CHAPTER 7

RESPONSIBILITY, ACKNOWLEDGEMENT AND APOLOGY

> *The problem is no one is owning up to the responsibility when duty of care was broken. Not the government, not the church…ultimately they both had a duty of care when they took me from my parents and made me a ward of the state.*[1]

7.1 Issues related to responsibility for past abuse and neglect and the development of measures of reparations go to the heart of the concerns of victims of institutional abuse. This chapter discusses issues related to the responsibility for state wards in institutional and out-of-home care and the role of governments and non-government bodies in the care of these children. The chapter then discusses issues related to the need for an acknowledgment and/or apology by governments and the Churches and agencies for past abuse or harm experienced by children whilst in institutional and out-of-home care. The Committee was repeatedly told that for many care leavers an acknowledgment of past wrongs would facilitate a degree of emotional and psychological healing and confirm that their experiences in care are at last 'believed' and recognised.

7.2 Measures of reparation available to care leavers through the court system and alternative redress arrangements through compensation schemes, internal Church-sponsored redress arrangements and victim's compensation tribunals are discussed in the following chapter.

Role and responsibility of governments and non-government bodies

7.3 Historically, legislative responsibility for child protection in Australia has rested primarily with the States and Territories – there is no legislative power over children or child protection in the Commonwealth Constitution.

7.4 The legal status of children placed in institutional and other forms of care varied depending on whether a child was placed in care by its natural or adoptive parents acting voluntarily in a private capacity, or by the State acting in accordance with statutory provisions. In the case of voluntary admissions to care, the legal guardianship of the child remained with the natural parents. However, guardianship of a child could be transferred voluntarily from the parent or other guardian to the State as a result of an application by, or with the consent of, a child's parents or custodian. Once a declaration or court order was made in this way it could not be revoked or cancelled merely because the parents or guardians of the child wished him or her to be

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1 *Submission* 371, p.10.

returned. For children admitted to care involuntarily, the legal guardianship of the child was generally transferred from the child's parents or guardians to the State.[2]

7.5 Children placed under the guardianship – custody, care and control – of the State, excluding adoption and immigration cases, had as their legal guardian the Minister, Director or other official of a State welfare department. In these cases the guardianship of the child was conferred on the Minister or his delegate under State legislation. Legislative arrangements governing the State guardianship of children varied from jurisdiction to jurisdiction as did the policies and practices followed by State welfare departments in the administration of their statutory provisions relating to guardianship. In general, the guardian of the child was granted extensive authority to make major decisions affecting the child. The transfer of the child's legal guardianship from his or her natural parents did not necessarily mean, however, that the child's guardian had the actual physical care and control of the child. This was most commonly the case for children placed under the guardianship of the State where the legal authority over the child was vested in the relevant Minister or the Minister's delegate but where the actual day-to-day care was provided by others.[3]

7.6 As noted above, legislative arrangements in relation to State guardianship varied between the States. Children were either placed in State-run institutions or foster care or institutions operated by the Churches or charitable groups.

7.7 In NSW, the *Public Institutions Inspection Act 1866* made all charitable institutions that received government grants subject to inspection. In the same year, the *Industrial Schools Act 1866* authorised the Colonial Secretary to remove children from private to public industrial schools or vice versa, and to substitute court-ordered care at a public industrial school with care at a private industrial school. The private institutions were subject to inspection and were eligible for public funds, and children sent there were subject to the 'custody and control' of the manager of the institution. Although any overriding state guardianship was not at first spelt out the Colonial Secretary's power to remove children from private institutions indicates continuing responsibility. Both Acts were repealed in 1901.

7.8 Under the *Child Welfare Act 1939* (NSW), which was in force until 1987, there was a similar provision to send children to private institutions, and the responsibility of the state for wards was spelt out:

> 9(1) Notwithstanding any other law relating to the guardianship or custody of children the Minister shall be and become the guardian of every child or young person who becomes a ward to the exclusion of the parent or other guardian and shall continue to be such guardian until the child or young person ceases to be a ward.

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2 Senate Standing Committee on Social Welfare, *Children in Institutional and Other Forms of Care,* June 1985, p.8.

3 *Children in Institutional and Other Forms of Care,* p.9.

7.9 In Victoria under the *Child Welfare Act 1928*, the Secretary of the Children's Welfare Department was the guardian of any child admitted to the care of the Department until the child reached the age of 18 years of age, or in certain cases 21 years of age. The Minister was empowered to place children in approved children's homes, and these homes were subject to inspection. Compared to other States, the child welfare system in Victoria historically relied more heavily on the provision of services by charitable and church-based agencies. The *Children's Welfare Act 1954* gave the government the power to establish its own institutions for the care of children. Non-government institutions were required to be registered with the Children's Welfare Department. These 'approved children's homes' were to maintain adequate standards of care and were subject to Departmental inspection.[4]

7.10 One witness described the arrangements in Victoria in the following terms:

> Relationships between the Children's Welfare Department and the voluntary organisations had grown out of events of the 19th century. Mostly the State limited its involvement in voluntary homes to that of exercising power to approve or disapprove of them and to making per capita grants for the children. Institutions were regularly inspected and reviews were made of the physical care of State wards. But the contact had been essentially administrative.[5]

7.11 In Queensland the *State Children Act 1911* provided that the Director should 'have the care, management, and control of the person of all State children, whether inmates of an institution or placed out or apprenticed, until such children attain the age of eighteen years' and that the Director should be the guardian of all State children. The *Children's Services Act 1965* gave the Director of the Department of Children's Services supervision of the staffing of licensed institutions, supervision of their standard of care and a general power of direction over them.

7.12 In Western Australia the *State Children's Act 1907* provided that the Secretary of the State Children Department should 'have the care, management, and control of the persons and property of all State children' and that children committed to the care of the Department could be 'detained in an institution', which included subsidised institutions and religious institutions. The State Children's Act and the subsequent *Child Welfare Act 1947* set out Departmental responsibilities for the care and protection of children in the state, and established that institutions providing out-of-home care be regulated and inspected.[6] Under the Child Welfare Act the Department was responsible for 'the placing out and supervision of Wards of the Department in institutions and in private homes with foster-parents'. Younger children were to be boarded out with foster parents wherever possible, with older children usually placed in institutions 'established by the various religious bodies for the care and betterment

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4 *Submission* 173, pp.4-7 (Victorian Government).

5 *Submission* 47, p.25 (Mr McIntosh).

6 *Submission* 55, p.14 (WA Department for Community Development).

of child life. These institutions are subsidised on a per capita basis by the Government and the Department has the right of inspection from time to time'.[7]

7.13 In South Australia the *Maintenance Act 1926* authorised the Children's Welfare and Public Relief Board to send children to private institutions, but specified that the children would remain under the 'custody and control' of the Board until they reach the age of 18 years, and that institutions were under the supervision of the Board. The *Community Welfare Act 1972* provided for licensed children's homes, and authorised the Minister to place children in those homes, but specified that the child was 'under the care and control of the Minister' until the child reached the age of 18 years.

7.14 In Tasmania, under the *Children of the State Act 1918*, the Secretary of the Children of the State Department was the guardian of such children until they reached the age of 17 years, or in some cases 21 years, but while children were in certified private institutions, the powers of the Secretary as guardian were exercisable by the managers of those institutions. Inspections of the institutions were performed under regulations. Under the *Child Welfare Act 1960*, approved children's homes were subject to inspection, and received a regular payment for each ward. Guardianship of wards of the state remained with the Director for as long as they were wards.

