Senate Inquiry into Child Migration -
QUESTIONS TAKEN ON NOTICE

DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AFFAIRS

Tuesday 6 February 2001

Introduction

The Community Affairs References Committee's questions required the Department to undertake further research into archived documents. This was done by reviewing relevant documents from the National Archives of Australia in Canberra. Some 62 files at National Archives were examined in this process. A list of the files examined is at Attachment A.

The Department has tried to address the Committee's questions as fully as possible. However, it is noted that the archival records available only provide 'snapshots' of events over a long period of time rather than a complete, comprehensive history of child migration to Australia.

The material attached complements the material provided in the Western Australian Family and Children's Services' submission, which drew on the wide range of National Archives records that are held in Western Australia. The names of children mentioned in some of the Inspection reports have been blocked out for privacy reasons.

Question 1 -

Senator Crowley asked the Department 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." [1]

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[1] Proof Committee Hansard - Senate Community Affairs References Committee Canberra 6 February 2001 Page CA 8

Response to Question 1 -

From the files that were examined, the Department was not able to find evidence that the Commonwealth was made aware that children had been subject to abuse in the institutions, other than in relation to particular incidents of sexual abuse that occurred in Barnardo's Home in Picton in 1958. As soon as the Commonwealth was notified about these incidents, it acted to ensure that remedial action was pursued as quickly as possible.

In examining the archival records to address Senator Crowley's question, particular attention was given to any instances of the forms of abuse referred to by Senator Murray at the Hearing on 6 February 2001- namely - emotional deprivation, systemic cruelty, assault (common and criminal), sexual abuse, and deceit over names, origin, family relationships, correspondence, possessions, withholding of records, deprivation of wages, and sense of loss of country. The findings in relation to these matters are summarised below.

Emotional Deprivation

From the sample of archival records examined, it appears that authorities and institutions at the time placed greater importance on the physical living conditions of the children than on psychological or emotional factors. As stated in the Department's first submission[2], this appears to have been consistent with the standards of the day.

Systemic Cruelty

There was nothing in the archival records examined that indicated "systemic cruelty". Reports and letters on the files did not point to the children being treated cruelly, physically or emotionally. Often to the contrary, the inspection reports contain comments such as:

> "…the general atmosphere of the Institution [Bindoon Boys' Town] is good and everything appears to be done to assist the children, and I am sure the Manager, Brother Keaney, has the welfare of the boys at heart. In my opinion many more institutions of similar nature could be incorporated in the social structure of the country with great benefit to Australia generally." (Please refer to Attachment B).

There was also no evidence on the files about the children reporting that they were being mistreated. The Commonwealth relied on such reports to ascertain whether the welfare of the children was being safeguarded.

Physical Assault

The archived files that were viewed did not indicate that the Commonwealth was aware that children had been physically assaulted. Some inspection reports

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[2] Senate Inquiry into Child Migration - Submission by the Department of Immigration and Multicultural Affairs December 2000.

indicated that a child had a broken limb or was ill - however, these were explained in terms of accidents and the normal course of growing up.

Sexual Abuse

Within the files examined, there was one case pertaining to sexual abuse of which the Commonwealth was made aware in 1958, at the Barnardos Home in Picton.[3]

Records indicated that the Superintendent at Picton uncovered "serious sexual malpractices" between "certain staff and boys" at Barnardos Picton, in May 1958. He alerted NSW Child Welfare and the Barnardo's authorities in Sydney. The police were called and arrests followed.

The Minister for Immigration, Mr A R Downer, banned the arrival of further parties of children to all Barnardo's Homes in Australia in June 1958 (please refer to Attachment C). The ban was lifted in August 1958, after inspections showed that the matter had been satisfactorily dealt with, and that the offenders had been tried.

At a meeting on 23 October 1958, both Commonwealth Relations and Home Office in Britain agreed that Barnardo's had taken decisive and effective action to resolve the problem. The Home Office did not raise any objection to the continuation of emigration to Barnardo's institutions in Australia.

There was a follow up inspection of the Barnardos Homes in NSW in April 1959. The report dated 6 April 1956, gave the homes the all clear (please refer to Attachment D).

