

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

National leadership

6.1 Evidence to the inquiry overwhelmingly indicated that, despite progress made, there remains much work to be done on the implementation of the recommendations of the *Lost Innocents* and *Forgotten Australians* reports. The reasons for this are various, and include refusal to implement, failure to implement, partial implementation and changing circumstances. The Committee notes that, with the benefit of experience since the original reports, certain recommendations might need revision to achieve the desired outcomes for care leavers.

6.2 In relation to former child migrants, the Committee notes that the Commonwealth government offered support for, or undertook to take action on, roughly two-thirds of the recommendations of *Lost Innocents*. A number of others were rejected but on the basis that the government would undertake a commensurate or alternative course of action elsewhere. For example, it refused to extend funding for the UK travel fund and tracing agencies in the UK on the basis that it would fund a travel scheme and the Child Migrants Trust in Australia.

6.3 While former child migrants share many if not all of the problems and concerns of *Forgotten Australians*, the enduring issues that are specific to this group generally relate to funding and services around the facilitation of overseas family reunions. This reflects the often cruel historical policies and practices around child migration, which denied many the knowledge of their own families and relations. Despite the steps taken by the Commonwealth government to implement the recommendations of *Lost Innocents*, there remains a substantial need for national leadership in continuing to provide funding for former child migrants to access specialised services in Australia, and to foster and maintain transnational links with relevant departments and agencies overseas.

6.4 More generally, former child migrants as a subset of the *Forgotten Australians*—people who experienced abuse and neglect in institutions and out-of-home care as children—have a range of other health needs arising from their childhood experiences. The need for national leadership on the recommendations of the *Forgotten Australians* report is therefore no less critical.

6.5 The Committee agreed that, despite some areas of improvement, the implementation of the recommendations of the *Forgotten Australians* report has in many ways been poor, and most particularly in critical areas where leadership is required by the Commonwealth government, both to ensure adequate recognition of the historical truths acknowledged in its original response, and to fashion a truly coordinated national response that delivers practical services and outcomes for those who suffered the horrific abuse and shameful neglect in care over the last century.

6.6 The previous Commonwealth government's welcoming of the *Forgotten Australians* report, and acknowledgment of the events it examined as being 'a matter of shame for this country', stand in contrast to the overall tenor of its response to the recommendations. Of the 39 recommendations of the *Forgotten Australians* report, the government rejected over half either explicitly or on the basis that the responsibility for implementation resided in a State or authority over which the Commonwealth had no responsibility or capacity to influence. Some recommendations were less explicitly rejected, with the response indicating 'in-principle' support but merely pointing to existing schemes or processes as sufficient and appropriate to satisfy the intent of the recommendation. A number were effectively rejected, with the response indicating agreement with the recommendation yet making no commitment to implementation; and disappointing lack of action thereafter. Yet other recommendations were accepted but with a commitment to undertake some relatively minor action such as bringing a matter to the attention of another agency or body.

6.7 The Committee acknowledges the constitutional division of responsibilities which allowed the previous Commonwealth government to reject responsibility for so many of the recommendations of *Forgotten Australians*. That noted, the Committee affirms its view that the Commonwealth occupies a special place in the Australian federation which affords it a unique leadership role in national challenges such as this. It should be remembered that the Commonwealth's child endowment payments to the States—to whatever degree they may be said to have sustained the operation of the institutions in which abuse and neglect of children was commonplace—undeniably facilitated the system which caused so much harm and lasting damage to children consigned to its care. Less directly, but just as clearly, the Commonwealth was responsible for its financial support of the States to implement their flawed policies on child protection over many decades.

6.8 Further, the Committee's original report was clear that any strict jurisdictional limits on the Commonwealth's responsibility for child protection are overborne by the moral obligation that rests with the national government to provide clear leadership in matters of national significance and importance. As Australia's federal system has evolved, with the increasing centralisation of policy and service design and coordination in the federal sphere, that moral obligation only increases. With conservative estimates that over half a million people experienced out-of-home care across Australia in the last century, the national significance of the issues brought to prominence by *Forgotten Australians* is undeniable. The proper implementation of its recommendations is important in order to satisfy the values of fairness and compassion that mark the Australian character.

6.9 The Committee welcomes the current government's recognition that there is a need to do more to progress the implementation of the recommendations of *Forgotten Australians* report, and its undertaking to review the previous government's responses and identify areas in which it can contribute and make improvements. The Committee urges the Commonwealth, where possible, to pursue coordinated strategies for the implementation of recommendations through national forums such as the Council of

Australian Governments (COAG) and the Community and Disability Services Ministers' Advisory Council (CDSMAC).

The role of the States

6.10 Many of the recommendations of *Lost Innocents* and *Forgotten Australians* prescribed certain actions and responsibilities for the States and/or churches and religious agencies, based on the clear relationships of responsibility and duty of care between these entities and the vulnerable children placed in their care.

6.11 Of the States, Queensland is notable, and to be commended, for being an early mover on care leaver issues, although much of this was set in train by the Forde Inquiry rather than the reports of the Committee. This has seen Queensland not only conduct a redress scheme but also establish a foundation to support care leavers and pioneer a care leaver services hub through the co-location of services at Lotus Place. Tasmania and Western Australia are also notable for having established redress schemes, and South Australia and very recently Victoria have improved their funding commitments for the support and provision of services to care leavers.