Duty of care

7.15 Issues relating to the responsibility for the care of children placed in institutions were discussed extensively in evidence. As noted above, legislation in the various States provided that the Minister or head of the relevant welfare department remained the guardian of state wards until they reached a certain age. However day-to-day care of children whether in State-run or Church-run institutions involved the management and staff of these institutions. One witness, who is undertaking postgraduate research into state wardship in Victoria, stated that ultimately responsibility rested with the State:

> …if I were to say where responsibility for state wards lies, I would tend to say that the state holds responsibility because of the legislative definitions. It defines which children come into care and which children do not come into care, so it legislates that responsibility. It selects wards. It sets up the system which says "You will be a ward; you will not be a ward". It selects the institutional destinations of wards – it says where these children are to go. It funds institutions. It knows it is funding these institutions, so it is responsible in that respect. It is paying institutions in return for a service…it inspected the institutions, not necessarily the children in the institutions.[8]

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7 Extract from the Annual Report of the Child Welfare Department 1951 in *Submission* 55, Attachment 9 (WA Department for Community Development).

8 *Committee Hansard* 12.11.03, p.19 (Ms Gaffney).

7.16 Legislative arrangements in the States often imposed statutory obligations in relation to food, clothing, education and corporal punishment of children in institutions. For example, in Queensland both the *State Children Act 1911* and the *Children's Services Act 1965* required that children should be adequately fed, clothed and cared for. Excessive physical and emotional punishment was forbidden by persons and institutions who held children in their charge.[9] See also Appendix 4.

7.17 Submissions from several Churches also recognised that in addition to the State Governments the Churches also had a 'duty of care'. Catholic Welfare Australia stated that while the 'ultimate responsibility' for former children in institutional care lay with State Governments 'this is not overlooking the responsibilities placed on those organisations, which had a "duty of care" in the day-to-day policies and practices that affected the quality of life for the children'.[10] UnitingCare Victoria and Tasmania stated that while State Governments had a responsibility 'as the legal guardian or custodian of many of the children and young people and also in their role as the regulator of substitute care facilities', the agencies also had a responsibility due to their involvement 'as either the day to day carers of the children on behalf of the State or, in other cases, as the carers of privately placed children'.[11]

7.18 Submissions and other evidence to the inquiry indicated, as discussed in chapter 4, that in many instances there was a failure in the duty of care in providing for the basics of life, including adequate food, clothing and access to education. Living conditions in many institutions were basic and in many cases substandard. Serious breaches in the duty of care were evident in the appalling levels of emotional and physical abuse and assault that were allowed to continue unchecked over a lengthy period of time in a number of institutions.

7.19 Evidence by care leavers displayed a deep sense of disillusionment and betrayal at what they saw as the abrogation by the State authorities and/or the Churches in their duty of care obligations.

> The state governments put some of the children into their own institutions and promptly wiped their hands of the children. How did the state employees act? They raped and they sodomised the girls. They sodomised the boys….The offenders had no action taken against them. These state employees, guards of these child prisoners, bashed, tormented and humiliated the little children with impunity.[12]
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> All state and church institutions must be held accountable for the hurt and pain. The duty of care of governments and non government agencies who ran children's homes is that they have a moral and ethical obligation to

9 Commission of Inquiry into Abuse of Children in Queensland Institutions (Forde Report), 1999 p.35. See also *Submission* 31, p.2 (Relationships Australia – Queensland).

10 *Submission* 71, p.24 (CWA).

11 *Submission* 52, p.10 (UnitingCare Victoria & Tasmania).

12 *Committee Hansard* 3.2.04, p.87.

> implement support services for their past residents, who are still coming to terms with their issues. (Sub 33)
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> I believe there is no basis for a government and a church organisation to pass the buck between each other. The state says, "We put them into church organisations; we thought they'd be all right". And the church says, "We didn't know; we employed those people". Well, tough luck, because somebody had a duty of care and somebody ignored it.[13]
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> The government, and in our case Wesley, are answerable as to "Why"? There has to be some form of redress with this...The government needs to apologise for not fulfilling its duty of care in making sure about and policing these institutions, because they were not policed.[14]

Inspections

7.20 Provisions existed in most States for regular inspections of institutions and the monitoring of the welfare of the children in institutional care, though the periods varied between the States and over different time periods. Evidence to the inquiry indicated that the extent and effectiveness of inspections varied considerably between States.

7.21 A particularly disturbing feature in Victoria was that prior to the introduction of the *Children's Welfare Act 1954* there was no formal requirement for inspections of non-government children's institutions as these institutions were not required to be registered with the welfare department. The Victorian Government conceded that:

> The system, until the 1950s, was based on the flawed assumption that state wards would be placed in foster care and that charitable children's homes would only accommodate children placed voluntarily by their parents.[15]

7.22 There was an informal process of, largely perfunctory, 'visits' to state wards in these institutions where some assessment was made of the physical health of the children but the management and standards of care in these institutions was not subject to inspection. Even when regular inspection of children's homes began in the late 1950s the standards of care to be maintained in these homes were not legislatively defined – the Victorian Government again conceding that this was a 'weakness' in the legislation.[16]

7.23 In New South Wales a similarly unsatisfactory situation existed. A former NSW government inspector noted that the licensing system for non-State homes (licensed under s.28 of the *Child Welfare Act 1939*) only required that children under the age of seven be subject to inspections. Thus older children in these homes were

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13 *Committee Hansard* 3.2.04, p.25.

14 *Committee Hansard* 3.2.04, p.18.

15 *Submission* 173, p.5 (Victorian Government).

16 *Submission* 173, pp.5, 18 (Victorian Government).

exempt from this requirement. The Committee asked the witness about the inspections undertaken.

> **Senator HUMPHRIES** – Did you interview children one on one in any of those places?
>
> **Mr Quinn** – No, because that was not part of the licensing system. I certainly looked at any children under the age of seven…I would have to admit that there certainly were no one-on-one interviews alone. That was not the practice in those days.
>
> **Senator HUMPHRIES** – Were you not expected to do that, or was it against departmental regulations?
>
> **Mr Quinn** – It was not part of the system, as I understand it. But the older children were outside the licensing regimen.
>
> **Senator HUMPHRIES** – And there was no-one who inspected in respect of them?
>
> **Mr Quinn** – Not to my knowledge, no. That practice dates from the turn of the century. Licensing was brought in in relation to small children.[17]

7.24 Inspections by welfare officers were often superficial and more concerned with the physical structure of the buildings than the children's' welfare. One witness, who has studied state wardship in Victoria, noted that:

> …on the issue of inspection reports…they are inspections of the institutions, not of the children in the institutions. The condition for approval and funding was that the institution had to be inspected, not the children in its care. The conclusion I draw from that is that there was a belief that if the institution was all right and was meeting the regulated requirements then it must be providing suitable care.[18]

7.25 A study of Victorian orphanages stated that even in the 1950s inspections of institutions were viewed by government authorities as a 'sop to reforming noises' and were not intended to have 'real teeth'. In the case of Victoria, which relied on voluntary institutions to house its wards, the study argued that the authorities did not 'dare to upset those institutions' with unfavourable inspection reports. The study noted the comments of a former inspector who recounted that inspections were 'left entirely up to us [as to] what we did and how we went about it'.[19]

7.26 In Western Australia, the Department for Community Development stated that existing records indicate that that the Child Welfare Department maintained regular inspections of institutions, and that there are examples of comprehensive inspections. Examples of inspections reports from the 1940s and 1950s are provided. The reports

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17 *Committee Hansard* 3.2.04, pp.117-118 (Mr Quinn).