Deception regarding Identity

The Australian Commonwealth Government relied upon the authorities and institutions in Britain to provide accurate and complete records for the child migrants. The Commonwealth was concerned to ensure that the correct identity and age of the children could be proven when they arrived in Australia, and that appropriate records were being kept. This is evident from a memo sent by Mr Heyes (Secretary, Department of Immigration) to the Commonwealth Migration Officer in London, dated 4 February 1948:

> "…at the Conference on Immigration between Commonwealth and State Officers in Canberra on 20/1/48, the West Australian State representative - the Under Secretary for Lands and Immigration, raised the question of British child migrants arriving in this State…he referred to the fact that a number of such children had arrived for whom no copies of Birth Certificates had been forwarded from your office, which presented great difficulties inter alia in proving the age of the children for Child Endowment and Maintenance payments. In a number of cases also, he stated that the names and ages on the Birth Certificates received did not match with those recorded on the Nominal Roll…..It is therefore

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[3] Information in National Archives File "Child Migration - Dr Barnardos Children's Homes - NSW" Series A446/182 - Item 1956/67312

> requested that in future, copies of Birth Certificates be included in the Personal Documents forwarded to the appropriate Commonwealth Migration Officers in the States in respect of each child…"[4]

Another example of this is shown in the case of a youth who came to Australia as part of the Big Brother Movement in NSW. The Secretary for Immigration once again wrote to the Commonwealth Migration Officer in London questioning why this youth only had a copy of an entry in the Adopted Children's register and not a Birth Certificate.[5] The response was not very clear on why a Birth Certificate had not been provided previously, however, a "short form" Birth Certificate was then provided for the youth.

It appears that whenever documents provided for the child migrants were discovered to be inadequate or incorrect, and the matter was brought to the Commonwealth's attention, the Secretary for Immigration took the matter up with relevant authorities in the UK.

Deprivation of Wages

There was recognition by the Commonwealth and State governments that the youth who were trainees or apprentices in the Homes should have received appropriate award wages from the Institution. This is evident from the documents at Attachment E, where recommendations were made for the amount of wages that trainees should have been receiving at Bindoon. Furthermore, Attachment E sets out the payments for various services that the trainees should have received, under sections 51 and 54 of the Western Australia Child Welfare Act, 1947.

Attachment E also contains information about the policy on employment and education for the child migrants. This document outlined the wages to be paid to children who were trainees, as well as the policy on how long children were to remain in school and the length of the traineeships.

In general the archival records examined, it appeared that the issue of wages was a particularly contentious one, at least as far as some Catholic authorities were concerned.

Sense of loss of Country - a lack of belonging

From the archival records that were examined, the Commonwealth and State authorities appeared to recognise the importance of the children 'belonging' in the communities that they had been introduced into - mainly it would seem, to help them to grow up into productive adults in Australia.

For example, the inspection reports at Attachment F discussed the extent to which the children had contacts outside the Home. The inspections by John Ross in 1956[6]

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[4] National Archives file - "Child Migration - general policy part 2" - Series A446/182 - Item 1960/66717
[5] National Archives file - "Child Migration - general policy part 6" - Series A446/182 - Item 1960/66721
[6] Commonwealth Relations Office, 1956, "Child Migration to Australia Report of a Fact Finding Mission" - (Ross Report)

prompted the Commonwealth to ask the State Delegates to investigate what opportunities were available for child migrants to mix with Australian children, visit Australian families and to become part of the Australian community after they left the institution. While this had been an element of the on-going inspections, the Ross report highlighted the importance of these factors.

Other examples of cases brought to the Commonwealth's attention

There were also some reported instances of children being 'uncontrollable', running away from the Homes, having accidents and so on - some examples are given below, while others are included at Attachment G.

