



**Australian Government**

Senate Community Affairs References Committee

Inquiry into Children in Institutional Care

Australian Government Response to the Committee's Reports:

*Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*

and

*Protecting Vulnerable Children: A national challenge. Second report on the inquiry into children in institutional or out of home care.*

**AUSTRALIAN GOVERNMENT RESPONSE  
TO**

**Forgotten Australians: A report on  
Australians who experienced institutional  
or out-of-home care as children**

**Senate Community Affairs  
References Committee**

**AUSTRALIAN GOVERNMENT RESPONSE TO:**

***Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children***

The report of the Community Affairs References Committee, August 2004.

The Government welcomes this report by the Community Affairs References Committee as a sensitive, insightful and moving revelation of the experiences of many children in the Australian institutional care system. The Government acknowledges the Committee's commitment to giving care leavers the important opportunity of telling their own stories and recognises and applauds the courage of those individuals who freely shared their experiences, speaking or writing of the trauma that still permeates their lives.

The report states 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.”

It must also be acknowledged that children from culturally and linguistically diverse backgrounds experienced the added dimension of the loss of cultural heritage.

The suffering experienced by so many children placed in institutional care is a matter of shame for this country. While past practices and attitudes were not always the same as those of today, there can be no excuse for the physical and emotional abuse and pain experienced by thousands of these children.

Their willingness to speak out gives us all the opportunity to appreciate the extent of the problems and also to move with them into a healing process.

It must be acknowledged that children formerly in institutional care are not an homogenous group, and their experiences varied considerably. Some found adults who supported and cared for them; many, unfortunately, found a lack of love and care and even extreme abuse. Their needs for support or assistance will vary considerably. To those whose experiences have scarred them indelibly, we as a nation need to respond with appropriate help. This report offers some recommendations that will guide our progress to that end.

Some recommendations are clearly directed to state and territory governments or to those organisations that ran institutions where children were placed, and it must be recognised that some steps have already been taken by those responsible to address the issues raised. The Australian Government urges state and territory governments and the churches and agencies involved to respond positively to the report's recommendations. We look forward to working with these agencies cooperatively and to continue discussing these recommendations with state and territory governments where a united response is appropriate.

The report states 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”.

The Australian Government acknowledges that all levels of government have responsibility for the well being of Australian children. All children have a right to care and protection, and all children deserve love and support. The policies that allowed these outrages to be perpetrated on innocent children were not only misplaced; they were inexcusable in any era.

Specific responses to the report’s recommendations follow.

## **RECOMMENDATIONS**

### **Recommendation 1**

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.

#### **Response:**

The Australian Government has great sympathy for those children who suffered hurt and distress in institutional care. While it would not be appropriate for the Australian Government to issue an apology for a matter for which it does not have responsibility, the Government expresses its sincere regret that these children were placed in situations where they did not receive the care they deserved. The Government appreciates that many of these unfortunate Australians and their families continue to experience the serious personal consequences of their experiences of abuse, assault and abandonment.

The Government urges state, territory and local governments, churches, institutions and community organisations to acknowledge their responsibilities and to take action, where appropriate, to alleviate the suffering of those who were in their care. In particular, the Government urges a collaborative approach to assistance, through improved information access as well as practical support for care leavers.

### **Recommendation 2**

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.

#### **Response:**

This is a matter for state and territory governments, churches and agencies to consider.

**Recommendation 3**

That State Governments review the effectiveness of the South Australian law and consider amending their own statutes of limitation legislation to achieve the positive outcomes for conducting legal proceedings that have resulted from the amendments in the South Australian jurisdiction.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 4**

That in recognising the difficulty that applicants have in taking civil action against unincorporated religious or charitable organisations, the Government examine whether it would be either an appropriate or a feasible incentive to incorporation, to make the availability of federal tax concessions to charitable, religious and not-for-profit organisations dependent on, or alternatively linked to, them being incorporated under the corporations act or under state incorporated associations statutes.

**Response:**

The Government does not support this recommendation. The Australian Government recognises that the requirement for charities to be incorporated, as a condition for receiving tax concessions, may be desirable in some cases; however, the Government considers that such a requirement would not be feasible on administration or equity grounds. In regards to charities, the Australian Government has already taken steps to safeguard against the potential abuse of the tax status of charities and has announced that it will provide for greater scrutiny of the taxation concessions available to charities. In addition, the Australian Taxation Office maintains a compliance program under which organisations' charitable status can be reviewed.

Compulsory incorporation of charities as a precondition to granting tax concessions will add significant compliance and financial costs to the sector as a whole. For example, not-for-profit organisations may need to consider maintaining a constitution, appointing a board of directors, holding annual general meetings and hiring a lawyer and an accountant to meet the requirements of incorporation. These requirements can impose prohibitive costs on smaller charities (such as locally based community organisations), which currently do not undertake activities that may warrant incorporation.

Confining tax concessions to incorporated not-for-profit organisations may draw public criticism that the Government's tax concessions favour larger not-for-profit organisations at the expense of the smaller ones. Furthermore, such a requirement may result in reduced levels of charitable activity across the community and community wellbeing more generally. In that regard, compulsory incorporation may also create a distortion in the sector by favouring those organisations that are sufficiently large or have the capacity to justify incorporation.

Placing further restrictions on the sector by using a tax policy instrument to achieve a non-tax policy outcome is likely to result in unintended consequences that would be difficult to address. Other non-tax options, such as requiring that certain governance arrangements be observed by charitable organisations of a certain size, may offer a more appropriately targeted means to achieve the desired outcome.

**Recommendation 5**

That the Commonwealth Government examine the desirability and feasibility of introducing whistleblower legislation for the not-for-profit religious and charitable sectors.

**Response:**

The Government supports this recommendation. In its examination of the desirability and viability of introducing whistleblower legislation to provide protection for those working in the not-for-profit religious and charitable sectors, the Australian Government will need to explore a number of issues, including the extent to which it is possible, practical and appropriate for the Australian Government to legislate in this area.

**Recommendation 6**

That the Commonwealth Government establish and manage a national reparations fund for victims of institutional abuse in institutions and out-of-home care settings and that:

- the scheme be funded by contributions from the Commonwealth and State Governments and the Churches and agencies proportionately;
- the Commonwealth have regard to the schemes already in operation in Canada, Ireland and Tasmania in the design and implementation of the above scheme;
- a board be established to administer the scheme, consider claims and award monetary compensation;
- the board, in determining claims, be satisfied that there was a 'reasonable likelihood' that the abuse occurred;
- the board should have regard to whether legal redress has been pursued;
- the processes established in assessing claims be non-adversarial and informal; and
- compensation be provided for individuals who have suffered physical, sexual or emotional abuse while residing in these institutions or out-of-home care settings.

**Response:**

The Government does not support this recommendation. The Government deeply regrets the pain and suffering experienced by children in institutional care but is of the view that all reparations for victims rests with those who managed or funded the institutions, namely state and territory governments, charitable organisations and churches. It is for them to consider whether compensation is appropriate and how it should be administered, taking into account the situation of people who have moved interstate.