6.12 Despite these improvements, the inquiry has shown that the States are collectively underfunding the services so desperately required by care leavers, such that lack of funding is a de facto barrier to access even where a service is nominally available. Most important of all, however, is that the implementation of recommendations has been inconsistent across the States, and these disparate responses are the underlying cause of the many inequities faced by care leavers in (a) the levels and availability of services across State borders and (b) denial of access to services in States other than the one in which a care leaver was resident in care as a child.

6.13 While the Committee acknowledges that all States have sought to implement various recommendations, a greater commitment to the provision of comprehensive services is critical for the spirit and intent of the Committee's reports to be fulfilled. As it does the Commonwealth, the Committee urges the States, where possible, to pursue coordinated strategies for the implementation of the reports' recommendations through national forums such as the Council of Australian Governments (COAG) and the Community and Disability Services Ministers' Advisory Council (CDSMAC).

National and State apologies

6.14 In relation to a formal statement by the Commonwealth acknowledging the error of child migration schemes and expressing regret for the harms suffered by former child migrants, the Committee notes that the expression of regret contained in the Commonwealth's response to this recommendation was insubstantial and insufficient to satisfy the spirit or intent of the recommendation.

6.15 The Committee therefore urges the current Commonwealth government to commit to providing such an acknowledgment as an act of national leadership to

recognise both the role of previous Australian governments in child migration programs and the experiences of former child migrants. The Committee believes that any such acknowledgement could be issued in conjunction with, or incorporated into, a national apology for care leavers more broadly, discussed below. However, any such apology would need to contain specific reference to former child migrants and to the elements of acknowledgment and expression listed in the original recommendation of the *Lost Innocents* report.

Recommendation 1

6.16 The Committee recommends that the Commonwealth government issue a formal acknowledgement and expression of regret to former child migrants in accordance with recommendation 30 of the *Lost Innocents* report; and that this statement be issued in conjunction with, or as a part of, a broader Commonwealth apology to people who experienced abuse and/or neglect in institutional or out-of-home care as children.¹

6.17 The Committee found that, of the States, only Western Australia and South Australia have issued formal statements that specifically acknowledge their respective roles in the child migration schemes of last century.

6.18 However, all States have now issued public formal apologies to care leavers more generally, as per the Queensland statement which the Committee's original recommendation proposed as a satisfactory model for the States to follow. These have, to varying degrees of success, acknowledged the experiences of care leavers more generally, as well as the responsibility of the States for the harms suffered by children in care. Therefore, to the extent that these State apologies were in themselves sufficient in substance and appropriately made (see below), the Committee considers the States to have made satisfactory formal statements as originally recommended. The Committee notes also that many States have made suitable statements at the unveiling of memorials for former child migrants, established on the basis of other recommendations of the *Lost Innocents* report.

6.19 The Committee received considerable comment on recommendation 1 of the *Forgotten Australians* report that the Commonwealth government issue a formal statement on behalf of the nation acknowledging the hurt and distress suffered by care leavers and apologising for the harm caused to children who suffered neglect and abuse in institutional care.

6.20 Many submitters and witnesses considered this issue to be emblematic of the Commonwealth's moral responsibility and duty of leadership in relation to care leavers. The failure of the previous Commonwealth government to act on this recommendation was contrasted with the 2008 apology to the stolen generations. The Committee agreed with the view that that apology was a powerful example of how

1 The Committee notes that the wording used in recommendations 1 and 2 reflect the wording of the original recommendations of the two reports which utilised varied language of the time.

such an act can promote healing and reconciliation when offered with due respect for ceremony, symbolism and sincerity, and is an appropriate model for a national apology to care leavers. While the Committee notes the importance of practical assistance and reparations for care leavers, it does not consider that the issuing of an apology should be formally tied to any particular scheme or form of assistance. The importance of providing services and compensation to Forgotten Australians is not underestimated in recognising that these things should not be a pre-condition of an apology.

Recommendation 2

6.21 The Committee recommends that the Commonwealth government issue a formal statement of acknowledgement and apology to children who suffered hurt and distress, or abuse and assault, in institutional care, in accordance with recommendation 1 of the *Forgotten Australians* report.

6.22 In terms of State responses to *Forgotten Australians* recommendation 2, the Committee notes that at the time of that report only Queensland had issued an appropriate statement of acknowledgment and apology to care leavers. However, since then the remaining States—New South Wales, South Australia, Tasmania, Victoria and Western Australia—have each made such a statement. The Committee commends the States for these actions, despite some criticisms by care leavers about the form and substance of apologies. With one exception, the Committee felt that the State apologies satisfied the intent of Committee's original recommendation. The one exception was the New South Wales' apology, which was issued as a response to a question without notice in the New South Wales parliament. This occasion did not adequately involve care leavers and clearly lacked an appropriate spirit of bipartisanship and ceremony. The Committee was also unimpressed by the substance of the apology, which was cursory and lacking in sensitivity. The Committee notes with approval that the New South Wales government has indicated it is committed to re-issuing its statement to care leavers. In light of this, the Committee considers it is unnecessary to make any further recommendation on this issue.

6.23 The Committee received very little evidence in relation to statements issued by churches and agencies since the *Forgotten Australians* report, which reflects the fact that there has been little action by churches and agencies since that time. An exception was the apology delivered by Pope Benedict to victims of abuse by the Catholic Church in Australia, although this was the subject of criticism.

