

***LOST INNOCENTS:
RIGHTING THE RECORD***
Report into child migration

**The Senate Community Affairs References Committee
August 2001**

**RESPONSE TO RECOMMENDATIONS
WESTERN AUSTRALIA
November 2008**

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.

The Western Australian Government has responded to the recommendations of the reports of the Senate Inquiries into Child Migration and Children in Institutional Care, including establishing a redress scheme, apologising to those people who were harmed as children while in institutional care and funding or directly providing supports and services to assist former residents in accessing their personal records, counselling and support.

The Department for Child Protection provided a submission to and attended the Perth hearing of the Senate Inquiry into Child Migration and was the only State or Territory Government child protection agency and family support to provide a submission to and attend the hearings of the Senate Inquiry into Children in Institutional Care.

The former Department for Community Development was independently reviewed by Ms Prudence Ford in 2006-07 to ensure a focus on child protection. The new Department for Child Protection was created on 1 July 2007 and is currently undergoing a major reform agenda.

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.

Recommendation 2

That British and Maltese former child migrants be treated equally in accessing any of the services currently provided or as recommended in this report, including access to travel funding.

The Western Australian Department for Child Protection fully supports this recommendation and has on all occasions provided information and services to Maltese former child migrants in the same manner as British child migrants. The Maltese child migrants form part of the Former Child Migrants Referral Index, established by the Department in partnership with former receiving agencies. Three hundred Maltese child migrants arrived in Western Australia between 1913 and 1968.

Recommendation 3

That the Commonwealth Government establish the means to accurately determine the numbers of child migrants sent to Australia during the 20th century to assist in determining the level of support services and other assistance needed for former child migrants.

The Department for Child Protection has identified the exact number of child migrants that came to Western Australia as part of the work in creating the Former Child Migrants Referral Index. The total for Western Australia is 2,941 child migrants.

Recommendation 4

That in accordance with the *Statutes of the Most Excellent Order of the British Empire*, the Commonwealth Government initiate the process for Francis Paul Keaney's membership of the Most Excellent Order of the British Empire to be cancelled and annulled.

This recommendation is directed to the Commonwealth Government.

Recommendation 5

That the Commonwealth Government continue to provide funding for at least three years directly to the Child Migrants Trust to ensure that the specialised services of tracing and counselling are provided or accessible to former child migrants living throughout Australia.

This recommendation is directed to the Commonwealth Government.

The Western Australian Department for Child Protection has provided funding to the Child Migrant Trust since 1999. Recurrent funding of \$77,425 per annum to 31 December 2011 has recently been approved by the Minister for Child Protection to enable the Trust to continue to provide services to Western Australian former child migrants and their descendents.

Recommendation 6

That the Commonwealth Government urge the British Government to continue financial resources for the National Council of Voluntary Child Care Organisations (NCVCCO) for the retention and expansion of the Child Migrant Central Information Index.

This recommendation is a matter for the Commonwealth Government.

The Western Australian Department for Child Protection has worked closely with the NCVCCO in the United Kingdom and has received three Indexes of information from them in relation to the 2,941 former child migrants who came to Western Australia. The information enables the Department to assist former child migrants seeking information.

Recommendation 7

That the Commonwealth Government urge all State Governments to establish a comprehensive signposting index similar to that established by the Western Australian Government.

This recommendation is a matter for the Commonwealth and other State Governments.

Western Australia is the only state to have established a Former Child Migrants Referral Index.

Recommendation 8

That the Commonwealth Government urge all State Governments to co-operate to establish a national index of child migrants.

Western Australia supports this recommendation and the need for the Commonwealth Government to lead.

Recommendation 9

That the Commonwealth Government urge State and Territory Governments to publish directories of information to assist all former residents of children's institutions to access records similar to the directories published by the New South Wales and Queensland Governments.

Western Australia has published three directories of information to assist all former residents of children's institutions, out-of-home care and supported accommodation, and adoptees. They are:

- *Signposts: A Guide for Children and Young People in Care in Western Australia from 1920* to assist people who were placed in residential care as children or who lived in Supported Accommodation as a young person, to find records and other documents.
- *Looking West: A Guide to Aboriginal Records in Western Australia* provides details on the location of records and contact details.
- *ROADS: An index of locations and access to adoption records.*

Recommendation 10

The Committee recommends that a national group of all receiving agencies, other relevant bodies and Commonwealth and State Governments be established to develop uniform protocols for accessing records and sharing information relevant to former child migrants, their families and descendants and to coordinate services for former child migrants.

The Department for Child Protection established protocols with the former Western Australian Receiving Agencies in July 2001 regarding accessing records and sharing information.

Recommendation 11

That the National Archives of Australia be provided with sufficient funding to ensure continuation of the program of digitising its records relating to child migration.

This recommendation is a matter for the Commonwealth Government.

Recommendation 12

That the National Archives of Australia liaise with the Genealogy and Personnel Records Section of the National Archives of Canada in relation to the technology, protocols, processes and procedures the Canadians have implemented to facilitate access to their records for former child migrants and their descendants.

This recommendation is a matter for the Commonwealth Government.

Recommendation 13

That the Commonwealth Government provide at least three year funding to those agencies engaged in dedicated tracing in the United Kingdom to assist former child migrants to locate their families, based on applications by agencies undertaking that work.

