

# SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE

## INQUIRY INTO CHILDREN IN INSTITUTIONAL CARE

### TERMS OF REFERENCE

On 4 March 2003 the Senate referred the following inquiry to the Senate Community Affairs References Committee.

On 1 December 2004 the Senate agreed to the Committee's recommendation that the reference, not disposed of at the end of the 40<sup>th</sup> Parliament, be re-adopted with a reporting date of 17 March 2005.

1. That the following matters be referred to the Community Affairs References Committee for inquiry and report. The second report is due by December 2004.
  - (a) in relation to any government or non-government institutions, and fostering practices, established or licensed under relevant legislation to provide care and/or education for children:
    - (i) whether any unsafe, improper or unlawful care or treatment of children occurred in these institutions or places,
    - (ii) whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection, and
    - (iii) an estimate of the scale of any unsafe, improper or unlawful care or treatment of children in such institutions or places;
  - (b) the extent and impact of the long-term social and economic consequences of child abuse and neglect on individuals, families and Australian society as a whole, and the adequacy of existing remedies and support mechanisms;
  - (c) the nature and cause of major changes to professional practices employed in the administration and delivery of care compared with past practice;
  - (d) whether there is a need for a formal acknowledgement by Australian governments of the human anguish arising from any abuse and neglect suffered by children while in care;
  - (e) in cases where unsafe, improper or unlawful care or treatment of children has occurred, what measures of reparation are required;
  - (f) whether statutory or administrative limitations or barriers adversely affect those who wish to pursue claims against perpetrators of abuse previously involved in the care of children; and
  - (g) the need for public, social and legal policy to be reviewed to ensure an effective and responsive framework to deal with child abuse matters in relation to:
    - (i) any systemic factors contributing to the occurrences of abuse and/or neglect,
    - (ii) any failure to detect or prevent these occurrences in government and non-government institutions and fostering practices, and
    - (iii) any necessary changes required in current policies, practices and reporting mechanisms.
2. In undertaking this reference, the committee is to direct its inquiries primarily to those affected children who were not covered by the 2001 report *Lost Innocents: Righting the Record*, inquiring into child migrants, and the 1997 report, *Bringing them Home*, inquiring into Aboriginal children.
3. In undertaking this reference, the committee is not to consider particular cases under the current adjudication of a court, tribunal or administrative body.

4. In undertaking this reference, the committee is to make witnesses and those who provide submissions aware of the scope of the inquiry, namely:
  - (a) explain the respective responsibilities of the Commonwealth and the states and territories in relation to child protection matters; and
  - (b) explain the scope of the committee's powers to make recommendations binding upon other jurisdictions in relation to the matters contained in these terms of reference.

In accordance with the terms of reference, the Committee emphasises that during its examination of the subject of children in institutional care, the Committee cannot deliberate on cases of particular individuals that are under consideration by courts, tribunals or other bodies which may grant some remedy to those individuals.

The Committee will hear the details of individual cases, but will only use these in its deliberations to build a picture of the problems of institutional life and to assist in the identification of remedies to deal with these problems. The Committee will not recommend remedies for any particular person. This is because the federal Parliament has only limited power to deal with child protection, which is primarily the responsibility of State parliaments.

The committee may make recommendations suggesting remedies for the general problems that it identifies, however it cannot force the Commonwealth or State parliaments to adopt those remedies nor make recommendations that are binding on other jurisdictions.

For further details contact the Committee Secretary, Phone: (02) 6277 3515,  
Fax: (02) 6277 5829.  
E-mail: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)