6.24 More generally, the Committee was unanimous in its concern at the poor performance of the churches and religious agencies in implementing the recommendations of *Forgotten Australians*. The Committee is frustrated at the lack of proper acknowledgment of the issues raised in the report. This is itself underscored by the absence of any coordinated or comprehensive effort to take actions that are commensurate with the obligation to accept responsibility, and make reparation, for the abuse and neglect suffered by children in the care of churches and religious agencies. With this in mind, and given their almost complete failure to participate in the present inquiry, the Committee agreed it is appropriate that such bodies be asked

to provide unequivocal public statements addressing the recommendations of the *Lost Innocents* and *Forgotten Australians* reports. These statements will provide a necessary baseline against which the public and any future inquiries on these matters may judge the progress of churches and religious agencies on these issues.

Recommendation 3

6.25 The Committee recommends that the Prime Minister write to relevant churches and religious agencies requesting that they provide formal statements concerning the need for such bodies to make reparation to children who suffered abuse and neglect in their care in the last century, and addressing in particular the issues of apology, redress and provision of services to care leavers, and the implementation of the recommendations of the *Forgotten Australians* report; the Committee further recommends that the Prime Minister cause the statements provided by churches and religious agencies to be collated and tabled in parliament.

Reparation and redress schemes

6.26 Recommendation 6 of the *Forgotten Australians* report went to the establishment of a national redress scheme by the Commonwealth. While this was not supported by the government, much of the evidence received by the inquiry commented on this issue and on redress funds more generally.

6.27 The Committee notes that a number of States have established redress funds. These are:

- Tasmania: this 2003 scheme predated the *Forgotten Australians* report, but was re-opened in 2008 in recognition of the number of outstanding claimants;
- Queensland: this scheme operated over 2007-08, with second-tier payments still being assessed; and
- Western Australia: applications for this scheme closed on 30 April 2009, with claims still being assessed.

6.28 Of the remaining States, South Australia is currently in the process of deciding whether it will establish a scheme. New South Wales and Victoria, however, have explicitly refused to establish redress schemes, insisting that care leavers must pursue claims through the criminal and/or civil courts.

6.29 A number of concerns were raised regarding inequitable outcomes arising from the State redress schemes. One source of these was the inconsistency of access, which can clearly be addressed only through providing all care leavers with access to a redress scheme, regardless of the State in which they grew up as children or reside in today.

6.30 A second source of inequity arises from the limited timeframes for the operation of redress schemes, which means that people are excluded if they do not submit an application in the period allowed. This is particularly problematic because

many care leavers face barriers to accessing schemes by virtue of their experiences in care, such as social isolation and mistrust of bureaucracy. While the Committee understands the imperatives in seeking to confine the administrative burden of schemes through definite timeframes, it is appropriate that provision is made for continuing receipt of applications for redress. The evidence to the inquiry suggests that this is unlikely to represent a significant administrative burden to governments.

6.31 A third source of inequity relates to the different conditions and amounts of compensation provided across the various State schemes. The Committee heard that even within schemes differentiated payments—whether based on legalistic assessments of harm and damage or on pre-defined levels according to evidence submitted with claims—can lead to distress for applicants. This occurs both through the re-traumatisation of having to detail abuses in order to establish claims; and through feelings that awards of compensation amounted to judgements on the relative severity of abuse, or indeed on whether or not abuse in fact occurred. The Committee acknowledges that this is a difficult issue to resolve, given the necessity of establishing reasonable criteria for the payment of compensation to claimants. The evidence to the inquiry suggests that this issue is best addressed through tiered payments based on graded standards of proof, and by the provision of suitable support and counselling for claimants to prepare applications, in the communication of reasons for decisions relating to claims, and in the processes for receiving and resolving complaints.

6.32 The Committee notes that the operation of redress schemes to date, both internationally and domestically, provides many valuable lessons in how such schemes can be best designed and administered to avoid inequitable or distressing outcomes for claimants. The Committee commends the most recent Australian scheme, Redress WA, as a demonstration of how the lessons of past schemes can be applied to achieve the best possible outcomes in this area.

6.33 Beyond these issues, the Committee was impressed by the positive potential of redress schemes as public forums to acknowledge the experiences of care leavers and to allow people to tell their stories in an appropriately formal yet sensitive environment. Further, while the Committee understands that money could never compensate for the childhood abuse and neglect, such awards—particularly when coupled with individual apologies to claimants—can be a worthy source of vindication and recognition for care leavers.

6.34 The Committee also considers that redress schemes can effectively contribute to the identification and prosecution of historical crimes of sexual and physical abuse. Evidence to the inquiry revealed the importance of centralised and coordinated avenues for the reporting and investigation of such offences by appropriately expert and dedicated police units. Redress schemes, properly linked to and supported by appropriate police units, can improve the detection of patterns of criminal behaviour and establish the all-important corroboration of claims that is critical to the standards of proof needed in criminal trials. The Committee believes that future redress schemes established in Australia must be designed to ensure that they maximise the potential

for the identification of recidivist conduct as well as information corroborating other claims.

6.35 The Committee heard contrasting views on whether the Commonwealth should establish a national reparations fund as per recommendation 6 of *Forgotten Australians*, or instead use its influence to ensure that those States which have not yet done so establish redress schemes. Taking into account the operation of redress schemes in three States since the original recommendation, the Committee concluded that the appropriate role for the Commonwealth from this point on is to actively ensure that that redress schemes are established by those States which have not yet done so, namely South Australia, New South Wales and Victoria. The Committee regards this as the most administratively feasible and cost effective approach, given the need for States to be intimately involved in processing applications, accessing care leaver records, providing appropriate support for applicants and making determinations.