### **Recommendation 7**

That all internal Church and agency-related processes for handling abuse allegations ensure that:

- informal, reconciliation-type processes be available whereby complainants can meet with Church officials to discuss complaints and resolve grievances without recourse to more formal processes, the aim being to promote reconciliation and healing;
- where possible, there be independent input into the appointment of key personnel operating the schemes;
- a full range of support and other services be offered as part of compensation/reparation packages, including monetary compensation;
- terms of settlement do not impose confidentiality clauses on complainants;
- internal review procedures be improved, including the appointment of external appointees independent of the respective Church or agency to conduct reviews; and
- information on complaints procedures is widely disseminated, including on Churches' websites.

### **Response:**

This is a matter for churches and agencies to consider. The Australian Government urges churches and agencies to respond positively and compassionately.

### **Recommendation 8**

That the Commonwealth establish an external complaints review mechanism, such as a national commissioner for children and young people who would have the power to:

- investigate and mediate complaints received by complainants dissatisfied with Church processes with the relevant Church authority;
- review the operations of Church sponsored complaints mechanisms to enhance transparency and accountability;
- report annually to the Parliament on the operation of the Churches' complaints schemes, including data on the number and nature of complaints; and
- publicise the existence of Church-sponsored complaints mechanisms widely throughout the community.

### **Response:**

The Australian Government does not support this recommendation. A Children's Commission or similar office may be appropriate for state and territory governments to establish, given the primary responsibility the states and territories have for child welfare, and that decision rests with them. NSW, Queensland and Tasmania have Children's Commissioners, and they are regarded as performing valuable functions. The ACT Government also plans to have a Children's Commissioner. However, the Australian Government does not believe there would be any benefit in having a National Children's Commissioner, as this would duplicate processes already in place. The Australian Government does not seek to influence state and territory governments regarding the establishment of state or territory children's commissions. This is a decision for each state or territory government.

### **Recommendation 9**

That the Churches and agencies publish comprehensive data on all abuse complaints received to date, and then subsequently on an annual basis, and that this information include:

- numbers of complainants and type of complaints received;
- numbers of Church/agency personnel involved in complaint allegations; and
- amounts of compensation paid to complainants.

### **Response:**

This is a matter for state and territory governments, churches and agencies to consider. Privacy considerations would be paramount.

### **Recommendation 10**

That information on the above matters be provided annually (including any reasons for non-compliance) to the national commissioner for publication in a consolidated form in the commissioner's annual report.

### **Response:**

See response to Recommendations 8 and 9. However, national consolidation of data is possible through existing departmental mechanisms. The Australian Government will discuss consolidation processes with state and territory governments, churches and agencies if they choose to establish data collection mechanisms.

### **Recommendation 11**

That the Commonwealth Government seek a means to require all charitable and church-run institutions and out-of-home care facilities to open their files and premises and provide full cooperation to authorities to investigate the nature and extent within these institutions of criminal physical assault, including assault leading to death, and criminal sexual assault, and to establish and report on concealment of past criminal practices or of persons known, suspected or alleged to have committed crimes against children in their care, by the relevant authorities, charities and/or Church organisations;

And if the requisite full cooperation is not received, and failing full access and investigation as required above being commenced within six months of this Report's tabling, that the Commonwealth Government then, following consultation with state and territory governments, consider establishing a Royal Commission into State, charitable, and church-run institutions and out-of-home care during the last century, provided that the Royal Commission:

- be of a short duration not exceeding 18 months, and be designed to bring closure to this issue, as far as that is possible;
- be narrowly conceived so as to focus within these institutions, on the nature and extent of criminal physical assault of children and young persons, including assault leading to death; criminal sexual assault of children and young persons;
- and any concealment of past criminal practices or of persons known, suspected or alleged to have committed crimes against children in their care, by the relevant State authorities, charities and/or Church organisations.



**Response:**

The Australian Government urges state governments, charitable organisations and churches that managed or funded institutions to cooperate fully with authorities to investigate the nature and extent of criminal offences and to work in good faith to address outstanding issues.

The Australian Government considers that a royal commission into state government, charitable and church-run institutions is not appropriate. This inquiry has shown that there are a number of practical steps that can be taken to redress the experiences of children in institutional care.

The offences dealt with under Recommendation 11 are offences under state/territory law. Any investigation of the nominated institutions is, therefore, a matter for state and territory governments.

**Recommendation 12**

That government and non-government agencies holding records relating to care leavers, implement and fund, as a matter of priority, programs to find, identify and preserve records including photographs and other memorabilia.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government strongly supports the proposal in principle.

**Recommendation 13**

That all government and non-government agencies immediately cease the practice of destroying records relating to those who have been in care.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government strongly supports the proposal in principle.

**Recommendation 14**

That all State Governments and non-government agencies, which have not already done so:

- provide dedicated services and officers to assist care leavers in locating and accessing records, both government and non-government; and
- compile directories to assist in the locating and accessing of records relating to care leavers and the institutions into which they had been placed.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider.

**Recommendation 15**

That a dedicated information and search service be established in each State and Territory to:

- develop a complete register of all records held by government and non-government agencies;
- provide assistance to care leavers to locate and access records;
- provide advocacy and mediation services to care leavers accessing records; and
- ensure that all agencies holding records identify, preserve and make available all surviving records relating to care leavers and the institutions that housed them.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 16**

That all government and non-government agencies agree on access guidelines for the records of all care leavers and that the guidelines incorporate the following:

- the right of every care leaver, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same;
- the right of every care leaver to undertake records searches, to be provided with records and the copying of records free of charge;
- the commitment to a maximum time period, agreed by the agencies, for the processing of applications for viewing records; and
- the commitment to the flexible and compassionate interpretation of privacy legislation to allow a care leaver to identify their family and background.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government supports the proposal in principle.

**Recommendation 17**

That all agencies, both government and non-government, which provide access to records for care leavers, ensure adequate support and counselling services are provided at the time of viewing records, and if required, subsequent to the viewing of records; and that funding for independent counselling services be provided for those care leavers who do not wish to access services provided by a former care agency.

**Response:**

The Australian Government notes that counselling services are already funded and widely available, including to care leavers, and would be appropriately used in these circumstances. The Australian Government has provided one-off funding to the Care Leavers of Australia Network (CLAN) of \$100,000 for counselling support. In the longer term, this is the responsibility of state and territory governments, churches and agencies.

**Recommendation 18**

That the Commonwealth request the Council of Australian Governments to review all Federal and State and Territory Freedom of Information regimes to ensure that they do not hinder access by care leavers to information about their childhoods and families.

**Response:**

The Australian Attorney-General will raise this proposal with his state and territory counterparts.

**Recommendation 19**

That the Commonwealth fund a national conference of service providers and advocacy and support groups with the aim being to establish a professional national support and advocacy body for care leavers; and that this body be funded by the Commonwealth and State Governments and the Churches and agencies.

