

Senator Claire Moore
Chair of the Community Affairs References Committee
C/- The Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
Canberra
ACT 2600

20th November 2008

Dear Senator Moore,

Re: Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports

Please find attached my submission to your inquiry. I would be pleased to answer any questions or provide any further information required by the Committee.

I am especially hopeful that the information I provide concerning the Human Tissue Amendment (Children in Care of State) Bill 2008 may fall under the terms of reference of your inquiry.

Yours sincerely.

John Murray

John Murray
Positive Justice Centre
3/314 Beamish St
Campsie
NSW 2194
02) 9789 4080
hirezday@tpg.com.au

Positive Justice Centre Submission:

**Senate Community Affairs Committee. Inquiry into the
Implementation of the Recommendations of the Lost Innocents
and Forgotten Australians Reports**

The NSW Government's response to the Inquiry's recommendations has been disappointing.

Even NSW's apology, as set out in the recommendations, was dealt with in a ham-fisted and abusive fashion.

Although two representatives from CLAN were invited to attend the apology, no one else was aware that an official apology would take place.

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 Dixier and without fanfare or ceremony.

The apology follows:

(The 23rd of June 2005 in Question Time)

**SENATE INQUIRY INTO CHILDREN IN INSTITUTIONAL
CARE**

Page: 17495

Ms MARIANNE SALIBA: My question without notice is directed to the Minister for Community Services. What is the New South Wales Government's response to a recommendation, in the report of a Senate inquiry into children in institutional care, for an apology?

Ms REBA MEAGHER: It has been rightly said that a happy childhood is an inextinguishable memory and that if we do not have that we can be emotionally undernourished, spiritually void and running on empty throughout our adult lives. A two-year Senate committee inquiry has found that from the early 1900s through to the mid-1970s half a million orphans or surrendered children were badly treated by the system charged with their care and consolation. There was neglect and despair; brothers and sisters separated; educational possibilities needlessly lost; children pressed into domestic service; and abuse—emotional, physical and sexual abuse.

During its inquiry the committee received graphic and disturbing accounts of the experiences of these children. The committee's report, "Forgotten Australians", makes a number of recommendations, and we, like other State governments, pledge our best efforts to implement them. One course of action that is highly valued by the survivors of these institutions is for them to have access to records: the stories of their origins, of what happened to them—records that might help explain that

persistent question: Why?

Another important step is for them to have information about brothers and sisters they did not know about. Consistent with privacy laws and the wishes of all involved, we will help reunite these families. We will offer counselling and support—a hand of comfort and understanding to help these victims deal with the past and face the future with greater confidence. But, most important, there is the question of a public and formal expression of regret, an apology that will be an important step in the healing process for those who suffered abuse. On behalf of the New South Wales Government, I accept and acknowledge the emotional, physical and sexual abuse suffered by many of the children entrusted to institutional care in this State. I, therefore, have the honour of offering them this heartfelt and sincere apology.

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 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.

Mr Brad Hazzard: Point of order: My point of order, and it is a serious matter, is that the Minister is making a ministerial statement which the Opposition would have liked the opportunity to support. This issue should be bipartisan, and the people who are sitting in the gallery are recognised for the strong work they have done in this area. We would have liked the opportunity—and we ask the Minister to give us the opportunity in the future—to address these types of issues in a bipartisan way.

Mr SPEAKER: Order! There is no point of order.

Dealing with the Committees recommendation for an apology in this fashion is indicative of the NSW Governments response to the remainder of the Committees important recommendations.

Certainly nothing has progressed with what I consider to be the very important recommendations dealing with data collection.

A great deal of very important information could be discovered by Government and NGO agencies collecting data regarding the child welfare experiences of their clients.

In NSW the only area where such work has occurred has been with Justice Health's invaluable work looking at the health care needs of adult and juvenile prisoners. These works confirmed the nature of the information I provided in my evidence to the Committee; the **2003 NSW Young People in Custody Health Survey** showing 28% of juvenile justice male inmates and 39% of female inmates had a history in care.

The **NSW Young People on Community Orders Health Survey 2003-2006** (2006. *The University of Sydney*) in table 5 showed 21% of males and 36% of females on community orders had a care history.