6.36 However, the Committee considered that there remains a moral obligation on the Commonwealth to make an additional commitment to the making of reparations to care leavers. It is appropriate, given the conclusions of this and previous reports, that this commitment is demonstrated through the Commonwealth showing leadership to ensure that the establishment and continuation of State redress schemes is pursued through COAG and any other appropriate national forum. The Committee notes that the financial contribution of the Commonwealth to care leavers is most appropriately directed towards funding of the national care leaver groups and services for care leavers, as outlined in subsequent recommendations.

6.37 The Committee believes that the Commonwealth government has a critical role to play in ensuring that redress schemes are established in the States identified above. The Commonwealth has a moral obligation to use its substantial influence to ensure that the issue of redress schemes is taken up in the appropriate policy forums, and is a consideration in its financial support of the relevant States. In relation to the other States, the Commonwealth must ensure that ongoing provision is made to provide redress to care leavers who may have been disadvantaged by the limited periods of operation for redress schemes.

Recommendation 4

6.38 The Committee recommends that the Commonwealth government pursue all available policy and political options to ensure that South Australia, New South Wales and Victoria establish redress schemes for people who suffered neglect and/or abuse in institutional settings or out-of-home care in the last century; and that the remaining States make provision to ensure continued receipt of redress claims.

Recommendation 5

6.39 The Committee recommends that the Commonwealth government pursue the establishment of State redress schemes through the Council of Australian Governments (COAG) and other appropriate national forums.

6.40 An issue related to the making of reparations was *Lost Innocents* Recommendation 17, which called for the conferring of automatic citizenship on former child migrants. The recommendation also called for provision to be made for individuals to exercise choice over whether they would receive citizenship on these terms. Given this, it is apparent that the Commonwealth government response—which objected to this proposal on the grounds that it could conflict with a person's existing citizenship status or preference—was at least in part poorly considered. Nevertheless, the Committee accepts that a legislative approach to the issue may not have been necessary, given the apparent number of cases involved. Although the Committee was unfortunately not able to determine how many of former child migrants who have become Australian citizens since their arrival in Australia or since the publication of *Lost Innocents*, there was evidence that few cases involving citizenship problems for former child migrants are outstanding. The Committee did not identify any systemic or administrative remedy for those cases that remain to emerge or be settled, leading it to conclude that remaining cases may be appropriately dealt with on a case-by-case basis by DIAC. The Committee notes that the CMT is able to offer assistance in such cases.

6.41 In relation to church redress schemes, the evidence to the inquiry suggests that there are still considerable problems with the variation in processes across the various church jurisdictions. The anecdotal evidence of advocates with experience in accessing and negotiating these schemes revealed considerable dissatisfaction and frustration at the inconsistency of processes, which meant that potential claimants could not anticipate the likely course of proceedings, and were not receiving comparable treatment.

6.42 Equally, the Committee heard claims that the transparency and accountability of church redress processes were often being undermined by serious breaches of procedural and natural justice standards, such as the withholding of documentation, inadequate documentation and personnel performing multiple roles in the process.

6.43 Overall, witnesses indicated that church processes were conducted in a highly unfair and strategic manner, as reflected in inadequate compensation outcomes for claimants, particularly where those who did not employ an advocate in negotiations with church lawyers.

6.44 While some witnesses invited the Committee to conclude that church redress schemes are of little or no worth, the Committee supports the original recommendation of *Forgotten Australians*. Despite the shortcomings that still affect church processes, such schemes represent a legitimate source of redress for care leavers and in many cases are the major contribution of such organisations to compensating care leavers for past wrongs. Given this, churches must take steps to

ensure greater of consistency across all institutions and States; and that redress processes conform to the elements defined in the Committee original recommendation.

Recommendation 6

6.45 The Committee recommends that churches take steps to ensure that processes for handling abuse allegations are consistent across all jurisdictions; and that such processes conform to recommendation 7 of the *Forgotten Australians* report.

Delivery of services

6.46 In relation to former child migrants, the Committee acknowledges that the previous Commonwealth government's response to the implementation of the recommendations of the *Lost Innocents* report was appropriate insofar as it focused on issues of great importance to former child migrants, in particular the funding of the Child Migrants Trust (CMT) and establishment of an Australian travel fund. The Committee considers that the Australian travel fund for former child migrants was well-designed and sympathetic to the needs of former child migrants. However, while the Committee understands that issues of cost and probity required the fund to be restricted in terms of its eligibility requirements and period of operation, there was significant evidence that these limits operated in a capricious manner, allowing only those fortunate enough to locate family or a gravesite in the requisite time—and indeed those who were willing and able—to receive funding for their travel. Further, the experience of participants has shown that the limit of one trip per applicant was clearly inadequate to offer ongoing support for former child migrants to re-establish and develop links with family overseas.

6.47 The Committee therefore feels that the Commonwealth should consider giving further support for former child migrants to re-establish and develop family connections. Such assistance could, for example, take the form of financial grants (not premised on discriminatory eligibility criteria) or a re-opening of the Australian Travel Fund (allowing claims from both new and previous applicants).

Recommendation 7

6.48 The Committee recommends that the Commonwealth government provide further financial and other support for former child migrants to re-establish and develop family connections.

6.49 The present inquiry confirmed the importance to former child migrants of the CMT, which has developed and continues to demonstrate its extensive expertise in dealing with former child migrants and pursuing their interests. In particular, the Committee was impressed by the CMT's highly professional and continuing work in tracing its clients' relatives and, in effecting family contact and reunions.