18 *Committee Hansard* 12.11.03, p.14 (Ms Gaffney). See also *Submission* 173, p.5 (Victorian Government).

19 *Submission* 47, pp.29-30 (Mr McIntosh).

are generally concerned with the physical conditions of the buildings and often contain only basic or superficial comments on the health and well-being of the residents. For example, an inspection report on Tardun in 1957 noted that 'during my visit I had the opportunity to speak to a number of boys, they all appeared happy in their surroundings…conditions at this College are satisfactory'.[20]

7.27 Accounts by care leavers of inspections that were undertaken are quite varied, with a general view that such visits were carefully staged managed and the children were not allowed to talk one-on-one with visiting welfare officers.

> ...the standards of inspections of institutions in my time leave me gobsmacked. The inspection that we underwent once a year was perfunctory, to say the least…The kinds of things that were commonly reported – often in no more than one sentence – were "He looks after his teeth", "He needs glasses", "He wears glasses", or "He's a fine boy". There was never any opportunity to discuss with the so-called inspectors what was going on in your life and how you felt about it...In fact, one risked a box over the ears if one raised that sort of question with the wrong staff member at the wrong time. So the inspections were never concerned with the psyche, the emotions or the feelings of the child; they were about your teeth or what grade you were in. We knew what grade we were in.[21]

7.28 Even when welfare officers met with children there appeared to be little follow-up action with respect to complaints made.

> …they used to have a welfare officer who would come in once a year. He always interviewed each and every one of us at the Box Hill Boys Home about how we were treated et cetera...Even then, even as a young child, I would wait and wait and wait and see if anything changed, but it didn't. They were aware of it…They were aware of what was going on – the mistreatment of kids. That was our only hope. We told them what we thought, how we felt and what was happening, but it fell on deaf ears. I used to think: why? (Sub 296)

7.29 The Committee received similar evidence regarding inspections in the child migrants inquiry. The Committee's view expressed at that time has only been reinforced by the further evidence during this inquiry:

> The Committee considers that in many instances, based on the documentary evidence available to it, the level of inspections undertaken and the consideration of the welfare of the children in the institution appear to have been at best basic and often deficient.[22]

7.30 A serious deficiency was the lack of complaints procedures available to children who might have wished to complain about conditions or their treatment in

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20 *Submission* 55, Attachment 10 (WA Department for Community Development).

21 *Committee Hansard* 11.11.03, p.31.

22 *Lost Innocents,* p.110.

institutions.[23] The Forde Inquiry also commented that a common fault in residential institutions in Queensland prior to the 1970s was the absence of complaints mechanisms for children dissatisfied with aspects of their treatment.[24]

> There were no ways of making complaints about our poor treatment and the system often appeared to try to crush us rather than help us. (Sub 245)
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> State Wards suffered the most as they had no family to complain to and no one to confront the staff. I would have to write a book to even begin to detail all the injustices that were commonplace in the institutions. (Sub 344)

7.31 Evidence from care leavers indicated that the authorities in the institutions made it clear that candid reporting of the actual conditions and/or mistreatment suffered were not to be made to visiting welfare officials for fear of further punishment.

> I remember going down to the shower blocks and Sangster said to each and every one of us, "If any of you kids say anything about how I'm running this organisation or how I run it, I'll know about it because the reports come back to me". So I thought to myself, well, there would be a lot of kids that would not even say anything. (Sub 296)
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> Ben had only been there [Tamworth Boys Home] about two months and he complained long, hard and bitterly about his treatment...The Minister [from the welfare department] opened the office door and called the guard in, telling him to escort this compulsive liar to solitary confinement and not to release him until he learned to tell the truth. Blows rained down upon Ben while the Minister stood by. As Ben was dragged by his feet from the office and down the stairs Ben yelled to the other boys waiting to be interviewed, "Don't complain, Don't complain!" This resulted in another beating.[25]

7.32 Some care leavers claimed that they never saw a welfare officer – even former residents that spent long periods of time in particular institutions.

> At no time during my period of detention [from 1963 to 1971] at St. Augustine's [Geelong] did I witness any monitoring and auditing of the conditions there by the Victorian Government. (Sub 385)
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> Never in all the time that I was at Dalmar – or, I believe, in the whole 14 years from 1949, when he was the superintendent – did anyone ever come from the welfare department. And we were wards of the state. Where were they?[26]
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> Where were the Children's Services during my time at St. Catherines [Geelong] from 1963-1968. I never saw them, not once! I want to know

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23 *Submissions* 68, p.8 (ACWA); 44, p.2 (Professor Goddard).

24 Forde Inquiry, p.97.

25 *Submission* 329, pp.5-6. The submission noted that the reference to the 'Minister' was probably a reference to a high ranking official from the welfare department.

26 *Committee Hansard* 3.2.04, p.25.

> why. I was the States child, never in those five years did anyone representing the Government speak to me and ask how I was doing. (Sub 111)

7.33 A telling indictment of the ineffectiveness of inspections and the monitoring by the States is the lack of recorded breaches of statutory obligations. The WA Department for Community Development stated that existing records of the Child Welfare Department contain no evidence of breaches of statutory obligations.[27] The Committee, however, received many instances of extreme abuse and neglect in Western Australian institutions. A former employee of the NSW Department of Community Services stated that he was 'unable to find a single instance of anyone being charged criminally with assaulting an inmate of an institution [in NSW], even though there was provision in the legislation from 1905'. The same witness described the 'inhumane and illegal punishment' of children in several NSW institutions, which was confirmed in other evidence to the inquiry.[28]

Internal processes

7.34 Internal monitoring *within* institutions was also superficial and, to a considerable extent, ineffective. Fear was a driving element for the children in many institutions. As noted above, to speak out on any issue would simply attract further retribution.

> It wasn't long before the abuse started on me. I complained to the Prior in charge at [St John of God's] Cheltenham. He told me to go away. He didn't believe me. He said "stop whinging you bastard". I was only 9 years and 8 months old. The same day I was called to go to the front office. He was there. He punched me in the face and said "you asshole". (Sub 130)

7.35 In relation to Catholic institutions, Dr Coldrey stated if complaints were investigated by a Superior, denial by a Brother accused of a wrongdoing usually meant his word against that of a boy, and no action against the Brother in question – 'occasional episodes of malicious accusations and suspicion of the reliability of orphanage boys tended to count against taking a boy's word against that of a Brother when there was no further evidence'.[29]

7.36 Similar inadequate processes were in place in other institutions. In relation to Dalmar, one care leaver recounted a visit to the institution from the committee of the Central Methodist Mission:

> [We] were told only to answer "yes" or "no" to questions. The committee from Central Methodist Mission would come up at Open Day and the children would sing on the stage. Then the committee would walk around the cottage for five minutes. The children would line up in that cottage and

27 *Submission* 55, p.14 (WA Department for Community Development).

28 *Committee Hansard* 3.2.04, pp.108, 110 (Mr Quinn).

29 *Submission* 40, p.24 (Dr Coldrey).