**Response:**

The Australian Government supports in principle the proposal for a conference of service providers, but not with a pre-determined outcome. Such a conference could identify ongoing needs of care leavers and make recommendations about the most effective ways of meeting those needs. The Australian Government is prepared to work with states and territories to convene a meeting of service providers and will discuss cost-sharing arrangements with states and territories. The Government cannot commit to funding of any outcomes in advance.

The Australian Government acknowledges the important role played by service providers and advocacy and support groups for care leavers. The Government notes that it already provides significant funding for counselling and support in the areas of child abuse and/or sexual assault.

The Australian Government considers that the establishment of any national support and advocacy body for care leavers would need to ensure that it does not duplicate services already available in some states. A state-based approach to providing support and advocacy is beneficial as it provides care leavers with the opportunity to talk to others with similar experiences and with counsellors who are aware of the specific experiences of children in those locations.

If there were seen to be a role for a national body, a fair and transparent selection process would be appropriate.

**Recommendation 20**

That the Commonwealth and State Governments and Churches and agencies provide on-going funding to CLAN and all advocacy and support groups to enable these groups to maintain and extend their services to victims of institutional abuse, and that the government and non-government sectors widely publicise the availability of services offered by these advocacy and support groups.

**Response:**

The Australian Government acknowledges the work CLAN has done in bringing together the stories of the individuals and families who suffered abuse and neglect in institutions. The Government commends CLAN for effectively reshaping the country's history by drawing the nation's attention to these tragic events. It is now important for governments, churches and agencies to take responsibility for delivering positive and concrete responses, and it remains to be seen what role CLAN and other support groups now have to play in encouraging them to do so.

The Australian Government has committed \$100,000 to CLAN as a one-off grant for the provision of counselling services to care leavers. The definition of any ongoing role for CLAN, or another national support body, would be expected to emerge from the conference proposed in Recommendation 19. Appropriate structures and sources of funding would be determined following discussion of recommendations from that conference. There are other care leaver support bodies, specifically providing services in some states to people who were in care in each of those states.

While ongoing support for care leavers is primarily a role for state and territory governments, churches and agencies, the Australian Government will commit additional funding of \$100,000 to assist care leavers through support groups, to be determined in conjunction with the planning and holding of the national conference.

**Recommendation 21**

That all State Governments, Churches and agencies provide a comprehensive range of support services and assistance to care leavers and their families.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government strongly supports a process that is based on an assessment of need and an identification of gaps in existing services. These matters could be further discussed at appropriate Ministerial Councils.

**Recommendation 22**

That all State Government funded services for care leavers be available to all care leavers in the respective State, irrespective of where the care leaver was institutionalised; and that funding provisions for this arrangement be arranged through the Community and Disability Services Ministerial Council.

**Response:**

This is a matter for state and territory governments. The Australian Government supports the recommendation in principle and urges state and territory governments to continue to ensure access to services is provided for care leavers who have moved interstate.

**Recommendation 23**

That all State Governments, Churches and agencies fund counselling services for care leavers and their families, and that those currently providing counselling services maintain and, where possible, expand their services including to regional areas. The counselling services should include:

- the extension of specialist counselling services that address the particular needs of care leavers;
- their provision to clients on a long-term or as required basis; and
- the provision of external counselling as an option.

**Response:**

This is a matter for state and territory governments, churches and agencies to consider. The Australian Government supports this recommendation in principle.

**Recommendation 24**

That specialist higher education courses be available for the training of health professionals in areas related to the particular psychological and psychiatric effects of institutional abuse.

**Response:**

Universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government. Under the new funding framework that commenced in 2005, there will be Funding Agreements with each University, specifying the number of places across the discipline mix to be supported by the Australian Government. In reaching these agreements, every year the Department of Education, Science and Training will meet with each University to discuss their strategic directions and plans for course offerings. This would be the stage at which the possibility of offering this training might be discussed, assuming that they are to be included in a health related degree. However, Universities decide how the funds they receive from the Government and the tuition fees they receive from their students will be used internally, as they are in the best position to allocate funds in a way that furthers their strategic direction in the provision of higher education.

The Australian Government will ensure that the Australian Vice-Chancellor's Committee is aware of the recommendations of the Senate Community Affairs Committee in this regard.

Other higher education providers are autonomous institutions, which determine their own teaching arrangements and course curricula.

The Medical Specialist Training Steering Committee, commissioned by the Australian Health Ministers' Advisory Council, is currently looking at providing training for medical specialists, including psychiatrists, which is more applicable to the range of health care settings within which they will practice as professionals. This work is being done in conjunction with the Royal Australasian and New Zealand College of Psychiatrists who are responsible for the development of training programme content. It will ensure that training provided to the future psychiatry workforce is more

applicable to the needs of the community, including those members of the community who present to a range of community based and acute settings for psychiatric treatment.

**Recommendation 25**

That the Commonwealth and State Governments in providing funding for health care and in the development of health prevention programs, especially mental health, depression, suicide prevention and drug and alcohol prevention programs, recognise and cater for the health needs and requirements of care leavers.

**Response:**

The Australian Government, through the Department of Health and Ageing, funds a range of health care, health promotion and support programs, which are accessible to all Australians. While not targeted at care leavers, these programs are accessible to this group. These include the *National Suicide Prevention Strategy*, *National Mental Health Strategy* and the *Better Outcomes in Mental Health Care Initiative*.

**Recommendation 26**

That the Department of Health and Ageing fund a pilot program under the Aged Care Innovative Pool to test innovative models of aged care services focussing on the specific needs of care leavers.

**Response:**

The Australian Government, through the Department of Health and Ageing, acknowledges the potential scope to develop a pilot proposal under the Aged Care Innovative Pool that would aim to test innovative models of aged care services for older people with specific needs, such as care leavers, whose care needs are not adequately met through existing aged care services. Consistent with Program Guidelines that specify the arrangements for developing innovative pool pilot proposals, stakeholder agencies can develop an outline of a proposed model and project parameters and make contact with the Department. More information about the Innovative Pool, including program guidelines, is available from the Department of Health and Ageing's website.

**Recommendation 27**

That the Home and Community Care program recognise the particular needs of care leavers; and that information about the program be widely disseminated to care leaver support and advocacy groups in all States.

**Response:**

This is a matter for state and territory governments. The Australian Government, through the Department of Health and Ageing, provides funding for the Home and Community Care (HACC) program, which is accessible to all Australians. The dissemination of information about state and regional specific programs funded under the HACC program is a state and territory government responsibility.

**Recommendation 28**

That the Supported Accommodation Assistance Program recognise the particular needs of care leavers; and that:

- data on the usage of the Program by care leavers be collected; and
- information about the Program be widely disseminated to care leaver support and advocacy groups in all States.

**Response:**

The Government supports this recommendation in principle. Data collection on the use of the Supported Accommodation Assistance Program (SAAP) by care leavers is currently being investigated by the SAAP program's Information Sub Committee.