This recommendation is a matter for the Commonwealth Government.

The Western Australian Department for Child Protection has provided funding to the Child Migrant Trust since 1999. Recurrent funding of \$77,425 per annum to 31 December 2011 has recently been approved by the Minister for Child Protection to enable the Trust to continue to provide tracing and counselling services to Western Australian former child migrants and their descendants.

Recommendation 14

That all organisations holding records pertaining to former child migrants make these records available to former child migrants or their authorised representative immediately and unconditionally.

The Department for Child Protection provides records, where held, to former child migrants and liaises with the former receiving agencies to obtain access to records held by those agencies.

The Department provides as much assistance as possible to help people find information about themselves. Individuals seeking information from Departmental client files are encouraged to access personal records or documents that are available through the informal process which is free of charge. Any information released must comply with the Freedom of Information Act.

Where the person is not satisfied with the information they have received through the informal process, they can apply under the Freedom of Information Act. In Western Australia there is no fee for individuals who use the FOI process to seek personal information about themselves, while a fee of \$30 applies for individuals seeking information about a third party.

The Department does not allow persons to view original information relating to themselves. Information is edited and copies provided, as there is often third party information entwined with a person's personal information.

Information about a person's personal and family history is provided face-to-face unless otherwise requested by the individual, and support and counselling is available if required or requested.

Recommendation 15

That where any organisation holds primary documents, including birth certificates, relating to any living former child migrant without their express permission, former child migrants be entitled to recover that document from the holding organisation.

The Department for Child Protection has made every effort to return birth certificates, where held, to former child migrants. The Former Child Migrants Referral Index created by the Department also indicates where the Department holds a birth certificate.

Recommendation 16

That all sending and receiving agencies be required to extend access to their records to descendants of former child migrants.

In Western Australia descendants of former child migrants may apply to have access to records held by the Department for Child Protection. Any information released must comply with the principles and guidelines for release of information under the Freedom of Information Act.

Recommendation 17

The Committee recommends that the Commonwealth Government:

- **confer automatic citizenship on all former child migrants, with provision for those who do not wish to become Australian citizens to decline automatic citizenship; and**
- **that a special ceremony conferring citizenship be conducted for former child migrants.**

This recommendation is a matter for the Commonwealth Government.

Recommendation 18

That the Commonwealth Government urge the United Kingdom Government to extend its contribution to the Child Migrant Support Fund for at least a further three years beyond its anticipated end in 2002.

This recommendation is a matter for the Commonwealth Government.

Recommendation 19:

That the Child Migrant Support Fund be supplemented by funding from the Australian Government, State Governments and receiving agencies; and that this funding comprise:

- (a) a Commonwealth Government contribution of \$1 million per year for three years initially;**
- (b) a combined contribution from State Governments of \$1 million per year for three years initially; and**
- (c) a contribution from receiving agencies, and that this be funded by a levy or other means on receiving agencies not currently providing travel assistance, in proportion to the number of children placed under their care as a result of the child migration schemes during the 20th century.**

The United Kingdom Child Migrant Support Fund and the Australian Travel Fund are the responsibility of the UK and Commonwealth Governments respectively.

Recommendation 20

That the eligibility criteria for access to the Child Migrant Support Fund be broadened to:

- (a) permit visits to family members and other relatives, including aunts and uncles, cousins, nephews and nieces; and for other related purposes, such as visits to family graves;**
- (b) be available for all former child migrants, including the Maltese and those who may have undertaken previous visits at their own expense;**
- (c) provide for two further visits but with a reduced level of assistance, limited to the payment of airfares and associated travel expenses;**
- (d) provide, in exceptional circumstances, travel funding for a spouse, child or other person as an accompanying carer; and**
- (e) be subject to no means-testing requirements.**

The United Kingdom Child Migrant Support Fund and the Australian Travel Fund are the responsibility of the UK and Commonwealth Governments respectively.

The Department for Child Protection, together with the Child Migrant Trust, has assisted claimants through the complex application process.

Recommendation 21

That the Commonwealth Government, together with other stakeholders, undertake a review of its participation in the Child Migrant Support Fund after three years to determine the adequacy of funding from Australian sources for the fund and the extent of continuing demand for travel from former child migrants.

This recommendation is a matter for the Commonwealth Government.

Recommendation 22

That, should the Child Migrant Support Fund not be extended by the United Kingdom Government, the Commonwealth Government establish a separate Australian travel scheme to assist former child migrants to visit their country of origin, and that this scheme be funded by contributions from the Commonwealth, State Governments and receiving agencies as detailed in Recommendation 19; and that the scheme have a broad set of eligibility criteria as detailed in Recommendation 20.

This recommendation is a matter for the Commonwealth Government.

Recommendation 23

That, to ensure that choice in counselling services remains available to former child migrants, the Commonwealth Government urge agencies and other State Welfare Departments providing counselling services to maintain those services and expand them where necessary.

The Western Australian Department for Child Protection has funded the Child Migrants Trust since 1999 including for the provision of counselling services and therapeutic group work. The Minister for Child Protection has recently approved recurrent funding of \$77,425 per annum to 31 December 2011.