In a letter dated 8 December 1950[7], the Secretary of Immigration Mr Heyes wrote to the Chairman, Children's Welfare and Public Relief Board (South Australia), regarding a child running away from Goodwood Orphanage:

> "…in certain circumstances it would not be practicable or wise for the child to be returned to the Institution, but I take it from your letter that in the instance of [child's name], the Catholic Authorities gave you the impression that if any unsuitable children came to their Home, they would pass them onto the care of the State….If this is so, the attitude is most unfortunate…"

To a letter dated 29 December 1950[8], Father Roberts wrote to the Secretary, South Australian Child Welfare Department outlining how the child had run away from the Home, the Secretary replied[9] :

> "The welfare and care of every immigrant child of whom you are custodian is your responsibility."

There was a report in July 1957[10] of a car accident in which four Barnardos boys were injured, from Mr Hicks, Director of NSW Department of Welfare to the Secretary of Immigration. There are follow up reports which discuss how the boys were recuperating and damages and compensation awarded to them. These reports are included at Attachment G.

There was also a report dated 19 November 1957[11] in relation to a child, describing his history of theft and absconding which is included at Attachment G.

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[7] National Archives file "Child Migration - St Vincent de Paul Orphanage - Goodward [sic], SA - Catholic" - Series A446/182 - Item 1956/67269.
[8] ibid.
[9] ibid.
[10] National Archives file "Child Migration - Dr Barnardos Homes - NSW" - Series Number A446/182 - Item 1956/67312
[11] ibid.

Question 2 -

Senator Crowley also asked -

"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?"[12]

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[12] Proof Committee Hansard - Senate Community Affairs References Committee Canberra 6 February 2001 Page CA 8

Response to Question 2 -

Reporting Processes

Regular inspection and reporting processes were in place to help ensure that children in the institutions were receiving appropriate levels of care. In the Department's original submission it was said -

> "The Commonwealth contributed financially to the support of the child migrants in conjunction with the States and the institutions, and was involved in some monitoring of the welfare of the children. However the Commonwealth's involvement appears to have been in conjunction with State governments in response to particular concerns that had been raised, or at the instigation of the British Government."[13]

> "The inspectorial system of monitoring the care of children in institutions appears to have been the main mechanism in place until the 1960s."[14]

Various State child welfare and education authorities conducted the actual inspections and copies of their reports were forwarded to the Commonwealth Department of Immigration, through the Commonwealth Migration Officer in that State. Copies of such inspection reports are available from files held at the National Archives.

For the Committee's information, an example of the sequence of inspection and reporting appears to have been as summarised below.

An inspector (eg a State Welfare Officer) inspected the Home and produced a report that was submitted to children's Guardian in that State (as delegated by the Minister for Immigration). For examples, please refer to Attachments H. (Please also refer to the Department's original submission - Annexure A[15] for the Minister's delegates in each State and Territory).

The Delegate might request further information about the Home and confer with the relevant State authorities about any issues. These authorities may have been religious bodies responsible for the institutions in that State, as well as relevant State government authorities and State based Commonwealth authorities (for example, please refer to Attachment I).

The Delegate or the Commonwealth Migration Officer based in the State would send copies of reports to the Secretary of the Commonwealth Department of Immigration (for examples please refer to Attachments J-N).

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[13] Senate Inquiry into Child Migration - Submission by the Department of Immigration and Multicultural Affairs December 2000. Page 8.

[14] Senate Inquiry into Child Migration - Submission by the Department of Immigration and Multicultural Affairs December 2000. Page 25.

[15] Senate Inquiry into Child Migration - Submission by the Department of Immigration and Multicultural Affairs December 2000.

The Secretary would respond to the reports (see Attachment O), following up on particular problems drawn to his attention (please see Attachment P).

The reports indicate that the inspectors concentrated mainly on the following features of the institutions -

- Physical condition of the orphanage - age of buildings, cleanliness and size - and whether any buildings need extensions and/or renovations
- Physical accommodation for the children - dormitories and locker rooms
- Furniture and bedding
- Physical condition of the class rooms
- Equipment in the class rooms
- Kitchen and Dining room
- Laundry
- Baths, showers and lavatories
- Exercise and recreation facilities and grounds
- Any farming facilities or live stock
- The staff in attendance - male/female and numbers

In most cases, the physical health of the children themselves was summarised as "generally good" and some individual cases were highlighted eg "six lads show signs of ringworms and one lad…is reported to have bad ears…", followed by a recommendation that a medical officer should see these boys as soon as possible.