Information on SAAP services may be of interest to care leaver support and advocacy groups, and such information will be made available through the Department of Family and Community Services. However, SAAP is a crisis response program for people who are homeless or about to become homeless. Support groups should familiarise themselves with the range of programs available for this particular client group which aim to prevent them from falling into crisis.

**Recommendation 29**

That the Commonwealth and State Governments widely publicise the availability of adult literacy and numeracy services and associated adult education courses to care leavers and care leaver support groups.

**Response:**

The Australian Government supports this recommendation. While funding of Adult and Community Education (ACE) provision is a State and Territory Government responsibility, from 1 July 2005 the Australian Government (through the Department of Education, Science and Training) will provide \$1.105 million to Adult Learning Australia (ALA) to undertake activities associated with adult learning. Part of this funding (\$730,000) supports the promotion of adult learning, research and other activities. An additional \$375,000 is provided to ALA to distribute to the States and Territories for activities associated with Adult Learners' Week.

The Commonwealth Department of Education, Science and Training liaises with State Training Authorities and with peak bodies, such as the Australian Council for Adult Literacy (ACAL) and ALA, and will seek their support to further publicise the availability of adult literacy and numeracy courses and associated education courses to care leavers and care leaver support groups. The Department of Education, Science and Training also funds the Reading Writing Hotline which directs callers to their nearest literacy training provider and will ask ALA to further publicise it.

State and Territory Governments also provide general education courses, which largely consist of literacy and numeracy training. The two Australian Government programmes which focus on literacy and numeracy, the Language, Literacy and Numeracy Programme (LLNP) and the Workplace English Language and Literacy Programme (WELL), target quite specific groups – jobseekers and those in employment respectively – and are not programmes that care givers or care agencies

can refer people to. These two programmes are, however, widely publicised through several different methods and are well known throughout the adult and vocational education fields.

**Recommendation 30**

That State Governments investigate options for alternative entry pathways to higher education courses for ex-residents of institutions and their children.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 31**

That the Commonwealth, in conjunction with the States, develop procedures for the collection of data on people who have been in care on forms that are already used to elicit client information such as Medicare and Centrelink forms and admission forms to prisons, mental health care facilities and aged care facilities.

**Response:**

The Australian Government will examine what the possibilities are of collecting information on existing forms. Not all situations will be appropriate. Collection of this type of information on Medicare forms is not supported. Access to such information through Medicare forms would infringe the *Privacy Act 1988*, as such collection is not a legislated purpose nor covered in the Information Privacy Principle 2 pathway as printed on the Medicare claim form. Further, section 130 of the *Health Insurance Act 1973* would prevent any such disclosure. The inclusion of specific questions on Centrelink forms would only be appropriate if programs were specifically tailored for, or offered particular services to, care leavers.

This recommendation will be revisited if specific programs or services are developed in the future that target care leavers as a distinct group.

This is a matter for state and territory governments to consider also.

**Recommendation 32**

That Commonwealth and State programs across a range of social policy areas, including health and aged care and social welfare services generally, explicitly recognise care leavers as a sub-group with specific requirements in the publications and other material disseminated about programs.

**Response:**

The Australian Government recognises the issues faced by care leavers but does not endorse the recommendation to explicitly recognise care leavers as a sub-group with specific requirements in publications and public information materials. Australian Government departments will consider and address, where appropriate, the special needs of care leavers with regard to information and programs that specifically address the needs and circumstances of that group.



**Recommendation 33**

That the Commonwealth and the States commit, through the Council of Australian Governments, to implementing a whole of government approach to the provision of programs and services for care leavers across policy areas such as health, housing and welfare and community services and other relevant policy areas.

**Response:**

The Australian Government believes that these issues are worthy of further discussion but does not support referral to COAG. The Australian Government will commit to a whole of government approach through relevant Ministers' Conferences, including the Community Services Ministers and the Health Ministers Councils. Appropriate strategies will be developed for government consideration.

**Recommendation 34**

That the Commonwealth and State Governments, in conjunction with the Churches and agencies, provide funding for the erection of suitable memorials commemorating care leavers. Where possible, memorials could take the form of:

- memorial gardens constructed in conjunction with local councils;
- the placement of plaques at the site of former institutions; and/or
- the construction of heritage centres on the site of former institutions.

The Committee further recommends that the appropriate form and location of memorials should be determined after local consultation with care leavers and their support and advocacy groups.

**Response:**

The Government supports the concept of memorials to commemorate the experiences of children in institutional care as an appropriate way to acknowledge past injustices. The Government will contribute funding of up to a total of \$100,000 towards any suitable proposals for memorials initiated by state or territory governments.

**Recommendation 35**

That the National Museum of Australia be urged to consider establishing an exhibition, preferably permanent, related to the history and experiences of children in institutional care, and that such an exhibition have the capacity to tour as a travelling exhibition.

**Response:**

While the Australian Government has responsibility for the National Museum of Australia, the management of Australian Government institutions is at arm's length from the government of the day. The Council and Management of these institutions form their own policies on acquisitions, exhibitions and all collections issues. The Museum has advised that while similar social issues, in particular those that affect the lives of children, have been represented in its temporary exhibitions program, it would be unable to commit to a permanent exhibition on this theme.

**Recommendation 36**

That the Commonwealth Government provide funding for the National Library of Australia to undertake an oral history project to collect the life-stories of former residents in institutional and out-of-home care.

**Response:**

While the Australian Government has responsibility for the National Library of Australia, the management of Australian Government institutions is at arm's length from the government of the day. The Council and Management of these institutions form their own policies on acquisitions, exhibitions and all collections issues. The National Library has advised that it would be unable to undertake a project of this scale at this time.

**Recommendation 37**

That the Commonwealth Government fund research either through the Australian Institute of Family Studies or other relevant research body or university into the following areas:

- historical research into institutional care, including the role of institutional care in Australia's social history; the history of institutions and the commissioning of personal histories of former residents;
- the social and economic impact and cost of institutional care; and
- inter-disciplinary research into the relationship between child welfare/child protection and areas such as welfare dependency, social problems such as drug and alcohol abuse and family relationship breakdowns.

**Response:**

The Australian Institute of Family Studies is an independent entity, and the Australian Government has no capacity to determine its research priorities. However, the Government will explore, through the Department of Family and Community Services, possibilities for engaging other research partners to examine issues relating to the social impacts of institutional care, the ongoing needs of care leavers, service delivery ramifications and specific issues around family relationship effects. Historical research, if undertaken, would not be a primary focus. Any research should be tailored to improving outcomes for this group of care leavers. The National Child Protection Clearinghouse is contracted to the Department of Family and Community Services and can be funded to carry out additional research as required. This avenue will be pursued.

**Recommendation 38**

That the Australian Institute of Family Studies National Child Protection Clearinghouse be funded by the Commonwealth Government to collect publications related to historical studies of institutional and other forms of out-of-home care and that this information be widely disseminated.