Counselling is available through Redress WA (see response to Recommendation 29), administered by the Department for Communities, and provided by a network of contracted and non-contracted service providers across Western Australia.

The Department provides counselling for people who experienced abuse in out-of-home care through Departmental psychologists and social workers or in exceptional circumstances through external counsellors.

The Christian Brothers Ex Residents and Students service offers counselling services to former child migrants.

Recommendation 24

That the Commonwealth and State Governments in providing funding for boarding house and supported accommodation programs recognise the housing needs and requirements of former child migrants.

The Western Australian Government is working with the Commonwealth Government on the development of a comprehensive long term national approach to tackling homelessness including early intervention, breaking the cycle of homelessness and connecting the service system.

With the Australian Government's release of the Green Paper and the development of the new National Affordable Housing Agreement (NAHA) which will incorporate funding for the joint Commonwealth/State Supported Accommodation Assistance Program (SAAP), there is a changing landscape regarding future responses for homelessness. The importance of a broader service system to address homelessness and improve integration and coordination with mainstream services is also recognised.

Recommendation 25

That the Department of Health and Aged Care commission a study into the aged care needs of former child migrants; and that Commonwealth funding be directed into areas of need identified in that study.

This recommendation is a matter for the Commonwealth Government.

Recommendation 26

That the Commonwealth Government urge the British Government to ensure that former child migrants living permanently in the United Kingdom are not disadvantaged in gaining access to income support payments following termination of the Social Security Agreement with the United Kingdom.

This recommendation is a matter for the Commonwealth Government.

Recommendation 27

That the Commonwealth Government provide a prospective one-off grant of \$10,000 to former child migrants wishing to return permanently to the United Kingdom or Malta who can prove that they will permanently relocate in those countries.

This recommendation is a matter for the Commonwealth Government.

Recommendation 28

That the Commonwealth and State Governments widely publicise the availability of remedial education services and associated adult education courses to child migrants and child migrant organisations.

A range of adult education courses, including literacy and numeracy are available in Western Australia and are publicised on the internet and in print media.

Recommendation 29

That the Commonwealth Government urge the Attorney-General of Western Australia to urgently review the recommendations of the Law Reform Commission of Western Australia Report on Limitation and Notice of Actions with a view to bringing the Western Australian law into line with other Australian jurisdictions.

The Western Australian Department for Child Protection concurs with the views previously expressed by this Department (Family and Children's Services as it then was) in the Senate report that any retrospective change would need to be treated with considerable caution both because of its effect on the general principles against retrospective legislation and its effect on individual cases.

The *Limitation Act 1935* does not give discretion to the Courts to extend the limitation period for personal injury (other than asbestos disease type cases). Case law such as the decision in *Bennett v Minister for Community Welfare (1993) 176 CLR 408* may, however, allow certain cases to successfully be brought after the expiration of the limitation period for the primary claim on the basis that a common law duty of care is owed by the guardian to the ward in his/her care to obtain independent legal advice on proper instruction in relation to potential actions for damages arising from injuries occurring while the ward was in the guardian's care, and advice that the action might become statute barred. The common law duty is breached by failure on the part of the guardian to obtain that legal advice, and a secondary cause of action, will arise on the expiration of the limitation period for the primary claim. The scope and duration of this secondary cause of action is yet to be tested in the Courts.

Western Australia has in recent years undertaken reviews of limitations law through the Law Reform Commission leading up to the enactment of the *Limitations Act 2005*. The Act makes specific provision for limitations periods applicable to children Part 3 allowing for the extension of limitation periods beyond 3 years upon application to the Court in certain circumstances. The legislature did not make special provision in the *Limitations Act 2005* for an extension of the limitations period for historical cases of institutional child abuse.

To address the difficulties facing victims of historical child abuse in accessing compensation as a result of the operation of the *Limitation Act 1935*, on 17 December 2007 the Western Australian Government announced a \$114 million scheme known as Redress WA offering ex gratia payments of up to \$80,000 and support services to adult victims who as children experienced abuse and neglect while in the care of the State of Western Australia.

Redress WA seeks to attract applications from eligible ex-wards of the State, members of the Stolen Generations and former Child Migrants placed in various church institutions and Departmentally managed facilities. Compensation payments received by victims from church groups for past abuse will not preclude victims from obtaining payments from Redress WA. Redress WA offers victims more timely access to payments than claims for common law damages through the court system, in a non-adversarial environment with the benefit of access to psychological services and support services for victims, and an apology.

The Department is of the view that the implementation of the Redress WA scheme provides a suitable alternative to victims without the need for further retrospective legislative amendments to the *Limitation Act 1935* or the *Limitation Act 2005*.

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.

This recommendation is a matter for the Commonwealth Government.

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.

The Western Australian Legislative Assembly passed a motion on 13 August 1998 apologising to former child migrants. The statement read:

“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.”

Recommendation 32

That the Commonwealth and State Governments, in conjunction with the receiving agencies, provide funding for the erection of a suitable memorial or memorials commemorating former child migrants, and that the appropriate form and location(s) of such a memorial or memorials be determined by consulting widely with former child migrants and their representative organisations.

The Western Australian Government established a memorial in December 2004 at the Maritime Museum to recognise the valuable contribution former child migrants have made to the community and assist towards healing the past. Funding for the memorial was provided by the Western Australian and Commonwealth Governments.

