CHAPTER 2

APOLOGIES, REDRESS AND JUDICIAL INQUIRIES

2.1 This chapter considers some of the major issues raised in evidence concerning the implementation of the recommendations of the *Forgotten Australians* and *Lost Innocents* reports. These are:

- the requirement for the Commonwealth to provided national leadership in ensuring coordinated and comprehensive responses to care leaver issues;
- national and State apologies to care leavers;
- reparation and redress schemes; and
- the need for judicial inquiries and/or a Royal Commission.

2.2 In most cases, both the *Lost Innocents* and *Forgotten Australians* reports made specific recommendations going to these issues. However, it is also the case that many of the recommendations in *Forgotten Australians* applies to care leavers more generally, and should be understood as being potentially relevant to any person who experienced out-of-home care in Australia in the last century, regardless of whether they experienced care in a State, religious or charitable institution; or indeed in some other setting, such as foster care.[1] The term 'care leavers' as it is used in the following chapter thus may include, as relevant, former child migrants and members of the stolen generation.[2]

National leadership role required from the Commonwealth

Lost Innocents

2.3 The former Commonwealth government issued its response to the *Lost Innocents* report on 14 May 2002. In the preamble to its response the government welcomed the report as a 'sensitive, comprehensive and insightful appraisal of child migration schemes and child migrants' experiences in Australia'; and acknowledged that the legacy of the child migration schemes must be addressed. Recognising the

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1 The second report of the Senate Community Affairs References Committee into children in institutional or out-of-home care, *Protecting Vulnerable Children: A National Challenge*, dealt specifically with foster care. The main focus of that report was on contemporary foster care issues, including children in care with disabilities and the contemporary government and legal framework for child welfare and protection. The report is available at http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2004-07/inst_care/report2/index.htm.

2 The major inquiry into the stolen generation was conducted by the Human Rights and Equal Opportunity Commission (HREOC) in 1997. The findings are reported in the inquiry's report, *Bringing Them Home*, available at http://www.hreoc.gov.au/social_justice/bth_report/index.html.

varied needs of former child migrants, and that many had suffered long-lasting effects from their experiences as child migrants, the government emphasised that the focus of its response to *Lost Innocents* was on 'practical support and assistance'.[3]

2.4 The Child Migrants Trust (CMT) commended the former Commonwealth government for supporting the holding of the original inquiry into child migration. However, CMT believed that the government's response was 'too half-hearted in tone and spirit' and 'did not seek to assume its full and proper responsibility for the many adverse consequences' of what were federal immigration policies.[4] In particular, the government had not adequately recognised the transnational nature of child migration issues, which required international coordination with the originating countries for child migrants in Australia, namely Britain and Malta.

2.5 Mr Norman Johnston, President, International Association of Former Child Migrants and Their Families (IAFCMF), called for the current federal government to formally respond to the original recommendations of the *Lost Innocents* report:

> It would give us a level or a measure of how far the present government is prepared to take our cause. What needs to be put to the committee is the level of grief that is still being suffered today by hundreds of former child migrants.[5]

2.6 Although the CMT acknowledged sustained benefits arising from the Committee's original inquiry, it felt that the inadequate responses and interest amounted to a lost opportunity for a 'more considered, compassionate [and] comprehensive approach to policy development in related areas, such as child trafficking and international adoptions'. A particular example was Australia's failure to send government representation to the International Congress on Child Migration in 2002.[6]

Forgotten Australians

2.7 The former Commonwealth government issued its response to the *Forgotten Australians* report on 10 November 2005. In the preamble to its response the government welcomed the Committee's report as a 'sensitive, insightful and moving revelation of the experiences of many children in the Australian institutional care system'; and, importantly, acknowledged that the neglect and abuse experienced by children placed in institutional care 'is a matter of shame for this country'. The

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3 Commonwealth government, 'Commonwealth government response to *Lost Innocents: Righting the Record*, May 2002, p. 1, available at http://www.aph.gov.au/senate/committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/recs/gov_resp_cm.pdf.

4 *Submission 23*, p. 8.

5 *Proof Committee Hansard*, 8 April 2009, p. 4.

6 *Submission 23*, p. 5.

response also accepted that the Commonwealth government must play a vital role in formulating national responses to the issues outlined in the report:

> 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.[7]

2.8 The majority of submitters and witnesses expressed disappointment at the implementation of the *Forgotten Australians* recommendations to date.[8] The government response was consistently described as a failure of national leadership, in particular due to the rejection of numerous recommendations on the grounds that they were the responsibility of the States and/or the institutions in which care leavers were resident. Mr Frank Golding, Vice-President, Care Leavers Australia Network (CLAN), observed:

> When it did respond, the government essentially passed the buck to the states, churches and charities.[9]

2.9 The Alliance for Forgotten Australians (AFA) stated that, given the Commonwealth's acknowledgement of the national character of the issues pertaining to care leavers, it was 'particularly disappointing' that it had refused to take the lead on recommendations where a national approach 'would be appropriate and effect fair outcomes':

> The repeated refrain of: 'This is a matter for state and territory governments, churches and agencies to consider' is frustrating for those who believe the Australian Government has a responsibility to coordinate, cajole and cooperate with those State and Territory Governments in the national interest.[10]

2.10 The Committee notes that the government's numerous refusals to act on the recommendations are based on a strict application of the historical Commonwealth-State legal responsibilities for child protection. As noted in the original report:

> Historically, legislative responsibility for child protection in Australia has rested primarily with the States and Territories – there is no legislative

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7 Commonwealth government, 'Government response to *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, November 2005, p. 1, available at http://www.aph.gov.au/senate/committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/recs/gov_resp_fa.pdf.

8 The full list of government responses are contained in Chapter 3 (*Lost Innocents*) and Chapter 4 (*Forgotten Australians*); and may be accessed through the committee's website at http://www.aph.gov.au/senate/committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/index.htm

9 *Proof Committee Hansard*, 30 March 2009, p. 14.

10 *Submission 10*, p. 3.

> power over children or child protection in the Commonwealth constitution.[11]

2.11 The submission of the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), while noting the need for collaboration across all jurisdictions, again drew attention to the primary legal responsibility of the States for child protection, as well as any consequent need for services:

> Given statutory responsibility for this issue, it is important to note that each jurisdiction has developed, or continues to develop, individual policies and service delivery processes.[12]

2.12 However, beyond such narrow or strictly legal considerations, submitters and witnesses identified a number of substantive grounds on which they believed the Commonwealth responsibility to past care leavers is soundly based. First, Commonwealth government funds, through child endowment payments, had supported the operation of many institutions. Mr Graham Hercus, After Care Support, United Protestant Association of New South Wales, commented:

> The federal child endowment money was pretty much what enabled many of the homes to keep functioning. They depended very heavily on that federal funding to operate…It is disingenuous for the federal government to say, 'We had no part in this,' because in fact it did.[13]

2.13 The inadequacy of such funding may also have contributed directly to the poor conditions in so many institutions:

> It can be argued quite cogently that it was the issue of lack of adequate (State and Federal) funding in the first place that led to some of the more obvious discrepancies in the provision of food, clothing, housing and, especially, staffing levels in the homes.[14]

2.14 Second, the Commonwealth was seen as having direct responsibility for the broader political and social environment that likely saw a great many children find their way into institutional care settings, particularly Australia's involvement in World War II. The AFA observed:

> Many of the children were in these institutions because their parents were, or had been, in the armed forces. They may have lost parent/s, through death or serious injury; many children also had parents who had returned from overseas war service with untreated post-traumatic stress disorder, unable to care for their children. [15]

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11 *Forgotten Australians*, p. 171.

12 *Submission 4*, p. 1.

13 *Proof Committee Hansard*, 7 April 2009, p. 21.

14 Association of Child Welfare Agencies, *Submission 28*, p. 3.

15 *Submission 10*, p. 5.

2.15 Mr Golding cited evidence supporting this view:

> …surveys show (e.g. CLAN 2007) that up to half of all fathers of children who subsequently grew up in 'care' served in the Australian armed forces. Many lost their father through death or serious incapacity or found that their mother left on her own was unable to care for them; and many children had parents who returned from service overseas wars with untreated post-traumatic stress disorder and other debilitating conditions. Service for the nation by parents undoubtedly created unintended harmful consequences for families, and countless children were separated from their fragmented families as a result of war.[16]

2.16 Third, witnesses considered that the Commonwealth has an 'overarching responsibility' for the harm suffered by children in care due to having funded State governments to administer child protection systems and by virtue of its national leadership role.[17] It was observed that in both respects the Commonwealth is not routinely restricted to areas for which it has strict financial or constitutional responsibility:

> This jurisdictional rationale for failure to act…[is] unconvincing. The Commonwealth Government routinely works with the States and Territories on matters outside its jurisdiction. It does provide leadership and resources in areas where it has no formal powers but sees the need for national action. School education is an obvious example. The current Government's leadership towards a National Framework for Protecting Australia's Children is an even more pertinent example. Led by the Commonwealth, all State and Territory Governments are heavily involved in putting the Framework together.[18]

2.17 Further, over time there had been an expansion of the federal spheres of influence and activity. Equally, the primacy of States' rights or sovereignty had diminished as Australia increasingly pursued national approaches to issues through the auspices of the Commonwealth government:

> …the reality is that politics have changed very significantly in Australia in that in the 1970s and 1980s states' rights was the big issue—states managed their own patch very tightly and were careful about that. Since then, we have seen a significant alteration in the whole balance of funding and of priorities across the nation, so we now have the federal government involved in the provision of health, education and a whole lot of other services that they previously were totally uninvolved in.[19]

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16 *Submission 16*, p. 3.

17 AFA, *Submission 10*, p. 5; Micah Projects Inc., *Submission 33*, p. 2.

18 Mr Frank Golding, *Submission 16*, p. 2.

19 Mr Graham Hercus, After Care Support, United Protestant Association of New South Wales, *Proof Committee Hansard*, 7 April 2009, p. 23.

2.18 Many witnesses expressed frustration at cooperative national responses and strategies being undermined by the continued reliance of both State and Commonwealth governments on jurisdictional arguments to deny any responsibility for implementing the recommendations of *Forgotten Australians*. Professor Maria Harries, Associate Member, AFA, commented:

> …reading some of the submissions what struck me is this relentless, 'No, that's a state responsibility.' 'No, that's a Commonwealth responsibility.' I think we have to move beyond that.[20]

2.19 Mr Golding observed that 'social and moral obligations can't be quarantined by legal boundaries'.[21]

2.20 Ms Caroline Carroll, Senior Forgotten Australians Worker, Victorian Adoption Network for Information and Self Help (VANISH), called upon the Commonwealth to demonstrate national leadership and 'move beyond the political' in implementing the recommendations of the *Forgotten Australians* report:

> We need our current federal government, which has been applauded on the international stage for its apology to our Aboriginal people and its commitment to and leadership on the environment and economy, to provide a national response and blueprint towards recompense and healing of forgotten Australians.[22]

2.21 In addition to acknowledging the Commonwealth's responsibility to work collaboratively with all stakeholders 'to further progress the report's recommendations',[23] Ms Allyson Essex, Branch Manager, FaHCSIA, advised:

> There is a range of processes within government that are used to encourage progress on particular issues. We have regular discussions with our state and territory colleagues about these issues.[24]

2.22 Further, FaHCSIA indicated that the current government 'has made further responses to the Forgotten Australians in several areas and has indicated its commitment to a healing process';[25] and is re-considering the responses of the former government:

> The Government is in the process of examining previous responses to the report's recommendations, to determine areas in which it is appropriate to make improvements and how improvements can be implemented. Given the need to do more, the Government is currently working with key stakeholder

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20 *Proof Committee Hansard*, 31 March 2009, p. 35.

21 *Proof Committee Hansard*, 30 March 2009, p. 14.

22 *Proof Committee Hansard*, 30 March 2009, pp 61, 63.

23 *Submission 4*, p. 2.

24 *Proof Committee Hansard*, 8 April 2009, p. 63.

25 *Submission 4*, p. 1.

groups and several Government members, in both the Senate and the House, to progress matters further.[26]

2.23 The Historical Abuse Network (HAN) commented:

It was with great relief that with a new government the recommendations are once again to be examined…[27]

National and State apologies

Lost Innocents Recommendation 30

That the Commonwealth Government issue a formal statement acknowledging that its predecessors' promotion of the Child Migration schemes, that resulted in the removal of so many British and Maltese children to Australia, was wrong; and that the statement express deep sorrow and regret for the psychological, social and economic 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.

Government Response

The government regrets the injustices and suffering that some child migrants may have experienced as a result of past practices in relation to child migration. The government supports the Committee's emphasis on moving forward positively to concentrate on improving support and assistance for those former child migrants who may need or want such services, as noted throughout the recommendations.

Implementation

2.24 *Lost Innocents* concluded that it was important for former child migrants to receive formal public acknowledgments, by governments and agencies, of their experiences as child migrants. The Committee considered that such statements would serve to recognise past wrongs and to enable governments and receiving agencies to 'accept their responsibilities for past actions involving the poor treatment of child migrants'.[28] The Committee felt that such recognition could assist former child migrants, as much as is possible, to resolve the emotional and psychological legacies arising from their experiences as child migrants.

2.25 The Committee notes that, notwithstanding the expression of regret contained in the government's response, the Commonwealth government has failed to issue a

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26 *Submission 4*, p. 1.

27 PowerPoint presentation, Brisbane, 6 April; 2009, available at http://www.aph.gov.au/senate/committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/submissions/sublist.htm.

28 *Lost Innocents*, p. 238.

formal statement containing the acknowledgments and expressions outlined in recommendation 30.

Lost Innocents Recommendation 31

That all State Governments and receiving agencies, that have not already done so, issue formal statements similar to those issued by the Western Australian and Queensland Governments and the Catholic Church and associated religious orders to former child migrants and their families for their respective roles in the child migration schemes.

Government response

The Commonwealth government urges state governments and receiving agencies to consider the importance of this recommendation, in recognition of the hurt and distress that may have been experienced by some former child migrants as a result of former migration and institutional practices.

Implementation

State governments

2.26 Evidence to the inquiry indicated that few States have issued specific statements similar to that issued by the Western Australian government—at least at the level of a statement made or motion put in a State parliament. However, the CMT advised that all of the State memorials to former child migrants, established in accordance with *Lost Innocents* recommendation 32 (discussed in Chapter 3), were launched with an accompanying 'statement of regret, if not a full apology'.[29]

2.27 A number of States have issued more general apologies to people who experienced abuse and neglect in care, similar to the Queensland statement referred to in recommendation 31. The text of the Queensland statement is reproduced below under the discussion of responses to *Forgotten Australians* recommendation 1.