The emotional health of the children seemed to be addressed briefly in the conclusion of the inspection reports. For example:

> "…the general atmosphere of the Institution [Clontarf] is good. The children appear to be happy and Brother Crowley and the Brothers and Sisters in authority appear to have the welfare of their charges at heart and to be doing everything possible to assist them." (Attachment H).

Other meetings where the welfare of children seemed to have been discussed regularly, were the Conferences of Commonwealth Migration Officers, and the Conferences of Commonwealth and State Officers. While the Department was not able to locate complete minutes or notes of these conferences, records indicate that the issue of child migration was included on the agendas (for example, please refer to Attachment Q). These conferences were also referred to in various letters, and extracted items from the conferences can also be found in some of the archived files that were examined.

Question 3 -

Senator Crowley asked the Department to provide…

"…to the committee the information on the Commonwealth situation and any other information you have on the distinction between guardianship and custodianship." [16]

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[16] Proof Committee Hansard - Senate Community Affairs References Committee Canberra 6 February 2001 Page CA 12.

Response to Question 3 -

The Australian Government Solicitor has provided the following definitions which highlight the relevant broad distinction between a guardian and a custodian.

Definitions

- guardian: 'one who is entrusted by law with the care of the person or property, or both, of another, as of a minor or of some other person legally incapable of managing their own affairs'[17].

- guardian: 'In relation to a child, a person with the right to make decisions about the long-term needs of the child, as opposed to the day to day care of the child'[18].

- custodial parent: 'A parent who has custody (that is, the daily care and control) of a child'[19].

The traditional role of a guardian

The legal concept of guardianship has long encompassed the full range of rights, powers and duties that can be exercised by an adult in respect of a child[20].

The law appoints guardians to protect an infant's person and property, or permits them to be chosen. The guardian performs the double office of educating and protecting the person of the ward, and managing his or her affairs and property until he or she attains majority. At common law guardians are entitled to the legal care and custody of their wards[21].

Guardians are required to act in all respects towards their wards like good and prudent parents. However, there are differences in the legal relationships. The guardian is in loco parentis only in a modified sense. Generally "the powers and authority of the parents are far wider and larger, and less subject to judicial control, than those of the guardian, though on the other hand, the liabilities of the guardian are in some respects less than those of the parent." The parent must support his child from his own means. "But the guardian is not bound to supply the wants of his ward, except from the wards own estate in his hands and the liberality of others, though it were to keep the child from starving"[22].

The Immigration (Guardianship of Children) Act modifies the traditional role of a guardian. The Act does not define guardian, so the ordinary understanding of that word, as discussed above, must be taken as the proper meaning. However, in ascertaining legal obligations and liabilities imposed by the Act, it must be

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[17] The Macquarie Dictionary (3rd edition).
[18] Butterworths Concise Australian Legal Dictionary.
[19] Ibid.
[20] Dickey Family Law (3rd edition).
[21] Eversley on Domestic Relations (6th edition).
[22] Ibid.

recognised that the legislation does in some ways modify the traditional role of a guardian. For example:

- the Act envisages delegation of the powers and functions of the Minister to State welfare authorities; and

- together with the regulations, the legislation provides inspection and other powers to State welfare authorities to supervise custody, and envisages that the State authority would be primarily responsible for supervision of the welfare and care of children covered by the Act.

Most notable among these are section 6 of the Act (which provides for the Minister's guardianship of certain non-citizen children), section 7 (which empowers the Minister to place a 'non-citizen child' in the custody of another person) and section 5 (which empowers the Minister to delegate all or any of the Minister's powers under the Act other than the power to delegate).