Other than this valuable work, nothing has occurred in NSW that would show, as I enunciated to the Committee, and still suspect, a similar overrepresentation amongst a range of service for the disadvantaged.

These services would include drug and alcohol, homelessness, mental health, criminal justice (as victims and offenders) and social security amongst others.

Since the Committee's final reports a number of important inquiries have occurred around the nation. Especially important amongst these is the SA Commission of Inquiry. The Wood Special Commission of Inquiry is expected to bring down its report shortly.

I would ask the Committee to review the numerous reports around the country, and in light of what has occurred in NSW to reconsider the Committee's recommendation regarding instituting a Royal Commission.

I would also suggest to the Committee that it re-consider making recommendations regarding the institution of a Federal Children's Commissioner.

I propose that this Commission should not look into issues regarding Forgotten Australians, other than to inform itself from history about how it could protect children in care today. This is because Forgotten Australians are no longer children, and should be dealt with separately from mechanisms dealing with children. They should especially be separated from having to deal with child welfare departments to have their concerns and needs addressed.

Another position should be created to represent Forgotten Australians, and I propose that this position should be as a Commissioner in the HREOC. This may require amendments to Commonwealth Legislation but could be achieved under existing Commonwealth powers having regard if necessary, to the Commonwealth's international obligations.

This position should also receive distinct funding to undertake research and deliver, or coordinate the delivery of services to Forgotten Australians.

Another area that the Commonwealth could exercise its powers in regards to Forgotten Australians would be by including Forgotten Australians as a field in the National Census,

and by introducing legislation or regulation allowing Commonwealth agencies and departments to collect and share information regarding the care history of clients, or clients under Commonwealth funded State Government delivered services.

An especially important recommendation made by the Committee regarded making documents and files available to care leavers and Forgotten Australians.

The only problem that I have with the initial recommendation is that it would lead to fragmented service delivery by a myriad number of agencies with little, if no expertise in the management, archiving and cataloguing of, and provision of access to such documents.

This would lead to a duplication of services that are already being delivered by government departments around the country. While I am not an expert on the various archive agencies and authorities around Australia, I have looked into the situation in NSW.

I enclose (sent by mail separately) a Bill that The Hon. Dr. Peter Wong AM MLC was kind enough to have drafted for me by NSW Parliamentary Council.

This Bill would allow for child welfare agency documents, both State and NGO to be considered State Records for the purpose of the Authority to collect and control said records.

In the case of NGO's this would occur because those NGO's had been in receipt of public funds to carry out services on behalf of the State, under the control and regulation of the State.

While it would be hoped under the provisions of the Bill that all NGO child welfare records would fall into the ambit of State Records, those records that were required to be kept under legislation, or regulation, or through other agreements with state agencies such as funding agreements and memorandums of understanding etc, would become State Records.

Under such arrangements, Forgotten Australians would then be dealing with professional government employees experienced in the delivery of records to the public, and who already have considerable skills in dealing with the distressing nature of many of the documents already under their control.

Provisions in the Bill I had drafted strengthen existing counseling arrangements already in place and extend the provision of counseling to staff of the Authority affected by dealing with Forgotten Australians.

I would hope that the Committee might agree with me that the system I propose for the collection, management and distribution of these records would be a best practice model and that the Committee might give consideration to recommending that the Commonwealth introduce uniform legislation to bring about consistency across the nation.

I believe that the Committee might come into receipt of a number of complaints regarding what has occurred since the Committees report was tabled concerning the activities of certain NGO's representing Forgotten Australians.

What has occurred has been sad, and sadly was predictable. It has occurred in the past when other groups of marginalised peoples have had their plight recognised, and ultimately leads to their issues not being progressed as well as they could have, or should have been.

The situation with CLAN is a good example of this, and although I have more or less retired from activities around Forgotten Australians issues, I am occasionally made aware of what is occurring.

I would point out to the Committee that CLAN is a national body only in name, and apart from fly in fly out arrangements to take credit for what has occurred in other States from other people's and groups efforts, has had little to no involvement in the progress of the Committees recommendations in other States.