**Response:**

See response to Recommendation 37.

**Recommendation 39**

That the Commonwealth, in co-operation with State Governments, establish courses of study at selected tertiary institutions that focus on child protection and related issues, especially early childhood and family studies, psychology, conflict management, the impact of institutional care and social policy to address issues in these areas.

**Response:**

The Australian Government supports this recommendation in principle but notes that universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government. Under the new funding framework that commenced in 2005, there will be Funding Agreements with each University, specifying the number of places across the discipline mix to be supported by the Australian Government. In reaching these agreements, every year the Department of Education, Science and Training will meet with each University to discuss their strategic directions and plans for course offerings. This would be the stage at which the possibility of offering this training might be discussed. However, Universities decide how the funds they receive from the Government and the tuition fees they receive from their students will be used internally, as they are in the best position to allocate funds in a way that furthers their strategic direction in the provision of higher education.

Other higher education providers are autonomous institutions, which determine their own teaching arrangements and course curricula.

Agencies that employ child protection workers could seek to work with individual Universities (or other higher education providers) to develop courses that meet their needs. Funding is being provided through the *Higher Education Support Act 2003* under Section 41-45 (Other Grants), for a Chair in Child Protection at the University of South Australia. The Chair was announced by the Minister for Education, Science and Training on 19 March 2004. Ten million dollars has been committed over ten years from 2004, to provide a special focus on research into child protection issues. The position of the Chair, currently held by Professor Dorothy Scott, is to lead and promote research into child protection and assist researchers working to combat child abuse across the disciplines of early childhood and family studies, psychology, education and literacy, conflict management, Indigenous communities and cultures, service delivery and social policy. The Australian Government has agreed with state and territory governments to write, as a group, to Professor Scott and seek her input and guidance on these issues.

The Australian Government will ensure that the Australian Vice-Chancellor's Committee is aware of the recommendations of the Senate Community Affairs Committee in regard to this recommendation.

Additionally, in vocational education and training, the Community Services and Health Industry Skills Council will be developing a national competency framework for workforce planning for Family Counsellors, Family Dispute Resolution Practitioners and workers in Children's Contact Services. This project, to be

undertaken during 2005-2006, was funded by the Attorney General's Department (Family Pathways Branch).

Vocational/job outcomes for workers will be achieved by developing competency standards and qualifications, and supporting their work under a national structure. The competency standards/qualifications are planned to be included in the Community Services Training Package.

Further, the Certificate IV in Mental Health Work (Nonclinical), in the current Community Services Training Package, was developed for health workers who provide a range of community services and community interventions to clients with mental health issues and/or implement health promotion and community interventions. Their work may take place in a range of contexts such as community based organisations, residential rehabilitation services and outreach services. This qualification refers to specific knowledge of a "clients with mental health issues" group and appropriate intervention processes applied in residential and community settings.

Also in the Community Services Training Package are three child protection qualifications: Certificate IV in Community Services (Protective Care), Diploma of Community Services (Protective Intervention) and the Diploma of Statutory Child Protection. These are delivered by TAFE and other Registered Training Organisations. The Community Services Training Package also provides national Certificate, Diploma and Advanced Diploma qualifications in the areas of children's services, residential support services, and non-residential services. In 2006-07 the Department of Education, Science and Training plans to fund the Community Services and Health Industry Skills Council to review the Community Services Training Package. Extensive stakeholder consultations occur during development and review to ensure that the Training Package is relevant to industry's needs and usable. Before the Training Package is endorsed for use, the developer must validate it with all relevant stakeholders and provide evidence of broad industry support.

Note that States and Territories are responsible for the quality of training and assessment, and for prioritising the allocation of funding for New Apprenticeships and other VET courses.



**AUSTRALIAN GOVERNMENT RESPONSE  
TO  
Protecting vulnerable children: A national  
challenge**

**Second report on the inquiry into children  
in institutional or out of home care**

**Senate Community Affairs  
References Committee**

**AUSTRALIAN GOVERNMENT RESPONSE TO:**

***Protecting Vulnerable Children: A national challenge.  
Second report on the inquiry into children in institutional or  
out-of-home care***

The report of the Community Affairs References Committee, March 2005.

The Australian Government welcomes the second report by the Community Affairs References Committee following its inquiry into children in institutional or out-of-home care. The *Protecting Vulnerable Children* report follows on from the Committee's *Forgotten Australians* report and focuses on contemporary child protection issues, including foster care, and the government and legal framework in which child welfare and protection issues operate. The second report also considers children and young people with disabilities in care, and children and young people in juvenile justice and detention centres.

The report's recommendations are directed at the Australian Government and the state and territory governments. Those recommendations directed specifically at the Australian Government have been considered, along with those recommendations that are directed at both levels of government. The Australian Government's response to these recommendations is attached.

With its focus more on contemporary child protection and welfare issues, the *Protecting Vulnerable Children* report makes some recommendations that will assist governments in developing a child welfare and protection framework that is capable of providing a safe and caring environment for children and young people and protecting their rights, including the right to their cultural heritage.

The report acknowledges that child protection is the primary responsibility of the state and territory governments. However, the importance of all governments working closely together to bring about a safe, secure and caring environment for all children and young people cannot be over emphasised.

The safety and welfare of children is the responsibility of all Australians: governments; communities; families; and individuals. It is the responsibility of all to ensure that the system works effectively for children and their families.

## RECOMMENDATIONS

### **Recommendation 1**

That the Commonwealth Government consider the designation of a year as the National Year Against Child Abuse in Australia.

#### **Response:**

The Australian Government agrees with the Senate Community Affairs References Committee that child protection issues must be paramount in general public debate and the public consciousness.

The Australian Government supports and promotes a number of ongoing initiatives, which focus on the prevention of child abuse and neglect. These include funding National Child Protection Week through the National Association of Child Abuse and Neglect (NAPCAN), and supporting the biennial National Child Protection Awards administered by the Australian Council for Children and Parenting. The Australian Government also provides support for Children's Week (which incorporates Universal Children's Day) and Families Week. In light of these initiatives, the Government does not believe that the designation of a year as the National Year Against Child Abuse in Australia would provide any further tangible benefits.

To assist in raising the public consciousness and in developing a national approach to child protection in Australia, the Australian Government will convene a National Summit on Child Protection to be held in Melbourne in the first half of 2006. The National Summit will bring together child protection practitioners, researchers, and policy makers from all jurisdictions to identify a practical way forward in developing a national approach to child protection in Australia.

### **Recommendation 2**

That State and Territory Governments consider reviewing the effectiveness of mandatory reporting in protecting and preventing child abuse, and in conducting such a review, they particularly focus on the successes of the various options used in care and protection systems, in comparison with mandatory reporting.

#### **Response:**

This is a matter for state and territory governments to consider.



