.

Ms Sands—I would also add that those standards have been developed for adults. In effect, the disability standards have not been developed with children and young people in mind, so staff who work there may work to the standards or try to run their service to the standards, but those standards do not take into account the particular emotional and developmental needs of children and young people. Systemically, those services cannot cater to the needs of children and young people.

Senator MURRAY—I understand that, and that is a failing that arises out of management of a situation that is inadequate for the problem. But there is a range beyond that which relates to laws and standards that apply to anybody, from a baby to an elderly person in an aged care home—that is, you cannot be criminally or sexually assaulted and you should be able to use the force of the law if you are. That is what I am asking: do these institutions still have carers—I hesitate to use that word—in their populations who are practising those crimes, as were practised in the fifties, sixties, seventies, eighties, nineties and onwards?

Mr French—Yes.

Senator MURRAY—That is a terrible indictment of our society.

Ms Epstein-Frisch—May I just add that the policy frameworks, which are at that softer level, apply to children without a disability are not applied actively to children with a disability in New South Wales. So, for children without a disability who are seen as being in need of out-of-home care, there is a framework of permanency planning that looks at how to meet the best interests of the child. That framework is not used for children with a disability, who are seen as mini adults with deficits rather than as children who have some additional needs.

CHAIR—As there are no further questions, thank you for coming along today.

[3.55 p.m.]

GRAYCAR, Professor Regina, Faculty of Law, University of Sydney

WANGMANN, Ms Jane, Faculty of Law, University of Sydney

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. The committee prefers all evidence to be heard in public, but evidence may also be taken in camera if you consider such evidence to be of a confidential nature. The committee has before it your submission. I now invite you to make an opening presentation, to be followed by questions from the committee.

Ms Wangmann—We would like to start by thanking the committee for inviting us to supplement our written submission. We very much welcome the inquiry. We see the issues that you are dealing with as being incredibly important. As you know from our submission, we are currently working on a research project which looks at civil legal responses to systemic injuries. Under ‘systemic injuries’, we are looking at a range of different types of complex injuries, of which institutionalised child sexual assault is one. We are also looking at other claims, such as those by the stolen generations—or the taking of children from single mothers for adoption—and the forced sterilisation of women with disabilities. The project is looking at a number of things. One of them is an examination of the current tort system and its limitation. We are also going to look at alternative methods of redress or reparations. Most of those examples are, of course, coming from overseas, notably Ireland and Canada. Our research has commenced and is ongoing, so we draw to the committee’s attention that some of the things that we are saying about our research are preliminary. We will have conclusions later on. This year our research proposal has been successful in receiving a modest amount of funding from the Australian Research Council.

For the purposes of evidence today I thought I would give a brief overview of the issues that are raised in our submission, as well as providing some supplementary information about some of the things that we have not touched on, such as apologies and an update concerning examples of redress packages. Our research is relevant to three of your terms of reference, notably (d), (e) and (f). That is obvious from the submission itself. Looking at the barriers of the civil litigation process, we know that most of these are documented quite well in the literature and other reports. If you look at any report—like *Bringing them home* or that of the Forde inquiry—you will see that they nominate a number of these limitations. One of the things is that the tort system was never really designed with these types of claims in mind. The limitation period, through the statute of limitations, operates against people making claims. There is difficulty in lodging a claim against those that are responsible, particularly in relation to vicarious liability. There was a High Court case last year that has perhaps made it more difficult for claims to be successful. There are evidentiary hurdles that claimants have to get over, which are also brought about by the passage of time.

The adversarial nature of civil litigation can make it very difficult for claimants; I refer to the process of cross-examination and being challenged. There are the costs of bringing legal proceedings when legal aid is virtually only available in criminal law matters. There is the inadequacy of damages when they are awarded for these types of harm. We see in some of the literature that there is a difficulty concerning recognition of gender and race in terms of assessing the damages or even being able to attribute an amount to sexual assault when a child. There is the inability of the legal system to understand different experiences and responses. Those limitations of the civil system are provided with some detail in the submission, so I will not go into those in any further detail. We will be happy to answer further questions you have on those matters.

