



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

COMMUNITY AFFAIRS REFERENCES COMMITTEE

Reference: Child migration

TUESDAY, 6 FEBRUARY 2001

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**SENATE
COMMUNITY AFFAIRS REFERENCES COMMITTEE**

Tuesday, 6 February 2001

Members: Senator Crowley (*Chair*), Senator Knowles (*Deputy Chair*), Senators Bartlett, Evans, Gibbs and Tchen

Substitute members: Senator Murray for Senator Bartlett

Participating members: Senators Abetz, Brown, Calvert, Chapman, Coonan, Crane, Denman, Eggleston, Faulkner, Ferguson, Ferris, Forshaw, Gibson, Harradine, Lightfoot, Mackay, Mason, McGauran, O'Brien, Payne, Tierney, Watson and West

Senators in attendance: Senators Crowley, Gibbs, Knowles and Murray

Terms of reference for the inquiry:

For inquiry into and report on:

Child migration to Australia under approved schemes during the twentieth century, with particular reference to the role and responsibilities of Australian governments and to the issues listed in the following paragraphs:

- (a) in relation to government and non-government institutions responsible for the care of child migrants:
 - (i) whether any unsafe, improper, or unlawful care or treatment of children occurred in such institutions, and
 - (ii) whether any serious breach of any relevant statutory obligation occurred during the course of the care of former child migrants;
- (b) the extent and operation of measures undertaken or required to assist former child migrants to reunite with their families and obtain independent advice and counselling services;
- (c) the effectiveness of efforts made during the operation of the child migration schemes or since by Australian governments and any other non-government bodies which were then responsible for child migration to:
 - (i) inform the children of the existence and whereabouts of their parents and/or siblings,
 - (ii) reunite or assist in the reunification of the child migrants with any of their relatives, and
 - (iii) provide counselling or any other services that were designed to reduce or limit trauma caused by the removal of these children from their country of birth and deportation to Australia;
- (d) the need for a formal acknowledgment and apology by Australian governments for the human suffering arising from the child migration schemes;
- (e) measures of reparation including, but not limited to, compensation and rehabilitation by the perpetrators; and
- (f) whether statutory or administrative limitations or barriers adversely affect those former child migrants who wish to pursue claims against individual perpetrators of abuse previously involved in their care.

WITNESSES

**HUGHES, Mr Peter Gerard, First Assistant Secretary, Multicultural Affairs and Citizenship
Division, Department of Immigration and Multicultural Affairs 1**

**MOWBRAY, Mr Graham Albert, General Counsel (Immigration), Australian Government
Solicitor for Department of Immigration and Multicultural Affairs 1**

**PAGE, Mr David Julian, Assistant Secretary, Settlement Branch, Department of Immigration
and Multicultural Affairs 1**

**WHITE, Ms Lin, Director, Settlement Policy and Planning Section, Department of Immigration
and Multicultural Affairs 1**

Committee met at 4.03 p.m.

HUGHES, Mr Peter Gerard, First Assistant Secretary, Multicultural Affairs and Citizenship Division, Department of Immigration and Multicultural Affairs

MOWBRAY, Mr Graham Albert, General Counsel (Immigration), Australian Government Solicitor for Department of Immigration and Multicultural Affairs

PAGE, Mr David Julian, Assistant Secretary, Settlement Branch, Department of Immigration and Multicultural Affairs

WHITE, Ms Lin, Director, Settlement Policy and Planning Section, Department of Immigration and Multicultural Affairs

CHAIR—Good afternoon and welcome. The Community Affairs References Committee is commencing its inquiry into child migration. The committee will continue with its public hearing program in Perth next week and in other states in March. I welcome officers of the Department of Immigration and Multicultural Affairs.

Mr Mowbray—I am from the Australian Government Solicitor, but I am assisting the Department of Immigration and Multicultural Affairs. I am General Counsel (Immigration) in the Australian Government Solicitor's Office.

CHAIR—Are you actually from the Attorney-General's Department?

Mr Mowbray—No, the Australian Government Solicitor.

CHAIR—A subset of nobody!

Mr Mowbray—We are a statutory authority within the Attorney-General's portfolio, but I am outposted permanently—full time—to assist immigration.

CHAIR—I am sorry, I am just pleased to get that clear. Thank you, Mr Mowbray. The committee prefers all evidence to be heard in public, but should you wish to give any evidence in camera, or answers to specific questions in camera, you can ask to do so and the committee will give consideration to your request. The committee has before it your submission, No. 42. Do you wish to make any alterations or additions to that submission?

Mr Hughes—No, we do not, Madam Chair.

CHAIR—I remind departmental officers that you are not required to answer questions on advice you may have given in the formulation of policy or to express a personal opinion on matters of current policy—you can tell us about policy of the 1950s.

This is the first hearing on the public record of this inquiry. I was a bit surprised, as were my colleagues, when we received a letter asking for an assurance that this inquiry will be completely open and unprejudiced, and that there will be no favouring of evidence in the inquiry for the institution of government or the institution of churches or of certain different

organisations. We were surprised because all of us understand that Senate inquiries are an extension of the Senate and are without prejudice and are very open. I place that on the public record as an assurance and as comfort for anybody who might be agitated about this perturbing area of inquiry. This, of course, has nothing to do with the department today. I am just using this opportunity to place those comments on the record.

We were also asked if anybody had any connections that might in any way be seen to be prejudicial, even if they are not. I make it clear that I have a brother who, for 13 years, was a Christian Brother. I do not believe that that will, in any way, prejudice or disadvantage me in being able to chair this inquiry with an open mind. That is just on the record for assurance for the person who wrote that letter.

I now invite the department to make an opening statement.

Mr Hughes—Thank you, Madam Chair. Without going to a long statement, I just want to make some very brief observations. Firstly, we are very conscious that the terms of reference of the committee cover the entire 20th century, events that took place in the UK and at quite a number of locations around Australia. In our submission, based on the historical research we were able to do in the time available, we have tried to give a brief overview of child migration schemes as we understand them. We have also tried to cover the legal and administrative arrangements for child migration schemes from the Commonwealth perspective, as well as the actions that have been taken to deal with the legacy of those schemes.

Since the Commonwealth department of immigration has only been in existence since 1945, obviously, the focus of our submission was the post-war period. On that basis, we are happy to go straight to any questions the committee wants to ask us.

Senator MURRAY—I think I will address my question to you, Mr Hughes, but anyone can answer. I want to start with two remarks. We understand the submissions we receive will largely focus on the downside of child migration but we also recognise there are some people who feel that it was a positive experience. Obviously our focus will be on the negative experiences, because people who feel they benefited from migration do not need the attentions of government or this committee much, probably.

My summary of the things most commonly alleged are emotional deprivation for child migrants—that is an institutional characteristic and is common. The lack of warmth and love was regarded as a systemic weakness of the time. The second common allegation is of systemic cruelty.

The third is of assault, both common and criminal, and often continued over years and over periods resulting in permanent disabilities. The next range of commentary—and these are not in any particular order—relates to sexual abuse, including rape, and not an isolated instance but occurring over long periods. Another very common theme in the submissions is lies and deceit over names, origin, family relationships, correspondence, possessions, withholding of records and theft of wages. People were not paid what they were entitled to.

There is a listing of concerns that people have—and the majority of people seem to be in the 55- to 65-year range from my reading of the submissions. It would seem that they would have

grounds for some restitution. That can be in many forms. Some forms are: connection—the ability to reconnect with relatives; counselling, to do with trauma and a sense of deep dissonance in their lives; the ability to recover wages; or the ability to take civil action or other action against people who were the perpetrators of this—and you will note the use of the word ‘perpetrators’ in the terms of reference.

I want to separate out the things that government can do which are a consequence of government funding and the things which government can do which are a consequence of changing the law. First of all, I want to deal with the law side. I have deliberately painted a picture so you understand the framework in which I am talking to you. One of the things I did not mention in my list of deprivations which surprised me and came through strongly was a sense of loss of relationship with their country—not just their family—and a lack of belonging.

I want to talk to you first about citizenship. You may need to answer some of these questions on notice. In 1985, when a number of provisions were made in the law to grant citizenship, was any consideration at all given to the automatic granting of citizenship to child migrants, either on an across-the-board basis or on an opt-out basis? The second question on the same theme which I would like you to deal with is: what objections can you see to citizenship being offered to child migrants now automatically, perhaps with an opt-out clause for those who do not want it, rather than the existing system whereby they have to apply?