Judicial comments on the Act

The role of the Minister as guardian under the Act has been commented on by a judge of the Federal Court (Justice North) in addressing the question whether unaccompanied minor non-citizens required a tutor in order to institute judicial review proceedings against the Minister. The judge said "The guardian must therefore address the basic human needs of a child, that is to say, food, housing, health and education." [23]

In later proceedings in which the same applicants sought to have the Minister as guardian provide funding for their living expenses, including accommodation, schooling and medical services Justice North said that "The duty of the guardian under s 6 is to protect the interests of the person under care. Whilst the guardian must ensure that the person under care is properly fed, clothed, housed and educated there is no absolute duty on the guardian to provide the funds for those purposes. The guardian may discharge the duty by arranging for others to bear the financial burden of the living expenses of the person under care."[24]

Although these judicial comments are broadly relevant to the role of the Minister as guardian under the Act, they concerned issues that are quite different from the suggested breaches of duty that the Committee has mentioned.

Standards of care change over time

While the duties and liabilities of guardians, both generally and under the Act, have remained broadly the same during the period in which the Act has been in force, the standards according to which those duties and liabilities are measured have changed (the standards expected of custodians and others who may have duties of care would also have changed).

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[23] X v Minister for Immigration and Multicultural Affairs (1999) 164 ALR 583.
[24] X v Minister for Immigration and Multicultural Affairs [2000] FCA 704.

In relation to duty of care considerations, the standard of care must be determined according to the standards of the time[25]. In this regard the limited financial resources available to the Commonwealth after World War 2 may be a relevant consideration, as it was found to be in Cubillo v Commonwealth[26].

Other matters that could be relevant in this regard, depending on the circumstances of the particular case including who is alleged to have breached a duty of care, include prevailing attitudes at the relevant time to things such as:

- institutionalisation, of persons generally and of children in particular, as a part of 'normal' social policy;
- the standard of care expected of the custodian of a child, in particular when the child is not in the custody of his or her parent or guardian (it is notable, for example, that the age of majority itself has been reduced from 21 to 18 during the period in which the Act has been in force);
- the means by which parents and guardians can control their children or wards, including, for example, through the use of corporal punishment;
- the extent to which State authorities have (and are recognised as having) a practical advantage in dealing with issues going to guardianship and child welfare;
- the benefits of avoiding a general duplication of functions as between Commonwealth and State authorities; and
- the extent to which the Commonwealth can impose conditions on funding to States and non-government organisations for the provision of community services.

In terms of a particular standard of care that must be provided, as in the past, current legislation does not appear set a particular "standard of care", rather "a risk of harm".

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[25] Maloney v Commissioner for Railways (NSW) (1978) 52 ALJR 292; Kruger v Commonwealth (1997) 190 CLR 1.

[26] Cubillo v Commonwealth [2000] 174 ALR 97

Question 4 -

Senator Crowley asked the Department [27]**-**

"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—*Hansar*d, 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…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."

Senator KNOWLES added -

"…. 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."

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[27] Proof Committee Hansard - Senate Community Affairs References Committee Canberra 6 February 2001 Page CA pages 15-16.

Response to Question 4 -

Mr Holt's speech is at Attachment R. In it, Mr Holt strongly refuted the claims made in the reports by the Women's Group on Public Welfare (UK) and the National Council of Social Service (UK) about the exploitation of British child migrants as cheap labour. Mr Holt said "I want to make it clear to the House that there are no grounds for concern so far as Australia is concerned."

This issue was also discussed at an Immigration Department meeting - the date of the meeting is not known as the document is an extract by itself[28] - it is included here at Attachment R - page 4. This document indicates that the Women's Group was not referring to child exploitation being a practice of the day, and particularly not in Australia. The Secretary of the Women's Group on Public Welfare wrote to Mr Lamidey, the Chief Migration Officer at Australia House - "I should like to say, however, that in this report the Committee [sic] found no such practices in the present day. In fact, mention is made of the warm-hearted manner in which Australia welcomes these children."

The Department is not aware of any committee was set up by the Commonwealth in response to the views expressed by the UK Women's Group of Public Welfare and the National Council of Social Services. The Council referred to in our first submission[29]. was the "Child Welfare and Migration Council" set up in 1952 in Western Australia by the Western Australian Child Welfare Department, State Immigration Department and a church representative from each denomination with Institutions under their care.

The Council's operations were confined to Western Australia and under its auspices, a Review Committee was set up, with the aim of visiting each institution and interviewing children of certain ages. The information on this Council and Committee seem to be limited.