> the committee would pat them on the head and ask them, "Are you happy?" or "Do you know who is giving you the roof over your head?" or "Do you know who is supplying the food that you eat?" The children would say "Yes" and "Yes" – and the committee would move on.[30]

7.37 Another care leaver recalled the lack of monitoring at the WR Black Home in Brisbane operated by the Presbyterian Church:

> We were told regularly, "You are here because nobody wants you but the good Church is now looking after you". Unfortunately, "The Good Church", as far as I know, never spoke to any of us "One on One". We would have been too frightened to say anything, anyway! (Sub 409)

Conclusion

7.38 The Committee considers that duty of care was lacking in several fundamental areas in relation to children in institutional care – in respect of the adequate provision for the basic needs of children, that is, adequate food, clothing and nurture; and the horrendous levels of physical, sexual and emotional abuse that were allowed to occur while these children were in care. Equally disturbing is the fact that such abuse was able to continue unchecked over so many years.

7.39 The inspection and monitoring of institutions, that should have detected inadequate provision of basic care and other serious violations of care, was grossly inadequate. The Committee considers that in many instances, based on the documentary evidence available to it, the level of inspections undertaken and the consideration of the welfare of the children in the institutions appear to have been at best basic and in numerous cases deficient. Internal processes within institutions were also grossly inadequate. The lack of a complaints mechanism available to children within institutions also contributed to a system where adequate levels of care were often not enforced.

7.40 Evidence clearly demonstrates a failure in their duty of care by those involved at all levels of the administration of institutional care arrangements. The inadequate levels of monitoring and buck passing of responsibilities appeared endemic at all levels. The Committee believes that these failures of duty of care and the unfortunate circumstances in which many former care leavers now find themselves is a shared responsibility of governments – and the Churches, religious orders and agencies – who were negligent in their caring responsibilities. However, the individual responsibility of those who were actually in charge of the children must never be understated.

Acceptance and denial of responsibility

7.41 Evidence to the Committee indicated that while some State Governments and religious authorities and agencies have accepted responsibility for forms of neglect

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30 *Committee Hansard* 3.2.04, p.25.

and abuse of children in their care in institutions – at least to some extent – others appear reluctant to accept these responsibilities. Often admissions of neglect or abuse are heavily qualified and reference is often made to prevailing conditions and standards of care at the time.

7.42 State Governments have adopted varying stances with respect to the question of responsibility for forms of neglect and abuse within institutions. Witnesses noted that it is often difficult to get State Governments to face up to their responsibilities in this regard.[31]

7.43 The Queensland Government has formally apologised for instances of past abuse and neglect in Queensland institutions. In August 1999 the Government and the responsible religious authorities in that State issued an apology that included the following statement:

> We sincerely apologise to all those people who suffered in any way while resident in our facilities, and express deep sorrow and regret at the hurt and distress suffered by those who were victims of abuse.

7.44 The Victorian Government, while acknowledging that some abuse occurred in institutions in Victoria, also placed considerable weight on consideration of prevailing standards of the day and the resources available at the time.

> In the past, some children were abused and neglected while in care, and a larger number of children were subjected to standards of care which would not be considered adequate by today's standards. However, it is also important to recognise that the people who cared for children in the past, either in children's homes or in their own homes, generally did so as well as they could in the circumstances of the times, and that auspice organisations for children's homes and foster care programs generally sought to provide the type of care which they believed to be best...Care provision and its quality have changed over time in response to changing attitudes and knowledge, concerns identified and resources available.[32]

However, the Victorian Government submission attracted some criticism with one witness commenting that 'I have never seen such a sanitised submission as the one put in by the Victorian Government, and it obviously was sent to the Solicitor-General to work through before it was signed off by whoever the minister is'.[33]

7.45 The WA Department for Community Development, while not directly addressing the issue of the State's responsibility for abuse in institutions, emphasised that regular inspections of institutions were undertaken and stated that the historical records of the Department 'contain little information on unsafe, improper or unlawful care or treatment of children in out-of-home care' adding however that the records

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31 See, for example, *Committee Hansard* 12.11.03, p.38 (Broken Rites).

32 *Submission* 173, p.3 (Victorian Government).

33 *Committee Hansard* 12.11.3, p.38 (Broken Rites).

held by the Department are incomplete or in some cases non-existent.[34] The Department noted that a review of extant historical records of the Child Welfare Department contain no evidence of breaches of statutory obligations.[35] The Committee notes, however, that as the monitoring by State authorities, especially through inspections, was largely ineffective in uncovering possible breaches of statutory obligations it is not surprising that no breaches were recorded.

7.46 Similarly, the Churches, religious orders and agencies have adopted varying approaches, usually from reticence to denial, towards accepting responsibility for conditions in institutions and acknowledging past abuse.

7.47 The Salvation Army stated that instances of abuse were 'rare' in its institutions:

> We acknowledge that in Salvation Army institutions established or licensed under relevant legislation as providers of care for children, sadly there have been some instances where unsafe, improper or unlawful care or treatment has occurred. The Salvation Army takes these instances very seriously. However, such occurrences have been relatively rare and not endemic to our services.[36]

The Committee notes, however, that the overwhelming majority of submissions to this inquiry from ex-residents of Salvation Army institutions in all States reported negative experiences in these institutions, often citing cases of extreme forms of physical, sexual and emotional abuse. The Committee believes that there has been a notable reluctance by the Salvation Army to acknowledge past practices, in particular the nature and extent of abuse in its institutions.

7.48 Barnardos Australia stated that care was in accordance with prevailing standards at the time:

> Whilst some of the practices of the past have not served children well, we believe that Barnardos services have acted in the best intention towards any child in institutional care. Some criminal activity did take place, but to the best of our belief that has been dealt with in the criminal justice system. However we believe that Barnardos attempted to maintain a standard of care which was in keeping with "good practice" in child rearing at the time.[37]

7.49 Catholic Welfare Australia, the peak body representing Catholic welfare organisations and an organ of the Australian Catholic Bishops' Conference, noted that standards of care needed to be judged in the context of the times:

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34 *Submission* 55, p.12 (WA Department for Community Development).

35 *Submission* 55, p.14 (WA Department for Community Development).

36 *Submission* 46, p.1 (Salvation Army).

37 *Submission* 37, p.3 (Barnardos).

> In hindsight Catholic organisations did play a role in the implementation of government policies and legislation, which meant children were placed in "out of home care". These organisations, under the circumstances, provided the best they could which unfortunately caused distress for some children.[38]

7.50 The Christian Brothers, while acknowledging that 'some horrific acts of emotional, physical and sexual abuse took place in particular institutions in particular eras', noted however that 'it is clear to the Christian Brothers that the majority of men who passed through our institutions received a quality of care appropriate to the era, obtained a good education and moved on to a good family life and good employment'.[39]

7.51 The Committee questioned the Order as to what evidence it had to substantiate this last statement. The Provincial of the Order argued that the statement was based on 'fairly substantiated anecdotal evidence' from attending gatherings of former students and discussions with former students over many years.[40] The Committee notes, however, that many former residents of these institutions are too traumatised to have any further contact with the Christian Brothers or their former institutions thus the 'sample' of ex-residents would not be representative of all former residents. The Committee also notes that a particularly common feature of Christian Brothers' institutions was their failure to provide a proper education for many ex-residents. The Committee also received many submissions from ex-residents of these institutions, both in this inquiry and the child migrants inquiry, attesting to a life full of trauma, emotional problems and poverty.