Mr Hughes—I cannot speak specifically about what was or was not considered in 1985 because I was not involved in any consideration at the time. Generally speaking, there is a principle with citizenship that governments have preferred people to apply for it on the understanding that that is the way an individual indicates that they want it. Generally speaking, Australian citizenship law has not automatically conferred citizenship on any individual, particularly if you do not know the individual’s circumstances. Any operation of law conferral of citizenship could actually adversely affect the interests of a person who did not want it. As a general principle, it is not normal for citizenship law to automatically confer citizenship. The approach that was taken to former child migrants in the 1990s when this was raised was to change the legislation so that there was no fee applicable. So child migrants who wanted it had to indicate their intention to take out citizenship and complete the necessary forms. But, unlike other applicants for citizenship, there would be no fee.

Senator MURRAY—The reason I raise 1985 was that a class of Australian residents were given automatic citizenship. In other words, they could be on the roll and they could vote. I am not referring to individuals, of course, I am referring to child migrants as a class who certainly numbered well below 10,000—so it is not large numbers—and whose average age, I understand from a submission we have had in from England, was about seven to eight years. It would pose no great threat, would it, to Australian electoral rolls or Australian institutions or systems if people now aged between 55 and 65, many of whom have fought in the Australian armed forces or have been members of the Australian armed forces and have fulfilled all the normal duties of citizens, were to become citizens? It is not a swamping of our numbers, is it?

Mr Hughes—Generically facilitating citizenship for former child migrants who want it would not necessarily be a problem. The difficulty would be the nature of the scheme that you chose to apply. For example, as I mentioned before, a scheme which was an operation of law scheme that made a former child migrant an Australian citizen, if that child migrant had since

become the citizen of another country, could potentially, for example, affect the citizenship of the other country that that former child migrant might want to keep. That is speculative, but it is a theoretical possibility that the citizenship interests of a former child migrant might be adversely affected.

CHAIR—Wouldn't the opt-out provision assist that?

Mr Hughes—Again, it depends on how you constructed the scheme. In other words, if it is an operation of law and you become an Australian citizen automatically then opt out, it is theoretically possible that you might lose your citizenship if you had the citizenship of another country. I cannot mention any specific examples of former child migrants where that might occur, but it is certainly a possibility and it is a danger with any pure operation of law scheme.

Senator MURRAY—Mr Hughes, I cannot obviously pre-empt the views of the committee and we are in very early stages, but if the committee were to envisage a granting of citizenship as a recommendation, with qualifications perhaps, it is not beyond the wit of your department to devise a satisfactory way of dealing with this issue, with the relatively few numbers involved, is it? You cannot immediately tell me there are insurmountable difficulties?

Mr Hughes—If a government were to decide for some simplified scheme for former child migrants becoming citizens in a way that involves a simplified process compared to the current process, we are very good at devising schemes.

Senator MURRAY—My second area of concern relates to our term of reference of statutory and administrative limitations. Without being unduly critical, I thought your item five was deficient, if you like. It lacked depth and I would hope that you would see fit in due course to supplement it. My own understanding from reading as widely as I can in this circle, including such books as Bruce Blyth's *In the Shadow of the Cross*, seems to indicate that the different statutory limitations periods in different states have affected the way in which individuals can pursue their cases at law against individuals who have acted wrongly against them.

Here we are dealing with a situation where child migrants have got themselves in many cases into a state where they can out themselves. When they were children, young men and women, they were not able to do so. Now they are speaking out and feel able to deal with these issues. Organisations exist which enable them to deal with these issues to some extent. If the committee were to look at this area as a possible area for recommendations, is it your department to whom we should turn for advice as to how a limitations regime could be evaluated on this basis between governments or would we need to take evidence from the A-G's office—or is the presence of Mr Mowbray sufficient in this area?

Mr Hughes—There are a couple of points on that. Firstly, in that area of the submission we were aiming to give a thumbnail sketch of the issues related to the area that you are speaking of, because, as you have acknowledged, it is very complicated and involves quite a few jurisdictions in Australia and multiple sets of circumstances. We tried to keep it as brief and simple as possible. As far as I am aware, it involves the separate operation of a number of state jurisdictions. I am sure Mr Mowbray will help me on that issue and be able to give you some advice on how best to pursue the issue of what limitations apply in different jurisdictions around Australia.

Senator MURRAY—Before Mr Mowbray responds my real question would relate to whether it is the Prime Minister and Cabinet who would have to talk to us because of the COAG arrangements or whether it is the A-G's situation. So far I do not see anything within our submissions which really develops this area in an informed and well researched way. My request to you is whether we should request through you to initiate this or whether we need to access other departments directly?

Mr Mowbray—Perhaps I can help you with that and give you a little bit of background before I come to that question. If an individual wished to bring an action in relation to some injury or damage suffered as a result of being involved in one of these schemes, it would normally be an action for negligence, breach of statutory duty or something of that kind for which you would take action in a state or territory court. If it were an action against the Commonwealth, it would be an exercise of federal jurisdiction. The state or territory limitation periods are picked up by the Judiciary Act so that the Commonwealth in these matters has no separate limitation period for an action against the Commonwealth.

If the action were brought in the Northern Territory—as the Cubillo action was, for argument's sake—you pick up the limitation period of the Northern Territory. If you had a look at the Cubillo decision, you would see that they went back prior to the current administration to the South Australian legislation. So the Commonwealth picks up state limitation periods through the Judiciary Act. I do not see that there is any difficulty in a legal sense in the Commonwealth setting a limitation period if it wished for actions against the Commonwealth in relation to, say, negligence or breach of statutory duty, but that has not been the practice to date—we have relied on the state limitations.

As far as your specific question is concerned, my suggestion would be that, because it would be something that covered an issue broader than just actions for former child migrants or an issue involving negligence by the Commonwealth or some other tortious liability by the Commonwealth, it would be something that you would need to take up with the Attorney-General's Department as the policy department. Because it involved actions relying on state limitation periods, PM&C would be involved as well.

Senator MURRAY—Part of the terms of reference require us to look at the issue of compensation or reparations. I must obviously qualify my remarks, but my reading so far is that there is no documentation in either charitable organisation procedures and so on or, in terms of state or government law or procedures, whichever sanctioned systemic cruelty, assault, criminal assault, sexual abuse, rape and theft of wages. One thing which does emerge which seemed to be sanctioned by the church and non-church organisations was lies and deceit, because there was a policy of withholding information and, in fact, of misleading children as to their origins. With regard to the rest, whilst you could argue a case for negligence and a failure in duty of care, you could certainly not argue that any of those consequences of institutionalisation were ever approved in any forum because there is no evidence that that is so.

Because that is the case, therefore the attention has to be on the individual perpetrators—or groups, or rings, or conspirators, if you like—rather than trying to pursue governments en masse, and we have seen with the Cubillo case how difficult that is. What I am seeking from you, Mr Mowbray, is whether the A-G's Department or the Prime Minister's department would be willing to survey this field against the kind of remarks that I have put and give us a broader

view, if you like—give us almost advice and then have a look at how the limitations issue is dealt with, because it is a major concern that individuals are not able to pursue perpetrators if they wish.

Mr Mowbray—I obviously cannot speak for A-G's or PM&C—you really have to take that up with them. All I can say is, from your latest comments, that you seem to be suggesting that the perpetrators are non-government organisations or individuals. In that case, it would not be a matter of federal jurisdiction if someone was taking legal action. In that case it would fall clearly within the responsibilities of the states, and the Commonwealth would not be in a position to do anything about limitation periods, even if it wished to.

Senator MURRAY—What I am seeking is whether there are any constitutional precedents or any precedents based on an attachment to international law—you know yourself how that has intruded into High Court decisions—which would enable a principle of justice to be established whereby perpetrators are brought to book. I hold the personal view that—and I cannot reflect the view of the committee—if people indulge in war crimes or sexual abuse of children, there should be no statute of limitations. It is just a view I have. However, what I am seeking is what the legal and international law and constitutional law position is, and I need to know how the committee can direct that question and to whom to get proper advice. We do not want to go and hire QCs and pay for them. I assume that that expertise resides within government.