6.50 Historically government funding for the CMT has been through the settlement funding program of the Immigration department.² With these programs now focussed on newly arrived migrants, there was some discussion that this may no longer be the most appropriate area for the government to provide funding for the Trust and that programs in FaHCSIA may now be more suitable.³

6.51 However, the Committee was pleased to be advised by DIAC that the government had committed to extend the funding of the Trust until 2011-12. The Committee commends the previous and current Commonwealth governments for their financial support of the CMT and also acknowledges the funding support of Western Australia. The Committee continues to be impressed by the efforts of the Trust to locate the families of former child migrants and notes the ongoing nature of this time-consuming and resource dependent work, and recognises that the level of funding to the Trust directly impacts on the level of services it is able to deliver on a national basis. Accordingly, the Committee considers that the remaining States should also make funding contributions to the CMT to assist in its work for former child migrants.

Recommendation 8

6.52 The Committee recommends that State governments which have not yet done so commit funding to the Child Migrants Trust (CMT) for at least the next three years.

6.53 In relation to the range of services required by care leavers generally, recommendations 23 to 30 of the *Forgotten Australians* report addressed the areas of provision of counselling; health care, housing and aged care; and education. The report showed as a group that care leavers have extensive, diverse and in many cases particular needs, arising from their childhood experiences. Evidence going to the delivery of services for care leavers to the present inquiry indicated that, while the level and scope of services with a particular focus on care leavers has improved to some extent, there is still substantial progress to be made on implementation of the Committee's recommendations in this area.

6.54 The majority of services specifically designed for and aimed at care leavers are delivered by non-government bodies or agencies, and support groups such as CLAN, VANISH (though their services will soon be reduced) and, in Queensland, the collection of services located at Lotus Place. While a range of services and support is available for care leavers, levels of funding in most cases appear to represent an effective barrier to access.

6.55 Arrangements for the provision of services to be available to care leavers in their State of residency irrespective of the State in which they received care have not been developed. Instead, care leaver services are often available for ex-residents of a

2 The Immigration department has had a number of titles during its period of funding the CMT.

3 Mr Peter Templeton, Assistant Secretary, Settlement Branch, DIAC, *Proof Committee Hansard* 8 April 2009, p.54.

State's institutions, regardless of where a care leaver now resides in Australia. Some States will also assist its residents to access services in the State in which they experienced care. While the Committee notes that States have made good efforts to improve their administration and support for such arrangements, these will continue to produce inequitable outcomes as long as there are different ranges or levels of service across the States. A number of States offered in-principle support for reciprocal access to services for care leavers access all States. However, the high-level policy commitment to this proposal has been lacking.

6.56 A number of submitters and witnesses raised the issue of instituting a health care card specifically for care leavers to access the range of available health services, similar to the gold card made available to veterans. While the Committee understands the attraction of such an approach, it did not agree that this was the best or most appropriate way to target services to care leavers that recognise the particular needs of that group.

6.57 The Committee found that specialist counselling services for care leavers is available in most States. However, as noted above, access to appropriate long-term counselling is effectively restricted by modest levels of funding to those bodies with the relevant expertise to provide or broker this service.

6.58 The evidence to the inquiry suggested that the Committee's original recommendations going to the provision of services remain highly relevant to the current needs and experiences of care leavers. Given this, and the slow progress on ensuring the availability of a comprehensive range of services, particularly counselling, across all States, the Committee feels that a particular focus on funding for bodies providing particular support and services for care leavers is the appropriate way to achieve the intent of the original recommendations. This issue is addressed below.

6.59 With regard to programs in health care, housing, aged care and education that specifically recognise and cater for the needs of care leavers, the Committee found that the Commonwealth and State governments alike have been resistant to the development of such programs. Governments variously argued that specific recognition of care leavers would operate to discriminate against this group, was not justified by the numbers of care leavers seeking access to services, or was unnecessary because existing services were available according to the general criteria for eligibility. Information on existing programs in these areas showed that, where care leavers have been acknowledged and catered for as a specific cohort, this tended to focus on the current generation of care leavers as opposed to the so-called older care leavers that were the subject of the *Forgotten Australians* report.

6.60 The Committee naturally supports all efforts and strategies to ensure that the systemic problems of the past are not repeated or visited upon those in care now or in the future. This was the focus of the Committee's report, *Protecting Vulnerable Children: A National Challenge*, which was the second report of the inquiry into children in institutional or out-of-home care. This report was clearly heavily informed

by *Forgotten Australians*, and some submissions to the present inquiry also addressed the implementation of its recommendations. A notable development in this area is also that COAG has recently endorsed a national approach to child protection through *Protecting Australia's Children is Everyone's Business: National Framework for Protecting Australia's Children*. Primarily, this framework will seek to build collaborative approaches to preventing child abuse and neglect. However, outcomes 4 and 6 the framework also recognise that appropriate support and care is needed for survivors of any abuse and/or neglect.

6.61 Notwithstanding recent steps, the Committee rejects arguments that older care leavers are not a significant group or can be adequately accommodated within health, housing, aged care and education programs without recognition of their likely and particular needs. Given this, the Committee re-endorses recommendations 25 to 28, and recommendation 30, of the *Forgotten Australians* report, and urges the Commonwealth and State governments to commit to explicit recognition of older care leavers in the funding and development of health, housing, aged care and education programs.