Recommendation 33:

That the Commonwealth Government support and promote international initiatives that facilitate the sharing of professional best practice, and that ensure uniformity of protocols relating to work with former child migrants and their families.

This recommendation is directed to the Commonwealth Government.

FORGOTTEN AUSTRALIANS

**A report on Australians who experienced
institutional or out-of-home care as children
Senate Community Affairs References Committee
August 2004**

RESPONSE TO RECOMMENDATIONS

WESTERN AUSTRALIA

November 2008

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.

This recommendation is a matter for the Commonwealth Government.

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.

The Western Australian Premier issued a Parliamentary Statement of Apology on 7 April 2005.

PARLIAMENTARY STATEMENT

“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.”

Recommendation 3

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

The South Australian law referred to in the recommendation is in regard to the statute of limitation in regard to criminal matters. In Western Australia there is no limitation period for the prosecution of serious criminal matters.

As there is no limitation period for the prosecution of serious criminal matters in Western Australia, the recommendation does not present an issue for this State.

Recommendation 4

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

This recommendation is a matter for the Commonwealth Government.

Recommendation 5

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

This recommendation is a matter for the Commonwealth Government.

Recommendation 6

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

- **the scheme be funded by Commonwealth and State Governments, Churches and agencies proportionately;**
- **the Commonwealth have regard to schemes already in operation in Canada, Ireland and Tasmania in the design and implementation of the 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.**

The Western Australian Government has established Redress WA, a \$114 million scheme administered by the Department for Communities, to provide redress to adults over the age of 18 years who suffered abuse and/or neglect as children while in State care in Western Australia prior to 1 March 2006. They 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.

Redress WA is not just about payments of money as the Government acknowledges that no amount of money can make up for the abuse some people suffered while in State care. It is primarily about the healing process and is designed to:

- help people move forward with their lives by publicly acknowledging failures in the provision of care to vulnerable children;
- provide a personal apology from the Western Australian Government;
- partly fund a memorial;
- provide access to support services such as psychological and financial counselling;
- assist eligible applicants with the Redress WA application process; and
- provide eligible applicants with an *ex-gratia* payment.

Any relatives of deceased persons, or the estate of deceased persons, who were in State care are not eligible.

Those who have received payments from receiving agencies, such as the Catholic Church and the Salvation Army, are eligible to apply. Similarly, applicants do not have to have been State wards. If they experienced private placements either by their families or by any other means, they too are eligible to apply.

The scheme comprises a two-tier payment system:

- 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; and
- 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.

The scheme closes for applications on 30 April 2009 and confidentiality is assured.

Recommendation 7

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

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

This recommendation is a matter for the Churches and non government agencies that provided institutional care.

Recommendation 8

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

- **investigate and mediate complaints received by complainants dissatisfied with Church processes with the relevant Church authority;**

- review the operations of Church sponsored complaints mechanisms to enhance transparency and accountability;
- report annually to the Parliament on the operation of the Churches' complaints schemes, including data on the number and nature of complaints; and
- publicise the existence of Church-sponsored complaints mechanisms widely throughout the community.

This recommendation is a matter for the Commonwealth Government.

Recommendation 9

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

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

This recommendation is a matter for the Churches and non-government agencies that provided institutional care.

Recommendation 10

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

This recommendation is dependent on the establishment of a national commissioner for children and young people.

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.**

This recommendation is a matter for the Commonwealth Government.

Recommendation 12:

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

In response to Recommendation 23 of *Bringing them home*, the Western Australian Government established a Records Taskforce to identify, locate and preserve government and non-government records relating to Aboriginal people in Western Australia.

Since 1998 the Department for Child Protection has been preserving Native Welfare, Community Welfare, Adoption and Departmental records through an Imaging Program. To date there are over 9,000,000 images stored in the FIRS database.

Recommendation 13:

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

The Department for Child Protection has not knowingly destroyed any client records since the 1980's. Current policy does not allow destruction of original records i.e. microfilm and paper records even though they have been imaged electronically. Therefore it is possible that three types of media exist of the same record.

Recommendation 14:

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

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

The Western Australian Department for Child Protection appointed a dedicated information officer in 1985 to provide information to clients seeking information about themselves.

In 1998 the Department established the Family Information and Records Bureau (FIRB) in response to Recommendation 27 of the *Bringing them home* report. FIRB employs six Aboriginal Information Officers who provide personal information and work with Linkup and Bringing Them Home Group, a System and Information Officer who manages the database and an Information Officer who provides information to non-Indigenous persons including former child migrants.

The Department has published the following guides:

- *Looking West: A Guide to Aboriginal Records in Western Australia* provides details of the location of records, type of service, years of operation, information in records and contact details.
- *Signposts: A Guide for Children and Young People in Care in Western Australia from 1920* to help people who were placed in residential care as children or who lived in Supported Accommodation as a young person, find records and other documents.
- *ROADS: An index of locations and access to adoption records.*

Recommendation 15:

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

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

Please refer to the response to recommendations 14 and 17.