### **Recommendation 3**

That, as recommended in *Forgotten Australians*, the Commonwealth, State and Territory Governments establish courses of study at selected tertiary institutions that focus on child protection and related issues, especially early childhood and family studies, psychology, conflict management, the impact of institutional care and social policy, to address issues in these areas (recommendation 39 in *Forgotten Australians*).

#### **Response:**

The Australian Government supports this recommendation in principle but notes that universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government. Under the new funding framework that commenced in 2005, there will be Funding Agreements with each University, specifying the number of places across the discipline mix to be supported by the Australian Government. In reaching these agreements, every year the Department of Education, Science and Training will meet with each University to discuss their strategic directions and plans for course offerings. This would be the stage at which the possibility of offering this training might be discussed. However, Universities decide how the funds they receive from the Government and the tuition fees they receive from their students will be used internally, as they are in the best position to allocate funds in a way that furthers their strategic direction in the provision of higher education.

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The Australian Government will ensure that the Australian Vice-Chancellor's Committee is aware of the recommendations of the Senate Community Affairs Committee in regard to this recommendation.

Additionally, in vocational education and training, the Community Services and Health Industry Skills Council will be developing a national competency framework for workforce planning for Family Counsellors, Family Dispute Resolution

Practitioners and workers in Children's Contact Services. This project, to be undertaken during 2005-2006, was funded by the Attorney General's Department (Family Pathways Branch).

Vocational/job outcomes for workers will be achieved by developing competency standards and qualifications, and supporting their work under a national structure. The competency standards/qualifications are planned to be included in the Community Services Training Package.

Further, the Certificate IV in Mental Health Work (Nonclinical), in the current Community Services Training Package, was developed for health workers who provide a range of community services and community interventions to clients with mental health issues and/or implement health promotion and community interventions. Their work may take place in a range of contexts such as community based organisations, residential rehabilitation services and outreach services. This qualification refers to specific knowledge of a "clients with mental health issues" group and appropriate intervention processes applied in residential and community settings.

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Note that States and Territories are responsible for the quality of training and assessment, and for prioritising the allocation of funding for New Apprenticeships and other VET courses.

#### **Recommendation 4**

That awareness of child protection issues, the effects in the longer term for a child or young person in care and related issues be included as components of teacher education courses conducted at the tertiary level.

#### **Response:**

Universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government. Under the new funding framework that commenced in 2005, there will be Funding Agreements with each University, specifying the number of places across the discipline mix to be supported by the Australian Government. In reaching these agreements, every year the Department of Education, Science and Training will meet with each University to

discuss their strategic directions and plans for course offerings. This would be the stage at which the possibility of offering this training might be discussed. However, Universities decide how the funds they receive from the Government and the tuition fees they receive from their students will be used internally, as they are in the best position to allocate funds in a way that furthers their strategic direction in the provision of higher education.

The Australian Government will ensure that the Australian Vice-Chancellor's Committee is aware of the recommendations of the Senate Community Affairs Committee in this regard.

Other higher education providers are autonomous institutions, which determine their own teaching arrangements and course curricula.

In June 2004 the Minister for Education, Science and Training established the interim National Institute for Quality Teaching and School Leadership (NIQTSL), to raise the status, quality and professionalism of teachers and school leaders in Australia. The NIQTSL is undertaking the scoping of a national accreditation system for teacher education courses, which may include requirements for course content. The Department of Education, Science and Training will make NIQTSL aware of the recommendation that teacher education courses should raise awareness of child protection issues, and the long-term effects of care. The House of Representatives Standing Committee on Education and Vocational Training is holding an inquiry into teacher education. This issue has been referred to that inquiry.

The Australian Government is committed to continuing working with the States and Territories wherever possible to support all children to receive an education in a safe and supportive environment. The Australian Government led the development of the *National Safe Schools Framework* (NSSF), which was endorsed by all Ministers of Education in July 2003. The NSSF is framed around six key elements providing a consistent national approach to countering bullying, harassment, violence, abuse and neglect in schools. In particular, it notes the importance of appropriate pre-service and in-service training for all staff about child protection issues, including: recognising and responding to indicators of child abuse; understanding the effects of abuse and neglect on the development of children and young people; and complying with agreed policies and procedures related to child protection.

#### **Recommendation 5**

The Commonwealth review the level of the Transition to Independent Living Allowance (TILA) to ensure that it is adequate to meet the needs of young people leaving care.

#### **Response:**

The Australian Government has recently expanded the eligibility criteria for the Transition to Independent Living Allowance (TILA) to include some young people transitioning from informal care arrangements including Indigenous Kinship Care and juvenile detention centres. As a result of the expansion of the eligibility criteria, it will be necessary to collect data on the uptake of TILA under the new criteria prior to considering any changes to the amount of TILA to be paid. It is anticipated that

sufficient data on the uptake of TILA under the new criteria may be available in 2006. The Australian Government will consider the adequacy of the amount of TILA to be paid once that data is available.

### **Recommendation 6**

The Commonwealth, State and Territory Governments consider new models for the schooling and education of children in out-of-home care, particularly children who have been classified as high-risk children, for example, schooling by specialist teachers trained in both education and child psychology.

### **Response:**

The administration of schools and teachers is a matter for State and Territory Government and non-Government education authorities, who bear legal responsibility for the duty of care of students. Accordingly, the Government considers this to be primarily a matter for States and Territories given their constitutional responsibilities for schooling for all children and for child welfare. However, the Australian Government is committed to continuing working with the States and Territories wherever possible to support all children to receive an education in a safe and supportive environment. The Australian Government led the development of the *National Safe Schools Framework* (NSSF), which was endorsed by all Ministers of Education in July 2003. The NSSF is framed around six key elements providing a consistent national approach to countering bullying, harassment, violence, abuse and neglect in schools. In particular, it notes the importance of relevant additional training to be provided for staff with specific roles in child protection, to provide support to students who are the subject of concerns about abuse or neglect.

In vocational education and training the Community Services Training Package provides qualifications with child psychology and child development competency units for people working in the child care in schools, community settings and out of home care. These qualifications include the Certificate III in Children's Services, Certificate IV in Out of School Hours Care, Diploma of Out of School Hours Care, Diploma of Children's Services, and the Advanced Diploma of Children's Services.

Support for teacher professional learning and development in relation to the NSSF is available to all jurisdictions under the Australian Government Quality Teacher Programme (AGQTP). The AGQTP could further provide particular professional learning for teachers of students with target learning needs such as children in out-of-home care, should the State and Territory education authorities identify a need.

The Australian Government also makes a very significant contribution to support the most educationally disadvantaged students through the Schools Grants element of the Literacy, Numeracy and Special Learning Needs (LNSLN) Programme. Over the 2005-08 quadrennium, the LNSLN Programme will provide an estimated \$2.1 billion to support the most educationally disadvantaged students. The School Grants element will contribute over \$1.87 billion nationally over the quadrennium and targets students with disabilities, students from a language background other than English and socio-economic disadvantage. State and Territory Government and non-Government education authorities are responsible for the administration of the Schools Grants element of the LNSLN Programme in their systems and schools.