2.28 Western Australia issued its statement acknowledging former child migrants in the form of a motion passed in the WA legislative assembly on 13 August 1998. The motion was:

> That this House apologise to the former child migrants on behalf of all Western Australians for the past policies that led to their forced migration and the subsequent maltreatment so many experienced, and express deep regret at the hurt and distress that this caused.[30]

2.29 New South Wales, South Australia, Tasmania and Victoria have all issued apologies to people who suffered abuse and/or neglect in State institutions, which

29 *Submission 23*, p. 2.

30 Department for Child Protection (WA), *Submission 11*, p. 10.

would include significant numbers of former child migrants. However, none of these could be said to be specifically directed to 'former child migrants and their families'.

2.30 South Australia advised that it had also previously made a public statement specifically acknowledging former child migrants:

> In February 2001, the Hon Dean Brown MP, then Minister for Human Services made a public statement acknowledging the history of the South Australian British Child Migrants.[31]

2.31 The public statement in part read:

> Many of the former child migrants tell us that they suffered greatly as a result of their being sent to Australia.
>
> Many have told of experiences of physical, emotional and sexual abuse at the hands of people in whose care they were placed.
>
> Many say they were told that they were orphans.
>
> Many say they were launched into adulthood without formal documents, such as birth certificates or citizenship papers and without any idea of their heritage.
>
> The resultant pain for the former child migrants is said to be enormous and has posed life-long challenges to them and their children and loved ones.
>
> The Government of SA wishes to acknowledge that these experiences, though not intended by the schemes, may have occurred and been suffered by the child migrants.
>
> At the same time, many of the former child migrants made an enormous contribution to the State of South Australia and have since demonstrated enormous courage and faith as they have worked to put the past behind them and move into a future with hope and optimism.
>
> We trust that the Government can move positively into the future with them and play a role in assisting and supporting the former child migrants and improving services for them.[32]

Receiving agencies

2.32 Beyond the apologies and acknowledgements made by the Catholic Church, as outlined in *Lost Innocents*,[33] the Committee received no evidence of further action, or inaction, by receiving agencies on this recommendation.

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31 *Submission 30*, p. 6.

32 *Lost Innocents*, p. 332.

33 See *Lost Innocents*, pp 229-231.

Forgotten Australians 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.

Government 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.

Implementation

2.33 In keeping with its response to recommendation 1, the Commonwealth government has not issued a formal statement acknowledging the hurt and distress suffered by, and apologising for the harm caused to, children in institutional care.

2.34 Submitters and witnesses identified a number of issues in relation to this recommendation.

Responsibility and leadership

2.35 The Committee's recommendation for an apology by the Commonwealth government on behalf of Australia arose from the conclusion that there existed a 'moral obligation' to do so. Much of the evidence received emphasised the continuing moral imperative of an apology for the Forgotten Australians. Mr James Luthy, who identified himself as a Forgotten Australian, submitted:

> This is also a moral issue and sadly the previous government seemed to lack the moral fibre or will to acknowledge that wrongs had been committed. As a Forgotten Australian I am asking that the Government assume some form of moral and ethical leadership and implement this recommendation.[34]

34 *Submission 36,* p. 1.

2.36 Beyond moral questions, the practical responsibility of the Commonwealth government was also raised. Ms Rebecca Ketton, Manager, Aftercare Resources Centre, Relationships Australia (Queensland), noted:

> …the Australian states and territories were responsible for putting in place their various child protection systems. The Commonwealth government funded them to do so and, therefore, holds accountability. An apology acknowledges that something wrong has happened and that something needs to change.[35]

2.37 *Forgotten Australians* also emphasised the powerful symbolism of an apology as a public acknowledgment of the experiences of Forgotten Australians.[36] Submitters and witnesses consistently expressed disappointment at the lack of a national apology delivered through the Commonwealth, and identified this failure as a lack of leadership. Ms Michele Greaves, for example, commented:

> It is important that the Commonwealth government leads the way for our nation, because our nation needs to hear what has happened to us. We can only heal when we hear from the government, from our nation, that you are sorry for what has happened...[37]

2.38 Similarly, Mr Laurie Humphreys, WA Representative, AFA, commented:

> The only thing I would like an apology to do is to acknowledge that it happened. That is a big thing. I have given a few talks over the last few years and people just do not believe it or it is hard for them to comprehend. The word 'sorry' after all these years does not excite me; just the apology for it having happened; saying, 'We did it and we apologise.'[38]

Continuing injustice

2.39 *Forgotten Australians* recognised that an apology would be an important part of the 'healing and reconciliation process for many care leavers'.[39] The Committee heard that the refusal of the Commonwealth government to deliver an apology had, accordingly, contributed to ongoing hurt and distress for Forgotten Australians. For many people, the refusal had denied them an opportunity for some resolution of a difficult past. Mr Luthy observed:

> The giving of an apology will give to many people closure from a past accentuated by abuse, horror, and feelings of worthlessness.[40]

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35 *Proof Committee Hansard*, 6 April 2009, p. 38.

36 *Forgotten Australians*, p. 197.

37 Private capacity, *Proof Committee Hansard*, 30 March 2009, p. 45.

38 *Proof Committee Hansard*, 31 March 2009, p. 45.

39 *Forgotten Australians*, p. 197.

40 *Submission 36*, p. 1.

2.40 Many Forgotten Australians were also experiencing a keener sense of injustice in light of the apology delivered to the stolen generations—Indigenous people removed from their families and placed in out-of-home care throughout the 19th and 20th centuries—on 13 February 2008. While there was consistent support for this act, it had only accentuated the Commonwealth's refusal to offer an apology for broadly comparable historical abuse and neglect. Mr Johnston submitted:

> On 13 February 2008 the world changed in relation to historical abuse, when the Prime Minister apologised on behalf of the government and the people of Australia to the stolen generation…We listened very carefully to the Prime Minister's sentiments. This was recognition, indeed, and long awaited. Our pain, suffering and injustice continues to this very day. We feel the degree of discrimination.[41]

2.41 Mr Golding also highlighted the effect on care leavers of the apology to the stolen generations:

> For many…[the apology] brought tears that there had been an acknowledgement for those people, but it also brought tears of the other sort: 'Why not us?'[42]

2.42 Given the similarities in the experiences of the stolen generations and the care leavers who were the subject of the *Forgotten Australians* report, Mr Andrew Murray, the former federal Senator who was instrumental in establishing the Committee's original inquiry, observed:

> The committee needs to ask the federal government the question being asked by white children who were harmed in care: where is their apology? Like the Indigenous children, many non-Indigenous children were taken from their country and stolen from their families. Like the Indigenous children, they too were sexually assaulted. They too were physically assaulted…So why does one section of the population get an apology but not the other? Why is there racial discrimination? Why does one group matter less than the other? That is the question to be asked loudly.[43]

Lessons from the apology to the stolen generations

2.43 Apart from contrasting the lack of an apology to Forgotten Australians, the apology to the stolen generations was considered by most as both a symbolically potent and practically meaningful event. Further, it was regarded as having been delivered sensitively in an appropriate setting and context.

2.44 Although there was and has been no undertaking to establish a reparations or redress scheme for the stolen generations, it was noted by some that the apology was

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41 *Proof Committee Hansard*, 8 April 2009, p. 1.

42 *Proof Committee Hansard*, 30 March 2009, p. 21.

43 *Proof Committee Hansard*, 31 March 2009, p. 20.

accompanied by significant undertakings to improve the material, physical and psychological wellbeing of Indigenous Australians more broadly.

2.45 Given this, many submitters and witnesses called for an apology to Forgotten Australians to be closely modelled on the apology to the stolen generations. Ms Coleen Clare, Chief Executive Officer, Centre for Excellence in Child and Family Welfare (CECFW), for example, noted:

> Were a Commonwealth apology to be made—and we hope it will be—I think it could follow the stolen generations model, which was very open and embracing.[44]

2.46 The CMT submission states:

> Many former Child Migrants were very impressed with the Prime Minster's historic apology in 2008 to the Stolen Generations. This was viewed as a positive example of a full and generous apology with its much more appropriate tone and content. Indeed, many consider that this changed the moral and political landscape of Government attempts to address past wrongs.[45]

Should an apology be linked to compensation or redress?

2.47 The Committee heard various and competing arguments about the need for a national apology to be formally tied to the giving of compensation or, more particularly, the establishment of some form of redress scheme. Mr Hercus felt that an apology would lack substantial meaning if not offered in the context of a broader commitment to practical measures:

> …a federal apology needs to be accompanied by significant action. Otherwise, it will lose its value. In the case of the stolen generations, the apology was accompanied by significant action and was seen by the public as being part of a bigger picture, and that is why it gained such wide acceptance.[46]

2.48 Mrs Gloria Lovely, Historical Abuse Network (HAN), stated:

> …from my point of view…[compensation] goes hand in hand [with an apology]. Actions speak louder than words.[47]

2.49 However, others felt that the issues of an apology and reparations should not be linked. Dr Debra Rosser, CBERS Consultancy, expressed the view:

> …it would be a wonderful thing for the nation to make an apology. I would be reluctant to tie that apology to any particular reparations scheme.[48]

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44 *Proof Committee Hansard,* 30 March 2009, p. 40.

45 *Submission 23,* p. 8.

46 *Proof Committee Hansard,* 7 April 2009, p. 37.

47 *Proof Committee Hansard,* 6 April 2009, p. 18.

2.50 Mr Andrew Murray emphasised that the purpose of an apology is intrinsically emotional—that is, to acknowledge the wrongs committed—and therefore serves a distinct purpose:

> In our personal lives and in our national lives the intangibles—the emotional expression of the relationship between governments and people in authority and the people—have to be respected. What an apology does is say, 'We did wrong by you. We didn't exercise a duty of care and we're sorry for that.' The rest is completely separate.[49]

2.51 Further, the linking of an apology with the issue of reparations could undermine the commitment of a Commonwealth government to deliver a national apology:

> …linking the two has always been a false link. I have always thought the refusal to offer a national apology was, at its best, based on a false premise—and that is that it would open the national government to major compensation claims—and, at its worst, was simply a reason not to do it.[50]

2.52 Ms Annette Michaux, General Manager, Social Policy and Research, Benevolent Society, was also concerned that the potential for an apology could be undermined by the insistence that it be accompanied by undertakings for reparations:

> Tying…[a national reparation scheme] to an apology might mean the apology does not happen, which would concern me, so I do not think they should be tied together.[51]

Forgotten Australians 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.

Government response

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

48 *Proof Committee Hansard,* 31 March 2009, p. 15.

49 *Proof Committee Hansard,* 31 March 2009, p. 22.

50 *Proof Committee Hansard,* 31 March 2009, p. 22.

51 *Proof Committee Hansard,* 7 April 2009, p. 37.

Implementation

2.53 Responses to this recommendation may be examined in light of the *Forgotten Australians* report's consideration of the elements of a meaningful apology in the context of victims of institutional abuse. These were:

- acknowledgment of the wrong done or naming the offence;
- accepting responsibility for the wrong that was done;
- the expression of sincere regret and profound remorse;
- the assurance or promise that the wrong done will not recur; and
- reparation through concrete measures.[52]

State governments

New South Wales

2.54 The NSW government submission advised:

> On 23 June 2005, the NSW Minister for Community Services apologised on behalf of the NSW Government to those children who suffered physical, psychological or social harm or distress as a result of their experiences in institutional care. The NSW Government recognises that an apology is an important step in the journey of healing for people who suffered neglect or abuse in institutional care…[53]

2.55 The NSW apology took the form of an answer to a question without notice in the NSW Legislative Assembly. The majority of the answer given by the Minister for Community Services outlined the findings of the *Forgotten Australians* report. The answer then concluded with the formal apology, as follows:

> The Government of New South Wales apologises for any physical, psychological and social harm caused to the children, and any hurt and distress experienced by them while in the care of the State. We make this apology in the hope that it may help the process of healing. The New South Wales Government is strongly committed to supporting families to reduce the need for children to be in care. Where children and young people are placed in care, the Government will assist with the services available to them. We hope that this apology will be accepted in the spirit in which it is made and that the New South Wales Government, our community partners and the community at large can continue to work together to build a better and safer place in which our children can live, grow and flourish. We know we need to listen to these people and work with them to make this a reality. I thank the House for the opportunity to make this important and much overdue statement. I hope this apology, along with the other measures that I

52 *Forgotten Australians*, p. 192.

53 *Submission 24*, p. 1.

> have outlined today, will help bring healing and help to those young Australians who, at a vulnerable time in their lives, were let down by the system.

2.56 The minister's statement was immediately followed by an opposition point of order which complained that, by not providing the opposition with the opportunity to offer its support for the apology, the government had not approached the giving of the apology in a bipartisan spirit.

2.57 Many groups were highly critical of the planning and occasion around the NSW apology. The Positive Justice Centre submitted:

> …[the NSW apology] was dealt with in a ham fisted and abusive fashion…Unlike other states who issued an apology, where numerous members of both houses spoke at great length, and the Parliaments entertained large numbers of guests, NSW chose to issue its apology by Dorothy Dixer and without fanfare or ceremony.[54]

2.58 Mr Hercus also commented on the lack of ceremony and occasion:

> An apology is important symbolism, and the symbolism was completely lost in the New South Wales case. It was a hole in the wall, late at night, with nobody there. There was a minimum amount of attention and publicity. It came across as something that was being done so as to appear to have been doing the right thing and for no other reason. The symbolism, unless it is accompanied by real action and activity, remains that. It remains a puff of air.[55]

2.59 The Healing Way for Forgotten Australians complained that NSW had not included care leaver groups in the occasion:

> …[We acknowledge] this apology with disappointment. We are aware that two representatives from CLAN were invited to attend the apology; no other groups seem to be made aware that an official apology would take place.[56]

2.60 Similarly, Ms Michaux commented:

> In the New South Wales apology…we missed out on an opportunity to have a ceremony, a coming together and a sharing of the grief, an opportunity to start to heal. So I think it was disappointing…the way it was done, without that opportunity for people to gather.[57]

2.61 Apart form the shortcomings of the ceremony, Mr Golding reported significant concerns over the substance of the NSW apology:

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54 *Submission 5*, p. 1.