Mr Mowbray—You seem to have broadened your question to cover not only civil liability but criminal liability as well.

Senator MURRAY—Yes, it does.

Mr Mowbray—Again, it is not something that really I could answer you on. I think really the thrust of your question is directed to concerns about actions by individuals or organisations within the states. It is not a Commonwealth area of responsibility. It would not fall within the Commonwealth criminal law, for argument's sake.

Senator MURRAY—Even under the delegated power?

Mr Mowbray—Under the delegated power which—

Senator MURRAY—Your submission is full of reference to the fact that you—by you, I mean the Commonwealth—delegated your powers to states in some cases and to private church or non-church organisations in other cases. I am not sure that the answer you are giving me is accurate in the case of a delegated power where the duty of care was retained.

CHAIR—If I can just add to Senator Murray's questions, I think this is a very important area that the community would like to get clear—at least I would. And I think that is certainly something for all of us. What is the Commonwealth responsibility in a delegated area? If you delegate to the state to do something, I presume it is not a Pontius Pilate situation—that is, the Commonwealth is not able to now wash its hands of any consequences of that delegation. Senator Murray, I think this is pursuing at least one part of the questions you were following.

Senator MURRAY—Yes.

CHAIR—If you cannot answer that now, I certainly believe that we should ask for you to come back with a legal or departmental or both expansion on this question. As I read all these delegations signed by Arthur Augustus Calwell in 1946, it says:

I, Arthur Augustus Calwell, the Minister of State for Immigration, in pursuance of the powers conferred on me by section 5 of the Immigration (Guardianship of Children) Act 1946, hereby delegate to the person from time to time occupying the office of performing the duties of Chairman of the Children's Welfare and Public Relief Board of the State of South Australia all my powers and functions under any of the provisions of that Act (except sections 5 and 11)—

And maybe we might need to know what they are—

in relation to every immigrant child in that State.

What exactly does that leave the Commonwealth minister responsible for?

Mr Hughes—We can answer that question, Madam Chair. You are quoting from—and the submission refers to—the Immigration (Guardianship of Children) Act, which was the legislative scheme set up by the Commonwealth in 1946 in order to provide a framework for the guardianship and custody of children coming to Australia. It was a framework which, from the Commonwealth's point of view, put the direct care and control of children in the hands of those who the Commonwealth believed was best placed to look after them, which was the state welfare authorities and the church and charitable institutions. The ministers at the time the scheme was set up, as you observed there, quoting the Arthur Calwell delegations, immediately delegated all their powers to act under that scheme—

CHAIR—All their responsibilities?

Mr Hughes—I am coming to that, Senator. All their powers to act under the scheme to the state government welfare authorities. The exceptions you mentioned there are actually the power to delegate: section 5. The minister at the time did not delegate his power to delegate. That is the one exception to the delegation. What we believe that meant in practice was that the state welfare authorities had the responsibility to look after the welfare of the children and make arrangements with the institutions to whom they gave custody of the children. As we have said in the submission, there were specific arrangements made in the relevant states with the institutions between the state welfare authorities.

The minister did, of course, retain responsibility to act in certain circumstances. Our understanding of the position is that the minister did retain a responsibility to act if examples of problems with the delegation or problems in the administration of delegation were brought to his attention.

CHAIR—Like what, Mr Hughes?

Mr Hughes—There were, for example—I think we have quoted in the submission—issues raised during the 1950s which led to the Ross report and Moss report where some issues were raised about the state of the facilities that children were in, particularly in WA. You will see there, as we have mentioned in the submission, that the minister and the Commonwealth administration did become involved at that stage with state authorities and the UK authorities in dealing with issues that arose about the use of delegation by the state welfare authorities.

CHAIR—I have two questions that might assist. I do believe that the committee needs, and would welcome, anything that you might like to take on notice and provide further in terms of what exactly the liabilities were under the delegated powers. I would like you to provide to the committee, on notice perhaps or by comment today, how many complaints you received, for example, in the 1950s, about the quality of care. Did you get any? What sort were they? Was the Commonwealth ever told by anybody that abuse of children was happening in any of these places? I do think it is important that, if any of that information was provided, it should become public, on the record, that complaints were made and overlooked, or complaints were made and it was taken up with the state government authority, or whatever. I do believe it is proper for the committee to know that.

Secondly, what did the Commonwealth ever do over the course of the forties and the fifties, let us say—if not even later—to satisfy themselves that their contract to care for the children was actually being implemented? Did the Commonwealth ever require on an annual basis, for example, a report on how many children had died, how many had finished grade 6, how many had learnt skills, or whatever? Did you require a report? Also, did you provide with the delegated responsibility moneys to enable the states to do this? If I could have gone to estimates hearings in the 1940s, could I have asked your minister at the table or the minister's representatives whether they were satisfying themselves that the money provided to the states or institutions to care for children was actually being used appropriately?

Mr Hughes—You are testing my knowledge of Senate estimates in the forties.

CHAIR—Don't you think they existed?

Mr Hughes—I cannot help you with that.

CHAIR—But you know what I mean.

Mr Hughes—I understand entirely the point you are making. You have asked us to take two questions on notice. The first one I have observed is in its literal sense quite a tall order of complaints in the fifties in a literal and detailed sense. We will provide you with whatever information we can on notice. I would ask though at this stage for Mr Page to give you some generic response to that question because, in the course of research for this particular exercise, as I mentioned before, we did consult as many files as we could in the time available to see what issues had come up during that period. Obviously, we are talking about very long periods and it is difficult to be certain that we consulted everything that was possibly in existence. I think Mr Page can give you some generic feedback on the issues that emerged from our research in terms of complaints at the time.

Mr Page—Possibly assisted by colleagues, Madam Chair, because it is interesting that we have come extremely quickly to the crux of the inquiry and, I think, the dilemma that we have faced in producing a submission and that the committee will continue to face as it makes inquiries. Firstly, I think the committee is going to have to come to an understanding of a distinction between the responsibility of a guardian and the responsibility of a custodian. I think Senator Murray is asking for definitive advice on that. We have been unable to obtain it because there has been no legal testing of those concepts, especially over the time frame that the child migration schemes occurred.

I also think it is worth noting that a number of more recent factors have intervened to confuse the chair's question about what would have been an answer given in Senate estimates during the 1940s or 1950s. They are things like the increased standards of care implied by the Convention on the Rights of the Child or numerous ways in which the relationship between parents and guardians have generally changed in the past couple of decades. We are talking about values being applied now that were unthought of in the 1940s and 1950s.

I also have to qualify any comments that I am making by saying that our submission is based on our best effort to examine departmental records and includes quite exhaustive research for those records, short of a full-scale research project that would take quite a number of years. The kind of material that is or is not in the National Archives, for example, could absorb a number of researchers for a long time. Our submission says quite openly that it relies fairly largely on a combination of departmental records and the standard sources that other submissions are also relying on, including the Christian Brothers history and other key documents that I am sure the committee is aware of.

Having made all those qualifications, I think we can say we are not aware of any complaint of the kind that came within the scope of Senator Murray's summary. There were complaints that were followed up at a range of levels by, for example, church authorities, certainly state welfare authorities and, occasionally, we are able to say by Commonwealth immigration officials in conjunction with state welfare and/or state immigration authorities. There is an example in the submission of, I think, the Clontarf institution, where complaints led to action to stop the flow of child migrants to that particular institution until improvements had been made to the accommodation and treatment standard.

There is a sort of anecdotal evidence that confirms that complaints were being made and were followed up, but I think it is part of the difficulty that everyone is having in understanding the feelings of the people involved that they were not in a position perhaps to offer to previous forms of inquiry the information that they are now coming forward with. Senator Murray's comment, about people now feeling empowered to say things that they previously were not, is a particularly valid one.

CHAIR—Mr Page, if you received complaints about the state of a building that was so bad that even at three times removed—from a Clontarf to presumably the state government, presumably to the Commonwealth is almost like a three-stage removal—and that, in fact, you the Commonwealth contributed to the cessation of migrants to that institution until it was physically improved, if I understand what you were saying—

Mr Page—That is right.

CHAIR—Did such a complaint ever make you wonder about what happened within a building or did you just go and look at the bricks and mortar?