As noted in the response to Senator Crowley's first question, the care of the children was also discussed regularly at the Conferences of Commonwealth Migration Officers and the Conferences of Commonwealth and State Officers, as well as the Conferences on Immigration held by the Commonwealth and State Ministers.

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[28] File A446/182, Item 60/66719 -

[29] Senate Inquiry into Child Migration - Submission by the Department of Immigration and Multicultural Affairs December 2000 - Page 24.

Question 5 -

Senator Murray asked the Department [30]**-**

"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.

….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."

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[30] Proof Committee Hansard - Senate Community Affairs References Committee Canberra 6 February 2001 page CA 16-17.

Response to Question 5 -

The Commonwealth Department of Family and Community Services were consulted on this question. They were not able to add to the information already incorporated in the Department's original submission, that in the United Kingdom the social conditions and attitudes which led to many children being sent abroad were changing. This change of attitude towards childcare in Britain in the post war period and in the 1950s led to a shift away from institutional care, towards foster care and cottage style accommodation and a greater understanding of the need for children to be living in an environment which more closely approximated that of the family[31].

Therefore the child migration program to Australia appears to have diminished as a result of changes in attitudes in the UK, rather than at the instigation of the Australian Government due to an intentional policy shift in Australia.

The shift of attitude in the UK is particularly evident from the examples of correspondence and memos at Attachment S.

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[31] Senate Inquiry into Child Migration - Submission by the Department of Immigration and Multicultural Affairs December 2000 - Page 29.

Question 6 -

Senator Knowles asked the Department[32] -

"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?"

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[32] Proof Committee Hansard - Senate Community Affairs References Committee Canberra 6 February 2001 page CA 17.

Response to Question 6 -

Funding

The Department has funded the Child Migrants Trust (the Trust) through the Community Settlement Services Scheme (CSSS), formerly known as the Grant-in-Aid Scheme, from 1990 to 2001. The table on the next page lists funding allocated and awarded for each financial year.

The total funding *allocated* to date is $1,017,223. The total amount actually paid is $828,565. The difference between allocation and funding is due to following factors -

- 1990 -1998: the difference between grant value awarded and actual amount paid reflects a past funding formula under which payments were only made for the number of days a funded position was occupied.

- 1999 - present: payments are made against Work Plans and Milestones, with performance criteria. This sometimes leads to payments below the Service Agreement grant value being made.

The grants have subsidised the Trust to provide the following services to former child migrants in Australia:

- retrieval of personal information and family history;
- family tracing;
- support for reunification with families; and
- counselling.

Funding has been provided to the Trust's Melbourne office for the full period indicated below. The Trust's Perth office received funding through CSSS from 1995/96 to 1999/2000. This funding was provided to:

- assist with establishment and ongoing costs of the Perth office; and
- pay the salary of social workers in Melbourne and Perth.

However, CSSS funded CMT services are not limited to residents of Victoria or Western Australia but are extended Australia-wide.

The current national grant of $120 000 has been provided for:

- the continuation of some casework;
- development of strategies to improve former British child migrants' access to mainstream services; and
- improving the capacity of relevant mainstream services to respond appropriately to the needs of this particular segment of their clientele.

The Department is negotiating with the Trust to achieve a national work program to meet these objectives. The current grant is a response to the changed environment for support and assistance for former child migrants.

Financial Year	Victoria Grant value $	WA Grant value $	Cumulative Grant value $		Victoria Paid $	WA Paid $	Cumulative Paid $
1990-91	53,180		53,180		48,934		48,934
1991-92	55,630		108,810		30,939		79,873
1992-93	57,400		166,210		59,093		138,966
1993-94	58,730		224,940		58,787		197,753
1994-95	59,963		284,903		59,771		257,524
1995-96	60,803	60,803	406,509		32,869	52,352	342,745
1996-97	61,771	56,538	524,818		58,313	38,525	439,583
1997-98	62,760	57,443	645,021		45,957	39,624	525,164
1998-99	73,804	58,398	777,223		65,003	58,398	648,565
1999-2000	60,000	60,000	897,223		60,000	60,000	768,565
2000-01	120,000		1,017,223		60,000		828,565

Table 1: CSSS funding allocated and awarded to the Trust each financial year since 1990.