55 *Proof Committee Hansard*, 7 April 2009, p. 37.

56 *Submission 25*, p. 3.

57 *Proof Committee Hansard*, 7 April 2009, p. 37.

> …former State wards were bitterly disappointed with the wording and spirit of the apology which has been described as 'superficial, succinct and without compassion'.[58]

2.62 On this last point, the Committee notes that the NSW apology appears to lack a number of the elements of a meaningful apology as outlined above. The apology:

- uses indirect language to name the offences it purports to acknowledge, referring to 'any physical, psychological and social harm' rather than using more direct terms such as 'abuse' and 'neglect';
- fails to explicitly accept responsibility for the wrong that was done;
- provides a bland assertion of apology rather than an expression of sincere regret or sincere remorse;
- offers no assurance or promise that the wrong done will not recur, referring only in fairly general and rhetorical terms to building a 'better and safer place' for children in care; and
- in relation to offering reparation with concrete measures, avoids any direct identification of past care leaver or particular undertakings or measures, stating only that 'where children…are placed in care' the government 'will assist with the services available'.

2.63 Ms Leonie Sheedy, President, CLAN, advised that the NSW government, in recognition of the issues outlined, had undertaken to issue a new apology:

> …[CLAN] have met with the current minister, Linda Burney, and she has committed to a second apology, so there is an acknowledgement that they need to do it better, and they will be doing that.[59]

Queensland

2.64 The Committee notes that on August 25 1999 the Queensland government, together with representatives of religious authorities including the Catholic and Anglican churches and the Salvation Army, issued a formal apology for instances of past abuse and neglect in Queensland institutions. The apology was given in direct response to the findings of the State's Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry), which reported on 31 May 1999.

2.65 The apology was as follows:

> We the government and churches together welcome the report of the Forde Commission of Inquiry into Abuse of Children in Queensland Institutions.
>
> We acknowledge that there have been failures with respect to the children entrusted to our care, despite all the good the Institutions did in the light of

58 *Submission 16*, p. 7, citing Gregory Smith, 'The Harm Done: Towards Acknowledgment and Healing in New South Wales', The Bellingen Institute, 2007.

59 *Proof Committee Hansard*, 7 April 2009, p. 44.

> their day. The result has been a system in which some children have suffered maltreatment, and their social, emotional, and physical needs have been neglected.
>
> 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.
>
> We accept the finding of the Forde Inquiry that government under-funding and consequent under-resourcing was a significant factor in the failure to provide adequate services to children in care.
>
> We are committed to establishing and continuing dialogue with victims of abuse in institutions to discuss the basis for providing appropriate responses. We acknowledge that discussions are well advanced between some parties.
>
> We are committed to working together with victims of abuse in institutions to ensure the provision of appropriately coordinated services through the establishment of a 'one stop shop', as recommended by the Forde Inquiry. This initiative will be integrated with church and government run services and processes for bringing about reconciliation with victims of abuse in institutions. The focus will be on providing victims with the most effective path to healing. We are committed to continuing to provide such services as long as they are needed.
>
> We recognise the value of formal reconciliation experiences in healing the hurt some have suffered, and undertake to plan these in consultation with former residents.
>
> We are committed to doing all we reasonably can to ensure that children in our care are not subject to abuse and neglect. Further, we are committed to ongoing review and improvement of our services to children and families.[60]

2.66 Ms Ketton observed that the apology had been well received by many care leavers:

> Many former residents in Queensland have expressed their gratitude for the apology made by Peter Beattie, the Premier at the time, and the acknowledgment that it brought them.[61]

2.67 However, some felt that there had been a lack of consultation over the apology. Ms Karyn Walsh, Coordinator, Esther Centre, commented:

> The criticism of the Queensland apology was that it did not involve dialogue. Any form of apology requires some dialogue with people who were forgotten Australian or who were in care.

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60 Department of Communities (Queensland) website, 'Forde Inquiry into abuse of children in Queensland institutions', accessed 29 May 2009 at http://www.communities.qld.gov.au/community/redress-scheme/forde-inquiry.html.

61 *Proof Committee Hansard*, 6 April 2009, p. 38.

> …there was no engagement with people who have experienced the abuse and harm…Certainly the Queensland government would say that it used the experiences and stories of the Forde inquiry to inform that apology, but people still felt there could have been greater emphasis on engaging forgotten Australians in what the apology means…[62]

2.68 Further, there was concern that the apology did not include or apply to the full range of people who experienced out-of-home care:

> In relation to the scope of the apology, the Queensland apology was in relation to the Forde inquiry. Foster care was not part of the Forde inquiry.[63]

2.69 Mrs Lana Syed-Waasdorp, HAN, felt that the substance of the apology was lacking:

> A lot of people were not happy with that one as it really did not explain anything about the apology. It was just very fine and simple words, but deep down it had nothing really heartfelt in it.[64]

2.70 On this final point, the Committee notes that the Queensland apology contained many of the elements of a meaningful apology as identified above. However, the criticism can be made that it was imprecise in naming the wrong it apologises for, referring only to 'maltreatment'. And, in referring to the 'good the institutions did in the light of their day,' it contains strong echoes of the justification—commonly offered in the past—that the historical abuse and neglect of children should be understood in the context of the prevailing norms of the day. This argument was addressed in the Committee's original report, which clearly showed that the behaviour in question was criminal, regardless of the era in which it occurred.[65]

South Australia

2.71 The Committee notes that on 17 June 2008 South Australia issued a formal apology to those who suffered or witnessed abuse or neglect in State care. The apology took the form of a motion moved by the Premier, the Hon. Mike Rann, in the State legislative assembly; the leader of the opposition also spoke to the motion. It read:

> I move:
>
> That this parliament recognises the abuses of some of those who grew up in state care and the impact that this has had on their lives.

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62 *Proof Committee Hansard*, 6 April 2009, p. 19.

63 *Proof Committee Hansard*, 6 April 2009, p. 21.

64 *Proof Committee Hansard*, 6 April 2009, p. 18.

65 *Forgotten Australians*, p. 186.

> Only those who have been subject to this kind of abuse or neglect will ever be able to fully understand what it means to have experienced these abhorrent acts.
>
> For many of these people, governments of any persuasion were not to be trusted. Yet many have overcome this mistrust.
>
> You have been listened to and believed and this parliament now commits itself to righting the wrongs of the past.
>
> We recognise that the majority of carers have been, and still are, decent honourable people who continue to open their hearts to care for vulnerable children.
>
> We thank those South Australians for their compassion and care.
>
> We also acknowledge that some have abused the trust placed in them as carers. They have preyed upon our children.
>
> We acknowledge those courageous people who opened up their own wounds to ensure that we as a state could k now the extent of these abuses.
>
> We accept that some children who were placed in the care of government and church institutions suffered abuse.
>
> We accept these children were hurt.
>
> We accept they were hurt through no fault of their own.
>
> We acknowledge this truth.
>
> We acknowledge that in the past the state has not protected some of its most vulnerable.
>
> By this apology we express regret for the pain that has been suffered by so many.
>
> To all those who experienced abuse in state care, we are sorry.
>
> To those who witnessed these abuses, we are sorry.
>
> To those who were not believed when trying to report these abuses we are sorry.
>
> For the pain shared by loved ones, husbands and wives, partners, brothers and sisters, parents and, importantly, their children, we are sorry.
>
> We commit this parliament to be ever vigilant in its pursuit of those who abuse children.
>
> And we commit this parliament to help people overcome this, until now, untold chapter in our state's history.[66]

2.72 Following the parliamentary motion, a ceremony for care leavers was held at Old Parliament House (SA). The South Australian government submission explains:

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66 Parliament of South Australia website, *House of Assembly Hansard*, 17 June 2008, http://www.parliament.sa.gov.au/Hansard/DailyHansard.htm, accessed 1 June 2009.

> …[At this ceremony the] Government and Churches (Archbishop of Adelaide, President, Lutheran Church, Chairperson of Uniting Church SA and Auxiliary Bishop of the Catholic Archdiocese) signed a formal apology parchment. One hundred people who were abused in State care attended the apology ceremony…met with the signatories and Ministers of Parliament, received a plant to commemorate the occasion and were later sent laminated copies of the apology parchment.[67]

2.73 The wording of the apology parchment was slightly different to the parliamentary motion. It read:

> We the Government of South Australia and the Churches recognize that some children and young people who were placed in our care suffered abuse that has impacted on their lives. This should never have happened.
>
> We are sorry and we express deep regret for the pain and hurt that they experienced through no fault of their own.
>
> We acknowledge that in the past some carers and others who have worked in the area have abused the trust what was placed in them.
>
> We acknowledge that the policies and practices in the last century did have a detrimental effect on some who grew up in State care.
>
> To all those who experienced abuse in State care, we are sorry.
>
> To those who witnessed these abuses, we say sorry.
>
> To those who were not believed, when trying to report these abuses, we say sorry.
>
> We are sorry for the pain shared by loved ones, husbands and wives, partners, brothers and sisters, parents, and importantly, their children.
>
> Our apology is given in a spirit of reconciliation and healing and with our commitment to contribute toward a child safe environment in our Government, our churches and the broader community.
>
> We commit to do all that we reasonably can to ensure that children in our care are not subject to abuse and that those who have abused are brought to justice.[68]

2.74 While the AFA described the South Australian apology as well-worded',[69] others criticised aspects of the ceremony. Mr Ki Meekins submitted:

> State Wards were told yes the Premier will make an apology, but you will have to go next door, letting church and other dignitaries' take your seat in

67 *Submission 30*, p. 2.

68 CLAN website, 'Shared government and church apology', http://www.clan.org.au/apology_details.php?apology_id=3, accessed 1June 2009.

69 *Proof Committee Hansard*, 30 March 2009, p. 63.

> Parliament, there isn't enough room inside Parliament for every body. What a further insult.[70]

2.75 The committee notes that the entirety of the South Australian apology contained the elements of a meaningful apology as identified above.

Tasmania

The submission from the Tasmanian government advised:

> In December 2004, in State Parliament, the Premier of Tasmania issued a formal apology to those people who had been in State care.[71]

2.76 The apology was delivered on 17 May 2005 in the form of a motion moved by the then Premier Mr Paul Lennon in the Tasmanian Legislative Assembly; the leaders of the opposition and minor parties and a number of other members also spoke to the motion. It read:

> I move that this House:
>
> (1) acknowledges and accepts that many children in the care of the State were abused by those who were meant to care for them and provide a safe and secure home life;
>
> (2) apologises to the victims and expresses our deep regret at the hurt and distress that this has caused; and
>
> (3) acknowledges the courage and strength it has taken for people to talk about events that were clearly traumatic and which continue to have a profound impact on their lives.

2.77 Premier Lennon's speech on the apology motion contained straightforward statements acknowledging the abuse suffered by children in State care and expressing deep regret. The Premier also expressed the Tasmanian government's commitment to providing appropriate services for care leavers and to further funding of the Tasmanian redress scheme.[72]

2.78 The Committee notes that, considered in total, the Tasmanian apology contained the elements of a meaningful apology as identified above.

2.79 No evidence of care leaver experiences and perspectives was received in relation to the Tasmanian apology.

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70 *Submission 44*, p. 1.

71 *Submission 7*, p. 2.

72 Parliament of Tasmania website, *House of Assembly Hansard*, 17 May 2005, http://www.parliament.tas.gov.au/HansardHouse/isysquery/f2539188-ad73-4d3a-ae98-879a5b223839/1/doc/, accessed 16 June 2009.

Victoria

2.80 While the Victorian government declined to make a submission to the present inquiry,[73] its submission to the Committee's original inquiry argued that any formal acknowledgment of the abuse and neglect of children in institutional care 'would need to be carefully considered'.[74] Since then, the Committee notes that the Victorian government has issued a formal apology to those who suffered abuse, neglect or a lack of care in out-of-home care.

2.81 The apology was delivered in the Victorian parliament on 9 August 2006 by the then Premier Steve Bracks. The standing orders of the parliament were suspended to allow the Premier, the leaders of the Liberal and National parties and the Minister for Community Services to make statements. Care leavers were invited to attend parliament on the day of the apology.

2.82 The apology was as follows:

> The government of Victoria welcomes the report of the Senate Community Affairs References Committee, *Forgotten Australians*, which was tabled in the Senate on 30 August 2004, as it offers an opportunity to offer a public statement of apology about some of the past practices in the provision of out-of-home care services in Victoria.
>
> The report provides a detailed picture of the life experiences of many people who as children spent all or part of their childhood in institutional care across Australia. The experiences of many of these children were distressing and have had an enduring detrimental effect on their lives.
>
> The Victorian government believes it is important that these histories are known, are heard and are acknowledged. The government is working hard to ensure that those unacceptable past practices are never ever again experienced by any Victorian child.
>
> We acknowledge that there have been failures with respect to many children entrusted to care. As a result of being placed in care, many of these children lost contact with their families.
>
> The state, the churches and community agencies cared for thousands of children over the years. For those who were abused and neglected, the message we wish to give to them is that we acknowledge their pain and their hurt.
>
> We are also committed to working together with survivors of abuse and neglect in care to promote the healing process.
>
> We take the opportunity provided by the release of this report to express our deep regret and apologise sincerely to all of those who as children

73 See correspondence from the Victorian Government Minister for Community Services, 19 December 2008, listed on the inquiry web pages as *Submission 22*.