Mr Page—I do not think there is a simple answer to that question either because the records would not show as full an inquiry as you are implying. The example that I am giving is just indicative of some form of follow-up action and inspection. It is not intended to imply that the Commonwealth agreed with the complaints being made. In fact, in terms of the Ross and Moss reports—I am afraid I cannot recall which order they come in—there was a specific follow-up

to one of those reports where a senior immigration officer and a state welfare official disagreed with the findings of a UK inspector who had come through. Again, I think these are issues that the committee will find people will make comments about and the committee will have to make up its own mind. There is no definitive work hidden in either our archives or files.

CHAIR—Does that mean that the Commonwealth over those 20 years or more never sought a detailed report from the state government?

Mr Page—I am sorry. We sought and got reports of the kind that are indicated in attachment B to our submission. This illustrates a huge distinction between intent and delivery or practice. If you skim through the grounds on which the Commonwealth in conjunction with local state authorities sought to approve particular institutions, you will see that there is a range of issues that reflect best practice of the day. It does not follow that in all instances those best practices occurred. That again is the issue that the committee is attempting to get to the bottom of: to what extent were those standards met or not met? I do not think there is a ready-made answer.

Senator KNOWLES—The yardstick by which they were judged then as opposed to the way they would be judged now is vastly different too?

Mr Page—Indeed.

Senator KNOWLES—And that is the problem that I think the committee has to confront. Because what we would consider even remotely acceptable today is a very different picture to what was probably considered acceptable then. I do not know how the committee will come to grips with the detail of that, given the lack of detailed material that you have access to or can readily find. Do you have a suggestion for the committee as to how best we can measure these things, given the differences of yesterday to today?

Mr Page—You need to try to narrow the scope of the different groups that may have been affected in the ways that Senator Murray summarised. It is quite interesting that some time ago, we and I think most other people were estimating the numbers of child migrants as being perhaps as high as 10,000. That is probably the figure if you include all youth up to 21 and even include people before World War II. But our best estimate is that it is somewhere below 4,000. I note with interest that other submissions seem to accept that lower figure.

Within that, the submissions from other organisations and indeed individuals seem to generalise perhaps a little too broadly on what happened to everyone. The list that Senator Murray gave is a very accurate assessment of the types of things that happened to someone. The extent to which they happened to the whole 3,000 or 4,000 is questionable. Until we get some sense of what proportion of those 3,000 or 4,000 people still exist and are in need of the kind of help that is being detailed in the submissions, then I do not think we will get very far.

Senator MURRAY—I have seen one submission from Canada which attempted to statistically rate this. I have no way of knowing whether it is accurate or not, so let us make that qualification.

Mr Page—A submission to this inquiry from Canada?

Senator MURRAY—Yes. From an organisation that is known as Home Children. They said that 66 per cent of all child migrants to Canada were sexually abused. That is an astonishing figure. They have obviously done the survey and arrived at a figure. From our figures before us, it does seem to have been quite widespread. I have no idea what that means in percentage terms.

Mr Page—Again, I think that illustrates the need to be as precise as we can about the particular target group. I am not aware of that Canadian submission.

Senator MURRAY—It is in the papers.

Mr Page—I certainly will look at it. A large number of children went to Canada well back into the century. As I understand it, a fair proportion of them were going into what amounted to foster care arrangements rather than institutions, so it could be that that figure you mentioned is a different set of perpetrators. I think we also need to try to discover whether there was a higher proportion of appalling behaviour directed at child migrants as opposed to other residents of institutions. I think some of what has been described is generic to institution life, and our submission attempts to show that welfare authorities realised that in the course of the 1940s and 1950s. We are seeing a decline in the total numbers of people in Australian institutions in favour of different kinds of care.

Senator MURRAY—The other point I would make in passing, given what has emerged so far, is that we should distinguish in value terms between what was the same then and what is the same now, and what was different then and what is different now. The same then and now is rape, criminal assault, theft of wages. It was wrong then and it is still wrong now. Different then and now, of course, is corporal punishment and that sort of thing. There were far different standards then and now.

Mr Page—Indeed, I agree.

Senator KNOWLES—But there is also people's preparedness to talk about those types of things then vis-a-vis now.

Mr Page—I think that is a significant point as well.

Senator GIBBS—Attachment B talks about approval of institutions and all of these guidelines. It would probably be in your records, wouldn't it, that these guidelines were to be adhered to by all institutions, not simply by state-run institutions?

Mr Page—Yes.

Senator GIBBS—There is a list of criteria. So the church organisations are in it, are they?

Mr Page—Indeed.

Senator GIBBS—In that case, do your records show whether there was continual monitoring of these places by the Commonwealth, or did the Commonwealth simply abrogate that responsibility to the states so that the state authorities were left to inspect the facilities?

Mr Page—The latter. Mr Hughes has just reminded me that there were not any state government institutions—

Senator GIBBS—None at all?

Mr Page—They were all non-government charities, but approved by a combination of Commonwealth and state welfare authorities. Our records show—and I think this is supported by other documentation—that it was the second option you are putting; that is, where something or other has come to light, the Commonwealth might act. For example, as part of the total planning of the postwar immigration program, there were regular meetings of Commonwealth and state ministers and officials, as there are today. Child migrant issues appeared on the agenda of those meetings fairly frequently, yet none of the major allegations of the kind Senator Murray has listed emerged from those agendas.

Senator GIBBS—So there were no detailed minutes of reports or any documentation of visitations to these places? I know we are talking about different times, but this is fairly impressive criteria. Even in those days, to be looked after in this way is not so bad as today—apart from lack of emotional love and all of those sorts of thing, this is basic. So were there no minutes to say that people actually went and made sure that the institutions were following this criteria?

Mr Page—Yes, but I think the issue is exactly who did and I would also say, although this has to be my conclusion from second-hand sources, that this is another area in which community expectations have risen dramatically. The idea that funding bodies would monitor and inspect in the way that we are assuming they would today did not occur.

Senator GIBBS—But under the act, wouldn't the Commonwealth immigration minister still be the guardian of these children, even though he has passed the responsibility on to state authorities?

Mr Page—That is fairly common ground on legal advice that the minister's delegated power of guardianship almost cannot be removed unless, for example in the case of adoptions, an adoption is completed and the state issues a certificate or the person becomes 18, as it would be now. It would have been 21 then. The distinction that I pointed you to before between the responsibilities of a guardian and the responsibilities of a custodian, or in modern parlance, foster parent, is an extremely grey area which the committee will need to contemplate.

CHAIR—If you have got any information on then and now definitions of custodian and guardianship, I think the committee would welcome that. I suppose we can ask each state government. I certainly know in South Australia, we have a comprehensive guardianship board, particularly pertinent to people with psychiatric illness, but not without relevance in terms of definitions. So if you could provide to the committee the information on the Commonwealth situation and any other information you have on the distinction between guardianship and custodianship, I think we would welcome that. Thank you.

Senator GIBBS—I just have a couple of other questions that I am particularly interested in. I notice in here organisation and after care of the children, so that is no doubt when they reach a certain age. Was that ever looked at? It seems from a lot of the submissions that once they

reached a certain age, that was it; they were on their own. Did the Commonwealth have any role to play there in seeking out information that these young people were looked after?

Mr Page—I think you can only answer that question with hindsight. I do not think anyone felt they did at the time.

CHAIR—The important thing for us is not to feel that you are here defending the Commonwealth from the 1950s. The question is: did the Commonwealth at that time do anything to follow what happened to children on the occasion of them becoming able to leave the institutions? And if the answer was, ‘We think not. It was all left to the state’, that would be very useful for us to know.

Mr Page—I think the answer is evidently, ‘We think not’, both because of our submission, but I think more convincingly because of the numerous submissions you are getting from individuals who say nothing was done. I think you can take that as—

CHAIR—We are pleased to know that the individuals can tell us, but with the greatest respect, you are here to tell us what you know about what the department did. It may be that all those individuals just failed to get the letter, or misread the evidence that was told to them. I want to be clear that you can tell us, from everything that you have looked at, that the department effectively handed the kids over to the states or the charitable institutions and then washed its hands of them?

Mr Page—I think you are putting those words in my mouth, with respect, Senator.

CHAIR—I am not. I am actually asking you a question. Is that a fair assessment? And your answer is?

Mr Page—No.

CHAIR—Thank you.