7.52 MacKillop Family Services, commented that in respect of former Sisters of Mercy, Sisters of St Joseph and Christian Brothers institutions in Melbourne 'we acknowledge that the policies and practices in institutional care in the last century had a detrimental impact on many of those who grew up in these institutions…It is also important to record the positive contributions of the past, given the danger of broad generalizations and stereotypes'.[41]

7.53 UnitingCare Victoria and Tasmania stated that in relation to former Methodist and Presbyterian homes operating in Victoria, 'the balance between positive and negative perceptions of those who experienced care in the variety of settings is difficult to estimate'.[42]

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38 *Submission* 71, p.5 (Catholic Welfare Australia).

39 *Submission* 65, pp.1,6 (Christian Brothers).

40 *Committee Hansard* 9.12.03, pp.55-56 (Christian Brothers).

41 *Submission* 50, p.2 (MacKillop Family Services).

42 *Submission* 52, p.8 (UnitingCare Victoria and Tasmania). No homes operated in Tasmania under the auspices of the Church.

7.54 The Wesley Mission acknowledged that a number of former residents have alleged abuse or unduly harsh treatment during their time with Dalmar. Wesley Mission added that:

> The perception of these experiences varies – some seeing it as common to parenting practices at the time, others seeing it as unacceptable and harmful to their long-term development. Positive stories are heard as often as negative ones, and often they are mixed.[43]

7.55 Anglicare Victoria, while not directly commenting on the issue of responsibility, argued that there has been a concentration in the media and elsewhere on abuse within institutions relative to other settings and that instead of 'laying blame' the community needs to support families in the future:

> I think we need to put this whole debate [on institutional abuse] into some perspective…95 per cent of abuse and neglect occurs in the family home, not in institutions. The focus has been very much on institutions because, in a sense, we can be easily targeted and examined.[44]

7.56 The Committee questioned Anglicare as to whether they accepted that adults who suffered harm whilst in institutions in the past were entitled to pursue justice and seek redress. Anglicare agreed with this proposition. The Committee wishes to emphasise that Churches and agencies need to address *both* the wrongs of the past as well as the challenges of the present.

7.57 Some organisations were more transparent in recognising that abuse did occur in their institutions without seeking to minimise its impact or extent. UnitingCare Burnside stated that:

> …unfortunately many instances have been shown, with the benefit of hindsight, where children who were supposed to have been provided with care outside of the family have been subjected to a range of abusive and neglectful manifestations of care.[45]

7.58 The United Protestant Association of NSW noted that several instances of alleged abuse have been raised with the organisation. The UPA acknowledged that abuse occurred in its homes and stated that the Association 'unreservedly apologises to any former children in UPA care who may have suffered harm'. The Association has established a policy of direct support for any child in UPA care – 'we treat each person individually, seeking to assist and meet their needs'.[46] The Association noted that compassion is needed in response to cases of institutional abuse – 'too often there is a

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43 *Submission* 178, p.12 (Wesley Mission).

44 *Committee Hansard* 12.11.03, pp.62-63 (Anglicare Victoria).

45 *Submission* 59, p.7 (UnitingCare Burnside).

46 *Submission* 30, p.2 (UPA).

defensiveness that creeps in, both at a government and at a non-government agency level. It is entirely inappropriate'.[47]

7.59 One organisation stated that no instances of any improper care or instances of neglect occurred in its homes. Mofflyn, which operated a number of former Methodist homes, stated that, based on an examination of its available records, 'there has not been any unsafe, improper or unlawful care or treatment of children at Mofflyn. Further we have not identified any serious breach of any relevant statutory obligation at any time when children were in care or under the protection of Mofflyn'.[48]

Conclusion

7.60 Evidence to the Committee, as described in the chapter on the treatment and care of children in institutions, demonstrates that many of these comments by Churches and care providers reveal a complete lack of understanding or acceptance of the level of neglect and abuse that occurred in their institutions, be it in some cases primarily emotional.

7.61 The evidence further indicates that the attitude of State Governments and religious authorities and agencies varies considerably in the extent to which they accept responsibility for the neglect and abuse of children under their care in the past. The Committee is disappointed that some State Governments and Churches and agencies appear unable to acknowledge past wrongs in an unequivocal way and believes that all governments and agencies need to accept responsibility for the wrongs that were done to children whilst in their care. It is only by accepting responsibility that they and the victims can move on and that practical measures of redress can be implemented to provide victims with a degree of closure.

7.62 The Committee notes that a number of Churches and others have made apologies for their role in institutional abuse of ex-residents. While these statements are of value it is essential that the attitude of governments and the Churches is consistent with these statements of regret and apology – both in acknowledging responsibility and in further positive action.

7.63 Much justification for the treatment of children in institutions in the above comments was based on an argument that the care of these children needs to be understood within the context of the prevailing norms of the day. The Committee has disputed this argument in chapter 5, considering that the many accounts it received of excessive and unwarranted assault or of sexual assault go beyond anything that could conceivably be argued as normal for the time – such actions were illegal then and they are illegal now.

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47 *Committee Hansard* 4.2.04, p.7 (UPA).

48 *Submission* 160, p.5 (Mofflyn).

Acknowledgment and apology

7.64 The *Concise Oxford Dictionary* defines an apology as a 'regretful acknowledgment of fault or failure; assurance that no offence was intended; an explanation; or vindication', whereas to 'acknowledge, by contrast, is to 'agree to the truth of; own to knowing; take notice of; or recognise the authority or claims of'.

7.65 One study noted that an apology can be described as an expression of 'deep and profound regret for causing another person serious anguish and regret'. The study noted that an apology made for causing serious harm to another person is a moral or ethical act, as well as an act of good conscience and a demonstration of respect with the overall goal being to restore dignity and social harmony.[49]

7.66 A Senate Committee report has defined an acknowledgment as involving a public recognition that an event happened and 'that this was the result of policy, as well as practice, and that these policies and practices created devastating consequences. In addition, acknowledgment involves an acceptance of responsibility for these policies, practices and consequences'. The report noted that an expression of acknowledgment may be seen as something less than an apology as it is only one aspect of a complete apology.[50]

Apologies to ex-residents

7.67 With the exception of the Queensland Government, Australian Governments have been notoriously reluctant in issuing apologies for their role in the abuse and harm experienced by care leavers while in their care. Yet an overwhelming number of care leavers indicated in evidence the importance and power that an acknowledgement or apology would have in helping their healing process and in them moving forward.

7.68 In Queensland, the Forde Inquiry into the abuse of children in Queensland institutions recommended that the Queensland Government and the responsible religious authorities issue a formal apology to former residents of Queensland institutions 'acknowledging the significant harm done to some children in Queensland institutions'.[51] In August 1999 the Government and the responsible religious authorities in that State issued the apology referred to earlier in this chapter.

7.69 The Committee understands that the Tasmanian Government is in the process of finalising the text of a formal apology in relation to abuse allegations in that State and that that apology should be released within months.

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49 Alter S, *Apologising for Serious Wrongdoing: Social, Psychological and Legal Considerations*, Law Commission of Canada, 1999, p.2.

50 Senate Legal and Constitutional References Committee, *Healing: A Legacy of Generations*, November 2000, pp.111-12.

51 Queensland Government, *Queensland Government Response to Recommendations of the Commission of Inquiry into Abuse of Children in Queensland Institutions*, August 1999, p.41.