74 Senate Community Affairs References Committee, Inquiry into Children in Institutional Care, S*ubmission 173*, p. 22.

> suffered abuse and neglect whilst in care and to those who did not receive the consistent loving care that every child needs and deserves.[75]

2.83 The Committee notes that the Victorian apology contains most of the elements of a meaningful apology as identified above. However, as the discussion below reveals, there are significant concerns about the extent of 'reparation through concrete measures' achieved in Victoria. Further, although apparently pleased with the offering and substance of the apology, a number of submitters and witnesses were critical of its delivery. Ms Clare identified a lack of appropriate ceremony or occasion:

> …the apology could have been done in a better way. It could have been more engaging in terms of actual space and accessibility for people to meet and talk…The Victorian one was a bit too quick for people to really hear and feel and give their experience. It was not enough. People welcomed it, but I think we learned from it.[76]

2.84 Mr Golding also pointed to a lack of appropriate ceremony:

> Many people thought the way the apology was delivered, with the tent at the back of the parliament building crammed with hundreds of care leavers viewing small TV screens, was pretty unimpressive.[77]

2.85 Broken Rites offered a stronger criticism, describing the apology as one of the worst examples of the apologies offered to the Forgotten Australians:

> …the former Premier saw the event as an opportunity for a media stunt. More than three hundred Forgotten Australians were invited and about two hundred and sixty turned up at the Parliament of Victoria expecting that they would be in the chamber gallery to hear and witness the Premier's speech…Only about thirty people were allowed into the gallery just before 2:00 pm and the rest were ushered around to a marquee that had been erected behind the Parliament. With seating available for only about fifty people only, many elderly Forgotten Australians became understandably angry. At the completion of the speech, the Premier was not prepared to go out to the marquee so the Leader of the Opposition and the Minister for Community Affairs did so instead.[78]

2.86 Notwithstanding the concerns expressed about the organisation of the Victorian ceremony, the Committee considers the apology to contain the elements of a meaningful apology as defined above.

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75 Parliament of Victoria, *Legislative Assembly Hansard*, 9 August 2006, p. 2672.

76 *Proof Committee Hansard*, 30 March 2009, p. 40.

77 *Proof Committee Hansard*, 30 March 2009, p. 16.

78 *Submission 14*, p. 2.

Western Australia

2.87 The Committee heard that on 7 April 2005 Western Australia issued an apology to 'people who were harmed in institutional care' over the period covered by the *Forgotten Australians* report. The apology took the form of a parliamentary statement of apology. The statement read:

> The recent report of the Senate Community Affairs References Committee Inquiry into Children in Institutional Care highlights the experiences of many Western Australians who were in institutional care from the early 20th Century until the 1970s.
>
> The Western Australian Government welcomes the report and acknowledges its findings that many children in the institutions suffered neglect or abuse at the hands of some of the adults entrusted with their care. Many of these children were placed in the institutions by past Government agencies.
>
> The report calls upon State Governments to issue formal statements acknowledging their role in the administration of institutional care arrangements and apologising for physical, psychological and social harm caused to the children in the institutions.
>
> Accordingly this Government apologises to all those people who were harmed as children while in institutional care and expresses deep regret at the hurt and distress this caused. We recognise that the effects of the physical, psychological or sexual abuse did not end when these children became adults and that for some of these people the experiences are still as deeply felt today.
>
> We are committed to support victims of abuse in institutions through the provision of counselling and information. Since 1985 the Department for Community Development has had a dedicated information officer to provide personal information to former Wards. The Department has produced *Looking West – a Guide to Aboriginal Records in Western Australia* to assist in the location of records for this significant group. Another publication, *Signposts* to be launched next month, will guide people who were children in residential care from 1920 onwards to agencies where their records might be located.
>
> Counselling is also provided on request through the Department to any person who experienced abuse in an institution or out-of-home care.
>
> It is important to learn from the past. This Government is committed to the improvement and enhancement of services to children in out of home care to ensure they are not subjected to abuse or neglect. Quality assurance processes have been strengthened and additional resources have been provided to the Department for Community Development for better management, supervision and support of children in care.[79]

79 *Submission 11*, pp 1-2.

2.88 The Committee notes that the Western Australian apology fulfils the elements of a meaningful apology, as outlined above. In particular, the apology:

- clearly names the wrongs which it acknowledged, referring to 'neglect', 'abuse' and 'sexual abuse', and their ongoing effects on people's lives;
- is clearly defined as an acknowledgment of the State's responsibility;
- expresses 'deep regret';
- contains assurances that the government is committed to ensuring the specific wrongs will not recur; and
- refers specifically to practical measures taken.

Churches and agencies

2.89 The Committee's second report into children in institutional or out-of-home care, *Protecting Vulnerable Children: A National Challenge*,[80] provided some analysis of the responses of churches and agencies to the recommendation that such bodies apologise to care leavers. That report noted that, by 2005, a number of churches and Catholic religious orders involved in the care of children in institutions had made formal statements of apology and regret acknowledging abuse of children while under their care. These included:

- The Catholic Church, as part of its *Towards Healing* process (June 2003);
- Christian Brothers (July 1993);
- Sisters of Mercy, Rockhampton; and Catholic Diocese, Rockhampton (1997);
- Salvation Army (August 2003);
- Barnardos (February 2004);
- Wesley Mission Dalmar (February and June 2004);
- United Protestant Association, New South Wales (1997); and
- UnitingCare (November 2004, in response to the *Forgotten Australians* report).

2.90 The Committee notes that on 19 July 2008 Pope Benedict offered a general apology to victims of sexual abuse by the Catholic clergy in Australia. However, the inclusiveness of this apology was criticised by Dr Wayne Chamley, Treasurer, Broken Rites, who commented:

> …Catholic Church officials in Australia were requested to permit Broken Rites to provide a list of persons (including Forgotten Australians) who would be invited to meet the pontiff and witness any apology however this

80 Available at http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2004-07/inst_care/report2/report.pdf

> was ignored. Instead, the Pope met with three persons who were victims of sexual assault within the church.[81]

2.91 More generally, Ms Walsh noted that many people remained unaware of the apologies issued by churches and religious agencies:

> For individuals, though, people noted that they are not necessarily aware of which churches have given apologies—they have not been circulated to people individually. Sometimes they are given with internal complaints processes, but if people have not gone through that process they have not received it. So there is sort of an ad hoc approach to it.[82]

2.92 The AFA submitted that there were still some bodies that had resisted proper acknowledgment of the extent of abuse and neglect in their institutions:

> Some past providers of institutional abuse still deny the extent of the brutality within their own systems.[83]

Reparation and redress schemes

Forgotten Australians 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.**

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81 *Submission 14*, p. 2.

82 *Proof Committee Hansard*, 6 April 2009, p. 19.

83 *Submission 10*, p. 5.

Government 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.

Implementation

2.93 In keeping with its response to recommendation 6, the Commonwealth government has failed to establish a national reparations fund for victims of institutional and out-of-home care abuse. However, the Committee notes that a number of States have established, or are considering establishing, redress schemes (these are discussed below).

2.94 A number of submitters and witnesses strongly criticised the Commonwealth's lack of action on this issue. Mr Andrew Murray stated:

> The federal government's refusal so far to consider a national reparations fund is mocked by the other governments that can and have introduced affordable and helpful reparations schemes, like those of Canada, Ireland, Tasmania, Queensland and Western Australia. The failure to exercise a duty of care demands restitution, it demands reparation and it demands compensation.[84]

2.95 The CMT characterised the Commonwealth's refusal to establish a national redress scheme as a moral failure:

> The Government's reluctance to consider the need for a national reparation scheme, especially given the legal obstacles posed by statutory time limitation periods, showed a lack of moral leadership.[85]

2.96 Despite the establishment of redress funds by some States, many felt there remained a clear need for the Commonwealth to implement a national fund and to take a coordinating role in relation to State funds. Ms Michaux submitted:

> …although individual organisations, including our organisation, have implemented processes to support victims and to go through processes of some kind of reparation, we support a broader national reparations fund—done well and learning the lessons from other states and countries. We really feel that it is very important to have a national, consistent and equitable approach…[86]

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84 *Proof Committee Hansard*, 31 March 2009, p. 22.

85 *Submission 23*, p. 5.

86 *Proof Committee Hansard*, 7 April 2009, p. 25.

2.97 The AFA submitted that the Commonwealth should also take a leadership role in encouraging States which had not established funds to do so:

> The Australian Government should provide leadership in establishing a national redress fund and urging those states that have not introduced such a fund to join with it in offering financial grants to Forgotten Australians.[87]

2.98 On this point Dr Chamley observed:

> I do not see that the Commonwealth needs to part with a lot of money in a reparation scheme so much as use its muscle to make sure that the state governments and the former church providers stump up the money…[N]ational governments can exert enormous pressure.[88]

2.99 Some States expressed their willingness to consider involvement in a national redress scheme. Ms Linda Mallet, Acting Deputy Director-General, Service System Development, Department of Community Services (NSW), advised:

> …the New South Wales government supports the issue of compensation being considered at the national level and would be willing to assess the viability of a proposal for a national compensation scheme developed through the contribution and cooperation of all jurisdictions as well as churches and other relevant agencies.[89]

2.100 Similarly, Ms Julieanne Petersen, Manager, Policy and Strategy, Guardianship and Alternative Care Directorate, Department for Families and Communities, indicated that the South Australian government would 'be willing to have discussions with the other States and the Commonwealth government' on the establishment of a national scheme.[90]

State redress schemes

2.101 While States were not able to contribute to a national fund in accordance with recommendation 6, a number of them have established their own redress funds. These are: Queensland, Tasmania and Western Australia. The Committee received a considerable amount of evidence on the design and operation of these funds, and how the experiences of care leavers under existing funds can be applied to those States which have not yet established schemes.

2.102 At the time of writing this report, South Australia was also considering establishment of a redress scheme.

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87 *Submission 10*, p. 2.

88 *Proof Committee Hansard*, 30 March 2009, p. 55.

89 *Proof Committee Hansard*, 7 April 2009, p. 69.

90 *Proof Committee Hansard*, 8 April 2009, p. 38.

2.103 New South Wales and Victoria have indicated that they will not establish redress schemes.

2.104 *Forgotten Australians* identified a number of distinguishing criteria and characteristics of reparations schemes, and particularly redress processes/packages:

> While reparations schemes vary they usually contain a number of components including the provision of apologies/acknowledgment of the harm done, counselling, education programs, access to records and assistance in reunifying families. A common feature of redress schemes is also the implementation of financial compensation schemes. While the design of the schemes vary they have as a common goal the need to respond to survivors of institutional child abuse in a way that is more comprehensive, more flexible and less formal than existing legal processes.[91]

New South Wales

2.105 The Committee heard that New South Wales had indicated it would not establish a State redress scheme. Mr Harold Haig, Secretary, IAFCMF, advised:

> We have written to…[the NSW government]. They refuse [to establish a redress scheme].[92]

2.106 The NSW government submission did not address the issue of a stand-alone scheme. However, it indicates that the State is prepared to:

> …assess the viability of a proposal for a national compensation scheme – developed through the contribution and cooperation of all jurisdictions, as well as churches and other relevant agencies – should such a proposal arise from national deliberations on the issue.[93]

2.107 The AFA, commenting on the NSW government position, observed:

> NSW has stated that they will not implement a redress scheme without Commonwealth involvement. This is deplorable but not surprising. The NSW response to survivors has generally been the most lacklustre.[94]

2.108 The NSW submission notes that under 'current arrangements' in NSW, people seeking compensation for abuse and/or neglect while in State care must pursue individual claims through the Department of Community Services, in the first instance, or otherwise through the courts or the victims of crime compensation scheme. Ms Mallet advised:

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91 *Forgotten Australians*, p. 221.

92 *Proof Committee Hansard*, 8 April 2009, p. 10.

93 *Submission 24*, p. 2.

94 *Submission 10*, p. 7.

> New South Wales claims for compensation in relation to abuse in care are assessed on a case-by-case basis. The department makes a determination based on the available evidence. If a legal liability is considered to exist, the claim may be settled. Claimants may also have the option of filing a suit against the Department of Community Services. In addition, there may also be entitlement to make a claim under the victims of crime compensation in New South Wales.[95]

2.109 In relation to claims submitted to the department, Ms Sheedy commented:

> We know people who have tried to do this. It is a very thankless, difficult and ultimately unsuccessful road to go down...[96]

2.110 The Committee notes also that the legal barriers to successfully pursuing claims through the criminal or civil codes are considerable, and usually insurmountable, in cases of historical abuse of children in institutional care. These issues were examined in detail in Chapter 8 of *Forgotten Australians*. The main barriers to pursuing claims through the courts were identified as limitations periods; difficulty proving injury; establishing vicarious liability of institutions, particularly those related to religious organisations; the adversarial legal system; and the prohibitive cost of litigation.[97] In addition, claimants face significant evidentiary barriers, due to their vulnerability in care and the passage of time.

2.111 A number of submitters and witnesses addressed the lack of a redress scheme in NSW. Mrs Julie Holt, Counsellor, Aftercare Resources Centre (ARC), for example, advised:

> …we fully support the establishment of a reparation fund for people who were in care in the state of New South Wales. We are continuously contacted by clients…who want to know why they are not eligible for compensation when care leavers in other states are. 'When am I going to get my money? When am I going to get my apology?' is something that we hear on a regular basis.[98]

2.112 Origins Inc. recommended the Commonwealth provide final support for States that are 'not financially competent such as NSW to provide redress schemes'. This would also ensure that 'victims did not have to return to their abusers for justice', such as when claims were required to be submitted through the Department of Community Services.[99]

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95 *Proof Committee Hansard,* 7 April 2009, p. 70.

96 *Proof Committee Hansard,* 7 April 2009, p. 44.

97 *Forgotten Australians,* p. 208.

98 *Proof Committee Hansard,* 7 April 2009, p. 54.

99 *Submission 2*, p. 12.

Queensland

2.113 Applications for the Queensland redress scheme opened on 1 October 2007. The scheme was established in response to the report of the Forde Inquiry into the abuse of children in Queensland institutions, handed down in May 1999.[100] The Queensland government submission explains:

> …the Queensland Government approved up to $100 million in funding for a Redress Scheme. The scheme is administered by the Department of Communities and provides ex gratia payments to people who experienced abuse or neglect in institutions covered by the terms of the *Forde Inquiry*.[101]

2.114 Eligibility for the scheme was restricted to people who:

- were placed in an institution covered by the terms of reference for the Forde inquiry;
- were released from care and had turned 18 years of age on or before 31 December 1999 and had experienced abuse or neglect; and
- who self-identified as having experienced that abuse or neglect.[102]

2.115 The main features of the scheme were:

- the $100 million funding allocation covered ex-gratia payments, access to legal and financial advice for eligible applicants and practical assistance to lodge an application;[103]
- a two-tiered system of payments:
    - Level 1 payments of $7000 for any applicant who met basic criteria.
    - Level 2 payments of up to $33 000 (in addition to Level 1) for people who 'suffered more serious abuse or neglect';[104] these were to be assessed on a case-by-case basis in a non-adversarial environment, based on the information provided by the applicant as to the harm suffered. Level 2 payments were to be made from the funds remaining once Level 1 payments and associated costs of applications, such as legal fees, had been paid.[105]
- the two payment levels resulted in a combined maximum payment of $40 000 per applicant;

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100 Forde Foundation Board of Advice, *Submission 13*, p. 2.