Unmet need

The CSSS is an application based scheme. Funding is advertised nationally and eligible community or service organisations are invited to apply. Priority target groups and priority services are identified in the advertisement and in advice provided to potential applicants. Assessment is based on the identification of unmet settlement needs and on the work program proposed by the applicant to address those needs. CMT applications have identified a client group whose needs they proposed to meet. A wider assessment of unmet need is not available.

However, the conditions of the current grant to CMT recognise that there may be unmet need and seek to extend the availability of services to former child migrants by improving the responsiveness of mainstream service providers. If the Trust succeeds in meeting this objective, services will be available more widely throughout Australia.

Question 7 -

Senator Crowley asked the Department[33] -

"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 MURRAY added -

"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?"

(i)

[33] Proof Committee Hansard - Senate Community Affairs References Committee Canberra 6 February 2001 page CA 25.

Response to Question 7 -

One aspect of the questions raised by the Committee in relation to possible recommendations for compensation or other legal redress concerned Senator Murray's 'hypothetical'.

Senator Murray's hypothetical involved adjudication of a claim for unpaid wages made by a child migrant against the body that formerly had custody of them some fifty years ago, on the assumption that such a body still exists in one form or another and has assets. The Committee sought advice both as to existing avenues for legal redress and the possibility of a tribunal being established to adjudicate claims.

Existing legal redress

Taking existing avenues of legal redress first, the situation in Queensland, Western Australia and Victoria has been examined to indicate what options may be available and the issues that arise. In order to sue for unpaid wages, a claimant would be required to establish the elements of that claim, including the existence of a contract of employment. Relevant limitation statutes would provide a substantial hurdle. In the absence of particular facts to which the relevant laws can be applied, the following advice is indicative only.

Contract

In each of Queensland, Western Australia and Victoria, an action in contract must generally be commenced within six years. There are some, albeit limited, possibilities of extension of this period. If the cause of action accrued while the claimant was a child, then in each of those States an action must be commenced within six years of the claimant ceasing to be under the legal disability of being a minor. None of the other possibilities of extension appear immediately to be of relevance.

In short, it appears that an action in contract would generally be statute-barred.

Industrial awards

Assuming a child migrant was the subject of an industrial award in relation to his or her employment, the following appears to be the case. In Queensland, applications may be made for payment of unpaid wages within 6 years after the amount claimed became payable. In Western Australia, the same limitation rules apply as for actions in contract. In Victoria an action would have to be brought under the Commonwealth Workplace Relations Act 1996, which requires an employee to sue for recovery of unpaid wages within 6 years.

In short, it appears that an action under industrial relations laws would be statute-barred.

Other - tort

Earlier in the proceedings before the Committee, Senator Murray referred to allegations of assault resulting in disabilities, and to other forms of abuse. To the extent that these might found actions in tort (eg negligence) on the part of a body that formerly had custody of a child migrant, the following appears to be the case.

In Western Australia the same limitation rules apply as for an action in contract. In Queensland and Victoria, the same limitation rules apply as for an action in contract except in cases involving personal injury. In such cases in Queensland, an action must be brought within 3 years from when the cause of action arose. However, an extension of time within which to commence an action can be given in such cases where, among other things, a material fact of a decisive character relating to the right of action was not within the means of knowledge of the applicant before the final year of the end of the limitation period (in which event a court can allow the applicant a further year within which to commence the proceeding). In such cases in Victoria, the limitation period remains 6 years but the cause of action is taken to have accrued when the person first knows that he or she has suffered personal injuries and that they were caused by the act or omission of some person (in which event a court has a discretion to extend the period within which an action may be brought for such period as it determines).

In short, it appears that an action in tort would generally be statute-barred. However, the period within which to commence proceedings might in some cases be able to be extended in relation to an action sought to be commenced in Queensland or Victoria and involving personal injury.

Practical difficulties with redress based on adjudication of legal rights

Mr Mowbray drew the Committee's attention to the difficulties caused by the passage of time, both in relation to proof of facts and to possible extension of limitation periods applying to the commencement of legal proceedings.