7.70 In evidence to the Committee, the WA Department for Community Development supported the issuing of an apology on behalf of the Western Australian Government – 'anything that is going to help the healing process for people who have been abused in care would be appropriate'.[52] The Department noted that in 1997 the Western Australian Government, in response to the *Bringing them home* report, apologised to Aboriginal and Torres Strait Islander people for the past policies under which indigenous children were removed from their families. In 1998 the WA Legislative Assembly passed a motion apologising to former child migrants on behalf of all Western Australians for past migration policies and the subsequent maltreatment many experienced.[53]

7.71 The Victorian Government argued that any formal acknowledgment by State Governments of abuse and neglect of children in institutional care 'would need to be carefully considered and would ideally [need to] be acceptable to all state and territory governments'.[54]

7.72 Public apologies by governments have been common in overseas countries. In Canada both the Federal Government and various provincial governments have apologised to Aboriginal children and/or other children who suffered abuse while in institutional care.[55] In May 1999, the Irish Government apologised to victims of institutional abuse in industrial schools and orphanages. The apology, delivered by the Prime Minister, was in the following terms:

> The time has long since arrived when we must take up the challenge which the victims of childhood abuse have given us all. A new, comprehensive approach is required to dealing with both the effects and prevention of this abuse. The starting point for this is simple but important: to apologise. On behalf of the State and of all citizens of the State, the Government wishes to make a sincere and long overdue apology to the victims of childhood abuse for our collective failure to intervene. Abuse ruined their childhoods and has been an ever present part of their adult lives, reminding them of a time when they were helpless. I want to say to them that we believe that they were gravely wronged and that we must do all we can to overcome the lasting effects of their ordeals.[56]

7.73 At the same time the Irish Government announced a package of measures aimed at addressing the issue of past institutional abuse. These measures included the establishment of the Commission to Inquire into Child Abuse (Laffoy Commission); the establishment of counselling services specifically dedicated to victims of past

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52 *Committee Hansard* 9.12.03, p.13 (WA Department for Community Development).

53 *Submission* 55, p.34 (WA Department for Community Development).

54 *Submission* 173, p.22 (Victorian Government).

55 Alter, pp.8-11, 36-38.

56 'The Response of the Irish Government to Past Institutional Child Abuse' at www.publications.parliament.uk; and www.politics.ie

abuse; and changes to the Statutes of Limitations in respect of sexual abuse with a review by the Law Reform Commission of the situation with respect to physical abuse.

7.74 In the Australian context, a number of Churches and Catholic religious Orders involved in the care of children in institutions have made formal statements of apology and regret acknowledging abuse of children while under their care. Similar apologies have been made by Churches in overseas countries. In Canada, for example, the four Churches involved in the residential schooling of Aboriginal children have made public apologies.[57] In Ireland, the Sisters of Mercy issued an unreserved apology in May 2004 acknowledging abuse of children in its care. The Order had apologised previously but admitted that that apology was seen by many victims as 'conditional and less than complete'. Other Catholic religious orders have also issued apologies.[58]

7.75 In Australia, the Catholic Church, as part of its *Towards Healing* process, has apologised for abuse in Catholic institutional care and other settings.

> As bishops and leaders of religious institutes of the Catholic Church in Australia, we acknowledge with deep sadness and regret that a number of clergy and religious have abused children, adolescents and adults who have been in their pastoral care. To these victims we offer our sincere apology.[59]

7.76 A number of Catholic religious Orders have also issued separate apologies. In July 1993, the Christian Brothers acknowledged that physical and sexual abuse took place in their institutions in Western Australia and published a statement of apology to former residents who had been in their care. The apology stated, *inter alia*, that:

> ...the fact that such physical and sexual abuse took place at all in some of our institutions cannot be excused and is for us a source of deep shame and regret. Such abuse violates the child's dignity and sense of self-worth…We, the Christian Brothers of today, therefore unreservedly apologise to those individuals who were victims in these institutions.

7.77 In 1997, the Sisters of Mercy in Rockhampton and the Catholic diocese of Rockhampton also issued a public apology for abuses that occurred to children under their care.

7.78 The Salvation Army has issued a number of formal apologies acknowledging abuse of children under its care. An apology was issued in August 2003 in relation to abuse allegations in the ABC's *Four Corners* program. The Salvation Army stated that:

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57 Alter, pp.8, 36-37.

58 Statement of Sisters of Mercy Central Leadership Team, 5.5.04 at www.mercyworld.org. See also 'Orders testify at abuse commission', *RTE News*, 30.6.04.

59 Australian Catholic Bishops Conference, *Towards Healing*, June 2003, p.1 at www.catholic.org.au

> We have apologised in the 4 Corners program to the people who have come forward and acknowledged the severe and tragic impact that this betrayal of trust has on the lives of those who have been abused by people with power over them.[60]

The Salvation Army recently issued an apology to residents of its Riverview home in Queensland, the spokesman noting that there was 'inappropriate behaviour and activities and we have apologised for that'.[61]

7.79 A number of submissions commented on the conditional nature of Salvation Army apologies and their failure to fully acknowledge past practices.[62] The Committee notes that in the apology given in relation to the *Four Corners* abuse allegations, the Salvation Army appeared not to fully recognise the extent of past failures of care. The statement noted that:

> We believe that the great wrong that was done to children abused in our care is that they were abused while **the majority of children in our care were having life enriching experiences**, making their trauma all the more difficult to bear.[63]

7.80 The Salvation Army has also issued personal apologies to individuals who have come forward with abuse allegations. In its submission to this inquiry the organisation stated that 'the Salvation Army itself regrets the human anguish arising from any abuse and neglect suffered by children while in its care'.[64]

7.81 Barnardos stated at a Committee hearing that 'we give an unreserved apology for any abuse that took place in Barnardos care'.[65] Barnardos noted that 'we understand that an acknowledgment of suffering can be helpful in the healing process for the individual who has suffered and for those who suffered criminal abuse or did not have their developmental needs adequately met'.[66]

7.82 Wesley Mission Dalmar at a Committee hearing expressed 'our deep regret and sympathy for people who were exploited and abused as part of our care system'. The Committee questioned the organisation as to whether this expression of regret constituted an apology on behalf of the organisation and Wesley indicated that it did.[67] The Wesley Mission acknowledged that 'while in our care, some children were beaten, exploited, kept apart from their siblings or from visiting parents, denied educational

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60 *Submission* 46, Supplementary Information, 8.6.04 (Salvation Army).

61 'Riverview abuse: Salvos say sorry', *The Queensland Times*, 17.6.04.

62 *Submissions* 286, pp.5-6; Additional Information, 13.8.04; 336, pp.3-7.

63 *Submission* 46, Supplementary Information, 8.6.04 (Salvation Army). *(emphasis added).*

64 *Submission* 46, p.2 (Salvation Army).

65 *Committee Hansard* 4.2.04, p.24 (Barnardos).

66 *Submission* 37, p.6 (Barnardos).

67 *Committee Hansard* 4.2.04, p.25 (Wesley Mission).

support or raised without affection. There may have also have been instances of sexual abuse. Wesley Mission views all these acts as unsupportable'.[68]

7.83 In June 2004, the Wesley Mission issued a statement to all past residents of Dalmar in response to evidence given to this inquiry by these former residents. In this statement Wesley Mission noted, *inter alia*, that:

> …[it] affirms the sentiments of a statement that was read into the record on behalf of Wesley Mission at the recent hearings. We feel deep regret and sympathy for those who suffered during and from this period.[69]

The statement was distributed to all past residents with whom Wesley is in contact.