Mr Page—Not entirely. Of course, it may have looked like that to some people. But I know of no action that the Commonwealth took over and above its expectation of the expert Commonwealth/state welfare authorities to pursue the standards that are set out in that table. I know of no separate action that would have reflected a perception that the minister had responsibilities over and above those that he had delegated.

Senator GIBBS—But that is what we are trying to establish—what the states looked after and what involvement the Commonwealth had after the minister passed on the responsibility to the states, if there was any Commonwealth involvement at all. That is basically what we are trying to establish.

Mr Page—I know. I am sorry, I do not know of any.

Senator GIBBS—That is fine. Sometimes in records people do keep minutes, but quite a lot of people do not, for various reasons.

Mr Hughes—There are a couple of questions in there, I think. As I said earlier, the Commonwealth did respond to specific issues that came up. We mentioned a couple of them. We mentioned that examination of the accommodation at Clontarf and we mentioned the Moss and Ross reports. So there was involvement when specific issues were raised. The other question that was asked was whether there was a specific program for children when they left institutional care in any way organised by the Commonwealth. The answer from my colleague's research is that we were not able to find evidence of one.

Senator GIBBS—I have one more quick question; I will then let somebody else ask a question. I am still talking about attachment B. Item 8, under the heading 'Home environment', reads:

Facilities given for the children to receive a religious up-bringing appropriate to the religious denomination to which they belong.

An attachment sets out the ages of the children who were sent out from 1947 to 1961. We have got one baby aged two sent out in 1958, 15 babies aged three sent out in the period of 1949 right through to 1960, and four- and five-year-olds. Also the submission says a lot of these children were sent out from institutions in Britain to institutions here because they were illegitimate or uncared for and they landed up in these institutions. How would you determine the child's religious denomination at so early an age?

Ms White—These children were in institutions that were run by religious organisations. I assume the assumption was that because they were in a Catholic institution, for example, they were Catholic.

Senator GIBBS—Basically they were given their religion by the institution?

Ms White—I assume so.

Mr Page—The group that we are talking about, of something under 4,000, appear to be children who were already in institutions in Britain and were being transferred to institutions in Australia. Therefore I think that explains clause 8 here. It is recognition that people coming out of Catholic institutions to Catholic institutions were going to receive religious instruction in the Catholic faith.

Senator GIBBS—That is fair enough, but were all the institutions in Britain religious institutions?

Mr Page—No.

Ms White—No.

Senator GIBBS—So the child could have been nothing as far as religion goes? Do you know what I mean?

Mr Page—I understand your question. I do not think there is an answer to whether there were some children who, since their religion was not known, received no religious instruction. I

suspect that at the time whatever education, state or special denomination, would have included some—

Senator GIBBS—It was just a curiosity thing actually. You are also talking about higher education. Do the records show any children in these particular institutions, who had any form of higher education, who showed exceptional abilities, extra brightness. Were their needs catered for? Were they actually given the added education according to their needs? Were they all given a certain standard of education and that was it: go and get a job?

Mr Page—Again, this illustrates that you cannot make a statement that applies to all. The issue would have varied significantly according to the type of institution. Most of the work was either farm or manual or versions of trades. I am not aware of a significant effort being made to promote people into higher education.

Senator GIBBS—Were they given at the time the standard of formal education that everybody else was entitled to?

Mr Page—I think you have to assume that because that was part of the accrediting of the institution, and under state law the standard of education would have had to have met state education requirements. So I think we can assume that most people left school at 15 or whatever the minimum leaving age was.

CHAIR—We would be assuming that, Mr Page. I just want to pick up on your own submission that talks about the Moss and Ross reports. It states:

Two investigations into the situation of the child migrants were conducted by British government officials in the 1950s. These led to the publication of two reports: the Moss Report in 1953 based on John Moss's unofficial visit in 1951-52; and the Ross fact finding mission report in 1956.

That is way back then. In fact we know from the *Hansard* of 13 March 1951 that the Minister for Immigration, Mr Holt, was very concerned. This is a Commonwealth minister voicing his concerns in our federal parliament—*Hansard*, page 340. The Moss report prompted closer scrutiny of the systems with one outcome being the establishment of a child welfare and migration council. I wonder if you could provide further detail about the membership of that committee, what activities it did and some history about it. But it has to make it clear that the care of children was obviously a concern at the Commonwealth level, as well as state level, in 1951. We need to know if you can provide evidence from the archives of this committee and what was happening at the Commonwealth level. We can get the *Hansard* out. We know that you established a committee—

Senator KNOWLES—The government established a committee.

CHAIR—The Commonwealth government established the committee. Why? First of all, tell us the membership, what activities it was supposed to do and a bit of its history and tell us why it was established. You had to have been getting some serious complaints at that time. I do not think the Commonwealth just rushed around making committees. Maybe you can take it on notice but I think you do need to add further to what you have already provided to us about way back then et cetera.

Mr Hughes—Senator, we will certainly provide information on that particular committee established as far as we can obtain it from the files. Mr Page might want to say something about the actual report that led to its establishment, if he is aware of the particular contents.

Mr Page—I am sorry; I am not aware of that committee. We will need to—

Mr Hughes—We will find information.

Senator KNOWLES—We just have to be careful, though. I do not think we should be, Madam Chair, sheeting the blame home to the officers before us. I am very concerned at some of the terminology. What we are trying to do is simply to find out what the position the government of the day was, where these councils and so forth were established, and their membership and so forth. We are talking in generic terms here of the government of the day, so I just trust that no particular officer takes offence. The committee is not trying to suggest that you personally are trying to withhold information.

CHAIR—That is their submission, Senator. You are quite right. It is a good point, well made. But it is called ‘We need a little expansion on what your report was telling us’.

Mr Page—We will certainly give you further information, which might include an explanation of why we cannot give further information.

Mr Hughes—But we will get as much as we can.

Senator MURRAY—Madam Chair, I would like to follow up your point. Before I do, Mr Page, I would urge you perhaps to reconsider some of your evidence earlier, in that you said that we could ‘assume’ the states and those charitable and church organisations would have carried out an educational standard. I think the evidence we have is that, although your attachments indicate a reasonable standard was required, we cannot assume that standard was carried through. The evidence is that it was not. It is the same with education. I accept the Commonwealth and the state governments had laid down a standard of education, but because of the lack of an enforceable inspection system that worked we cannot assume that that was the case. Particularly in the case of places like Bindoon, the evidence is that education was not carried out to a basic standard. I just put that as a point to you.

Mr Page—Yes, that is true. My colleague has endorsed that.

Senator MURRAY—One of the reasons I wanted to follow up on the chair’s remarks is this: Commonwealth policy with regard to the treatment of children in institutions and the desirable way in which children should be dealt with changed—it changed quite radically. Institutionalisation was moved away from, there was a greater desire for trying to keep people in families, more women were involved in social work and care, et cetera. It was quite a marked change in policy. Governments do not change policy in a vacuum, by accident. Having just suggested to you that we have got to be careful about assuming, I assume that there must have been a series of reports, or claims or allegations or concerns, to government which made them think that the institutional management of children was producing bad outcomes—in respect of all children, not just child migrants but Australian, indigenous and non-indigenous children as well.

It may be little difficult for your department to know about that, because probably that was not your direct area of concern. But I would like you to establish for us, if you can—and it would need to be a question on notice—what were the main drivers of a policy change. There had to be concerns for it to change. What we have had before us so far is evidence that no concerns reached the right people, but I am not sure that that is true. Maybe it did not reach them in a written form but in a verbal and anecdotal form, and eventually senior bureaucrats and ministers said, ‘Look, we have got to stop this. We will do something about it.’

Mr Page—I would be grateful if we could take that on notice and expand on my immediate response, which is that—as I think our submission indicates to some extent—the welfare state in Britain; the Moss and Ross reports; a complete shift in the professionalising of human services, particularly to children; the growth in introduction of social work, all those things were significant influences in what I was referring to before in saying that that accounts for how community standards have changed. If anything, the change of attitude in the sending country, namely, Britain, resulted in a reduction in the supply of people to go to any institution, and I think that is what led to the ending of the scheme, if we can confine child migration to children under 15. As you would be well aware, the youth migration extended for another 10 or 15 or so years beyond that. But the shift in values of a kind that you are seeking elaboration of occurred in the surroundings of child migration. The reduction in the number of children in institutions in Australia in the decade of the 1950s did not result from criticism of child migration; it resulted from a much broader view of institutionalised children.