The Western Australian Department for Child Protection has established the following:

- Family Information Research System (FIRS) holds all the Native Welfare and some Community Welfare Records plus 43 Indexes from church groups and non-government agencies. FIRS also holds the Adoption Information System, which is a register of enquiries received about WA Adoptions from 1896 to the present day.
- The Former Child Migrant Referral Index which holds 2,941 names of former child migrants who came to WA from the United Kingdom and Malta from 1913 to 1968. The index holds information relating to the sending and receiving agencies. The WA Government is the only government in Australia to have established a comprehensive index to assist former child migrants access information about themselves.
- The Children-in-Care Database which contains names, aliases, dates of birth and placement details. There are in excess of 106,000 entries on the database comprising approximately 58,000 names.

The Department provides assistance through the Family Information Records Bureau and Adoptions Services in locating and accessing records.

Recommendation 16:

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

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

Please refer to the response to Recommendation 17.

Recommendation 17:

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

The Western Australian Department for Child Protection encourages individuals seeking information about themselves from Departmental client files to access personal records or documents through the informal process.

Any information released must comply with principles and guidelines for release of information under the Freedom of Information Act.

The Department provides as much assistance as possible to help people find information about themselves. The service is provided free of charge. Where the person is not satisfied with the information they have received through the informal process, they can apply under the Freedom of Information Act. In Western Australia there is no fee for individuals who use the FOI process to seek personal information about themselves, while a fee of \$30 applies for individuals seeking personal information about a third party.

The Department does not allow persons to view original information relating to themselves. Information is edited and copies provided, as there is often third party information entwined with a person's personal information.

Information about a person's personal and family history is provided face-to-face unless otherwise requested by the individual, and support and counselling is available if required or requested.

Recommendation 18:

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

This recommendation is a matter for the Commonwealth Government.

Recommendation 19:

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

This recommendation is a matter for the Commonwealth Government.

Recommendation 20:

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

Western Australia provided one-off funding of \$10,000 in 2004-05 to the Care Leavers of Australia Network (CLAN), based in Sydney to provide support services for Western Australian care leavers and \$5,000 to reimburse calls to

their 1800 helpline from Western Australian care leavers. The helpline is promoted on CLAN's website.

Redress WA, administered by the Department for Communities has established a network of contracted and non-contracted service providers across Western Australia to provide assistance to applicants, both with lodging their applications and with counselling needs. Funding has been provided to CLAN to assist those people who are eligible to apply and reside outside of Western Australia.

Professional support services are also available through a 1800 telephone service at the cost of a local call directly to any Redress WA applicant anywhere in Australia. Email support is also available to applicants in Australia or now living overseas.

Redress WA provides callers with direct guidance through the application process and to provide telephone counselling if required.

Recommendation 21:

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

Please refer to recommendations 6, 14 to 17, 20 and 23.

Recommendation 22:

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

Western Australia supports this recommendation in principle.

Recommendation 23:

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

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

The Western Australian Department for Child Protection provides counselling for people who experienced abuse in out-of-home care through Departmental

psychologists and social workers or in exceptional circumstances through external counsellors.

Counselling is available through Redress WA, administered by the Department for Communities, and provided by a network of contracted and non-contracted service providers across Western Australia.

Recommendation 24:

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

The Western Australian Government supports this recommendation in principle and notes that universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Commonwealth Government. Other higher education providers are autonomous institutions which determine their own teaching arrangements and course curricula.

Recommendation 25:

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

The Western Australian Department of Health funds a range of health care, health promotion and support programs that are accessible to all Western Australians.

Recommendation 26

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

This recommendation is a matter for the Australian Government.

Recommendation 27:

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

Services funded under the Home and Community Care program are provided to applicants based on their relative assessed need. Consideration of applicants' living and financial arrangements, mental and general well being

are taken into account when prioritising services. Generally, in most cases it would not be known that an applicant for services is a care leaver.

Recommendation 28:

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

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

The Western Australian Government is working with the Commonwealth Government on the development of a comprehensive long term national approach to tackling homelessness including early intervention, breaking the cycle of homelessness and connecting the service system.

With the Australian Government's release of the Green Paper and the development of the new National Affordable Housing Agreement (NAHA) which will incorporate funding for the joint Commonwealth/State Supported Accommodation Assistance Program (SAAP), there is a changing landscape regarding future responses for homelessness. The importance of a broader service system to address homelessness and improve integration and coordination with mainstream services is also recognised.

The issue of data collection on the usage of SAAP services by care leavers was considered by the SAAP Information Steering Committee. It did not recommend making any changes to the national data collection as there would be some difficulty in formulating appropriate questions and, potentially, some difficulty in asking people about their history in State care. While every effort is made to ensure effective data around SAAP service usage, it should be noted that data collection is based primarily on self-disclosure, if the person has not been referred to the SAAP service by the agency that previously provided care. Making disclosure a requirement of service usage may discourage some people from accessing SAAP services.

Recommendation 29:

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

A range of adult education courses, including literacy and numeracy are available in Western Australia and are publicised on the internet and in print media.

Recommendation 30:

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

Western Australia considers that existing entry pathways to higher education courses take into account a range of circumstances of applicants, and does not support introducing an alternative pathway specifically for ex-residents of institutions and their children. Not all ex-residents would necessarily wish to be identified as such.