7.84 The United Protestant Association of NSW made a public apology in 1997 for children abused while in its homes. In its submission the Association stated that it 'unreservedly apologises to any former children in UPA care who may have suffered harm'.[70]

7.85 Some agencies of the Uniting Church have not issued formal apologies. UnitingCare Burnside indicated to the Committee that the organisation has not made a generic apology 'as in a statement to all people who may have been in out-of-home care, but we do apologise both face to face and in writing where there is a formal complaint that has gone through any sort of process, whether that be an external investigation – of which we have only ever had one – or whether it has been managed within the agency; and the person has a copy of that'.[71]

7.86 Likewise, UnitingCare Victoria and Tasmania has not formally apologised but indicated that it was likely to issue an official statement to coincide with the release of this Committee's report.[72] In its submission UnitingCare stated that it was willing to assist anyone affected in its care by formally acknowledging the significant pain and suffering experienced by some former residents and 'to apologise to those adversely affected by the provision of this care in our agencies'.[73]

Views on the need for an apology

7.87 The Committee received a wide range of views on the question of the need for an apology. Much evidence suggested the urgent need for such an apology and the impact this would have in helping victims move forward and recognise their past sufferings. Other evidence argued that for an apology to be effective, it needed to be

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68 *Committee Hansard* 4.2.04, p.4 (Wesley Mission).

69 *Submission* 178, Supplementary Information, 29.6.04 (Wesley Mission).

70 *Submission* 30, p.2 (UPA).

71 *Committee Hansard* 4.2.04, pp.25-26 (Burnside).

72 *Submission* 52, Supplementary Information, 11.6.04 (UnitingCare Victoria & Tasmania).

73 *Submission* 52, p.11 (UnitingCare Victoria & Tasmania).

accompanied by practical measures of support and assistance; while other evidence questioned the value of an apology.

7.88 There are two types of apologies usually offered to victims of institutional abuse – a personal, private apology or an official, public apology. A personal apology is an interpersonal, one-on-one and usually private transaction. It may be communicated face-to-face or by a personal letter. An official apology tends to be more formal and is usually formulated bearing in mind not only the sentiments of the injured parties – the direct recipients – but also the society at large. Sometimes victims want to receive both types of apology, sometimes they wish to receive only one or the other. One study noted that although an official, public apology is less capable than a personal apology of recognising the harm suffered by each individual, it can serve a unique role – 'it has the potential to set the record straight and restore dignity to the person or group harmed, under full, public scrutiny'.[74]

7.89 A study prepared for the Law Commission of Canada identified the main elements of a meaningful apology. These are:

- Acknowledgment of the wrong done or naming the offence – many victims want wrongdoers to acknowledge what they did and that it was wrong. They are, in effect, asking the wrongdoers to admit to them that they know they violated moral standards. Such admissions validate the injured parties' moral sensibilities, which were violated by the wrongs done.
- Accepting responsibility for the wrong that was done – the apologiser must demonstrate to the recipient that he accepts responsibility for what happened. By accepting responsibility, the apologiser helps restore the confidence or trust of the injured party.
- The expression of sincere regret and profound remorse – the centrepiece of an apology is an expression of sorrow and regret. When the apologiser expresses sincere remorse for the wrong committed or permitted to happen, then the person receiving the apology is reassured both that he understands the extent of the injury that was committed and therefore will not allow it to happen again.
- The assurance or promise that the wrong done will not recur – victims need to be assured that the injury they experienced will not happen to them, or anyone else, again. Where official, public apologies are made, victims also want affirmation from the officials responsible that the mistakes of the past are not repeated.
- Reparation through concrete measures – following serious wrongdoing, mere words of apology are not enough to repair damaged relationships. Verbal apologies must be accompanied by concrete measures, such as financial compensation, counselling and other measures. These measures help translate the static message of an apology into an active process of reconciliation and

74 Alter, p.7.

> healing. Official apologies, in particular, need to be accompanied by direct and immediate actions.[75]

Many of those who seek or have received apologies expect that they will contain the elements identified in the Law Commission's report. Many apologies, however, fall far short of this ideal and this can lead to disillusionment on behalf of the intended recipients who regard such apologies as merely expressing empty rhetoric.

7.90 Many submissions noted that a formal apology by the Commonwealth and/or State Governments is an essential part of acknowledgment of the harm and abuse inflicted on many individuals in institutional care, and of the responsibility of governments and the Churches for the devastating effect of these policies on many care leavers. Submissions also argued that an apology can promote emotional and psychological healing among those who have been most affected by the impact of institutional care.

7.91 As noted above, many care leavers indicated that a formal apology was important to them as an acknowledgment of their past treatment and recognition of their 'existence'.

> I want and need a formal apology for the treatment I received…Had I received some understanding and an apology many years ago I may not be suffering as I do now. (Sub 20)

> …a written apology [would] give me back my own self worth as a human being having lived that life…I need this apology today to release me from the pains of my past and to help assist me out of victimhood that I still get when having any dealings with any government official. (Sub 386)

> The government, and in our case Wesley, are answerable as to "Why?" There has to be some form of redress with this. We have to get some answers and a public apology. The government needs to apologise for not fulfilling its duty of care in making sure about and policing these institutions, because they were not policed.[76]

> …I have no family directly because of what happened to us back then. I do not know why they were allowed to treat us like that. Why? We want recognition as human beings, and I think we should get an apology from someone.[77]

> I beg the Government to Compensate us for the past even if only a public apology and improve the care and needs of state wards today. (Sub 334)

7.92 Professionals working with care leavers noted the important role apologies can have in the reconciliation process. CBERSS stated that its clinical staff have found that acknowledgment and apology by the Christian Brothers is an important validation

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75 Alter, pp.1-16.

76 *Committee Hansard* 3.2.04, p.18.

77 *Committee Hansard* 13.11.03, p.2.

and recognition of the experience of some of its clients – 'this acknowledgment of their suffering has provided some clients with a measure of closure'.[78] A counselling service – Broadening Horizons – noted that a priority for many victims of abuse is the provision of an apology from the perpetrator or the representative organisation (where the perpetrator may have died).[79]

7.93 Submissions noted, however, that apologies can sometimes be seen as merely 'gestures' that have no real substance or impact on those who have been affected by past practices. Some care leavers disagreed with apologies in these terms arguing that such apologies are 'meaningless' and cannot undo the past:

> …any measured reading of that [Salvation Army] apology, shows that it was grudgingly given because they had been caught out. To me their apology is little more than a justification for abusive practices, and an attempt to squirm out from their moral and Christian obligations and water down the enormity of their actions. (Sub 286)
>
> I cannot forget, will not forgive and no apologies accepted. (Sub 330)
>
> I do not know that you can apologise. A piece of paper is not going to do it. You cannot give me back my childhood and you cannot give me back my parents, and just saying sorry does not quite cut it.[80]

7.94 The alternative view is that this is not an important consideration because if the apology is sincere it can have strong symbolic value – 'the recognition of suffering, that may still continue, and a determination to change practices in the present and future can afford some closure and an ability to move forward'.[81]

7.95 There is also a view that apologies can have a salutary effect on those making the apology because it enables them to stop denying events and to begin focussing on and dealing with the issues. The appropriateness of current governments or religious organisations accepting responsibility for the actions of previous administrations or church agencies is also sometimes questioned – as is the value of apologies issued in these contexts.[82]

7.96 The issue of whether apologies could be taken as an admission of liability leaving an organisation open to action through the courts from a person or persons seeking compensation was also raised in evidence.[83] Submissions referred to the NSW Ombudsman's advice in relation to the *Civil Liability Act 2000* and the giving of

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78 *Submission* 49, p.18 (CBERSS).