One of the things we did not explore in our written submission was the role of apologies, so for that reason I thought I would expand on that today. It is a very important component of any redress or reparations package, and we need to remember that it is only one of the components. It, in itself, will not bring about healing, but if a meaningful apology is offered with other components of reparations then perhaps it will assist victims on the road to recovery. I draw the committee’s attention again to the work of the Law Commission of Canada. Their work around children in institutional care is very thorough, and they have dealt with the role of apologies and what makes a meaningful apology. A meaningful apology needs to be complemented by actions and words that also show that that apology is real and meaningful. We have seen in recent times in Canada and Ireland that there is concern about the disparity between the apology that was offered—and they had quite expansive apologies given by their governments and churches for the various harms that happened in those places—and the subsequent actions that we see governments and churches displaying in litigation or before inquiries. The extent to which they are challenging evidence has underplayed the apology that was given.

Apologies are also made on different levels. We often talk about the large-scale apologies that we ask governments and churches to offer, and we have seen examples of them in Canada and Ireland, as I mentioned. We also have apologies that are offered on a more personal scale. They might be offered by the perpetrator of the abuse. They might also be offered by the institution, but on a more personal level such as face to face. We need to consider that both of these types of apologies are important and that some of the redress packages that we have been looking at have both components. The Grandview agreement, which we have mentioned, has a government apology, and when claimants have gone through the process and received their compensation they are then meant to be issued with a personal apology which is meant to be more detailed and more specific about acknowledging the harm that that person has been through.

Generally, we have found that apologies have played a small role in criminal and civil litigation. That has often been because of the adversarial nature of those systems, but it is also because of the perceived idea that it admits liability. We draw to the committee’s attention the fact that when we are talking about large-scale apologies we are actually talking about an apology that does not offer the type of specificity of the individual claim such as required within litigation and that in fact when we are talking about liability, particularly around vicarious liability, those types of apologies do not prove the elements that the court is looking for. In fact, the reason for not offering an apology based on liability and litigation really does not bear out when we look at the cases.

We note that your term of reference is very broad around apologies. It talks about a federal government apology. I also draw to your attention the fact that we need to have apologies from those people who are responsible, including from organisations, that make those apologies relevant. Another point around apologies that have been issued through redress schemes is that they have often had very critical input from the victim survivors. They have been able to say what things they would like admitted in an apology, what sorts of components, and so some redress packages have been able to have an apology that includes an apology to the victim not only for the harm that was suffered but also for the subsequent harm that has also flowed on to that person's family. The redress packages have enabled much more scope around the types of things that victims are seeking. We have drawn to the committee's attention a number of redress schemes that have been implemented overseas. Most of these have been in Canada, with another major one in Ireland. The first lot of redress schemes are discreet redress packages that have been designed for experiences in particular institutions, and I have referred to those as small-scale packages.

Good examples of those packages are the Grandview agreement, which involved the Grandview girls industrial school, and the Jericho Hill compensation program. Both of those packages went to great lengths to design and implement systems that actually responded to the harms and experiences of the victims. In the Grandview agreement they ensured that there were women adjudicators and people who had experience around sexual assault matters, and that the type of environment in which disclosures were made and the level of support were appropriate. The Jericho Hill compensation program, which was for a school for deaf and sight impaired children, also made sure that they had people who were experienced in American Sign Language and also experienced in sexual assault, and that they accommodated the types of harms that people were claiming.

We note that the redress packages tend to have smaller amounts of financial compensation, but they are supplemented by a whole range of different things which people are also seeking for redress. So there will be a counselling component. The Grandview agreement had a tattoo removal component, because that was a symbol of attending the school and part of their institutionalisation. There has been an evaluation of the Grandview agreement. It notes that the primary goal was to address the consequences of abuse, not simply getting a settlement around the issue. I think that is quite important. Sometimes we drive to settle issues, but in fact if we are talking about healing and reconciliation then we need to talk about how we might address the consequences of abuse through that process. It was seen as a social policy within a legal framework. It was seen as a real alternative to the court process. Most of the women that went through that process found it helpful and supportive. Of course they point out that no redress package alone brings healing, but it does put you on that road.