101 *Submission 15*, p. 3.

102 *Proof Committee Hansard*, 6 April 2009, pp 70-71.

103 *Submission 15*, p. 5.

104 *Proof Committee Hansard*, 6 April 2009, p. 70.

105 *Proof Committee Hansard*, 6 April 2009, pp 77-78.

- successful applicants were to be required to sign a waiver releasing and indemnifying the State government from any future claims that fall within the range of the redress scheme;[106] independent legal advice to assist applicants to make an informed decision was provided;[107] and
- decisions concerning applications could be appealed under the *Administrative Decisions (Judicial Review)* Act or referred to the Ombudsman.[108]

2.116 Applications to the scheme closed on 30 September 2008, after the closing date was extended for three months to allow more time for applications to be received. Level 2 applicants were given until 27 February 2009 to provide any additional information in support of their claims.

2.117 The scheme received 10 200 applications.[109] Of these, more than 60 per cent were seeking both levels (that is, the maximum) payment. Miss Eris Harrison, Senior Policy Manager, AFA, noted that the Queensland scheme had been successful in terms of take up:

> The reason Queensland got such a good take-up…far better take-up than they ever expected—with their redress scheme was because they had support groups already in place…[and] had had the [Forde] inquiry...[110]

2.118 As of 13 November 2008, over 3270 Level 1 payments had been granted. Level 1 payments commenced being paid in December 2007. As of 6 April 2009, over 6000 had been made. Assessment of Level 2 claims began in August 2008.

2.119 Ms Angela Sdrinis criticised the Queensland scheme in terms of the amount of compensation paid to successful applicants:

> …the Queensland scheme was obviously the least generous of them all, and probably not enough for people to feel that they had recognition. On this whole issue of payment of money, there is not enough money in the world on the one hand, but, on the other hand, in our society the money is the only way in which that wrongdoing can be recognised…the money is the thing that costs the giver, the wrongdoer, something. That is what is important to the survivor or the victim.[111]

106 Micah Projects Inc., *Submission 33*, p. 3.

107 *Submission 15*, p. 6.

108 Mr Mark Francis, Executive Director, Policy Development and Coordination, Department of Communities (Queensland), *Proof Committee Hansard*, 6 April 2009, p. 78.

109 *Submission 15*, p. 2.

110 *Proof Committee Hansard*, 30 March 2009, p. 70.

111 Private capacity, *Proof Committee Hansard*, 30 March 2009, p. 7.

South Australia

2.120 South Australia is yet to announce whether it will establish a redress scheme.[112] The submission of the South Australian government states that in July 2008 it established a task force to examine redress schemes for child victims of sexual abuse. The submission states:

> Upon receipt of the task force report, the Government will consider the task force findings and recommendations and determine the most appropriate course.[113]

2.121 Ms Petersen advised:

> I cannot tell you where…[the task force] are up to, but they are exploring a number of different options. They are exploring what the Tasmanian and Queensland governments have done, and I think they are also looking at what the Irish government did a number of years ago. They are exploring those options to see what fits best.[114]

2.122 The reporting date for the task force was 'next year'; and a 'high-level task force was currently meeting 'every six weeks'.[115]

2.123 Ms Carroll expressed frustration at the apparent delay over the decision whether South Australia's would implement a redress scheme:

> Forgotten Australians in South Australia have been listening to redress commitments in Queensland, Tasmania and Western Australia, and additional financial support in Victoria, and none of this is happening in South Australia.[116]

2.124 South Australia submitted that, pending the decision on a redress scheme, claims for compensation could be submitted to the existing Victims of Crime Compensation fund, under which the South Australian Attorney-General was able to make discretionary grace payments. The State government had committed to particular arrangements for claims in relation to abuse in care:

> The Government has expressed its commitment to make reparation of $50,000 available to victims of abuse in care without the prerequisite of a conviction to avoid further traumatisation of individuals and their families.[117]

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112 *Submission 28,* p. 2.

113 *Submission 30,* pp 2-3.

114 *Proof Committee Hansard,* 8 April 2009, p. 37.

115 *Proof Committee Hansard,* 8 April 2009, p. 41.

116 *Proof Committee Hansard,* 30 March 2009, p. 63.

117 *Submission 30,* pp 2-3.

Tasmania

2.125 In August 2003 the Tasmanian government announced a redress scheme in response to an investigation by the State Ombudsman into past abuse of children while in State care.

2.126 Eligibility for the scheme was restricted to people who had suffered abuse and neglect in care as wards of the State. The Tasmanian Minister for Human Services advised that former child migrants were able to access the scheme.[118] Ms Leica Wagner, Manager, Abuse of Children in State care, Department of Health and Human Services (DHHS), advised:

> We look at cases of migrants, children who have been placed in non-government, in particular church-run organisations, and other institutions. However, we would only look at those cases where those children were placed there by the state. The underlying criterion is that they were placed in state care. The state may then have put those children into one of those institutions.[119]

2.127 Ms Wagner clarified that this meant that children who were placed into care arrangements 'voluntarily' by their parents or relatives did not qualify for the scheme.[120]

2.128 The main features of the scheme were:

- funding of $24 million;[121]
- claims were made through the Ombudsman;
- a review team investigated the claim, through record-checking and interviews;
- the interview process in part involved determining what the claimant wanted from the process. This included, for example, an apology issued on behalf of the DHHS, official acknowledgment that the abuse occurred, assistance tracking lost family members and access to departmental files, professional counselling, payment of medical expenses, and compensation;
- an independent assessor of claims, whose role was to:
    - record settlements reached between DHHS and claimants against the referrals made by the Ombudsman.
    - receive referrals from the DHHS on all matters which had not reached settlement; such cases were reviewed and, where appropriate, assessed for an ex-gratia payment.

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118 *Submission 7*, p. 1.

119 *Proof Committee Hansard*, 8 April 2009, p. 72.

120 *Proof Committee Hansard*, 8 April 2009, p. 72.

121 *Proof Committee Hansard*, 8 April 2009, p. 78.

- the maximum amount for individual payments was $60 000; however, the assessor could recommend a higher payment sum in exceptional circumstances.[122]
- DHHS advised that, in addition to assessment of claims:

> The Review process was designed in a way which gave victims of abuse the opportunity to tell their story, to view their files, to receive counselling and to be assessed for an ex gratia payment...
>
> Claimants in the Review were also assisted in tracing family members and every effort was made to locate significant documents and photographs for claimants.[123]

2.129 The scheme ran from 2003 to 2005. However, it was re-opened from March to July in 2008 'in recognition of the fact that a number of care leavers had missed out on the opportunity to make a claim'.[124] In respect of future claims, Ms Alison Jacob, Deputy Secretary, DHHS, advised:

> We have also made a commitment recognising that there would still be some people who, for whatever reason, have not made an application during the first three rounds of compensation. The government has also established a trust fund that would allow an ongoing process for any person who subsequently comes forward to be able to have an application dealt with according to the same processes, although those payments would be capped at the average payment that has been made up to date, which is $35,000.[125]

2.130 Under the initial rounds of the scheme 878 claims were received. Of these, 686 had received payment. Unsuccessful claims were generally from people who were privately placed into care as children.[126]

2.131 Over 1000 claims had been received for the 2008 phase of the scheme.[127]

Victoria

2.132 The Committee heard that in 2008 Victoria announced it would not establish a redress scheme but would deal with abuse allegations on a case-by-case basis.[128]

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122 *Forgotten Australians*, p. 222.

123 *Submission 7*, p. 2.

124 Department of Health and Human Services (Tasmania), *Submission 7*, p. 2.

125 *Proof Committee Hansard*, 8 April 2009, p. 70.

126 *Proof Committee Hansard*, 8 April 2009, p. 77.

127 *Proof Committee Hansard*, 8 April 2009, p. 78.

128 Association of Child Welfare Agencies, *Submission 28*, p. 2.

2.133 Mr Golding advised that efforts to negotiate with the Victorian State government over the establishment of a redress scheme had been unsuccessful:

> I have been part of CLAN delegations on a number of occasions to successive Victorian ministers. We spoke at one stage to Premier Bracks. But the government's unwavering position is that, notwithstanding the acknowledgement of the harm that has been done, they will only deal with compensation on a case-by-case basis, even though they know that this is harmful and quite painful for the persons concerned.[129]

2.134 CLAN advised that, as with New South Wales, claims for compensation would need to be pursued primarily through the court system, and therefore face the obstacles outlined above:

> …the Victorian Government has stated that abuse allegations…[must be] tested through the court system. In addition victims/survivors would be required by the state's solicitors to provide corroborative information such as the exact date on which abuse occurred, the precise nature of the abuse, details of any complaints they made about the abuse and the precise date on which complainants began to suffer injury, loss and damage.[130]

2.135 In relation to settlements obtained via claims lodged in the courts, Mr Golding commented:

> The Victorian Government says it has outlaid more than $4m on out-of-court settlements (all victims are bound by confidentiality agreements). In the light of the sums made available in States where redress schemes are available – WA $114m, Queensland $100m and Tasmania $75m – it is hard not to conclude that the Victorian Government's approach is designed cynically to save money.[131]

2.136 Ms Sdrinis informed the Committee, however, that Victoria had begun to meet with claimants to try to settle claims without recourse to litigation.[132] Ms Sdrinis indicated that some claims had been settled for 'very low six-figure sums'.[133]

Western Australia

2.137 The Committee had the benefit of questioning officers from the Western Australian redress scheme, Redress WA, at the hearing of the inquiry in Perth. The opportunity to examine a State scheme in detail was of great assistance to the Committee.

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129 *Proof Committee Hansard,* 30 March 2009, p. 17.

130 *Submission 21*, p. 4.

131 *Submission 16*, p. 5.

132 *Proof Committee Hansard,* 30 March 2009, p. 10.

133 *Proof Committee Hansard,* 30 March 2009, p. 6.

2.138 On 17 December 2007, the Western Australian government announced the establishment of Redress WA for children abused and neglected in State care. In terms of funding, the Western Australian Department for Communities advised:

> The Redress WA fund is fixed at $114 million, of which approximately $24 million is being expended on service providers of legal, financial and psychological counselling and support, as well as administration of the scheme. This means that once all applications have been assessed, about $91 million is available for distribution as *ex-gratia* payments.[134]

2.139 Eligibility for the scheme was restricted to people over 18 years of age who suffered abuse and/or neglect as children while in State care in Western Australia prior to 1 March 2006. The scheme was not generally open to children who were adopted, on the grounds that once adopted the adoptive parents became their legal guardians, with the same rights and responsibilities of the biological parents of a child.[135] However, applicants did not have to be former State wards, meaning that people who were 'voluntarily' placed in care were eligible for the scheme. The submission of the Western Australian Department for Child Protection notes:

> …[Those eligible for the scheme] include former child migrants, those of the 'stolen generations' and anyone who spent time in a care facility that was subsidised, monitored, registered or approved by a State Government, including foster homes or other residential settings.[136]

2.140 Ms Sheedy observed:

> The good thing about Western Australia is that they cover everybody whether they were a state ward, a home child or in foster care.[137]

2.141 The main features of the scheme were:

- a two-tiered system of payments:
  - an ex-gratia payment of up to $10 000 whereby applicants must show there is a reasonable likelihood that they experienced abuse and/or neglect
  - an ex-gratia payment of up to $80 000 whereby medical and/or psychological evidence is provided to substantiate claims of abuse and/or neglect; this is the highest payment available under any of the state redress schemes;[138]

134 *Submission 12*, p. 6.

135 *Submission 12*, p. 4.

136 *Submission 11*, p. 3.

137 *Proof Committee Hansard,* 7 April 2009, p. 43.

138 Ms Stephanie Withers, Executive Director, Redress WA, Department for Communities, *Proof Committee Hansard*, 31 March 2009, p. 49.

- a specialist team of 'records people' and senior archivist; applicants were thus not required to locate and access their records;
- offers of payments to be endorsed by an independent review member or a panel of independent review members; prior to accepting an offer all applicants are required to take independent legal advice as to the nature and effect of the terms of the settlement, with such legal advice paid for by Redress WA up to a maximum of $1000;[139] and
- guidelines for dealing appropriately with applications from people with serious health problems.[140]

2.142 In addition to assessment of claims, the scheme provided:

- a personal apology from the Western Australian Government;
- access to support services such as psychological and financial counselling;
- assistance to eligible applicants, including those residing outside the State,[141] with the Redress WA application process;[142] and
- the opportunity for applicants to formally record their stories on their official files (regardless of whether they receive payment).[143]

2.143 The scheme, being ex gratia, does not offer access to judicial or administrative review through tribunals or the courts. However, the Committee heard that there was a high value placed on scrutiny and accountability of decisions, reflected in the mechanism established for complaints. Mr Peter Bayman, Senior Legal Officer, Redress WA, outlined the options open for applicants who were unhappy with a decision:

> The independent review panel will have a senior legal person as the presiding member. It will include people with social work and psychological experience and also support group representatives. That is really the first line of appeal. If that group of people…feel there was something wrong and that we did not cover a particular area, they will send it back and say, 'Look, we don't think you got it right.' So…although there is no appeal on quantum ultimately to the court, there is the independent review panel, the internal redress complaint process and then the complaint process to the Ombudsman.
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> …[Also] it is arguable that somebody could lodge an application in the Supreme Court [under the ADJR Act]. They could not have the quantum

139 *Submission 12,* p. 7.

140 *Submission 12*, p. 6.

141 CLAN, *Submission 21*, p. 4.

142 *Submission 11*, pp 3-4.