79 *Committee Hansard* 8.12.03, p.119 (Broadening Horizons).

80 *Committee Hansard* 3.2.04, p.68.

81 *Submission* 61, p.19 (Mercy Community Services).

82 For a discussion see *Submission* 49, p.18 (CBERSS).

83 *Committee Hansard* 4.2.04, p.25 (Wesley Mission); *Submission* 59, p.17 (UnitingCare Burnside).

apologies. The Act provides that apologies given, in certain circumstances, will not constitute an admission of liability, and will not be admissible in court. These provisions do not apply to situations involving intentional torts, such as sexual assault.

7.97 The Ombudsman's advice stated that:

> The protections under the Act do not apply to all civil proceedings. The types of civil liability that are not covered by the protection for apologies (as set out in s.3B of the Act) can be briefly summarised as liabilities for: (a) an intentional violent act done with intent to cause injury or death (including sexual assault or misconduct)…[other types listed]…An apology should not be made in any matter that falls (or is thought to fall) into any of the categories listed in s.3B until legal advice has been obtained. This approach is recommended because an apology provided in such a matter may act as an admission of liability and may therefore breach a relevant contract of insurance.[84]

7.98 Professor Graycar of the Law Faculty of the University of Sydney advised the Committee that the Ombudsman's advice does not purport to set out the general law regarding the relationship between apologies and legal liability; it is solely confined to the legal situation under the NSW Civil Liability Act. Professor Graycar added that apologies and statements of regret have been offered in institutional harm contexts both in Australia and overseas 'which have not resulted in mass scale litigation (on the basis of that apology)'.[85]

Views on an acknowledgment

7.99 Some submissions argued that the Commonwealth and/or State Governments and the Churches and agencies should, rather than issuing formal apologies, issue an acknowledgment that past flawed institutional care policies occurred and acknowledge the consequences, including the adverse consequences, of these policies. An acknowledgment was seen as particularly important for many care leavers in that it would recognise their pain and suffering and prove to them that, at last, their stories and their past histories are 'believed'.

> While there are demands for financial recompense for the suffering received at the hands of those whom the courts identified as able to provide adequate care and protection, the service users at VANISH are clear that for them, it is important that their pain and suffering is acknowledged, Child Migrants and Indigenous Children have had acknowledgment of their suffering and ill treatment. Why should the survivors of Australian Institutions and alternative care not be awarded the same consideration? [86]

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84 NSW Ombudsman, *Apologies and Child Protection*, Child Protection Fact Sheet No 11, April 2003.

85 *Submission* 51, Supplementary Information, p.3 (Professor Graycar). See also *Committee Hansard* 4.2.04, p.98 (Ms Wangmann).

86 *Submission* 167, p.5 (VANISH).

> …there is a need to remove the "evidence burden" of having to provide evidence by people who have been in institutional care when they report that they have experienced abuse. The healing process would be aided if the agencies responsible for the care of children were to issue a broad statement that acknowledges the suffering of those who have been in institutional care. The anguish experienced through separation from their family of origin as well as their experiences of systemic abuse should be acknowledged as historic fact.[87]

7.100 The National Children's and Youth Law Centre emphasised the importance of a formal acknowledgment on behalf of Australian governments in that it shows the victims of past abuse that the community and its leaders are prepared to recognise and validate the suffering they have endured; and it assists the victims to feel a sense of release and gain strength to cope better with their personal experiences.[88]

7.101 One care leaver stated that:

> In my heart I feel if there is to be real peace for myself and others like me, I expect some acknowledgment, some justice…from society. I would like to be treated respectfully and fairly – to be given a fair hearing, the Australian "fair go". (Sub 219)

7.102 CLAN, the support and advocacy group representing care leavers, argued that acknowledgment and recognition is a more pressing need than seeking an apology:

> It is not an apology that is needed but an acknowledgment by both state and Federal governments that these events did take place, that policies were misconceived, and that the effects of this care system were pernicious and caused lasting and often irreparable damage to the children who suffered it.[89]

7.103 Submissions noted that any acknowledgment needs to be accompanied by precise measures of assistance and support. Broken Rites stated that the organisation has 'observed the representatives of religious organisations make acknowledgments time and time again while at the same time refusing to consider the needs of the victim when seated in front of them at mediation'.[90]

Conclusion

7.104 The Committee believes that governments and the Churches and agencies should all acknowledge their role in past institutional care policies and practices.

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87 *Submission* 158, p.11 (Relationships Australia – NSW).

88 *Submission* 70, p.3 (National Children's & Youth Law Centre). See also *Submission* 277, pp.7-8 (Office of the Commissioner for Children – Tasmania).

89 *Submission* 22, p.32 (CLAN).

90 *Submission* 79, p.16 (Broken Rites).

7.105 The Committee considers that the Commonwealth Government should issue a formal statement acknowledging, on behalf of the nation, the impact that institutional care had on the lives of many care leavers. In particular, the statement should express sorrow and apologise for the harm caused to these children as a result of their lives in institutions, with a particular emphasis on those children subject to physical and sexual abuse and assault. The Committee notes that, while the Commonwealth was not directly involved in the administration of these institutions, it has a moral obligation to acknowledge the harm done to many children – and fellow Australians – in institutional care settings. An acknowledgment in these terms will be an important part of the healing and reconciliation process for many care leavers.

7.106 The Committee is of the view that the State Governments and the Churches and agencies, who were directly involved in either the administration and/or day-to-day implementation of institutional care practices in the States, should acknowledge their respective roles in these practices; and the significant harm done to many children in their care in the various institutions across the country. The Committee believes that the statements by State governments and Churches should express sorrow and apologise for the hurt and distress suffered by care leavers, especially those who were the victims of abuse and assault at the hands of those in the institutions who were in charge of them and for whom they had a duty of care.

7.107 The Committee believes that the symbolism of an acknowledgment is important in itself in recognising past wrongs and enables governments and the Churches to accept their responsibilities for past actions in relation to the treatment of care leavers.

7.108 The Committee also considers that an acknowledgment would enable closure to be achieved or at least progressed for many care leavers. It would go some way towards promoting emotional and psychological healing so desperately needed by many care leavers. An acknowledgment would at last recognise that care leavers have been 'believed' – that their experiences, their traumas, their very existence do count and they are accepted for what they are.

7.109 The Committee further is of the view that that these acknowledgments must be accompanied by other positive measures that have been recommended in the report to ensure that they are not regarded as merely 'empty gestures' by care leavers and the community generally.

Recommendation 1

7.110 That the Commonwealth Government issue a formal statement acknowledging, on behalf of the nation, the hurt and distress suffered by many children in institutional care, particularly the children who were victims of abuse and assault; and apologising for the harm caused to these children.

Recommendation 2

7.111 That all State Governments and Churches and agencies, that have not already done so, issue formal statements acknowledging their role in the administration of institutional care arrangements; and apologising for the physical, psychological and social harm caused to the children, and the hurt and distress suffered by the children at the hands of those who were in charge of them, particularly the children who were victims of abuse and assault.