The obstacles caused by limitation statutes could be removed, although this would involve amending the relevant State laws. If this were done, an action of the kind to which Senator Murray referred, or an action in tort, could be commenced in a relevant State court or, in some cases, a small claims court or tribunal.

However, many practical difficulties would still remain, not the least of which would be the difficulty of an individual establishing on the balance of probabilities that he or she was not paid a certain sum in wages, or was treated in a particular manner for the purposes (for example) of a tort action, some fifty years previously. Any such legal dispute resolution process could adversely affect another person or organisation's rights and/or reputation and would ordinarily require procedural fairness and other legal safeguards, and therefore could prove time-consuming, costly and, possibly, ultimately frustrating.

The Committee may wish to consider the judgment of the Federal Court in Cubillo v Commonwealth (2000)[34], a case involving actions against the Commonwealth relating to the removal of Aboriginal children from their families many years ago, as an example of the complexity that can be involved in such a process. The summary at pages 110-111 may be particularly useful because of its conciseness. That action involved different, albeit not entirely dissimilar, issues from those under consideration by the Committee.

The Committee suggested that perhaps a new tribunal could be established to provide redress to child migrants who may have suffered some legal wrong in the past. It would not be possible for the Commonwealth to establish a tribunal able conclusively to settle disputes between legal persons (such as those referred to in Senator Murray's hypothetical), because that is a judicial function and only a properly-constituted Commonwealth court can exercise federal judicial power. Having a court do so would raise obvious cost and access implications, as well as the problems of proof alluded to above.

Other considerations would apply if redress were to be provided that did not involve legal adjudication of existing legal rights and obligations, but rather looked to the future through facilitation of services such as counselling, family tracing and reunions and so on. Many approaches could be taken depending on the policy objectives the Committee wishes to achieve.

(i)

[34] 174 ALR 97

Question 8 -

Senator Crowley asked the Department[35] -

" 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…

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?"

(i)

[35] Proof Committee Hansard - Senate Community Affairs References Committee Canberra 6 February 2001 page CA 26-27.

Response to Question 8 -

Community Settlement Services Scheme (CSSS)

The Community Settlement Services Scheme (CSSS) grants require a signed Service Agreement which sets out the terms and conditions and reporting requirements of the grant.

Standard Service Agreements have been developed by DIMA, with assistance from the Attorney General's Department. DIMA State or Territory grants consultants negotiate individual work programs and agreed milestones and performance measures with each funded organisation. These form a schedule to the signed Service Agreement.

All funded organisations are required to provide regular milestone and funding reports, as well as an audited financial statement. DIMA grants consultants monitor performance and reporting requirements and provide regular feedback and support through contact, visits and training as required. Grant funding is paid in agreed Contract Instalment payments, following satisfactory completion of milestones and reporting requirements. Payment may be delayed or reduced in the event of delayed or incomplete delivery of the work program or reporting requirements. The department has found that close liaison between grants consultants and funded organisations ensures compliance with the terms and conditions of funding as set out in their Service Agreements.

Copies of the *Guidelines for Funded Organisations* and the standard Service Agreement are at Attachment T.

Care of unaccompanied humanitarian minors (UHMs)

The Commonwealth currently has cost sharing arrangements for the care of unaccompanied humanitarian minors (UHMs) with NSW, Victoria, SA and WA and QLD. The objectives of this program are to support the settlement process of refugee minors without parents in Australia and to prevent a breakdown in care arrangements through early intervention, counselling and assistance to families providing care. The agreements require state child welfare authorities to provide frequent caseworker contact.

Under the cost sharing agreements, States are required to report quarterly on the extent to which the objectives of the program have been met and provide details on the frequency of caseworker contact. They are also required to produce an overall annual report.

In addition, DIMA settlement officers responsible for UHMs have contact with State child welfare authorities in relation to children covered by the *Immigration (Guardianship of Children) Act 1946* (IGOC Act). This occurs as part of the process of delegation and in the context of organising DIMA maintenance allowance, which is paid to eligible wards of the Minister. This contact enables the Department to monitor the way in which State child welfare authorities are exercising the Minister's delegation.