The large-scale redress schemes that we are examining are those in Ireland and Canada. The Irish scheme has been operating since 2002. It is a statutory scheme. Under that scheme 2,500 applications have been received. We find that there is still civil litigation happening at the same time as the redress scheme, and it also still has its commission of inquiry running at the same time. So there are a number of complex components.

We do not know much at this stage about how victim survivors are finding the redress scheme process. There are some levels of criticism or debate about things that are happening in Ireland, but they do not actually centre on the process of the redress scheme. They centre around the fact that the commissioner of the Commission to Inquire into Child Abuse, Justice Laffoy, resigned from that inquiry because of the level of government control and involvement. There is debate around the inadequacy of the deal that was struck between the church and the government about the church's contribution to the redress scheme. There is also perceived inadequacy about the awards that are available under the scheme compared to some of the litigation. There have been some recent cases where some claimants have received large court awards. There is a level of secrecy around the value of the awards that are coming out in Ireland, although we do know the average amount. They are reasonably high but they are perhaps not as high as would be happening through litigation.

In Canada they have only recently confirmed their alternative dispute resolution scheme in relation to Indian residential schools. I think in our submission they had at that stage postponed it. They have created a two-model system. The first model deals with the more serious claims, where you have sexual abuse or physical abuse that was lasting for some period of time. A second model deals with less serious claims. The second approach obviously has much less formality. Claimants do not have to lodge a range of supporting documents, and they are not subject to the same sorts of questions about their claims as compared to model A. Also, the amount of money that they can get is much less. It can only go up to $Can3,500. Under model A, where the claims are more serious, we are talking about awards that are comparable to what people are receiving in court. That scheme has just commenced. It is also meant to be less formal. People are able to give evidence in narrative form, which obviously helps people.

We have to wait and see how people are receiving that process, but it seems to be received positively except for the limitations around the types of claims that people can make. At the moment Canada has restricted people to claiming sexual abuse, physical abuse and wrongful confinement. The Indian residential school claimants would like to be able to claim loss of language, loss of culture and loss of treaty rights. At the moment, those aspects which have not yet been recognised in the court are not being recognised by the redress scheme. That is about all in terms of my update on the submission and additional matters. We are happy to take questions from the committee.

CHAIR—Professor Graycar, would you like to add anything?

Prof. Graycar—Not really. Jane has been employed to work directly on this project which I am overseeing, and she is probably much more knowledgeable about the individual schemes that are operating at the moment because she is keeping up with them. My background and expertise is a big picture one and in the tort system itself because that is an area I work in directly. That is how we have divided things up.

CHAIR—Would you like to comment on the point you make on page four of your submission about the High Court stance on the question of vicarious liability in relation to sexual abuse of children by an employee of an organisation?

Ms Wangmann—In that sentence we are referring to the High Court cases of Lepore, Rich and Samin that were decided in early 2003. The High Court was asked to decide whether or not the schools’ authorities had breached their non-delegable duty of care in relation to children who had been sexually assaulted in a day school or whether vicarious liability was the correct way in which to approach the issue. The High Court by majority decided that vicarious liability was the most appropriate way to deal with it. But when you look at the judgments—apart from two judges, they issued separate judgments—the way in which each of the judges that adopts vicarious liability approaches the issue of child sexual assault shows a number of limitations about whether or not vicarious liability would be found. Chief Justices Gleeson and Kirby perhaps had the more progressive judgments but, particularly in Chief Justice Gleeson’s judgment, you are perhaps restricting it to looking at residential schools. The question is, of course, left open and we will be waiting for another court case that actually asks the court to decide vicarious liability. The High Court in this case has sent those cases back for retrial or repleading.

Prof. Graycar—Is that all of them or just the New South Wales one?

Ms Wangmann—The Queensland case had leave to replead, but whether or not they will is another question.

CHAIR—A lot of care leavers do not start to confront their demons until later in life. They leave institutions sometimes at 14 years and nine months old or at 15, and they just race out and want to get on with life. Then at about 35 they start to slow down and think about what has happened to them: they have been assaulted sexually and physically, and it has damaged them. Would you like to comment on how a statute of limitations affects them?