6.62 The Committee notes that the development of strategies such as the framework for protecting vulnerable children, to the extent that it deals with the needs of older care leavers is a step towards demonstrating the whole-of-government commitment to program and service delivery called for in recommendation *Forgotten Australians* recommendation 33. The Committee commends the government for its use of COAG as a forum to work towards national approaches to program and service delivery in as health and education, and urges the government to consider care leavers as a specific cohort in whole-of-government approaches in these areas. The Committee therefore re-endorses recommendation 33 of the *Forgotten Australians* report.

Recommendation 9

6.63 The Committee recommends, in accordance with recommendation 33 of the *Forgotten Australians* report, that the Commonwealth and States commit, through the Council of Australian Governments (COAG), to implementing a whole-of-government approach to the provision of programs and services for care leavers across policy areas such as health, housing and welfare and community services and other relevant policy areas.

Recommendation 10

6.64 The Committee recommends that the Commonwealth and State governments reconsider the previous responses to recommendations 25 to 28 of the *Forgotten Australians* report with a view to explicitly recognising and meeting the needs of older care leavers in the funding and development of health, housing, aged care and education programs; and ensuring that appropriate services are provided.

6.65 Both the *Lost Innocents* and *Forgotten Australians* reports recognised that an important aspect of service design and delivery for Forgotten Australians was the collection and maintenance of adequate data or information on care leavers, or groups of care leavers. Evidence to the present inquiry demonstrated that, although the potential benefits of such undertakings remain clear, the corollary of governments' unwillingness to recognise care leavers in the specific design or advertising of services is that governments are also not prepared to seek a better understanding of this group through commissioned studies (*Lost Innocents* recommendation 5) or the use of data collection via Medicare or Centrelink forms (*Forgotten Australians* recommendation 31). The Committee notes that its previous reports received unequivocal evidence of the needs of former child migrants and care leavers, sufficient to justify the recommendations of those reports. In light of the Commonwealth and State governments disagreeing with the need for services to be specifically targeted or communicated to care leavers, the Committee concluded that a comprehensive study on the scope and extent of services required by this group is needed to underscore both policy and debate in this area.

6.66 Finally, the Committee considers that there has been very poor progress on the related issue of the establishment of tertiary courses of study focused on child protection and related issues, as per recommendation 39 of *Forgotten Australians*. The Committee agreed that action on the undertakings provided in the original response to this recommendation has been disappointing, and considers that the Commonwealth should resume its dialogue with the Chair in Child Protection on the implementation of recommendation 39. The Committee notes that the outcomes of this work should complement the Commonwealth-State commitment to support a National Research Agenda for Child Protection through the *National Framework for Protecting Australia's Children*. In urging the Commonwealth to re-commit to and advance these undertakings, the Committee re-endorses its original recommendation relating to tertiary study courses.

Recommendation 11

6.67 The Committee recommends, in accordance with recommendation 39 of the *Forgotten Australians* report, that the Commonwealth, in co-operation with State Governments, establish courses of study at selected tertiary institutions that focus on child protection and related issues, especially early childhood and family studies, psychology, conflict management, the impact of institutional care and social policy to address issues in these areas.

Identification and access to records

6.68 In relation to former child migrants, the Committee found that there has been a substantial improvement in identification of and access to records through the development of directories and databases both specific to this group and more generally related to people who spent time in institutional or out-of-home care as children.

6.69 For *Forgotten Australians* more broadly, evidence suggested that there has also been considerable, albeit ad hoc, improvements across the States and other relevant organisations and agencies in terms of the preservation and identification of care leaver records. And, as noted above, many States have publications and guidelines or legislation to assist people seeking personal records of their time in State or out-of-home care. Commendably, a number of specific programs offering support for members of the stolen generations to locate and access records now exist. However, there are few programs to assist care leavers more generally, most of whom are required to obtain assistance with locating and accessing records from care leaver support groups. A notable exception in development is the Victorian 'Who Am I' project, an interactive historical database that could prove an accessible means of access to the personal histories of care leavers.

6.70 The Committee found that the lack of dedicated information and search services for care leavers generally meant that there was no supported access to records for care leavers, other than what is available through established care leaver support services. Some States offer advice or referrals through the department's granting access to records. However, access to records is invariably governed by FoI and privacy regimes, although in some cases administrative arrangements are in place which, while still subject to FoI and privacy principles, can improve access for care leavers. While fees for FoI applications involving personal information are routinely waived, the Committee notes a continuing concern with the complexity and timeframes involved.

6.71 An issue of particular concern in relation to records was the effect of privacy restrictions on access to information concerning third parties. This restriction impacts harshly on care leavers, who are continuing to receive records with information relating to third parties blacked out. In many cases, this information concerns family members—a cruel outcome for people who are often seeking to establish the family relationships or sense of self and personal identity that was denied by the circumstances of their upbringing. The Committee supports calls for the Commonwealth and States to seek to reform FoI and privacy regimes to ensure better provision for care leavers to access information on their relatives and family, for example, through a discretion to allow third-party access in FoI legislation in legitimate cases. The Committee urges the Commonwealth to pursue this issue through the Council of Australian Governments (COAG) as per the original recommendation of the *Forgotten Australians* report. The Committee also calls for current reviews of the Commonwealth and Queensland FoI regimes to explicitly address this issue.

Recommendation 12

6.72 The Committee recommends that the Commonwealth government pursue the reform of national freedom of information (FoI) and privacy legislation to ensure that care leavers are not hindered in their access to information about their childhoods and families; and that current and future reviews of Commonwealth and State FoI regimes explicitly address this issue.