143 Western Australian Department for Communities, *Submission 12*, p. 4.

> reconsidered but they could…[seek to] have the decision sent back to the department to be redone.[144]

2.144 Applications for the scheme were open from 1 May 2009 to 30 April 2009; and it was intended that applications would be processed and the scheme closed down by 'the end of 2010'.[145]

2.145 Ms Stephanie Withers, Executive Director, Redress WA, Department for Communities, estimated that the scheme would attract around 3500 applications. Of the approximately 2000 applications received at the time of the hearing, nearly half were from Indigenous people; and nearly a quarter were from former child migrants.[146] Dr Marilyn Rock, Senior Redress Officer, Redress WA, observed that non-Indigenous and non former child migrants were potentially under-represented:

> But it is a point of concern, because there are so many people who are missing out. Once again, Aboriginals and child migrants make up the bulk of the applicants, so it is that core of people who are non-child migrants and non-Aboriginal community members who are missing out, because they are not 'organised'.[147]

2.146 The Committee was advised that approximately 270 of the approximately 2000 applications received thus far had been submitted by care leavers now resident outside the state.[148] Similarly, Queensland advised that it had received applications from 'across Australia and overseas'.[149] The Committee notes that the significant proportions of all applications coming from outside the States demonstrates the large numbers of care leavers that tend to leave the State in which they received care as a child. This fact justifies the significant effort made by Redress WA to advertise its scheme outside the State following the initially low take-up (see below). The Committee notes also that the high mobility of care leavers is a core reason for the ongoing need to ensure that services are available to Forgotten Australians in all States, regardless of where they experienced institutional or out-of-home care.

2.147 Miss Harrison felt that the Western Australian scheme had failed to attract substantial numbers of applicants, and that this was due to the scheme's lack of integration or association with support services:

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144 *Proof Committee Hansard*, 31 March 2009, pp 49-50.

145 *Proof Committee Hansard*, 31 March 2009, p. 47.

146 *Proof Committee Hansard*, 31 March 2009, p. 47.

147 *Proof Committee Hansard*, 31 March 2009, p. 50.

148 Ms Eileen O'Reilly, Senior Redress Officer, Redress WA, Department for Communities, *Proof Committee Hansard*, 31 March 2009, p. 61.

149 *Proof Committee Hansard*, 6 April 2009, p.72.

> The take-up has been very low, which is not surprising to us at all, because there are no services associated with the redress scheme and there have been no services in the past.[150]

2.148 The Western Australian Department for Communities acknowledged that the scheme had initially attracted significantly fewer applications than the 10 000 which had been expected. A communications and media officer was subsequently appointed to implement a communications plan for the scheme.[151]

2.149 The AFA submission outlined concerns about the possible delay and effect on applicants of the scheme's approach to locating and accessing records, which, as noted above, was being done by dedicated officers on behalf of applicants:

> …this [approach] places some applicants at a disadvantage, because they may not see what the Redress WA assessors will. FIRB (the Family Information Records Bureau in WA) has been swamped with applications and has inadequate resources to cater to the demand created by Redress WA. There is currently a 6-8 month waiting list for obtaining Child Welfare files from FIRB, which means many people won't get their records until after the application period closes in April 2009.[152]

2.150 A number of submitters and witnesses felt that Redress WA was the best of the redress schemes to be implemented in Australia. Ms Sdrinis, for example, said:

> …the Western Australian scheme is the best one so far. It is the most generous, simply in terms of monetary compensation. It is very straightforward in what it seeks. It asks for evidence or information about the abuse and then it asks for proof of injury, which is quite straightforward—medical reports, statements from family members and that sort of thing, in terms of the effects of the abuse.[153]

2.151 Dr Joanna Penglase, Co-founder and Project Officer, CLAN. concurred:

> Western Australia [is the best scheme] so far. It is a good model in that there is quite a lot of money allocated. They have done quite a lot of advertising. They have allocated money for advertising and to try to find people in other states. It is fairly well resourced…They have also tried to get funds through to people who are ill or dying. There is some compassion there.[154]

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150 *Proof Committee Hansard,* 30 March 2009, p. 70.

151 *Submission 12*, p. 6.

152 *Submission 10*, p. 11.

153 *Proof Committee Hansard,* 30 March 2009, p. 6.

154 *Proof Committee Hansard,* 7 April 2009, p. 42.

Benefits of State redress schemes

Acknowledgement

2.152 The *Forgotten Australians* report noted:

> …there is an increasing interest throughout the world in the issue of reparations for past injustices and the role that such reparations can play in reconciling particular aggrieved groups within nations with the larger society.[155]

2.153 This view was supported by evidence received in the present inquiry, which indicated that a benefit of redress schemes was that they provided an opportunity for people to have their stories heard. Mrs Syed-Waasdorp, for example, submitted:

> It was a good idea to have a redress. It is a great thing to have. It gives us a chance to write to the government and let them know how we did all suffer and it lets us be heard, lets our stories go and be heard.[156]

2.154 The idea that redress schemes provide a therapeutic avenue for people to tell of their experiences in a public forum was a recurrent theme. However, such experiences were tempered or balanced by evidence that, for some, such processes could not in themselves ameliorate the pain of past injustices. Ms Wagner, for example, observed:

> …we have had some people who come through the process who are getting fairly elderly and in some cases they are telling us their stories for the first time. It has been a great comfort for them that finally someone has listened and acknowledged what occurred to them as children…[However, we] often see people who have travelled through different routes through their lives, through the justice system, and remain very angry and bitter at what happened to them as children.[157]

Comparison to criminal and civil legal processes

2.155 Given the problems associated with pursuing legal claims outlined above, many submitters and witnesses noted that the processes offered by redress schemes were preferable to criminal and civil legal trial processes:

> …to go through litigation and everything that that involves—the cost and the trauma and the delay and the feeling that you are on trial rather than your perpetrators—compared to that, redress funds have got to be better. There is no comparison.[158]

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155 *Forgotten Australians*, p. 214.

156 *Proof Committee Hansard*, 6 April 2009, p. 25.

157 *Proof Committee Hansard*, 8 April 2009, p. 79.

158 Ms Angela Sdrinis, Private capacity, *Proof Committee Hansard*, 30 March 2009, p. 6.

2.156 Redress schemes also offer scope to address a range of undoubted wrongs that fall outside of legal definitions of criminal or negligent behaviour. Such wrongs were detailed extensively in both *Lost Innocents* and *Forgotten Australians*. Ms Sdrinis noted that the Western Australian redress scheme, for example, recognised 'neglect' as a basis for compensation.[159]

Contribution to investigation of historical crimes of sexual and physical abuse

2.157 Ms Sdrinis observed that redress schemes could contribute to the investigation and prosecution of perpetrators of abuse, insofar as such schemes were coordinated with police units with specialist knowledge and a dedicated remit to investigate the particular crimes committed against care leavers:

> In states where redress funds have been set up, there is a process whereby all complaints—provided that the claimant gives permission—are referred to a task force set up by the state police service; a task force which will investigate the criminal aspects of the conduct and, if appropriate, prosecute the perpetrators.[160]

2.158 By acting as a conduit for allegations of historical abuse to be collected in central databases administered by dedicated police services, redress schemes could help overcome the lack of corroboration that is so common in cases of historical abuse.[161]

> In these cases of historical sex crime, corroboration is everything. You are not going to establish beyond reasonable doubt that a crime occurred if you are relying upon the memories of a child and if the perpetrator is flatly denying that these events ever occurred. You are not going to be able to prove it. But where there are two or three or four or more complaints about a perpetrator then the likelihood is that the police will prosecute and the likelihood is that they will get a conviction because of the corroboration.[162]

2.159 By comparison, Mr Golding described the difficulties of current processes to report and investigate allegations of historical abuse against care leavers.

> At the moment in Victoria…the system that requires complainants to tell their story first to the local police and then again to the appropriate Sexual Offences and Child Abuse unit. Not only is this a needlessly repetitive, traumatic and insensitive process, police sources concede that if a complaint is lodged in one city in Victoria and another person makes a similar complaint against the same alleged abuser in another city, it is largely a matter of chance whether the alleged offences are matched up and the full extent of the alleged abuse discovered. Yet corroboration can be crucial in obtaining a conviction. Having your story heard through a redress

159 *Proof Committee Hansard,* 30 March 2009, p. 12.

160 *Proof Committee Hansard,* 30 March 2009, p. 3.

161 *Proof Committee Hansard,* 30 March 2009, p. 3.

162 *Proof Committee Hansard,* 30 March 2009, p. 3.

> scheme is for many victims an act of closure, but having your tormenter brought to justice is equally important (if not more so for some victims)…[163]

2.160 The Committee heard that Tasmania had made explicit arrangements for its redress scheme to link up with its Police. Mr Golding advised:

> I understand that, as part of their arrangements for redress for former wards of the state, the Tasmanian Abuse of Children in State Care Assessment Team has a system of referrals to specially selected liaison officers in Tasmania Police. This referral system is designed to ensure that, in as many cases as possible, perpetrators will be tracked down and dealt with in the criminal justice system.[164]

2.161 CLAN submitted:

> As far as CLAN is aware, the only state in Australia which has set up a state database of known perpetrators of abuse in care is Tasmania, within their Police Department. They are to be commended for this initiative, which needs to become the norm in every state of Australia.[165]

2.162 Ms Sdrinis saw a role for the Commonwealth in the establishment of specialist police 'Sexual Offence and Child Abuse' units to facilitate the investigation and prosecution of historical crimes against care leavers.[166]

Concerns with the operation of State redress schemes

Unequal access to State redress schemes

2.163 Submitters and witnesses highlighted the inequity or unfairness caused by inconsistent access to reparation, due to the failure of some States to implement redress schemes. Mr Golding observed that care leavers were being denied access simply on the basis of their State of residency.[167] Accordingly, the Association of Child Welfare Agencies (ACWA) called for a 'national approach on the basis that:

> …too many people fall between the cracks in this State-by-State approach…[168]

2.164 Dr Penglase commented:

> …the reparations issue is difficult and complex. Redress, which is now linked to the states, is a very thorny issue with care leavers because there is

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163 *Submission 16*, p. 6.

164 *Submission 16*, p. 6.

165 *Submission 21*, p. 6.

166 *Proof Committee Hansard*, 30 March 2009, pp 4, 7.

167 *Proof Committee Hansard*, 30 March 2009, p. 18.

168 *Submission 28*, p. 3.

> such inequity across the states. This is a really major problem, which we raised in our submission. Some states have redress schemes and some do not.[169]

Inconsistency of scheme conditions

2.165 As shown above, State schemes have had many differences in terms of eligibility requirements, methods of determining compensation, levels of compensation, access to records and support arrangements for claimants. The ACWA observed:

> In short, some of the states have offered reparations/redress under varying conditional constraints – most have deadlines by which applications need to be lodged; some have sliding scales of reparations dependant upon degrees of abuse received; eligibility varies from state to state in terms of place of residence v Home location; and some have rigid levels of statutory compensation.[170]

2.166 The Committee heard that the varying conditions across the States had caused considerable distress to care leavers. The ACWA submitted:

> …too many people are forced to make odious comparisons in their treatment versus that available in another jurisdiction.[171]

2.167 Dr Penglase noted that in some cases care leavers had also experienced inconsistent treatment within State schemes:

> For example, Tasmania does not acknowledge you if you were not a state ward. So you can have a brother and a sister, one of whom was a state ward and one who was not, in the same or related homes and one is eligible and one is not. So that is very difficult for people to understand and to come to terms with. The point about redress is that if it is in one state it needs to be in all states, and it is not.[172]

2.168 Ms Sheedy was also concerned about unfair outcomes based on eligibility criteria:

> …in Queensland, we have a member who is a 54-year-old state ward of Queensland who was not covered by the Forde inquiry. She is not entitled to redress because she was in foster care but her 83-year-old father who was in an orphanage in Queensland was entitled to the redress money. These inequalities are just not acceptable really.[173]

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169 *Proof Committee Hansard,* 7 April 2009, p. 40.

170 *Submission 28*, p. 3.

171 *Submission 28*, p. 3.

172 *Proof Committee Hansard,* 7 April 2009, p. 40.

173 *Proof Committee Hansard,* 7 April 2009, p. 43.

2.169 The AFA submitted:

> Eligibility needs to be as broad as possible. Excluding survivors of abuse in foster care, people in detention centres, people who were not state wards or people who were only in care for short periods, for example, creates undesirable divisions and adds to the administrative burden the need to make judgements about who "fits" the criteria and who does not and then to defend those judgements through an appeal system. The eligible group needs to be as broad as possible.[174]

2.170 Mr Golding called for the Commonwealth to play a central role in ensuring the coordination of redress schemes across the States and Territories:

> …the Commonwealth should make a major contribution by bringing together the various players in this area and talking about some common guidelines—not necessarily mandating them but at least getting that discussion going about the need for common guidelines.[175]

2.171 Ms Clare also saw value in a coordinated national effort to identify successful models:

> We would like to see the outcomes from the redress schemes that have operated [applied] so that Victoria and other states could have the benefit of then putting in place what is most appropriate and most supportive. That piece of national work would be helpful in putting pressure on states that have only partially met that need or those, like Victoria, that have not met it at all.[176]

Inconsistency of compensation

2.172 The different methods of determining levels of compensation across the State schemes attracted particular comment. Many felt that the process of having to establish evidence of abuse or physical and mental harm in order to qualify for higher awards of compensation was unfair. Ms Marlene Wilson explained:

> …the redress is just another kick in the teeth. It was a pittance, and for $7,000 having to sign to say I would never ever take the government to court shows me I am still not worth very much and the government does not think very much of me to this very day…Just because I am not under psychiatric care and those kinds of things does not mean I do not suffer and my family have not suffered.[177]

2.173 Similarly, Mrs Lovely commented:

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174 *Submission 10*, p. 7.

175 *Proof Committee Hansard*, 30 March 2009, p. 19.

176 *Proof Committee Hansard*, 30 March 2009, p. 38.

177 Private capacity, *Proof Committee Hansard*, 6 April 2009, p. 82.

> All of the people who were in the homes have similar stories, some a lot worse than others, but I found that very difficult—that is, to try to prove how and what happened. I did not think, personally, that we should have to try to prove what happened to us because I think it is general knowledge that this all went on in each and every institution.[178]

2.174 The ACWA observed that many care leavers equated the different levels of compensation awarded to a judgment about the seriousness of the abuse, or the severity of the harms, suffered:

> …states that have already paid reparations have had to do so with one eye on a limited fund and the other on trying to balance justice against need, so that, too often, applicants are left wondering why their own life affecting abuse or rape or permanent injury was worth so little.[179]

2.175 Commenting on the Tasmanian scheme, in which each claim was assessed on the basis of a review, Dr Penglase observed:

> The Tasmanian scheme seems to have been divisive at times. I think it is probably better always to have a certain sum allocated because in Tasmania people would get together and compare, 'My abuse was worth this much, and yours was worth that much,' which can be very divisive. We heard quite a few stories of pain and more suffering coming out of that.[180]

2.176 The two-tier system of compensation employed by both Queensland and Western Australia was also criticised. Ms Greaves observed:

> People are very angry and frustrated because, as the system goes into the different grades, if the sexual abuse is on the top you diminish what has happened underneath and it should have been equal. Abuse is abuse and it is an individual effect on children. It is not the same across the board, so there should not have been classifications.[181]

2.177 Accordingly, Ms Greaves called for redress schemes to offer standard or flat rates of compensation:

> …the redress should have been a national system overseen by the Commonwealth government and the monetary compensation should have been equal in all states. I really think that it needs to be investigated, because you have done further harm through restrictions and classifications of abuse. Regardless of what category of abuse someone falls under, governments cannot decide which has done more harm or less. It is an

178 *Proof Committee Hansard,* 6 April 2009, p. 23.