Prof. Graycar—Basically, it creates enormous difficulties for them—that would be the simplest summary. Statutes of limitations operate in all the jurisdictions and they basically give people a certain limited period in which to sue after the particular damage has occurred. The damage can sometimes be damage that happened to you without you knowing. There are amendments in most of the states that give you an extra period of time from the time you knew or ‘had the means of knowledge’, which is a phrase that some of them use. It is very technical. Basically, limitations period have been used to defeat the possibility of civil litigation pretty well across the board. There are all sorts of policy rationales: the evidence is stale, it is unfair to the defendant who might have thought that the whole issue had gone away and so on. At the most practical level, some of those things are in fact true.

We saw some of this in the litigation brought by Lorna Cubillo and Peter Gunner in relation to the stolen generations. That was one of the many factors that defeated their claim: the limitations issue. But there are some jurisdictions that have amended statutes of limitation directly to deal with, for example, institutional child abuse and that have abolished them for those kinds of harms. There are none in Australia that I am aware of, but there are two in Canada and one in California I think. The Californian one is specifically related to claims against the church.

Ms Wangmann—Or vicarious liability claims, basically designed for their church claims.

Prof. Graycar—Whereas the ones in Canada, I think, followed a Supreme Court of Canada decision back in the early nineties where they took a slightly more expansive view of when the limitation period would run from than has been the approach of the Australian and the English courts for example. So limitation periods are one of the biggest barriers. The passage of time itself is a barrier but it is exacerbated in law by the way limitation periods are applied very strictly.

CHAIR—Ms Wangmann, you talked about compensation and then you talked about the consequences of abuse. You said you should not just try to talk about compensation; you should deal with the consequences of abuse as well. Do you want to expand on what you meant there?

Ms Wangmann—In situations in Canada, particularly when the Canadian government was beginning to establish its Indian residential school claim, some Indian claimants were concerned that the government simply wanted to wrap it up and settle the claims rather than litigate because they had a number in the pipeline in the courts. So, the aim should not be merely to seek settlement because there is a potential for litigation but to seek settlement because the claims concern abuse. Some people end up going through a compensation system or a court settlement, feeling that they have been paid off, rather than having had an opportunity to tell their story, having it listened to and having it validated. They then have a range of mechanisms to assist in healing of which compensation is one and opportunities for counselling and apologies are also other mechanisms.

CHAIR—I would say that probably goes for the community too in the way that they think the people are litigating just to get money when in fact they want to tell their story.

Prof. Graycar—And often with the legal system, even if there were—and these are incredibly rare—successful litigation, people often at the end of it would say, ‘I never got to say what happened to me,’ because of the way the information is channelled through the legal process. That could be the case even in a so-called successful claim. There is something very lacking from a healing point of view, if you like, about the current legal system. I think our submission focuses more on all the many legal barriers to the success of possible claims. It would be pretty hard to beat all those, but even if you did you would have the extra problem that the person themselves might not particularly feel that they have moved on or healed as a result of that process. That is why the research that was done in Canada that looked at the Grandview scheme is quite interesting because it compared outcomes. They looked at people who had used the civil litigation process, victims compensation and Grandview. I am not sure if they also looked at people who had had criminal proceedings brought about those events. They looked at the different levels of satisfactions and outcomes that people had using these different forms. Grandview was a very alternative process but the others are very well-known and long-existing legal processes and schemes. We have both of those in Australia—that is, criminal injuries compensation and civil litigation—but you will not find anywhere near the same number of successful claims through those schemes. They have been few and far between.

Senator MOORE—What is the time frame of your research project?

Ms Wangmann—The ARC has granted us funding for another three years.

Prof. Graycar—It is very modest. It is not as much as we have asked for. We wanted to do some international comparative work but we are probably going to be limited in what we do.

Senator MOORE—It is just that the field is of such interest at the moment and, from what we can find, is unresearched. We are trying to find background and, particularly, the international comparisons. As you said, our own system is very limited and we need to get some guidance for, I would hope, sympathetic attorneys-general. It seems to me—and I am not a lawyer—that the only way to break through is to have attorneys-general get appropriate research and make decisions. That would be in the hope that we would have that. We are looking at a three-year process before we have some clear result. You can give directional stuff but, as you know, attorneys-general like things very complete.