6.73 All States reported that there was no longer any destruction of care leaver records taking place; and that procedures for the retention and preservation of such files are in place. Evidence received from some religious and non-government organisations also showed that such systems were either in place or under development. However, care leaver organisations expressed concern that some destruction of records was taking place in non-government settings.

Role and operation of support groups and other bodies

6.74 The Committee notes that there was a range of views in relation to particular support and advocacy groups, and that the performance of support groups was generally the subject of both praise and criticism to varying degrees. The Committee recognises that arises in part because of work done by such groups, which must attempt to encompass the diverse and complex needs and concerns of a broad collection of individuals who have suffered great physical and emotional harm. When this complexity of membership is combined with the very limited resources and the administrative and bureaucratic structure that are necessary to operate such bodies, the Committee understands that there is a degree of conflict and dispute, often at a philosophical level, and occasionally at a personal level.

6.75 Having noted the inevitability of some disagreement occurring between such groups and their members or interested parties, the Committee expresses its support and admiration for all care leavers and the groups which work in good faith to support them.

6.76 As with the previous inquiries into former child migrants and care leavers, evidence to the inquiry demonstrated that support and advocacy groups provide the majority of the essential and targeted information and services accessed by care leavers. There is a substantial number of care leaver advocacy and support groups, representing a spectrum of approaches to providing support, self-help, solidarity and succour to those abused and neglected in institutional care. Noting the diversity of care leavers themselves, the Committee believes that it is important that a range of such groups is supported to maintain a range of opportunities for social interaction and networking for care leavers. The Committee acknowledges that the number of such groups is increasing.

6.77 Equally, however, the Committee notes that the Alliance for Forgotten Australians (AFA) and Care Leavers Network Australia (CLAN) respectively play critical national roles in advocating for, and providing services to, care leavers. The Committee believes that it is particularly important that these groups continue to be supported through funding to develop the national character of their work, given that so many of the Committee's original recommendations pertain to jurisdictional barriers and better national coordination of services. While the Committee acknowledges the previous Commonwealth's governments funding support for the AFA and CLAN, evidence to the inquiry showed that a higher and recurrent funding commitment is needed to properly support the advocacy and services they provide, and ensure that such groups can be as inclusive as possible through being able to

maintain an effective national presence and, in the case of CLAN, without having to fund its services through membership fees.

6.78 Given the need to support the major national groups offering and advocacy and support for care leavers, and as much as is possible and practicable to maintain the variety of groups providing support for care leavers, the Committee considers that the Commonwealth government should significantly increase its funding of the AFA and CLAN. To support the smaller State groups and organisations offering advocacy, support and self-help in this field, the Department of Families, Housing, Communities and Indigenous Affairs (FaHCSIA) should be funded to administer a fund to provide operating grants to such care groups.

Recommendation 13

6.79 The Committee recommends that the Commonwealth government provide recurrent funding to the Alliance for Forgotten Australians (AFA) and Care Leavers Network Australia (CLAN) to enable these groups to continue providing adequate services to care leavers on a national basis.

Recommendation 14

6.80 The Committee recommends that the Commonwealth government provide funding to the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to administer a fund for providing operating grants to care leaver advocacy and support groups.

Judicial Reviews and Royal Commission

6.81 In relation to the question of holding judicial inquiries into the treatment of children in institutional care, the Committee considered whether a fresh endorsement of the Committee's original recommendation was justified in the light of developments since the publication of the *Lost Innocents* report. The Committee noted that the Forde Inquiry in Queensland and, since then, the Mullighan Inquiry in South Australia have led to significant recognition of people who suffered neglect and abuse while in the care of the State; as well as important changes to systems of child care and protection addressing the fundamental recommendations of the two inquiries. The Committee notes that to a considerable extent the lessons of these inquiries are also reflected in reforms to those systems in other States, as well as in the development of national approaches. In South Australia, many of the recommendations of the Mullighan Inquiry went to administrative, procedural and professional reforms to the police service to ensure that the justice system could deal appropriately with allegations, victims and perpetrators of sexual abuse of children.

6.82 The Mullighan Inquiry, which had as its focus allegations of sexual abuse and death of children in State care, resulted in 170 allegations from a total of 826 being referred to police. As at 1 April 2008, the Committee understands that two suspects had been arrested and 14 matters referred to the South Australian Department of

Public Prosecutions.⁴ The Forde Inquiry, which had terms of reference requiring it to inquire into institutions and to review current systems of child care and protection, resulted in 14 allegations being referred to police for investigation. While the report found there had been incidents of 'unsafe, improper and unlawful' behaviour, it could not make detailed findings due to 'the passage of time, the fact that a number of alleged perpetrators are now deceased, and the difficulty in obtaining corroborative evidence'.⁵

6.83 The Committee noted also, but only in a general way, the experiences of the Irish Commission to Inquire into Child Abuse, which ran from 2000 until June 2009. The timeframe for this inquiry was extended by a number of legal challenges and reviews, which also led to the names of alleged perpetrators being suppressed in the inquiry's final report. While the Committee is not aware of the total cost of the inquiry, the legal nature of its proceedings necessitated a large staff, including a significant number of senior legal counsel.⁶ It therefore appears likely that the total cost of the inquiry would have been substantial.

6.84 The Committee notes that its own reports into children in institutional care, and the work of advocacy and support bodies, have also contributed to the improvement of both State and national standards and strategies for child protection.