Recommendation 31:

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

The Western Australian Government does not support the identification of people who have been in care on various admission forms and notes that issues of privacy, consent and data comparability would be significant impediments to obtaining meaningful data. It is acknowledged that former residents may be reluctant to identify themselves on service application and admission forms. The purpose of collecting this information, as stated in the Senate Committee's report is to inform policy makers about services and assistance required for care leavers. This information could be obtained through research on specific areas of relevance to former residents.

Recommendation 32:

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

Western Australia does not support the recommendation to explicitly recognise care leavers as a sub-group with specific requirements in publications and other materials. Not all care leavers would wish to be specifically recognised as such.

Western Australian Government departments and agencies will consider and address where relevant the needs of care leavers with regard to programs and services that are designed specifically to address the needs and circumstances of that group.

Recommendation 33:

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

The recommendation that this matter be referred to the Council of Australian Governments is for the Commonwealth Government to consider.

The Western Australian Government supports a whole-of government approach to the provision of programs and services for all Western Australians across policy areas; for example, the Child Safety Directors Group, chaired by the Chief Executive Officer Department for Child Protection, has been established to plan, coordinate, develop and monitor interagency services and responses for vulnerable children, young people and families. The Group reports to Cabinet through the Minister for Child Protection.

Recommendation 34:

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

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

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

The Western Australian Government has allocated \$50,000 through Redress WA and the Commonwealth Government has contributed \$10,000 toward a permanent memorial to those abused or neglected while in State care.

The Department for Child Protection is currently supporting and liaising with a committee of former residents regarding the development of the memorial. The Department for Culture and Arts has agreed to provide space in the Perth Cultural Centre for the memorial.

Recommendations 35

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

This recommendation is a matter for the Commonwealth Government.

Recommendation 36

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

This recommendation is a matter for the Commonwealth Government.

Recommendation 37

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

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

This recommendation is a matter for the Commonwealth Government.

Recommendation 38

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

This recommendation is a matter for the Commonwealth Government.

Recommendation 39:

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

The Western Australian Government supports this recommendation in principle and notes that universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government.

The Department for Child Protection has established dialogue with universities regarding opportunities to work together and build closer links in relation to specific comments on this recommendation. In addition the Department has

recently established a position whose role it will be to liaise with tertiary institutions regarding social work courses.

The Department was instrumental in the development and implementation of the Graduate Certificate in Child Protection at the University of Western Australia. The Certificate is a one-year part-time course for practitioners, managers, and service planners working in the field of child protection, across government and non-government agencies, who wish to focus in-depth on the specialist knowledge and skills. There is also the opportunity for students to select an area of interest in which to undertake research. The Department for Child Protection offers annual scholarships to staff to complete this course.

The Department for Child Protection is also a member of the Advisory Board for the School of Occupational Therapy and Social Work at Curtin University to review and develop the social work curriculum.

Both Curtin and Murdoch Universities are working towards delivering a Masters program by 2010.

The Department for Child Protection also hosts Social Work students for placement / work experience in their final year of study.

***PROTECTING VULNERABLE CHILDREN:
A NATIONAL CHALLENGE***

**Senate Community Affairs References Committee
March 2005**

**RESPONSE TO RECOMMENDATIONS
WESTERN AUSTRALIA
November 2008**

Recommendation 1:

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

The Western Australian Government supports and promotes a number of ongoing initiatives, which focus on the prevention of child abuse and neglect including support for National Child Protection Week and Children's Week, which incorporates Universal Children's Day. The Department for Child Protection provides annual funding to its district offices to deliver local activities during Child Protection Week. These activities are primarily focused on the prevention of child abuse and neglect.

As one of the conference sponsors, the Department for Child Protection is on the planning committee for the 8th International Society for the Prevention of Child Abuse and Neglect (ISPCAN) Asia-Pacific Regional Conference on Child Abuse and Neglect, incorporating the 12th Australasian Conference on Child Abuse and Neglect. The Conference theme is *Child Abuse and Neglect – Looking through the Lens of Prevention*. It will be held in Perth, Western Australia from 15 to 18 November 2009.

Recommendation 2:

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

There are some highly targeted laws that require the reporting of child abuse in Western Australia.

- Under the *Western Australian Family Court Act 1997*, court personnel, counsellors and mediators must report child abuse and may also report suspicions of child abuse in Family Court cases to the Department for Child Protection.
- Under the regulations of the *Child Care Services Act 2007*, licensees of childcare service providers are legally obliged to report abuse in a child care service to the Department for Child Protection.

Legislation to expand mandatory reporting in Western Australia, the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008* was passed by Parliament in June 2008. This will come into operation on 1 January 2009.

The Act makes it compulsory for doctors, nurses, midwives, police officers and teachers to report to the Department for Child Protection, if they form a belief, based on reasonable grounds, and in the course of their paid or unpaid work, that a child or young person under the age of 18 years:

- has been the subject of sexual abuse that occurred on or after the day the legislation comes into effect; or

- is the subject of ongoing sexual abuse.

The Department for Child Protection has worked in partnership with the relevant professional government and non-government agencies representing mandatory reporters to provide training and support prior to commencement of the legislation.

The Department for Child Protection has strengthened its service agreements with funded services for the reporting of concerns for children or when children have been abused, neglected or assaulted.