Prof. Graycar—I have had three-year research grants before where we have published interim reports. We can tailor where we are at so far to a particular purpose. For example, when we heard of your inquiry we thought we should at least send you a submission about the work we had done to date. It is an ongoing process, but there will be different stages of it.

Senator MOORE—That will be of interest. From reading, the Irish process for the commission will be in 2005.

Ms Wangmann—That is the commission of inquiry itself.

Senator MOORE—Yes. The other things are running parallel but the commission of inquiry, which is the one involving the whole community and government, is 2005.

Ms Wangmann—Yes. I would expect at this stage that it will take longer, simply because the chair resigned. Because of the length of time that they are taking to investigate cases that are coming before them, they are deciding whether or not to change that process, and so the expected date to complete may change.

Senator MOORE—Thank you.

Senator MURRAY—I have done a fair bit of reading on reparations worldwide for all sorts of causes in all sorts of countries, and I am aware of those instances you put together. It seems to me the key difference between compensation and reparations or redress is that compensation is primarily a judicial process and reparations or redress is primarily a political process—in other words, an all-encompassing policy approach to resolve an issue. Examples of that approach are the Swiss-German-Israeli agreements and reparations in North America about the stealing of artefacts and indigenous skeletons and the residential and industrial school scandals in Canada and Ireland. Would you agree that the judicial-political divide is primarily the difference between reparations, redress and compensation?

Prof. Graycar—I am intrigued to hear you say that. I have not ever thought about it in that way. As lawyers, we see compensation as much broader than, say, the judicial. For example, something like a criminal injuries compensation scheme would be described in all sorts of ways as an administrative scheme. I think you are probably right in the sense of the different emphases and approaches. I would tend to blur the two and say that, in addition to compensation, you need other elements of redress. That would be the way I would probably address it, with compensation being a money thing.

Senator MURRAY—Let me explore it a little more. You would be familiar with the financial or accounting language that refers to direct costs and indirect costs. Reparation often allows for the indirect to be catered for. Direct refers to money and something you can easily measure, while indirect refers to the provision of services—therapy, accommodation, welfare and those sorts of things. Do you think that to progress this matter of in some way meeting the needs of justice, and I mean that in the biggest sense—a great harm was done to a great number of people, and justice should be realised—we as a committee should be introducing into our thoughts the concept of proportionate liability?

Let me give you an example. In the child migrant situation the federal government received deported children from Great Britain and delegated responsibility to look after those children to the state governments, which in turn delegated it to the religious organisations, which in turn delegated the immediate responsibility to the person running that institution, who in turn hired a lot of paedophiles who sexually assaulted these children. The prime liability does not lie with the federal government, the state government or the religious organisation, which all had rules and laws and standards which said this is how you clothe, feed, educate and keep a child, and this is how they have to be treated. What was done by the people in those institutions was against the law. I understand enough about law to know how liability runs but the fact is that the greatest liability and responsibility rests on individuals. One of the fears of all governments with regard to great numbers of people receiving great harm is the great cost. They are worried about their pockets and therefore they produce these lawyers who fight tooth and nail to make sure people do not get justice.

The state is already equipped to provide much indirect reparation—they have mental health systems, welfare systems and other systems which if they are added to can provide redress: therapy, for instance, or accommodation for aged people with particular characteristics or perhaps additional educational aids through institutions which already exist. Can you see where I am going with this? Do you think it is possible to think more laterally in this area? In the area of reparations and redress is it possible to think of the proportionate liability side, to think more indirect as well as direct and actually find a mechanism which would make governments less fearful that there are 500,000 people out there who are all harmed? At $2 million each that is $1 billion; we cannot afford it. That could start to shape it in a meaningful and affordable way from a government perspective. As individual legislators and policy makers we want to encourage governments to meet their liabilities and responsibilities but we recognise the political reality that unless you get over the threshold hurdle of fear of cost we are just not going to get there. I have deliberately taken some time to frame this question but I am sure you understand exactly what I am on about.