6.85 Beyond the ability of State judicial inquiries to inform the reform and development of appropriate standards and systems for child protection, the Committee is acutely conscious that the primary concern for many former child migrants and care leavers in supporting the holding of judicial inquiries is the desire to see justice done through the naming, charging and prosecution of perpetrators of historical abuse of children. While the Committee supports all care leavers in this respect, it believes that there is only modest potential for successful prosecutions to arise from the conduct of judicial inquiries. The Committee's conclusion on this question was based on considerations of the outcomes of previous inquiries, the significant passage of time since the abuse and neglect complained of, and the numerous legal barriers that would still confront any criminal or civil claims arising from information obtained through judicial inquiry.

6.86 Given the Committee's views that the holding of State judicial inquiries would be unlikely to significantly further inform the reform and development of child protection systems in Australia, or result in significant number of successful

4 Government of South Australia website, 'Ministerial Statement: Mullighan Inquiry into Children in State Care – Allegations of sexual abuse and death', 1 April 2008, <http://www.ministers.sa.gov.au/news.php?id=2941&print=1>, accessed 23 June 2009.

5 Forde Inquiry Report, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, http://www.communities.qld.gov.au/community/redress-scheme/documents/forde_comminquiry.pdf accessed, p. 276, accessed 23 June 2006.

6 Commission to inquire into Child Abuse website, <http://www.childabusecommission.ie/index.html>, accessed 23 June 2009.

prosecutions for historical abuse and assault, the Committee decided that it would not re-endorse recommendation of the *Lost Innocents* report.

6.87 The Committee heard contrasting opinions on the issue of holding a Royal Commission into State, charitable and church-run institutions, as recommended by the *Forgotten Australians* report. While most submitters and witnesses agreed that churches and other institutions had failed to meet the conditions of transparency and cooperation described in the Committee's original recommendation, there was disagreement on whether the expected expense and time taken by the holding of a Royal Commission was justified by the likely number of successful prosecutions that it might produce. Supporters of an inquiry, as above, emphasised the desire for justice of those who as children were abused and assaulted while in institutional or out-of-home care. Those who did not support a Royal Commission emphasised potentially limited outcomes, and the services and support for care leavers that could instead be provided with that funding.

6.88 As in the making of the original recommendation, there was a range of views within the Committee on this question and, conscious of the importance of this particular issue to many care leavers, the arguments put forward were carefully considered. The Committee's conclusion was ultimately based on an assessment of the likely success of a Royal Commission in achieving successful exposure and prosecution of perpetrators of criminal acts. The Committee senses that there may be unrealistic expectations held by many as to the outcome of a Royal Commission. Despite the wider powers of royal commissions, the Committee considers that any such inquiry would face the same barriers to success as outlined above in relation to judicial inquiries, and accordingly would be unlikely to produce outcomes that would justify the significant expenditure of both time and finances. Even so, while considering that valuable resources could be more beneficially expended for care leavers, the Committee notes that its views on a Royal Commission remain subject to the continuing developments with issues related to the recommendations of the *Forgotten Australians* reports. The Committee will maintain its interest in the performance of governments and non-government bodies in implementing the recommendations of the report, particularly as they relate to opportunities for redress for care leavers.

6.89 Finally, the Committee notes that the effort to identify and successfully prosecute perpetrators of historical sexual and physical abuse of children must remain a goal and commitment of all Australian governments. The Committee is encouraged that prosecutions can be successfully undertaken based on the very recent successful prosecutions against a Salvation Army officer in South Australia and a Christian Brother in Victoria for abuse of children in homes more than 30 years ago that both resulted in jail terms. Evidence to the inquiry suggested that certain barriers to the prosecution of historical sexual and physical abuse of children could be at least partly addressed by ensuring that specialist police units with expertise in this area exist in each State and Territory. Indeed, the police forces of some States and Territories may already have specialist areas that could be expanded to deal with crimes of this nature. The Committee heard that the use of centralised and expert groups for dealing with

historical abuse complaints could both facilitate the laying of complaints by victims and increase the potential for repeat offending and corroborative material to be identified. The coordination of such units nationally would of course be necessary to maximise the effectiveness of this approach.

6.90 The Committee notes that a fuller assessment of such proposals is needed as part of developing a national police policy on historical crimes of sexual and physical abuse of children in care.

Recommendation 15

6.91 The Committee recommends that the Ministerial Council for Police and Emergency Management (Police) develop and implement a national policy on the prosecution of, and data collection and sharing about, historical crimes of sexual and physical abuse of children in care; and that the establishment or further development of specialist State police units be considered as part of this policy development process.

Memorials and remembrance

6.92 In relation to the erection of suitable memorials for both former child migrants and care leavers more generally the Committee was pleased that states have provided such sites for former child migrants, and substantial progress has been made in relation to care leaver memorials. The Committee notes that, despite some frustration at the sometimes lengthy timeframes involved for appropriate consultation over, and design and siting of, memorials, the value of these efforts was widely recognised and appreciated by care leavers.

6.93 The Committee was impressed by the institution of an annual remembrance day for care leavers in Queensland, which appropriately occurs during Child Protection Week in that State (September). Recognising the importance of such symbolic events to care leavers, and noting their ability to widely publicise care leavers and related issues to the community at large, the Committee agreed that it would be beneficial for the other States to institute similar occasions.

Recommendation 16

6.94 The Committee recommends that the States consider establishing an annual remembrance day for care leavers, similar to that held by Queensland each year during Child Protection Week.