179 *Submission 28,* p. 4.

180 *Proof Committee Hansard,* 7 April 2009, p. 42.

181 *Proof Committee Hansard,* 30 March 2009, p. 44.

> individual thing that has happened, so the compensation should have been quite equal.[182]

2.178 Miss Harrison, however, saw benefits in a graded approach to determining compensation:

> We quite like the two-tier scheme, which means that people who do not want to go through all the horror of retracing the steps of every awful thing that happened to them and finding what evidence they can…still get a base payment that acknowledges that they experienced harsh treatment in care without demanding too much of them in return.[183]

2.179 The AFA also preferred the two-tiered approach:

> The two-tier schemes introduced by Queensland and Western Australia are a good way of ensuring all survivors can (relatively easily) claim a base amount without having to go through the additional trauma of producing a more detailed and documented account of their suffering. Those who are able and ready to claim the higher level of reparation can do so.[184]

2.180 Mr Bayman advised that the tiered system of compensation based on a 'legal model of pain and suffering', as opposed to a flat payment, meant that the type or severity of abuse suffered, as well as individual factors such as personality and need, could be taken into account. Such an approach allowed a more complex and holistic assessment of a person's experiences and circumstances.[185]

2.181 In terms of levels of proof needed to establish claims under the Tasmanian scheme, Ms Jacob advised that evidential standards were applied appropriately, as well as being sensitive to care leavers:

> In our assessment processes around the ex-gratia payments, the assessment process has taken a pretty liberal view that we do not rely on everything being evidenced in files, because if we did that clearly that would have been an unrealistic expectation of the file system. We work with the paper files the best we can, but we also take very seriously the story that the applicant tells us. It is that story that is assessed. We tend to err on the side of being as expansive as we possibly can in terms of what the person is telling us, rather than having everything having to be validated by what is in the file.[186]

2.182 The AFA felt a similar approach to evidence was needed even where higher levels of compensation were sought.

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182 *Proof Committee Hansard,* 30 March 2009, p. 44.

183 *Proof Committee Hansard,* 30 March 2009, p. 70.

184 *Submission 10,* p. 8.

185 *Proof Committee Hansard,* 31 March 2009, pp 55-56.

186 *Proof Committee Hansard,* 8 April 2009, p. 80.

> The decision about whether to proceed to claim the higher level of reparation must be made in the knowledge that support in the preparation of the claim will be available, and that unreasonable levels of detail will not be required.[187]

Impact of redress schemes on other services

2.183 The CMT advised that the scheme had increased contacts with former child migrants, increasing the call on the Trust's services for the duration of the scheme and beyond. Mr Ian Thwaites, Service Manager, CMT, advised:

> The Western Australian state government redress scheme has brought many more people forward, as well as people that we have not seen for years who have now come in. In asking for assistance to prepare their statements for redress, it has also become very clear that there are still missing family members. Some people did not ask at the time for their families to be found and so we are now engaging with them in core service issues that will go far beyond the end of the redress scheme.[188]

2.184 Dr Rosser indicated that the implementation of redress schemes could put pressure on systems related to identification of and access to records:

> …if you are designing a scheme, again one of the lessons to learn is to try and get your records house as much in order as you can before you start and perhaps have a longer lead time…if there were a long lead time and the records were right, then people would be able to access their records prior to making their applications.[189]

Retraumatisation

2.185 It was apparent from the experiences of care leavers pursuing claims through redress schemes that there was significant occurrence of retraumatisation through having to recount their experiences to establish their claims. For example, Mr Wayne Bradwell commented:

> I learnt to keep a lot of…[my childhood experiences] locked away in a little safe in the back of my head. I have had it locked away for an awful lot of years. A lot of it is making me very agitated since this redress came up. I did not have to do much for the first round, but for the second round I had to sit in a very small room and explain why I deserve the second part of the redress.[190]

2.186 The AFA observed:

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187 *Submission 10*, p. 8.

188 *Proof Committee Hansard*, 8 April 2009, p.13.

189 *Proof Committee Hansard*, 31 March 2009, p. 6.

190 Private capacity, *Proof Committee Hansard*, 6 April 2009, p. 59.

> Support to prepare claims must be provided as part of the system. This is not just legal support but sympathetic support that recognises the trauma such a process creates and offers advice on the amount of detail needed to establish an entitlement.[191]

Timeframes

2.187 The Committee notes that the redress schemes established by the States have all been of relatively short duration, leading to extensions of deadlines or scheme operation. Despite such extensions, the Committee heard that considerable numbers of people are likely to have missed the opportunity to submit claims. For example, Ms Walsh advised:

> …part of the problem with the Queensland Redress Scheme was the timeframe…[There] was not enough time given to the numbers involved. We have a record of about 70 people who would be eligible who did not know about the scheme…[The] timeframe around implementation of Redress with very little additional resources was a major issue.[192]

2.188 The AFA observed that there are a number of factors that made it difficult for care leavers to adhere to narrow scheme timeframes:

> Schemes should be open-ended, as eligible survivors are all at different stages in the acknowledgement process and should not be rushed into public declarations before they are ready. Forgotten Australians working in government departments fear discrimination if they disclose, and will often elect to wait until retirement before claiming redress. There are also issues of awareness; people who cannot read, for instance, because an education was denied them, may take much longer to learn about a government policy or scheme. Deadlines are counterproductive.[193]

2.189 Ms Walsh agreed that redress schemes should in general provide for much longer periods of operation:

> …the lessons of the redress schemes everywhere are showing that timeframes and the ability to just get your life into some sort of order to be able to fill out an application process by the due date and get the necessary documentation is an unrealistic request given the lives that people are living, or something that was a much longer period of time as a public hearing.[194]

191 *Submission 10*, p. 7.

192 *Proof Committee Hansard*, 6 April 2009, p. 34.

193 *Submission 10*, pp 7-8

194 *Proof Committee Hansard*, 6 April 2009, p. 34.

Redress through the religious schemes

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 recourses 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.**

Government response

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

Implementation

2.190 *Forgotten Australians* noted that a number of churches had, by the time of that report, established internal redress-type mechanisms to provide assistance and support to victims of abuse by church personnel. The report noted:

> These processes provide an alternative avenue of redress to civil litigation for people alleging neglect or abuse in church-run institutions. Many former residents will not, however, use these processes because of past negative experiences as children in the institutions operated by the various Churches.[195]

2.191 Noting the potential for churches to continue to receive complaints about abuse, the report also observed that it is essential that complaints handling procedures across all churches are effective and transparent. The report described the processes in

195 *Forgotten Australians*, p. 228.

place in the Catholic, Anglican and Uniting churches, the Salvation Army and Barnardos, identifying a number of problems. These included:

- decisions lacking apparent objectivity;
- a lack of informal or reconciliation-style processes;
- processes lacking transparency and accountability;
- appointments lacking independence;
- failure to adhere to, and inconsistent, processes;
- coercion and intimidation of claimants; and
- overly legalistic approaches.

2.192 The Committee received no submissions from the major religious organisations. While it is difficult to conduct an in-depth analysis of the changes to religious redress schemes in the absence of detailed responses from the churches, a number of stakeholders offered comment on the ongoing implementation and performance of religious redress schemes.

2.193 Mr Andrew Murray noted that churches should be given some credit for their efforts to date in instituting redress schemes:

> …we need to recognise that many churches and agencies—even recalcitrant churches, agencies and individuals—responded to the original recommendations very well and instituted processes…Much progress has been made.[196]

2.194 Ms Walsh commented:

> I think the very fact that every church now has a protocol is a significant improvement on what it was like 10 years ago. In the last 10 years we have seen churches put enormous energy into looking at developing protocols. It is the understanding of how those protocols need to be implemented that needs more attention across the board.[197]

Consistency, transparency and accountability of processes

2.195 Commenting on the Catholic Church's *Toward Healing* scheme, Ms Walsh advised that the program was not consistently applied:

> …Towards Healing is a national program, but its implementation is not nationally applied. It is still very locally driven according to how local bishops and religious orders want to deal with it. The problem for the public and for victims of abuse and their families is that there is no clear picture of what is going to happen when you actually do process a complaint, even

196 *Proof Committee Hansard,* 31 March 2009, p. 29.

197 *Proof Committee Hansard,* 6 April 2009, p. 36.

> though there is a document. When people speak to each other or hear how different complaints have been heard, it varies greatly.

2.196 Dr Philippa White, Coordinator, CBERS Consultancy, acknowledged that there was a significant degree of variation in the processes offered by the different church organisations and across the States.[198]

2.197 Submitters and witnesses also indicated there were still concerns over the transparency and accountability of church redress schemes:

> There remains no benchmark, no accountability, and no transparency on the part of church bodies when it comes to the issue of handling abuse allegations.[199]

2.198 Dr Chamley, who had experience as an advocate for claimants, submitted that religious organisations had failed to adequately publicise processes available for people to seek redress:

> The response of the various bodies to this recommendation has been patchy at best, and sometimes against the intent of the recommendation. While attention has been directed towards the development of internal codes and procedures, a big failure here has been the absence of clear information on website home pages that there is a process available. None of the churches, religious organisations and charities has been proactive in this regard.
>
> The Salvation [Army] has never been prepared to provide such information while with the Anglican Church, information appears on the home pages for some dioceses. In the case of the Catholic Church, information was available on the home page before the release of the Senate Committee Report then, all of it was removed when a new website was developed and installed.[200]

2.199 Dr Chamley identified a number of very serious procedural and natural justice issues in relation to church schemes, including anecdotal accounts of churches using private investigators to conduct irrelevant investigations into claimants' affairs, and the improper use of medical information:

> They consistently withhold medical reports. They will even commission psychiatric reports. They refuse to hand copies of those reports to the claimants, even though in law anyone is entitled to receive any medical report about them, or they give them to me on the day of the mediation, when their lawyers have had them for weeks. They use private investigators in the lead-up to these mediations. This is mainly the Catholics who play tough.[201]

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198 *Proof Committee Hansard*, 31 March 2009, p. 16.

199 Micah Projects Inc., *Submission 33*, p. 4.

200 *Submission 14*, p. 4.

201 *Proof Committee Hansard*, 30 March 2009, p. 57.

2.200 Ms Walsh also discussed this issue:

> There is often an element of where churches want to assess the dysfunction of the victim in order to determine what money is going to be paid and proportionately look at what could be from the perpetrator of the abuse and what is the vulnerability of the victim. We would argue that the vulnerability of the victim means that there should be a higher rating for the abuse that has occurred, because the offender has taken advantage of that vulnerability. It should not be something that diminishes the responsibility or the outcome of the internal process.[202]

2.201 Dr Chamley had also experienced inadequate documentation of processes:

> You will have mediations where there is absolutely no paper trail—not a single document, apart from the deed of release. So there is nothing that exposes them.[203]

2.202 In some cases, there had also been a clearly inadequate division of responsibilities:

> In the case of Towards Healing, from the church side you can have the same person turning up as the facilitator before we get to mediation. They are then the mediator and then they are a psychologist—the same person—going all the way through...[204]

Inadequate compensation outcomes

2.203 Submitters and witnesses also raised concerns about the compensation outcomes being delivered by the church redress schemes. Ms Sdrinis observed that in the absence of a reasonable prospect of success of litigation—due to the legal barriers outlined above—church processes tended to deliver relatively poor compensation outcomes:

> It becomes very difficult to negotiate successfully when everyone involved in the negotiations knows that your claim will almost certainly fail if you go to court, and that affects the levels of compensation we can achieve for claimants.[205]

2.204 In comparison to settlements achieved with the State of Victoria, for example, the quantum of compensation payments made under the in-house church schemes was significantly less, and it was 'unusual for them to be of the same order' as the settlements achieved through negotiations directly with States:

> The Catholic Church compensation panel, as you would be aware, has a maximum of $55,000. You cannot do better than that. The Christian

202 *Proof Committee Hansard,* 6 April 2009, pp 28-29.

203 *Proof Committee Hansard,* 30 March 2009, p. 57.

204 *Proof Committee Hansard,* 30 March 2009, p. 57.

205 *Proof Committee Hansard,* 30 March 2009, p. 10.

> Brothers have been known to pay six-figure sums, but that is in the particularly embarrassing and difficult cases for them. Generally speaking, settlements are between $10,000 and $100,000. The Western Australian government's range of settlement is squarely within what we have been achieving just through the negotiating process.[206]

2.205 Dr Chamley believed that churches had attempted to 'coerce claimants' through offers of compensation conditional on acceptance within brief timeframes, and saw this as contributing to the tendency for unrepresented claimants to receive lower payments.[207] On this point, Ms Walsh observed:

> The benchmarking around money is significantly different in every jurisdiction and every church. In some cases people feel that private school complaints are dealt with completely differently from those of people who were in orphanages. There is often an element of where churches want to assess the dysfunction of the victim in order to determine what money is going to be paid and proportionately look at what could be from the perpetrator of the abuse and what is the vulnerability of the victim. We would argue that the vulnerability of the victim means that there should be a higher rating for the abuse that has occurred, because the offender has taken advantage of that vulnerability. It should not be something that diminishes the responsibility or the outcome of the internal process.[208]

2.206 Overall, Dr Chamley felt that the religious schemes offered compensation that was clearly inadequate to the ongoing needs of care leavers:

> If a person goes to one of these internal processes such as Towards Healing and the Anglican process, they get maybe a monetary sum and six sessions with a psychologist. So what? What they need is a whole lot of support…to help them stabilise and get a better quality of life [rather] than bouncing around in the public health and housing systems…frustrated by their self-esteem, poor reading and writing skills…[209]

2.207 Origins Inc. considered that the apparently inherent problems of in-house church redress processes were insurmountable, and did not support such schemes:

> Origins does not support this recommendation. Having been a 'support advocate' for a number of mediations we have found the client once again becomes traumatised in personally having to deal with the very organisation that abused them in the first place. We have on a number of occasions found the process of "mediation" not much more than an episode of haggling with nuns who have minimised the clients experience and have

206 *Proof Committee Hansard,* 30 March 2009, p. 11.