Prof. Graycar—I have a number of responses to that but first let me talk briefly about proportionate liability. That is not particularly helpful in this context. It works well in a market context where you have two companies who both might be responsible in relative shares for some kind of damage. There has been a lot of discussion about that around the tort reform debate and so on. The problem with it in this context is that we have no experience of people making successful claims of almost any kind. Proportionate liability requires two lots of defendants to be found liable and then have the amounts addressed respectively. In that sense it seems to me that it would meet exactly the same pitfalls as everything else we have identified in the current civil legal system. I agree with you totally that we need to be thinking more laterally but we need to get away from litigation unless something very dramatic happens to that because it has never proved responsive to these situations.

You were saying with the previous witnesses that the things that go on in institutions are barred by law—for example, some of the assaults and sexual abuse. They always have been. This is not new. But there has never been an adequate form of redress for so many of the things that happened. The approach that we are taking is to start by looking at the legal barriers to that and our interest is in exploring alternative reparation and redress mechanisms that can avoid those kinds of pitfalls. I think that proportionate liability is too related to the system that has already failed to meet these kinds of injuries to have potential there.

Senator MURRAY—Let me test that proposition, and there is much more to talk about—I gave you a very large framework. I think that at the moment governments end up with 100 per cent of the liability because the reality is that all those who are harmed are costing the current taxpayers a fortune. There are people who have substance and drug abuse who end up in jails, those who need welfare assistance, those who have failed relationships, those who bash their wives, and we need to build refuges. Whatever consequences there are where damaged people end up damaging other people—it is not always true of everyone who has been an institution, but you understand that—there is already the indirect cost area landing entirely on current taxpayers and future taxpayers and therefore on their governments. Yet the charitable and religious organisations, which are often right at the heart of these terrible events, get off scot-free. Their successors appear with blue eyes looking brightly at us and we say: ‘What should be done?’ and they say, ‘The government should give us more money to fix it.’ They cause the problem but they make no contribution to it even though they have massive assets. I appreciate the complexities—I am simplifying it—but the fact is that they are not making a contribution, and proportionate liability implies that everybody affected should. Your answer was framed in what we understand to be the legal history of these things, but I am suggesting to you that the practical reality is different.

Ms Wangmann—In Canada and Ireland the governments have struck deals with the churches to have a contribution. This has been criticised subsequently but in Ireland, where it is criticised quite a great deal at the moment, the Irish government is also very strong about it, saying, ‘We need to move forward from this scheme. We have made the best deal that we possibly could.’ It may not be what people perceive as being equal but they have managed to get a contribution from the church.

Senator MURRAY—It is better than nothing, I can tell you that.

Ms Wangmann—In Canada where they have struck a 70-30 deal with various churches, except the Catholic Church and, I think, another church, that came about after a successful case where it was decided that the government was 70 per cent responsible or 75 per cent responsible—something that was similar to the deal that was subsequently struck. But for those people that went to an institution run by the Catholic Church the government has left those people to get only 70 per cent from them if they have a successful claim on the redress package and to pursue the church through the litigation system, rather than supplementing that deal. So if a deal can be struck, that works really well for victims. But if a deal is not struck, it is leaving victims to have to manage both systems—

Prof. Graycar—One of the issues that I was responding to is that proportionate liability looks to me like a piece of litigation where everybody is going, ‘You blame them,’ and ‘No, you blame them.’

Senator MURRAY—Not if it is proposed by statute.

Prof. Graycar—No. I would not call it that, you see. I am just being a lawyer here. That is what I responded to. I would never be suggesting for a moment that we should go only after government and that nobody else should take responsibility and I did not intend to convey that impression. The question is: how would you sort out the relative responsibilities? In fact we have had settlements from some churches, I think, in Australia—more than from government. I take your point that governments are paying the indirect costs.

Senator MURRAY—Some of the people sexually assaulted at Bindoon got $5,000. These people were sodomised and raped daily, weekly, yearly. This was no fun. I got the impression that at the back of some of the Irish and Canadian settlements was the old Mafia approach of, 'I am going to make you an offer you can't refuse'—namely, the state said to the churches, 'You are coming to this party; we'll impose it or you'll agree.' That is why I say a political or statutory solution can get there. There is some sympathy for that. There is a quote on page 34 of CLAN's submission—I remember seeing the program—which says:

> On the ABC 7.30 REPORT on 1 July 2003, the head of the Jesuit order—

he was the new head of the Jesuit order; he had only been in there six months—

> Father Mark Raper in an interview in relation to compensation for people who considered themselves victims of abuse by employees or religious personnel of the Catholic Church said that 'assets are not as important as the people that we seek to serve ... what's the point of doing what we're doing if that's not the case?'