Mr Hughes—With regard to page 10 of the submission, to pick up your point about the overall change in Australian society about whether institutionalisation of children was or was not the appropriate social vehicle: it was of interest to us, in doing the research for this submission, to see that in 1954 in Australia as a whole there were over 27,000 children in institutions in Australia—of which child migrants would have been a small subset—and yet in the year 2000, according to these figures from the Department of Family and Community Services, there are about 1,000. This obviously shows a dramatic shift in the thinking of social welfare administrators on what should be the position of children who need substitute care.

Senator MURRAY—And the far lower ratio of children to institutions in 2000 than in 1954.

Mr Hughes—Absolutely.

Senator KNOWLES—One of the things that I think the committee has to deal with and that I certainly want to focus upon is what we do now and where we go from here. As you would well know, there have been a number of inquiries. I really do not want to see this committee just go around and around in circles, retracing those steps. One of the things that I think would be helpful is for us to have a breakdown of funding from the Commonwealth to assist the child migrants and their welfare, the reunions and everything else. I know that within the submission today you have detailed the types of services that have been available. Yet I notice that there is not much in here in terms of actual dollar amounts as to what the contribution has been from the Commonwealth. Would it be possible, once again on notice, to have the breakdown as to what the Commonwealth has provided, and in what areas, over what time? I do not know whether there is a bit of a need for crystal ball gazing here or whether there has been any research undertaken, but has there been any consideration of unmet need? If so, what is that? What is proposed to be done to address that as well?

Mr Hughes—We cannot answer all of that now but I think we can answer a lot of it. I think the focus of the immigration portfolio over time has been to meet some aspects of the adverse legacy of child migration. Our involvement in terms of dealing with the legacy probably goes back to the mid-1980s, with the Catholic Migration Centre in Perth, where, through some of our settlement funds or partly funded by us, they were doing work with former child migrants. I guess we got more heavily involved in responding to requests for assistance with funding counselling services and tracing services in 1990, when, under the then migrant settlement grants scheme, we started to fund the Child Migrant Trust. We funded that trust under a variety of migrant settlement service schemes throughout the 1990s, and we continue to do so.

Senator KNOWLES—Is that the \$750,000?

Mr Hughes—Yes. If you take into account the money that we have earmarked for the current funding round, that would take it up to about \$870,000 over that period from 1990 to the present day. Clearly, many of the submissions speak very highly of the work done by the Child Migrants Trust and of the assistance that people received in dealing with the issues personal to them.

The other initiatives we have been involved in—to come back to the citizenship one that Senator Murray mentioned at the beginning—include legislating to remove the fee for citizenship for child migrants, because that was raised with us as a very significant issue, as well as producing a specific brochure for former child migrants and working with the Child Migrants Trust to see that information on that was made available to those who needed it. Elsewhere in the Commonwealth, the National Archives has been very heavily involved in working with the Child Migrants Trust to make available as much information as possible to enable former child migrants to access what information they need about their family histories, and there are other connections that the archives can help them with. My understanding is that the National Archives has been very heavily involved over a long period.

As to the other services available, following a series of inquiries in the latter part of the 1990s, state governments have become more involved with funding of assistance in this area, as indeed have some of the religious agencies in providing funding and services. Most recently, of course, the British government has provided a considerable amount of funding for travel reunion schemes, subject to certain conditions. So we have been involved in a portfolio throughout the 1990s—mainly within the context of our settlement services grants schemes, which have their own mode of operation—and there has been funding coming from a variety of other sources towards ameliorating the consequences and the legacy of child migration.

The more difficult question you asked was: is there enough; is there a needs analysis? I think that is a very hard question to answer. I do not think we have the definitive answer as to whether it is enough to meet all of the need. It depends on the size of the group you consider—if it is less than 4,000, it is hard to make an estimation. If you put together all of those things that have been provided over time, what are the services that are still needed by child migrants who have been adversely affected? That is a very hard question to answer, and no doubt some of the submissions that have been put in will be helpful in reaching an understanding of that.

Senator KNOWLES—Has there been any work done in pulling together all Commonwealth government departments to know what their contribution is to aid those who need assistance,

for example, in the health area or with counselling or whatever? While this money goes through the trust, is that considered to be the overall lump sum umbrella money from which it is then dispensed into areas of need, or are there other government departments putting money in to support the infrastructure?

Senator MURRAY—Do you mean in general services or directly?

Senator KNOWLES—In general, yes.

Mr Hughes—I think the amount of money that we have given to the trust continually throughout the 1990s is the easily identifiable amount of money. It is always much more difficult to say how much else has been spent through mainstream services, which I would hope in one form or another have been benefiting former child migrants with medical or other problems they might have. I am not sure whether there has been a particular study on that ever. Mr Page might be able to enlighten me.

Mr Page—There has not been a study in the spirit of the Senator's question. The Australian government response to the British House of Commons inquiry tried to set the framework that Mr Hughes has just referred to—that is, all services in Australia ought to be recognising the needs of this particular segment of the population. And although the Child Migrants Trust is putting forward a fairly convincing argument that it has almost unique expertise, that is probably expertise that needs to be shared and spread into other services.

All states, in terms of the Australian government response, committed themselves to recognising the target group. Whether they are doing so adequately or not, I am sure this committee will discover in the course of its inquiry, but it seemed to me that that Australian government response sets the framework for pursuing the question that Senator Knowles is raising.

Senator KNOWLES—One of the things, I suppose, that I have difficulty in understanding in all of this is, for example, if a child migrant decides they need counselling, who in the end picks up the tab for that counselling, because sometimes that person might not necessarily want to identify themselves publicly as being in that category, but it could go on for some time and at some expense? The same would apply to people who want to improve their education; they want to undertake further studies. Is there any support that is given to those people in a financial sense from other government departments, or once again, does that come under the trust and they have to work through the trust?

Mr Page—If I can offer some views without necessarily being held to the literal meaning of everything I say—

CHAIR—Have a shot, Mr Page.

Mr Page—The impetus for action has arisen from the funding that we and others have given to the Child Migrants Trust, so there is a degree in which the needs have been exposed by that activity and are now at a stage where a whole lot of other questions of the kind that you are raising come into play. At what point the casework focus emphasis of the trust merges into a mainstream response to a segment of the population is not all that clear-cut. What has happened

to date is that people have increasingly made their concerns and needs known to the trust or similar bodies. In that context, of course, a certain amount of preliminary counselling has to occur, even on the issue of tracing family, and the question of whether an individual actually wants to engage in that possibly stressful activity. And probably coinciding with that is a much deeper sense of therapeutic and possibly even deeper psychiatric counselling that may be required for certain individuals.

The trust, I think, argues that all that cannot be separated and needs to be regarded in a holistic way. The weakness in that approach is that it confines your resources and limits them by geography, often placing them at the margin. So we are trying to use that energy to convey the same expertise into all aspects of counselling. Therefore, in future years someone might be able to say, 'Yes, a proportion of the health vote did pick up the particular needs of child migrants.' A proportion of the social work counselling that Centrelink might give to its clients for various reasons might encompass some of the needs of child migrants or even their children but, at the moment, there is no ready-made construction that is pulling that together except for the funding of the trust. As Mr Hughes has pointed out, that is currently within the competitive environment of the numerous settlement needs that other incoming migrants are experiencing.

CHAIR—I would like to ask to ask some further questions. You mentioned archives. A number of submissions refer to the difficulty of getting access to records. I suppose that gets a little easier in some cases and much harder in many other cases. But we have also been advised that getting originals from archives is, if not impossible, very close to it. That is often not satisfactory for people. Who owns the archives?

Mr Hughes—We cannot speak for the archives because we do not administer the Archives Act. Mr Page might have some information on that particular issue, though.

Mr Page—I believe the senator is right. The Archives Act is administered by the National Archives. Because certain documents were in the hands of immigration authorities at some time and clearly were not returned to the original owner, they have become official documents and are therefore archived. Under the Archives Act, people can only get copies. I understand the problem you are raising, but I think that would probably require a change in the archives law.

CHAIR—Thank you for that. Do you know if there is any cost to people who are looking for records through archives?