Recommendation 3:

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

The Western Australian Government supports this recommendation in principle and notes that universities are self-accrediting institutions that decide the courses they will offer, within broad profiles agreed with the Australian Government.

The Department for Child Protection has established dialogue with universities regarding opportunities to work together and build closer links in relation to specific comments on this recommendation. In addition the Department has recently established a position whose role it will be to liaise with tertiary institutions regarding social work courses.

The Department was instrumental in the development and implementation of the Graduate Certificate in Child Protection at the University of Western Australia. The Certificate is a one-year part-time course for practitioners, managers, and service planners working in the field of child protection, across government and non-government agencies, who wish to focus in-depth on specialist knowledge and skills. There is also the opportunity for students to select an area of interest in which to undertake research. The Department for Child Protection offers annual scholarships to staff to complete this course.

The Department for Child Protection is also a member of the Advisory Board for the School of Occupational Therapy and Social Work at Curtin University to review and develop the social work curriculum.

Both Curtin and Murdoch Universities are working towards delivering a Masters program by 2010.

The Department for Child Protection also hosts Social Work students for placement / work experience in their final year.

Recommendation 4:

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

The Western Australian Department of Education and Training delivers compulsory child protection professional learning to ensure that all staff and trainee teachers are able to identify and support children at risk of abuse and have an awareness of the *Reciprocal Child Protection Procedures* for referring matters of concern about children to the Department for Child Protection.

Tertiary Institutions recognise the need for undergraduate training in child protection and will have access to the Department for Education and Training's online training.

Recommendation 5:

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

The review of TILA is a matter for the Commonwealth Government.

The Department for Child Protection has included reference to the availability of TILA in its field worker guidelines to ensure young people leaving care are made aware of this grant and the application process.

Recommendation 6:

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

Western Australia is implementing an education planning strategy for all children in care, which will ensure the Departments for Child Protection and Education, as well as non government schools, work together to identify and meet the educational needs of children in care. Each child will have an Education Plan which will be reviewed annually and will identify strategies to meet the individual child's needs.

Western Australia is participating in a data linkage project over three years which is partly funded by the Australian Research Council. The project will include the de-identified linking of out-of-home care data and educational data. The analysis will allow a broader understanding of the pathways and experiences of children in care and give a better picture of their educational outcomes and how they compare with the rest of the population.

Recommendation 7:

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

As acknowledged in the Senate Committee's Report, the *National Plan for Foster Children, Young People and their Carers* (the National Plan) includes key areas for action such as the strengthening of case management through the sharing of best practice and the implementation of national standards. The National Plan has been finalised and national standards have been endorsed by the Community and Disability Services Ministers' Conference. In addition, information about good practice models were shared amongst jurisdictions and considered in the context of research activities linked with the National Plan.

In Western Australia, the *Children and Community Services Act 2004* which was proclaimed on 1 March 2006 has strengthened planning for children in the care of the Chief Executive Officer (of the Department for Child Protection). Care plans must be in place for all children and be reviewed at least every 12 months. The care plan is a written plan that identifies the needs of the child, outlines the steps or measures to address those needs and sets out decisions about the care of the child including placement and contact between the child and a parent, sibling, other relative or any other person who is significant in the child's life.

Recommendation 8:

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

The National Plan which has been finalised includes standards for transition planning for children and young people in care, including when leaving care. The national standards have been agreed to by the Community and Disability Services Ministers' Conference (CDSMC).

The Department for Child Protection has developed protection and care standards *Better Care Better Services 2007*, which are consistent with the national standards endorsed by CDSMC. Since November 2007 the Department has been working with non government placement services to extend the implementation of *Better Care Better Services 2007* across Department provided and funded placement services. This initiative will be progressed during 2008-2009 and involves piloting a service provider self assessment, followed by an external monitoring assessment against the Standards. The monitoring process has been developed to quality assure the provision of services as well as identify opportunities for continuous improvement.

The *Children and Community Services Act 2004*, implemented on 1 March 2006 includes provision for leaving care services for eligible young people up to the age of 25 years. The Department for Child Protection has developed a leaving care policy and guidelines to ensure long-term planning before children leave care and the provision of support services for eligible young people, as provided for in the legislation. Protocols and practices have been implemented in partnership with funded leaving care services to assist in referral, assessment and case management.

A leaving care website, *Ignition WA*, has also been developed by the CREATE Foundation in partnership with the funded Leaving Care agencies and the Department to provide a comprehensive range of information for young people on leaving care issues.

Recommendation 9:

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

Training – investigate the implementation of national carer specific accredited training qualifications, for example, through Vocational Education Training;

Uniform Data Collection – collection of data on the carer cohort;

Support – examine ways of improving carer support including national standards for reimbursement of costs to cover the real costs of caring and payment of allowances; examine ways of improving foster care retention; and develop models of response to allegations of abuse against foster carers and workers based on international best practice including articulation of carer’s rights.

The National Plan which has been finalised includes national standards for the training and support of foster carers. The national standards have been agreed to by the Community and Disability Services Ministers’ Conference (CDSMC).

Training

Western Australia has developed regulations under the *Children and Community Services Act 2004* that identify the requirements for the approval of carers. Competency based training for foster carers has been developed and implemented, including a package for rural carers. An audit has been completed of general and relative carers to identify needs for ongoing training and a calendar of training provided each semester.