207 *Proof Committee Hansard,* 30 March 2009, p. 58.

208 *Proof Committee Hansard,* 6 April 2009, pp 28-29.

209 *Proof Committee Hansard,* 30 March 2009, p. 53.

> declared that they are 'poor' and cannot provide any more than a token gesture.[210]

2.208 The ACWA submitted that, because many of the original State, church and agency bodies 'no longer exist or have now heavily committed their capital assets to new areas of charitable need', the federal government was the only body with sufficient funds to ensure the availability of a meaningful reparations program.[211] However, it was acknowledged by others that a national scheme would not supplant the responsibilities of States or religious or charitable institutions, but should form part of a collective response:

> The ideal would be a national reparations fund because it would show a real commitment on the part of the federal government and an acknowledgement of the seriousness of what happened. I think that it can be done. I know it is different in that they do not have states and so on, but the Irish government showed that it can be done. Anything like this can be done if there is the political will. It would have to be a joint exercise between the federal and state governments and, probably, the past providers of institutional care.[212]

Judicial Reviews and Royal Commission

Lost Innocents Recommendation 1

That the Commonwealth Government urge the State and Territory Governments to undertake inquiries similar to the Queensland Forde inquiry into the treatment of all children in institutional care in their respective States and Territories; and that the Senate Social Welfare Committee's 1985 inquiry be revisited so that a national perspective may be given to the issue of children in institutional care.

Government response

The government supports this recommendation and will bring the recommendation to attention of the Community Services Ministers Advisory Council, acknowledging that children in institutions are the primary responsibility of the States and Territories.

The number of children in institutional/residential care has decreased markedly from approximately 27 000 in 1954 to less than 2000 currently. Most states and territories have phased out large institutions, with the majority of residential care now provided in small facilities caring for three to eight children.

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210 *Submission 2*, p. 12.

211 *Submission 28*, p. 4.

212 Dr Joanna Penglase, Co-founder and Project Officer, CLAN, *Proof Committee Hansard*, 7 April 2009, p. 41.

Implementation

2.209 *Lost Innocents* recommended the holding of State inquiries into the treatment of children in institutional care on the basis that this could lead to a better understanding of how past adverse treatment in care has 'detrimentally affected a proportion of those children'. Equally, a repeat of the Senate Social Welfare Committee's 1985 inquiry into children in institutional and other forms of care was recommended as being important to bring a national perspective to the issue,[213] and this was achieved through the holding of the Senate Community Affairs References Committee's twin inquiries into children who experienced institutional and out-of-home care.

2.210 The report recommended that State inquiries follow the model of the 1999 Queensland Forde Inquiry—the Commission of Inquiry into Abuse of Children in Queensland Institutions, chaired by Ms Leneen Forde AC. This inquiry was established to examine, inter alia, if there had been any abuse, mistreatment or neglect of children in Queensland institutions and breaches of any relevant statutory obligations during the course of the care, protection and detention of children in such institutions. The report, *Abuse of Children in Queensland Institutions*, released in May 1999, examined practices at more than 150 institutions, and also considered Queensland's contemporary child welfare, juvenile and Indigenous justice systems and legislative and departmental practices, profiles of children in care, and staffing arrangements. As with the Committee's own inquiries, the Forde inquiry heard evidence of a wide range of abuse and neglect of children in historical care, arising from both systemic failures and individual criminality. The 42 recommendations of the Forde report covered issues to do with record-keeping, institutional standards and monitoring and principles of compensation. The Queensland government accepted 41 of the 42 recommendations and committed $100 million over four years from 1999-2000 to implement responses, including the establishment of the Forde Foundation, a redress scheme and funding of the groups co-located at Lotus Place (discussed in Chapter 3).[214]

2.211 New South Wales, Tasmania and Victoria did not directly comment on the implementation of this recommendation, and the Committee is not aware of any judicial inquiries into matters of children in these States. As noted in *Forgotten Australians*, some related previous investigations in these States include:

- a 1992 report to the Minister for Health and Community Services from a committee established to review substitute care (NSW);
- a 1994 report by Cashmore, Dolby and Brennan on systems abuse (NSW);
- a 1984 report on child and youth deprivation by the Legislative Select Committee (Tasmania); and

213 *Lost Innocents*, pp 8-9.

214 *Forgotten Australians*, pp 10-12.

- a 1990 review of the redevelopment of protective services for children in Victoria by the Family and Children's Council (Victoria).

2.212 South Australia advised that it had established the Children in State Care Commission of Inquiry (the Mullighan Inquiry) which released its report, *Allegations of Sexual Abuse and Death from Criminal Conduct*, on 1 April 2008:

> The CISC made 54 recommendations in relation to training for child protection staff, carers, police, judiciary and legal representatives, legislative changes including strengthening the position of the Guardian for Children and Young People, provisions for reparation and an apology by the State and prioritisation of the hearing of criminal prosecutions involving child complainants. The Government responded in June and September 2008 in relation to actions in implementation of the recommendations.[215]

2.213 The AFA observed:

> …the Mullighan Inquiry, in being restricted to investigating sexual abuse, was more limited [than the Forde Inquiry] in its terms of reference. Any national or state inquiry should, in our view, broadly address physical, psychological and sexual abuse.[216]

2.214 Western Australia advised that it had held a review of its Department for Community Development in 2006-07, conducted by Ms Prudence Ford, 'to ensure a focus on child protection'. Western Australia created a new Department for Child Protection on 1 July, which is 'currently undergoing a major reform agenda'. The State advised that it did not intend to conduct a judicial review:

> The Western Australian Government considers that holding an Inquiry into children in institutional care in Western Australia at this time would not significantly add to the findings of the previous Senate Inquiries and the Ford Review into the former Western Australian Department for Community Development.[217]

2.215 Mr Johnston commented that former child migrants were 'disappointed' with the response to *Lost Innocents* recommendation 1, and noted that 'perpetrators of appalling degrees of childhood abuse remain free and escape justice'.[218] Mr Johnston believed that the benefits of judicial inquiry to former child migrants were still relevant:

> A judicial inquiry will give us the power, the drive and the incentive to be able to do this and achieve a good result for former child migrants. They will suddenly be believed and vindicated over everything that has happened

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215 *Submission 30*, p. 3.

216 *Submission 10*, p. 10.

217 *Submission 11*, p. 3.

218 *Proof Committee Hansard*, 8 April 2009, p. 1.

to them. There would also be a sense of relief from seeing some of these beasts brought to justice.[219]

Forgotten Australians 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; and**
- **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.**

Government 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.

219 *Proof Committee Hansard*, 8 April 2009, p. 3.

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.

Implementation

2.216 The *Forgotten Australians* inquiry received evidence of serious allegations of criminal physical and sexual assault of children and young persons who were in out-of-home care during the last century. The Committee was particularly concerned to hear allegations concerning concealment of past practices by religious and State officials and organised paedophilia, and this concern was reflected in the proposed terms of reference contained in the original recommendation.

2.217 The *Forgotten Australians* report also noted that children in orphanages and homes had been subjected to the use of experimental medications and drugs. The Committee received copies of documents from Mr John Pollard that allege that such practices had been occurring over many decades.

2.218 The report outlined the nature and powers of royal commissions, notably their extensive powers and procedural flexibility. It concluded that these could be appropriate for a thorough investigation of the complex issues raised by the evidence referred to above, in the event that charitable and church-run institutions did not meet certain conditions. However, the report also noted that in all cases the holding of a Royal Commission entails serious considerations around a 'range of conflicting factors', which the Committee understands to include the likely timeframe, the possible cost and, specific to the present case, the likelihood of significant outcomes in the identification and successful prosecution of crimes the subject of the inquiry.[220]

2.219 Directly referring to the conditions set out in the recommendation, Mr Andrew Murray felt that religious organisations in Australia had continued to protect or shield perpetrators of abuse, and that the reasons for the holding of a Royal Commission therefore remained compelling:

> I remain a supporter of a royal commission…Amongst the tens of thousands of religious people who are in churches and agencies that deal with children in care, there is only a minority that are criminals, but the majority protected the minority.[221]

2.220 CLAN also noted that the conditions to prevent the holding of such an inquiry had not been met, namely that the relevant institutions, agencies and facilities had not cooperated with authorities investigating historical crimes. It was further justified by their failure to adequately implement recommendations 9 and 10, which together sought the annual consolidated publication of data on all abuse complaints received to date. CLAN submitted:

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220 *Forgotten Australians*, pp 241-251.

221 *Proof Committee Hansard*, 31 March 2009, p. 29.

> …a Royal Commission is essential to fulfil the purpose…named in the Report, namely, 'to bring closure to this issue, as far as that is possible'.[222]

2.221 Miss Harrison believed that the inadequate administration of complaints processes and redress schemes had allowed many churches to avoid meaningful cooperation with investigating authorities:

> …a royal commission, while it can be long and tedious and expensive as a process, may well be the only way in which we can compel some people to come forward and talk about their response or their lack of response, and I think the churches are among those. The churches…are dodging their responsibilities, are instituting their own processes—which many forgotten Australians regard as totally inadequate…Our position is that we think a royal commission may be necessary.[223]

2.222 More generally, care leaver advocacy and support groups re-stated their arguments to the previous inquiry in support of a Royal Commission. The AFA submitted:

> …a royal commission or formal inquiry into state government, charitable and church-run institutions may be the only way to obtain the truth and to bring accountability. [224]

2.223 Broken Rites observed:

> …real progress will only come about after the conduct of a Commonwealth-initiated Royal Commission. The…commission should be broad enough to…inquire into the roles, actions and activities of state government agencies as well as charities, churches and the institutions that they operated. It must inquire into what was done to so many children, how governments, charities and churches benefited and to where these benefits were distributed.[225]

2.224 Dr Penglase felt that 'the level of criminality and cruelty will only come out in a Royal Commission'.[226]

2.225 Other witnesses emphasised separate or additional benefits to the holding of public inquiries. Mr Mullighan emphasised the important role of inquiries in providing an appropriate and public opportunity for people to tell their stories:

> …if one of [an inquiry's] functions is to provide a forum for people to be able to disclose what happened to them it would be of great value. [In the Mullighan inquiry] there were people who were still making up their minds

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222 *Submission 21*, p. 5.

223 *Proof Committee Hansard*, 30 March 2009, p. 64.

224 *Submission 10*, p. 10.

225 *Submission 14*, p. 5.

226 *Proof Committee Hansard*, 7 April 2009, p. 49.

> whether to come forward, and when they did without exception they all said that it was such a positive experience for them…because someone had listened. They had been able to make a disclosure... It is very important that people are respected in that way.[227]

2.226 However, for the purposes of allowing people to tell and to have heard their stories, such a forum did not necessarily have to be in the form of a Royal Commission:

> It does not have to be a royal commission, but I think it needs to be something that is independent—a parliamentary inquiry or similar commission…[People] need somewhere they can go that is independent, where people will listen and where anything that they have to say will be considered…It is absolutely critical.[228]

2.227 Origins Inc. also emphasised the individual and social healing potential of public inquiries, in calling for a national inquiry modelled on truth and reconciliation commission inquiries:

> A Truth Commission on the crimes committed against citizens of this country is needed.
>
> It is established that when abuses or deprivation of civil liberties by governments have been acknowledged, the climate is right to deal with the issues that come from the exposure of such human rights crimes, hence the need for a National Inquiry to gauge the level and degree of physical and mental health damage[229]

2.228 Not all submitters and witnesses supported calls for a Royal Commission, reflecting different views on its likely effectiveness and the best use of funds and resources to further the interests of care leavers. Mrs Lovely submitted:

> There are different perspectives by HAN members about whether or not a royal commission would be able to bring about the justice and healing that people are seeking.[230]

2.229 Ms Diane Tronc, HAN, explained:

> Those against having a royal commission are concerned about the expense of the commission and that there would once again be another report that is not responded to by governments. There is concern also about how many people are getting older and want action by governments sooner rather than later.[231]

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227 *Proof Committee Hansard,* 8 April 2009, p. 29.

228 *Proof Committee Hansard,* 8 April 2009, p. 33.

229 *Submission 2*, p. 21.

230 *Proof Committee Hansard,* 6 April 2009, p. 13.

231 *Proof Committee Hansard,* 6 April 2009, p. 13.

2.230 Mr Humphreys was concerned that the holding of further inquiries would only serve to further delay and frustrate action to address the well-known needs of care leavers:

> We have had enough inquiries. It is evidence. Counsellors will tell you today that new stories and new inquiries getting in the press does not help because it only revives old memories. As far as I am concerned, let's act on the ones we have already had and all the stuff we know about. You have been told it all. You have got it in writing. Act upon it. Don't let's go down the track of saying, 'Let's have a royal commission'.[232]

2.231 In response to the view that an inquiry could divert resources from care leaver services, Dr Penglase described this as being a Catch-22 insofar as 'you do not get services unless you have the inquiry'. She cited the Queensland example, where the Forde inquiry had led to significant funding for the establishment of the Lotus Place centre for care leaver support and services. In contrast, it was unclear what level of services would be funded in Western Australia, which, while it had put in place a redress scheme, had not held an inquiry.[233]

2.232 Those States that provided comment on this issue were generally in agreement with the Commonwealth in not supporting recommendation 11.

2.233 New South Wales considered a Royal Commission to be an 'unnecessary and prohibitively costly' option, and questioned whether any 'further progress regarding theses issues' would be achieved given the 'considerable research and inquiry into the abuse of children in institutional care' in NSW and other States.[234]

2.234 The Western Australian Department for Child Protection submitted:

> The Western Australian Government considers that holding an Inquiry into children in institutional care in Western Australia at this time would not significantly add to the findings of the previous Senate Inquiries and the Ford Review into the former Western Australian Department for Community Development.[235]

2.235 Discussion on the implementation of the recommendations addressed in this chapter and the Committee's conclusions and recommendations are contained in Chapter 6.

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232 *Proof Committee Hansard*, 31 March 2009, p. 45.

233 *Proof Committee Hansard*, 7 April 2009, p. 50.

234 *Submission 24*, p. 4.

235 *Submission 11*, p. 1.