In other words, he says that the word of God is more important, and to get rid of the assets if it is going to help the people they have harmed, which I cannot help but agree with. My question to you as lawyers—and in a sense you also have a social justice orientation in this project of yours—is: do you think it is possible for us to work through some of these angles, such as I am exposing to you, fairly? Do you think that a reparations approach, a proportionate liability approach or a direct cost and indirect cost is a fair way for us to approach the issue? In saying this I will stress to you that the committee has not discussed this. These are ideas I am throwing at you.

Prof. Graycar—One of the things about the move towards so-called alternatives and some of the more successful redress packages elsewhere is that money has not been the main focus. Grandview is such a good example of that, where the maximum amount that was available for any one person was $60,000, which in common law terms is not a lot of money. But instead there was the process that people saw as therapeutic. There was the tattoo removal we have referred to, which is very poignant in a sense. That is such a marker for life of a time spent in an institution. It seems to me that from a very pragmatic point of view there is enormous benefit in looking at more responsive forms of remedy than just the money.

Senator MURRAY—Legislation that has come through recently from the coalition, which was supported by all parties but amended in the Senate, which is the job of the Senate, concerns structured settlements for injury victims. That has to be dealt with in isolation but essentially it was the very point you have just made. That amount of money is not given as compensation for being injured; it is given for life support to pay for the health service you need because you are a quadriplegic or a cripple or you have head trauma or whatever. You cannot do that with a cohort such as we are discussing. That is why I am inclined to the view, which I think again is what you expressed, that money is not the most important thing, but you need money for the services, which is the therapy and everything else. That is why I then go back to the view that if you go the proportionate liability route—and I am talking broadly, not narrowly, in the legal sense—and if you go the indirect cost route, governments will stomach that more than they will the money spent, because they already have the framework, the structures and the institutions and they can adjust it.

Prof. Graycar—If you take the way common law damages work at the moment, there is something very arcane about how a once-and-for-all settlement gets put together. One of the examples is that if you do receive a common law settlement you have to pay back every penny Medicare has ever given you that relates to that injury. Though now limited by statute you have available to you what are still very generous payments for pain and suffering and loss of amenity. Another way to put it would be counselling. You can buy musical instruments or whatever but ultimately pain and suffering is the trauma and hurt that goes with the kinds of harm.

People can be quite derisory about large common law sums of money but, if you break them down, a large proportion of the calculation is for life support, rehabilitation, wheelchair access, medical services, nursing services and so on. A lot of it involves those enormous transaction costs not just of lawyers but of moving things back—public and private, Medicare and not Medicare and so on. I totally agree with you that it would be much more sensible not to run around for health services and so on, to work out who ought to pay what kinds of things and to acknowledge the indirect costs the government is now paying for. I do not quite know how you would go about deeming by statute certain proportions of liability for various institutions, but I think it is really important that all the players who were responsible for the care of children, particularly in these institutions, be brought to the table to work out the remedy and the responsibility. I do not know whether you have any particular ideas on how to go about doing that, but it is pretty difficult. I guess my response to your notion of proportionate liabilities is that they would argue forever about the share of someone’s responsibility. Someone has to initiate the process.

Senator MURRAY—Or impose it. That is what the political process does.

Prof. Graycar—In that sense, it is government’s role to at least steer through some kind of process, even if it involves dragging into it unwilling participants who may well share that responsibility.

Senator MURRAY—Let me again stress to you that the committee have not discussed this, and I am not floating committee ideas, but we clearly understand that there is a long-term economic and social cost to what we suspect is half a million people and all those associated with them. Therefore we will have to go back to the government and express to it some view of how it should deal with the issue in a way that is accepted as just by those who have been harmed, which is a perception issue. You have quite rightly focused on acknowledgments and apologies and the perception of being really sorry. If people say: ‘You say that but what are you doing?’ and the response is, ‘I am now spending this money in these areas,’ it enables people who are money minded and are focused on cost-benefit analysis to work out a framework, and it becomes rational to them in that sense.