They have the flexibility to determine which students and schools have the greatest need and to allocate funds accordingly, while ensuring principles of equity, effectiveness and efficiency.

The Australian Government has provided \$5.3 million for the Partnership Outreach Education Model Pilot (POEM) to date and has agreed to provide a further \$2.6 million to extend the Pilot until December 2006. POEM provides an education and personal development programme targeting young people (aged 13 to 19) who are disconnected from mainstream schooling. POEM offers flexible accredited education and training options delivered in supported community settings and places emphasis on the acquisition of appropriate life skills. POEM is underpinned by partnerships and positive relationships between young people and their families, community service agencies, schools, government at all levels and business.

An evaluation of the Pilot released in 2004 found that POEM projects are strengthening the resilience and building the capacity of very troubled young people who, for a range of reasons, have disconnected from important social institutions such as family, schools and communities. Following the evaluation, the pilot projects will receive additional funding up till December 2006.

For the period 2002-2004, 4,110 young people were engaged in education, training and/or life skills programmes through the POEM Pilot.

#### **Recommendation 7**

That the strengthening of case management under the National Plan be progressed as a matter of priority, in particular to attempt to limit the turnover of caseworkers for children in out-of-home care.

#### **Response:**

As acknowledged in the Committee's Report, the National Plan for Foster Children, Young People and their Carers (the National Plan) already includes key areas for action such as the strengthening of case management through the sharing of best practice and the implementation of national standards for the transition planning for young people and children in foster care (see also Recommendation 8 below).

The development and implementation of the National Plan is a matter for all jurisdictions. Implementation is occurring over a two-year period, and a Community Services Ministers' Advisory Council working group led by the Australian Capital Territory is developing national standards in the areas of recruitment, training, assessment, transition planning and core information available at placement. The Australian Government will continue to work actively with state and territory governments on the implementation of the National Plan.

**Recommendation 8**

That the introduction of national standards for transition planning, particularly when leaving care, under the National Plan be implemented as a matter of priority.

**Response:**

See the response to Recommendation 7 above. The Australian Government will continue to work actively with state and territory governments on the implementation of the National Plan.

**Recommendation 9**

That the National Plan for Foster Care, Young People and their Carers be extended to include the following:

- Training –
  - investigate the implementation of national carer specific accredited training qualifications, for example, through Vocational Education Training;
- Uniform Data Collection –
  - collection of data on the carer cohort;
- Support –
  - examine ways of improving carer support including national standards for reimbursement of costs to cover the real costs of caring and payment of allowances;
  - examine ways of improving foster carer retention; and
  - develop models of response to allegations of abuse against foster carers and workers based on international best practice including articulation of carer's rights.

**Response:**

The development and implementation of the National Plan is a matter for all jurisdictions and is led by the Australian Capital Territory. The key areas for action and proposed outputs were agreed by all Community and Disability Ministers in 2004. The Australian Government will continue to work actively with state and territory governments on the implementation of the National Plan. Proposed outputs already include agreement on core competencies and nationally agreed training standards. The Australian Government has allocated \$50,000 for a scoping study, which will be undertaken by the Australian Institute of Health and Welfare, to evaluate the possible development of unit record based national data collection about foster carers.

**Recommendation 10**

That the State and Territory Governments consider the information in this report and use as a base on which to assist in providing more flexibility in accommodating and caring for children with disabilities, particularly where families can have their children at home. Such considerations would include an examination of a mix of living arrangements such as institutional care combined with options for children to return to families at particular times; week-day residential schools; and other options including various combinations of living at home with families, residential and respite care and foster care, along with a mix of carers and support. Where required, options could include the use of high-level residential care facilities and highly-trained professional staff and with an emphasis on ensuring that where necessary, the quality of care and actions of the staff are monitored.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 11**

That State and Territory Governments enlist the expertise of policymakers in disability and other areas of social policy when formulating laws for children and young people with disabilities, so that legislative provisions take account of the special needs of children and young people with disabilities and are broad ranging in their application, including in relation to residential facilities and services for children with a disability as well as to the actions of advocates and advocacy services.

**Response:**

This is a matter for state and territory governments to consider.

**Recommendation 12**

That the Commonwealth, State and Territory Governments examine ways to break down the barriers to legal assistance for children and young people with disabilities and their families; make the law more easily understood for such groups; and harness the expertise of practitioners in social policy and other disciplines to formulate laws to better serve all people with disabilities.

**Response:**

This recommendation is similar to one made by the Productivity Commission following its review of the *Disability Discrimination Act 1992*. Recommendation 9.1 from the Commission's report was that:

The Attorney-General, in consultation with state and territory governments, should commission an inquiry into access to justice for people with disabilities, with a focus on practical strategies for protecting their rights in the criminal and civil justice systems.

The Government accepted this Productivity Commission recommendation in principle and referred to the Federal Civil Justice System strategy paper released in

March 2004. The strategy paper includes strategies for improving access to the civil justice system for people with disability.

Many of the issues relating to access to justice for people with disability in the civil and criminal justice systems are matters that fall within the jurisdiction of the states and territories. Therefore the Attorney-General agreed to write to his state and territory counterparts to draw their attention to the Productivity Commission report and its recommendations.

#### *Commonwealth legal aid*

The Australian Government funds state and territory legal aid commissions to provide legal assistance to disadvantaged Australians in matters which arise under Commonwealth law. The services provided include information, community legal education and publication, legal advice and minor assistance, duty lawyer, primary dispute resolution and legal representation. Applicants for a grant of legal representation must satisfy the eligibility criteria, which include meeting the relevant Commonwealth legal aid guideline and means and merits tests. The Commonwealth priorities for legal aid, which are outlined in clause 6 of the legal aid agreements between the Australian Government and state and territory governments and legal aid commissions, include a special circumstance provision. This enables legal aid commissions to treat, as a Commonwealth priority, matters where the applicant has an intellectual, psychiatric or physical disability or is a child.

Under the Commonwealth family law, legal aid guidelines commissions must give the highest priority to matters where a child's safety is at risk. In addition, the family law legal aid guidelines provide for commissions to make grants of legal assistance for the separate representation of children in court proceedings.

The Government notes that assistance for young people is also a priority for legal aid commissions, with some having specialist youth legal services. The Under 18s Hotline is a legal advice line which has been set up by Legal Aid NSW. Qualified, experienced criminal lawyers with expertise in juvenile justice are available to provide advice to all young people who have committed, or are suspected of committing, a criminal offence. This service operates Monday to Friday, 9 am to midnight, and provides 24-hour coverage on weekends and public holidays.

Legal aid commissions in Victoria, Queensland and Western Australia provide specialist services for children and youth who have to appear before the courts or are involved in legal cases. In Queensland, applicants who are 17 years or younger are not subject to a means test to qualify for legal aid. In a number of other jurisdictions, the means test is not applied to the income and assets of parents of applicants under 18 years of age unless the applicant is still financially dependent on his/her parents.