Mr Page—I think not. I think that is one of the things that they have waived. But I also think that a large number of the records people are looking for are unlikely to be, and never were, in national archives. They are more likely to be the records of institutions, which, as many of the submissions are saying, either have been destroyed or are said to have been destroyed, and which might contain highly personal information—of concern, on the one hand, and abuse, on the other hand, to an individual.

CHAIR—Some of the submissions and some of the evidence we have already discovered say that people might have, for instance, arrived in Australia clutching a birth certificate that said their name was John Smith but in fact they had been born as Peter Brown, or they have got a certificate that says that they are Mary Jones and they were born of a different order altogether.

Can you provide any information about how people then can seek the truth, when the documents are all lies?

Mr Page—That is the harder question. I can begin to explain why that might have happened. It comes to the fact that, as I said before, many of these children were already in institutions. From the point of view of Australian immigration, a child was identified by what I might call the sending agency. Whatever that sending agency said the child was called, and whatever details were provided, were accepted for immigration purposes. I notice that in some submissions people are saying they did not get ‘visas’. Nor would anyone else from Britain have got a visa in those days, because they were not required to get visas. They say that they did not have a passport; that is also possibly true. They probably travelled on a document of identity that allowed them to travel from Britain to Australia without the need for passports to be issued at all. So we are dealing with the kind of documentation that would turn into a kind of manifest or a list of passengers on a particular ship, received in Australia by someone who was expecting that list of people. The hard part of your question is how to get beneath those flaws in the documented system and reunite people. Again I would have to say that is an area in which the Child Migrant Trust claims, and deserves to claim, some successful expertise. Exactly how, I cannot say.

CHAIR—We understand there has been some success. We understand there has also been extreme difficulty. Along with that, it is interesting to me that your submission has a line, on page 10, indicating that it was thought better that migrants were denied contact with their families. That is the next step from being called John Smith when you were really Peter Brown, it seems to me. The submission states:

This practice appears to have been common in institutions in both the United Kingdom and Australia at that time in relation to children who were illegitimate. The motive appears to have been to avoid the stigma associated at that time with illegitimacy—it was thought better for the child to be seen as an orphan rather than as illegitimate, while at the same time, it protected the privacy of the unmarried mother.

Do you have any documentation or departmental records that could indicate that that is what the thinking was?

Ms White—No. Those comments were derived from secondary sources, where that was generally the view that was being expressed by a number of other commentators.

CHAIR—So it was thought that it would be better to be an orphan than to be illegitimate?

Ms White—That was taken from other sources. It was not from departmental records.

Mr Hughes—Perhaps the other point here is that this part of the submission was trying to understand the social context of the time, based on the research that we did. Those sorts of practices would have related to child welfare practices at the time, rather than immigration practices. The immigration authorities of the time would have accepted whatever documentation was provided by a sending institution.

CHAIR—‘Welfare’ hardly seems the word, does it, Mr Hughes? To call it child welfare when I am one of 50 children who arrived on a bill of lading—a manifest—to deliver this bunch of

50 children to Australia. That will make me wake up in the middle of this night, 'I arrived under a manifest.'

Mr Hughes—It is interesting how views of child welfare practices change over time.

CHAIR—Absolutely. I would like to ask a couple more questions. Some groups have argued that the Australian Commonwealth should match the UK government's contribution to travel assistance. How would the department respond to that?

Mr Hughes—In a couple of ways. Firstly, the funding that we provide for the Child Migrant Trust, as we have for over a decade, is through our Community Settlement Services Scheme. Therefore, it competes with other migrant settlement needs. Also, in terms of the base of its funding, it is concerned with helping organisations to help their clients rather than community organisations, often ethnically based. In its guidelines it does not usually involve actually giving organisations money to give somebody else. In the context of the way we funded the Child Migrant Trust as part of the Community Settlement Services Scheme, I guess it would be out of the scope of the usual practice of schemes to provide that kind of money for that kind of purpose. I suppose the other issue is the question of whether, now that the United Kingdom government has provided \$2.5 million, the travel reunion need is met or is not met. That is something that it is very hard for us to make an assessment of.

CHAIR—How could the department fund it—as a separate line item?

Mr Hughes—I think it would have to be on a basis entirely different from the basis on which we have assisted the Child Migrant Trust.

CHAIR—Are you saying, though, that it is possible for the department? I am not saying that you will, but should it be agreed by a government, for example, that funding from the Australian Commonwealth should go to assist with travel, could your department do that as a separate item?

Mr Hughes—It is a matter of government policy. If a government wanted to do that, we would obviously have to look at the technicalities of how funding would be provided.

Mr Page—If I may add to that: the experience of the British government in administering that travel fund to date is, as you would expect, that it is seen immediately as too little, confined by time, confined by the criteria that had been adopted. I think that before any such supplementation from the Australian end occurred, we would need to be pretty precise on exactly what it was we were seeking to contribute to.

CHAIR—You argue on page 41 against the blanket compensation for child migration victims as neither appropriate nor even possible. It has been suggested in other places that a tribunal could be established to address the issues of compensation. Would the department care to comment on or respond to that proposal?

Mr Page—Could I say first that I do not think we are attempting to argue that point as much as to express what current government policy and approach to these issues are. Therefore, we

could not rule out the possibility of a tribunal. But I think you would find that, as with other tribunals, the cost of administering the tribunal might exceed the amount it had to administer.

Senator MURRAY—There is another option. Let us take a hypothetical example. An existing tribunal or a new tribunal could be set up to adjudicate on compensation issues between, for instance, a child migrant and the body which formerly had custody of them. That tribunal might have to determine what unpaid wages—with interest, and at today's values—should be paid out, and the institution might have to find that money. That would be a practical case of, say, 'I was there such and such a time. I should have received £25. I didn't receive that. Where's your record that you paid it?' 'There is none.' 'Well, cough up.' And the tribunal would have to determine that. In other words, I am suggesting we should not examine the tribunal possibilities in a narrow way. There are many ways in which a tribunal could deal with issues of fact, 'Were you were paid or not paid the wages?' and adjudicate an amount.

Mr Page—Certainly.

Senator MURRAY—In that case, the Commonwealth would simply provide the facilitating mechanism for something which is between an individual and an organisation.

CHAIR—Does your department accept any responsibility, for example, for the failure of wages to be paid to children under the Child Migration Scheme?

Mr Hughes—I do not think the department does accept responsibility for failure to pay wages.

CHAIR—I am not sure that I can find the right words but, in the light of Senator Murray's suggestion about what a departmental tribunal could do, could I ask the question again. It is not necessarily that I want to sheet home the dollar liability to the department, but in the beginning your minister provided guardianship or custodianship and took responsibility for the care and proper support of child migrants. If they were duded of their wages—if they were indeed, as the Women's Group of Public Welfare and the National Council of Social Service said in 1951 and probably earlier, claiming to have conducted research for two years into child immigration and to believe that British children who had been taken overseas were being exploited as cheap labour—if indeed they were not being paid, they were being exploited as cheap labour, would that seem to come within the ambit of a failure to properly provide care for these migrants?

Mr Hughes—As you have expressed it I do not think it would, in the sense that in the legislative scheme, that we described earlier, the Commonwealth had envisaged that other people—the state welfare authorities—would act with the minister's full powers and responsibilities as delegate. They would also provide custodians for the children and reach agreement with the custodians about care of the children.

CHAIR—Mr Hughes, I am here to say that they failed, and I am here to say it to you. You signed the contract with the British government—you understand that I am now doing a kind of pseudohypothetical—to care for these people. Are you absolutely adamant in your, 'No, we are not liable for requiring that the state government or an institution now provide wage justice to exploited workers,' for example?

Mr Hughes—Obviously, that is a legal issue in a particular case. In other words, we are making generic statements here, which is always difficult, so a particular claim has to be made and legal liability has to be determined.

CHAIR—Given, hypothetically, that all that is true.

Mr Hughes—Given the whole hypothetical situation and discussing the structure of the historic responsibility of ministers in this area, I do not think the issue would arise unless it was shown that the administration had been aware and did not take any action. That issue would be very important in looking at any specific legal liability, but it is very hard to speak in terms of hypothetical circumstances because there really is a need to look at what the individual claim is and against whom the claim is being made. Mr Mowbray might like to add to that.