I understand this has led to a fair amount of ill will towards CLAN across the country. Given that CLAN is primarily a NSW based organisation, I believe it is fair to look at the lack of progress in that State as a general indication of CLAN's success and abilities.

Again, this was predicable and is an outcome to be lamented, and it is why I believe that the Committee should look at providing Forgotten Australians and their issues with a Commissioner on HREOC, or through some other suitable vehicle.

While I was concerned, and still maintain my concerns that careleaver issues would be absorbed by the agencies responsible for our predicament, I also believe that care leavers require professional, creditable, and compassionate representation.

This representation could be well guided by a Forgotten Australian Commissioner on HREOC or some other Commonwealth body.

NSW - Human Tissue Amendment (Children in Care of State) Bill 2008

Another issue I would appreciate the Committee examining is the recent legislative changes in NSW concerning children in the care of the State and in out of home care.

The Human Tissue Amendment (Children in Care of State) Bill 2008 has recently returned to the Legislative Assembly with no amendments, and is expected to pass through that House and shortly receive assent.

The Bill purports to treat children in care as if any normal child for the purpose of harvesting organs for organ donation. While the Bill purports to protect these children from harvesting tissue for non organ transplantation purposes (research and training for example) it does not appear significantly strong enough to stop tissue being removed for the purpose of industrially treating tissue for the purpose of other medical treatments.

This would include for example collecting skin, bone and blood to be made into products that would later be transferred into other people's bodies, rather than whole organs. This is a concern; as such children could in effect be harvested for a large amount of tissue not required for immediate organ donation. This would include ground bone preparations, skin cultures, hormone and blood products, hair transplants etc.

Another major concern is that of informed consent. This Bill does not allow for informed consent by the child concerned, and in fact reverses the onus to that of the child not having made an objection to organ donation, as criteria for an assumption towards possible donation of the deceased child's organs. This is differential and discriminatory treatment no other person or class of people are treated with in this country.

This is a major concern and while the 2nd Read, and the ensuing debate noted that the child whose case brought about the Bill had expressed a desire to have their organs donated should she die, this consent provision was not carried into the Bill.

The handling of the Bill, and the events leading up to the Bill was alarming to say the least with the Department of Community Services misleading the public.

The Minister of Community Services, no doubt under advice from departmental officers informed the public that the Supreme Court had denied the parents of the deceased child the ability to donate their children's organs.

No such court case was ever mounted, and that this outright lie was used to bring about legislative change that discriminates against children in care should be of great concern.

Another example of the continuing discriminatory practices against children in care is the fact that the NSW Department of Health simply allowed NSW DOCS to have carriage of Health Department Legislation. While DOCS should have been given a right to have input into the legislation, it should not have been tasked with the role of running the taskforce, nor drafting the legislation.

Further, no provision exist in the legislation for the biological parents to have an outright power of veto or otherwise regarding organ donation, and other provisions allowing who can make such decisions are flimsy to say the least, and will be dealt with only by further regulation.

The power to authorise a donation even extends to NGO staff. This is a major concern to myself as many of these agencies fall under the control of Church organisations that also control large private hospitals.

One can see, especially given Church objection to embryonic stem cell techniques the possibility that children in care could become attractive alternatives regarding organ supply.

Given the history of the same agencies using children as medical guinea pigs, this possibility should not be automatically discounted. Along with the Committee's previous finding regarding medical experiments, I would direct the Committee to my essay on this subject at <http://www.onlineopinion.com.au/view.asp?article=6229> . The history of the medical sector using welfare children for dangerous medical experiments is a long and dark history that includes perfecting procedures for lumbur puncture and smallpox inoculations. Further, many of history's great research hospitals were 'charity hospitals'.

I am concerned that this malpractice could happen again given the fact that there are no safeguards in the legislation regarding informed consent, a register of children in care who have had organs removed, or any reporting mechanism that would allow across time comparisons to be made against children in out of home care against their community peers.

It is also easy to conceive of the situation where a child who has died because of a Department (or NGO's) malpractice could be used to sooth any resulting guilt- because that child death lead to saving numerous other children.

I hope that the Committee shares my concern in this regard.

This issue could also be dealt with by the Commonwealth introducing uniform legislation to protect children in care around the country.

Submission ends.