#### *Commonwealth community legal services program*

The Australian Government funds a number of services through the Community Legal Services Program which are targeted at meeting the legal needs of young Australians. In 2004–05 the Australian Government provided funding of \$0.527million to six youth law centres, including the National Children's and Youth Law Centre.



### *Indigenous legal aid*

With respect to young Indigenous Australians, the Government funds a number of Indigenous-specific providers of legal aid services. Given that the Indigenous population has a much younger age structure than the non-Indigenous population, a significant part of their work involves providing legal assistance to Indigenous youth. The locations of Indigenous-specific providers (across a range of rural and remote as well as urban settings) helps ensure that their services reach Indigenous communities. Providers are required to give priority to Indigenous individuals – including children and youth – whose physical safety or cultural or personal well-being is at risk, or who would be significantly disadvantaged if assistance was not provided.

#### **Recommendation 13**

That the Australian and/or State Law Reform Commissions conduct research among legal practitioners to ascertain their knowledge and expertise in areas of disability and the law. The outcome of such research would highlight the need to introduce measures to educate lawyers so that they are better able to advise clients about laws affecting the lives of people with a disability, particularly in explaining the impact of certain legislative provisions and common law decisions for children and young people with disabilities. Such investigation might also include examining ways to encourage legal practitioners to offer *pro bono* services to children and young people with disabilities, who cannot afford legal fees.

#### **Response:**

The Australian Law Reform Commission's role is to make recommendations for legislative change. Its functions are set by statute and involve reviewing laws for the purpose of systematic development and reform. It can consider proposals for making, consolidating or repealing laws, and for making the law uniform across Australian jurisdictions.

The Senate Committee's recommendation is focused on education and changing attitudes, which are outside the Australian Law Reform Commission's functions. It would be more appropriate for these tasks to be undertaken by bodies such as the Law Society in each state and territory.

#### **Recommendation 14**

That, where applicable, all jurisdictions amend their *Disability Services Acts* to ensure that terms relating to people with a disability, specifically include children and young persons, as well as adults. This may require additions to legislation to include principles and applications for children and young people with a disability.

#### **Response:**

One guiding principle in commenting on Recommendations 14 and 15 is that of human rights, and the understanding that Australians of all ages can reasonably expect their human rights to be fully observed and that they will be treated equally and without discrimination. This expectation is supported in law, both at home and internationally. A second guiding principle is that the presence of a disability should in no way reduce the application of human rights – either in terms of the individual's expectation, or in terms of a third party's responsibilities towards the individual.

The Australian Government supports Recommendation 14 in seeking to ensure that relevant jurisdictional legislation is amended so that it relates to all people with disability – not only to adults, but to children and young persons as well.

**Recommendation 15**

That the Commonwealth Government encourage the NSW Government to take note of the evidence presented to this inquiry and proclaim ss.155 and 156 of the *Children and Young Person's (Care and Protection) Act 1998*, so that all children with disabilities in care, including those who have been voluntarily placed, have broad-ranging legislative protection and monitoring of their care.

**Response:**

For the reasons (principles) stated in support of Recommendation 14, the Australian Government supports Recommendation 15 in that it seeks to extend to all children with disability in care the legislative protection and monitoring of their care.

**Recommendation 16**

That the Commonwealth Government take note of the merits of restorative justice programs in helping to keep young people out of the juvenile justice system (and later gravitation to the adult prison system), and increase its involvement, support and funding for such programs, to ensure that the coverage of such programs across Australia is wider than is presently the case. It is recommended that the Commonwealth Government introduce restorative justice programs that would assist in reducing the high numbers of indigenous youth in juvenile justice centres.

**Response:**

Criminal justice and corrections is primarily a state and territory responsibility. In accordance with the principles agreed to by all governments at the Council of Australian Governments (COAG) in June 2004, the Australian Government is committed to working with the states and territories and with Indigenous people to address the over-representation of Indigenous youth in the juvenile justice system.

The Australian Government Attorney-General's Department (AGD) supports a range of Indigenous justice initiatives, several of which target the needs of Indigenous youth. The Government recognises the importance of supporting restorative justice initiatives. The Prevention, Diversion and Rehabilitation Program (PDRE), administered by the Indigenous Law and Justice Branch, currently funds around 130 community level projects that are intended to help reduce Indigenous people's adverse contact with the justice system. In addition to night patrols and prisoner support services, the program funds a range of projects for at-risk children and youth as well as restorative justice initiatives.

The Government recognises that improved outcomes for Indigenous youth in areas such as health, education and employment are likely to lead to improved justice outcomes as well. AGD is therefore working with other departments and agencies under the Government's new arrangements for the administration of Indigenous affairs to promote developments across all these areas.

**Recommendation 17**

The Commonwealth establish a national commissioner for children and young people to drive a national reform agenda for child protection. In doing so, that national commission should:

- bring together all stakeholders, including States and Territories, child protection professionals and researchers and peak organisations, to establish an agenda for change including the identification of key areas of concern;
- encourage the development of innovative models within the child protection system; and
- encourage State and Territory Governments to work toward harmonising child protection legislation, including agreement on common definitions.

**Response:**

As advised in response to Recommendation 8 in the *Forgotten Australians* report, the Australian Government does not support the establishment of a National Children's Commissioner. A Children's Commission or similar office may be appropriate for state and territory governments to establish, given the primary responsibility the states and territories have for child welfare, and that decision rests with them. NSW, Queensland and Tasmania have Children's Commissioners, and they are regarded as performing valuable functions. The ACT Government also plans to have a Children's Commissioner. However, the Australian Government does not believe there would be any benefit in having a National Children's Commissioner, as this would duplicate processes already in place. The Australian Government does not seek to influence state and territory governments regarding the establishment of state or territory children's commissions. This is a decision for each state or territory government.

The Australian Government considers that the best outcomes for children will be achieved if the Australian Government and the states and territories all work together. On 28 July 2004, the Community and Disability Services Ministers' Conference (CDSMC) endorsed a new dialogue between the states and territories and the Australian Government to examine a national approach to protecting vulnerable children. Under the auspices of the CDSMC, a Community Services Ministers' Advisory Council (CSMAC) working group is currently exploring a National Approach for Child Protection. The national approach will facilitate the development of common frameworks, definitions and terminologies for child protection and prevention and early intervention.

In addition, as noted in the response to Recommendation 1 of this report, the Australian Government will convene a National Child Protection Summit. The National Summit will bring together child protection practitioners, researchers, and policy makers from all jurisdictions to identify a practical way forward in developing a national approach to child protection in Australia.

**Recommendation 18**

That the Commonwealth engage the Productivity Commission to undertake an evaluation of out-of-home care to better determine the real costs to the community of out-of-home care.

**Response:**

As the state and territory governments have primary responsibility for providing out-of-home care services, the Australian Government will consult with them on this proposal. The issue of an evaluation and review body would need to be considered as part of this consultation.