Senator MURRAY—I will ask Mr Mowbray a question in that relation. As I understand from my readings so far, neither the Commonwealth government nor the state governments withheld the moneys that should have been paid, as alleged by a number of witnesses. Therefore, they are not liable in that sense. If those organisations still exist in one form or another and have assets, I assume, Mr Mowbray, that a valid claim could be made. Fifty years ago you should have paid me £25. You did not, you still have assets and I am due £25, adjusted to today's values. Here is my claim and you cannot prove you paid me. That is an issue capable of being resolved as a matter of fact and a matter of law, isn't it?

Mr Mowbray—It would be subject to the exercise of the statutes of limitations. If you have an action in contract—assuming it is in contract for present purposes—you would be subject to limitation legislation if you brought that action in the state court. I should have mentioned earlier on that, although there are particular limitation periods prescribed in the state legislation, the court can extend the period for bringing the action, too. So there is a certain discretion in most limitation acts. It would be subject to the exercise of that discretion by the court. But you would have to prove that there was a contract of employment and that you did work the period you were owed. It is like any legal action. The onus is on the plaintiff in those circumstances to prove that there is a liability and that that should be met.

Senator MURRAY—If the committee recommended, and the government agreed, that it would be best to do this in a manner which was not dragged out at length in expensive court litigation, would it be possible to set up a legislative device to have a judicial tribunal—or some other tribunal with those sorts of powers—to deal with these issues? Is it your view that it would have to go through the courts as a matter of practice or that it could be dealt with as a tribunal matter?

Mr Mowbray—Senator, you are in a difficult area there, and I would not want to provide any conclusive advice because, if it were a matter of federal jurisdiction, you cannot establish a tribunal that is exercising judicial powers other than a court. That is where, for instance, the human rights commission got into trouble in the Brandy case. You would have to look at the nature of the powers that you wanted the tribunal to exercise, and such like, to determine whether or not it were something that would have to be adjudicated in a court or whether it is something that could be adjudicated in a tribunal. I am not sure that I can go further than that at this stage. We would need a clearer view of the nature of the operation that you had in mind before we could give advice on that.

CHAIR—One of the problems that this committee has to deal with—and I think Senator Knowles has probably spelt it out very well—is that we all understand that that was then and now is now, and they are different. The criteria that we might want to sit in judgment on behaviour back then have to be qualified. If we are going to be fair and reasonable, we do have to appreciate that there were different understandings of what was called welfare for children et cetera.

One of the things that people said to this committee is that maybe you have to go for compensation. But a lot of people are interested in something wider or alternative to compensation. They may indeed look for assistance over a number of areas—for instance, access to records, contact with family, family reunion, wage justice for work done and not paid. It may well be that, on balance, the committee will have to weigh up the difference between whether we choose what sorts of things might best solve problems and assist people to get on with living a more fruitful and constructive life than they are currently able to enjoy. What are their major concerns and what sort of assistance they want?

If you could follow that hypothetical from Senator Murray, I think it would be very useful, Mr Mowbray. We do need to know, in questioning witnesses later on, whether it would be possible if hypothetically this happened and whether tribunal X could do whatever. The committee would be assisted if it knew what were some of the broad parameters, for example.

That may be of no help to you at all, Mr Mowbray, and when I read the *Hansard*, I will probably wish I had not said all of that or at least that I had said it more lucidly. But I think what the committee has to deliberate on is how best to take the information provided to us and make recommendations of where we go from here. For example, would it be better to be looking at assisting people with a litany of a number of things that are causing major upset in their lives—anger resolution, access to counselling, privacy protection? In other cases, it is travel or access to records and so on—a lot of things that people want to deal with rather than just going the ‘we demand compensation’ way. But it will be no good if you want to recommend that way, if you are going to be told, ‘Yes, but in fact, under laws, you can’t do it.’ It is no good saying to people, ‘Would this help?’ and then be told, ‘But there’s no way in which that can be advanced.’ So I suspect, Mr Mowbray, it is a hypothetical. For example, perhaps it could be possible to look at a federal government tribunal that did not pay or did not do things, but in fact became a conduit for sorting out between the parties ways to do things.

Senator KNOWLES—Does Mr Mowbray have a comment on that suggestion? I do not want to see the committee sending you off on a frolic that is impossible to deliver.

CHAIR—That is a good point.

Senator MURRAY—It might be worth our while if you could let us know if there are any existing judicial mechanisms which might serve this purpose. Within the states, are there small claims courts, or those sorts of things? If this statute of limitations that was agreed between governments were adjusted so that these things could be dealt with, would a small claims court fulfil what we after or would we have to create a new mechanism? Is that helpful?

CHAIR—Senator Murray, I do not know, but it seems to me that it is not without parallel to the equal opportunities legislation. Under Commonwealth legislation, the prospect of mediation,

of talking things through is available before one has to rush into court without looking for solutions in the usual adversarial way in courts.

Mr Mowbray—Certainly, most states have small claims tribunals or courts. I cannot tell you offhand what their jurisdiction is and what sort of impediments there might be to someone bringing a claim like that in those tribunals. The biggest impediment, I think, is the time, whatever form of tribunal you might have. The lack of evidence, people's memory, the prejudice to the employer as well as the employee: those are the sorts of things that might be considered by a judge in determining whether to extend the time limitation. That is probably more significant for many of these things than just the normal jurisdiction of a small claims tribunal.

I would not want to be quoted on this, but I imagine that most of these claims, leaving aside financial impediments, could be taken in the state supreme courts currently, subject to the limitation period being extended. As you have already said, you do not want to set up or encourage people to go through a mechanism that will cost them more than they will actually receive in return.

CHAIR—Mr Mowbray, does the caution from Senator Knowles mean that you can still take a look at some things that might be able to assist the committee or are you saying to us it is a frolic?

Mr Mowbray—I think we can look at some of the mechanisms fairly easily that are available in the states at the present time to determine what jurisdiction they might have, what impediments there might be and just see what comes out of that. I am not wanting to promise you or raise your expectations too much but, certainly, that is something we could have a quick look at.

CHAIR—I think we would find that very useful. We said that we would have evidence between four and six. We have come to six, so this hearing will come to a close. I want to put on record, or ask you on notice, about the Settlements Service Grants Schemes that you referred to. I understand that the schemes allow you to delegate to state governments or to migrant organisations a lot of the work that the Commonwealth has responsibility for—have I got that right?

Mr Hughes—I would not quite put it that way.

CHAIR—Please put it more accurately for me on the record.

Mr Hughes—These are arrangements that have been in place in many forms for very many years, and the Community Settlement Services Scheme in effect allows community organisations to make submissions to the government about settlement needs that they would like to provide a service to support, and we provide funding in the form of grants to assist them to do so.

CHAIR—Could you provide on notice to the committee how you satisfy yourself that the states or organisations are doing what the Commonwealth has contracted them to do? This

would be in comparison with the 1950s when it seems there was less supervision from the Commonwealth about what the Commonwealth was responsible for?

Mr Hughes—For the Community Settlement Services Scheme, we can provide you with the—

CHAIR—I know all those things.

Mr Hughes—details of the monitoring arrangements for that.

CHAIR—That would be useful.

Mr Hughes—It is community organisations though, not state governments.

Mr Page—But, Senator, under that scheme, we are not contracting in the sense that I think you mean. We are funding an application by a community organisation to do something.

CHAIR—How do you know they have done it, Mr Page? That is my question. I think Mr Hughes understands.

Mr Hughes—Yes, we can answer that.

CHAIR—Yes, but I appreciate your point of difference, too. Is child migration still a matter for Commonwealth state ministerial council meetings?

Mr Hughes—Child migration, in the form that is being discussed in the submission and in the committee's terms of reference, does not continue, although some children remain covered by the Immigration (Guardianship of Children) Act in certain circumstances that we have mentioned in the submission, children coming to Australia before the adoption process is completed and some humanitarian entrants.

CHAIR—There are many more questions. At some stage we will probably take the opportunity to put them to you. I thank you very much for your submission and for your coming along today to the opening session of this inquiry. I am presuming that, if we have further questions, we can put them to the department and to the Solicitor-General and you will assist us with further questions as they come to light?

Mr Hughes—Yes, Senator, we would be happy to.

CHAIR—Thank you, Mr Hughes. I thank you for your assistance today and for your acceptance of the questions on notice. We look forward to that information from you.

Committee adjourned at 6.02 p.m.