Prof. Graycar—There has been some research done—Jane knows the research I am thinking of—on medical injuries and the role of apologies and acknowledgment of mistakes in people’s views about litigation and pursuing remedies. I could find the reference for you and send it, but my understanding is that people who feel they have been apologised to and explained to are far less likely to take legal action.

Senator MURRAY—You gave us a reasonably complete set of footnotes—it runs to 110—but perhaps you would be good enough to think about our discussion and write to us with some references for us to beaver in on within our limited time and resources. You discussed some medical research in that area. Those sorts of insights could enable us to see ways in which there is a public acknowledgment that meets people's needs and is measurable.

Prof. Graycar—I think the Grandview research is a very good illustration of that and is closer to this context in the level of satisfaction—'satisfaction' is a difficult word—of the participants. They were all aware that they could have done quite a lot better financially through the civil litigation system, but it was not their priority under the circumstances. I do think there is some quite demonstrable research that money is not always what people are after, and it may not be the most important thing in redressing harms.

Senator MOORE—In your Canadian experience, what was the period of time between the injuries and the claims?

Prof. Graycar—Twenty years at least.

Senator MOORE—I am interested because for so many of the people who have talked to us the person or persons who were the focus of their greatest anger and concern are long dead, which then creates all those added issues about who is responsible. People have a need to allocate the blame, and I wonder whether in those case studies it was similar.

Prof. Graycar—Absolutely.

Ms Wangmann—I would say that most of the small redress packages are around 20 years or more, but when you are talking about the Indian residential schools you are talking about claims that are much older and they do have people who have died. Those schools started in the 1800s.

Prof. Graycar—Not only are individual perpetrators physically not around but one of the issues—and this is an across-the-board tort law issue too—is that individuals are very unlikely to be able to meet judgments or even possibly to deal with people on a one-to-one level.

CHAIR—I have one final question. One of the agencies this morning referred its not making an apology because of advice it had received from the New South Wales Ombudsman concerning liability, yet other groups had made apologies. Are you aware of the Ombudsman's comments? If so, what is your view on the advice to not make an apology? If you would like to consider it and write back to us, you are most welcome to.

Prof. Graycar—I would be very interested to see what the Ombudsman said.

Ms Wangmann—I am not aware of it.

Prof. Graycar—No, this is news to me too.

CHAIR—There is no need to answer now. We will send you a copy of the *Hansard*. We would really appreciate your reply.

Ms Wangmann—Just briefly, one of the discussion papers that supports the Law Commission of Canada's research was around apologies, and they did have a look at legal consequences. Individual apologies tend to be more specific and hence more likely to attract liability. Whether or not the Ombudsman is talking about that I do not know, but the larger scale apologies do not tend to have that level of specificity. Recently in New South Wales our Civil Liability Act has excluded apologies in limited circumstances. Lots of lawyers see that as merely clarifying the legal situation, but it is now there that an apology is not an admission of liability.

Prof. Graycar—Excluding liability for apologies in case of doubt.

Senator MURRAY—So you can now say 'sorry' after a road accident?

Prof. Graycar—I will have to look up the Motor Accidents Compensation Act!

CHAIR—Thank you very much for coming along this afternoon. It is much appreciated. We will send you a copy of the *Hansard* in which this claim was made. We would really appreciate your advice on it—free advice I hope!

Prof. Graycar—I was just going to say we cannot give you legal advice that is binding in any way.

CHAIR—Before we wind up, thank you very much for the great attendance here. I am sure it has been a comfort to a lot of people, and it is certainly encouraging to see that there is support for our inquiry. The second thing I would like to do is to advise you—this is an advertisement from Leonie Sheedy—that the CLAN office will officially open on 6 March in Bankstown. I do not have the address or the time here, but I am sure that with Leonie's undoubted ability to attract attention and publicity we will see some free publicity in some paper in New South Wales over the next month.

Committee adjourned at 4.49 p.m.