Uniform data collection

A national pilot collection to collect information about foster carers is planned to occur in February 2009, with the data to be analysed in April 2009 by the National Child Protection and Support Services sub-committee. Expansion of the collection to collect more detailed information about foster carers and to include a parallel collection on relative foster carers is dependent on the allocation of funding by the Community and Disability Services Ministers’ Advisory Committee.

Support

Western Australia does not support the introduction of national standards for the reimbursement of costs to foster carers and considers this to be a matter for individual States and Territories, which have different systems for the payment of subsidies and reimbursement of costs.

Western Australia is reviewing protocols with non government placement agencies on abuse in care and guidelines on responding to allegations against Departmental officers and foster carers. Guidelines on support for carers during an abuse in care investigation have been developed.

Initiatives to support carers include increased subsidies, a higher clothing allowance, increased funding for respite care, the introduction of counselling for foster families and the development, in partnership with the Foster Care Association, of a statement of commitment, foster carer charter and handbook.

Recommendation 10:

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

The Department for Child Protection and the Disability Services Commission are reviewing the Memorandum of Understanding on joint responsibilities for children and young people with disabilities who are at risk of, or in need of out-of-home care. The MOU is underpinned by a number of principles which include:

- children with disabilities should grow up in stable, secure, loving and nurturing families;
- families have the primary responsibility for the care and protection of their children with disabilities;
- parents are generally the legal guardians of their child and have a range of responsibilities in the life of their child. Many of these apply regardless of whether the child is living at home or in out of home care;
- children with disabilities should have access to services and supports that are available to all children;

- families of children with disabilities and parents with disabilities should have access to the services and supports that enable them to care for their children; and
- where a child with a disability is not able to live with his/her parents then wherever possible the child should be brought up in a family or in living arrangements that are as close as possible to those of a family.

The Disability Services Commission is developing a model of Alternative Family Care for children with disabilities that includes identifying and supporting families vulnerable to relinquishing care of their child and the development of both shared and alternative family care for children with disabilities that focuses on the long term needs of children with disabilities for a home and loving, permanent parental care. The model is centred on the best outcomes for the child with a disability.

Recommendation 11:

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

The Western Australian *Disability Services Act 1993* includes the following provisions which are incorporated into the Service Agreements that disability service providers have with the Commission: standards monitoring, a standard around abuse, a requirement to report on the death of or non-trivial injury (including physical, psychological and sexual abuse or neglect) to a person in their care, criminal record screening of employees and volunteers.

The *Working With Children (Criminal Records Checking) Act 2004*, implemented on 1 January 2006, aims to help protect children from harm by deterring people from working with children where they have criminal records that indicate they may harm children and preventing people with such records from gaining positions of trust in certain paid and voluntary work with children.

Recommendation 12:

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

The Western Australian Disability Services Commission convenes the Access to Justice Working Party, which includes representation from Legal Aid WA

and other justice agencies. This committee has implemented a training program for legal practitioners on Disability. Legal Aid WA has developed policy to give priority to people with disabilities and has appointed a specialist disability position in the Perth Magistrates Court through which a number of lawyers have gained experience. These disability-trained lawyers rotate through the Children's Court. The issue regarding the development of plain language or pictorial, audio or video information about the law that is suitable for children, young people and adults with disabilities will be placed on the committee's agenda.

The Chief Justice's Equal Treatment Bench Book provides Western Australia's judiciary with reference material about different ethnic and religious backgrounds, Aboriginal culture, people with disabilities, gay people, young people and the aged. Social policy and disability service providers participated in the development of this very useful resource document for court officials, which contributes to fairer hearings and outcomes from the courts.

Recommendation 13:

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

Western Australia indicated support in-principle for this proposal; however, notes that the Senate Committee's recommendation is focused on education and changing attitudes, which are outside the Australian Law Reform Commission's functions. It would be more appropriate for these tasks to be undertaken by bodies such as the Law Society in each state and territory.

Recommendation 14:

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

The Western Australian Disability Services Commission acknowledges that the needs of children and young people with disabilities are different to those of adults with disabilities and while the current *Disability Services Act* does not

differentiate between children, young people and adults, the Commission acknowledges that a differential response is required.

The *WA Disability Services Act 1993* provides the overarching framework in which to develop services which are responsive to the needs of individual people with disabilities and their families. The Principles and Objectives of the Act protect the special needs of children and youth by directing that individual capacities be taken into account (Principle 3) and individual needs (Principle 8), that services be tailored to meet individual needs (Objective 4) and that the barriers occasioned by age be taken into account (Objective 5).

The Act is currently under review and an interim report has recently been released for comment. Addressing the needs of different sub-groups and populations is usually reflected at the level of policy and program development.

Recommendation 15:

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

This recommendation is a matter for the New South Wales Government.

Recommendation 16:

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

The Western Australian Department of Corrective Services (DCS) operate Juvenile Justice Teams (JJT) as a diversionary alternative to the formal court system for juveniles charged with minor offences in partnership with Western Australia Police. The teams are modelled on the New Zealand conferencing program and the principles of restorative justice. It is a voluntary process that involves victims, empowers parents and makes young people accountable to those directly hurt by their offending. In 2004 amendments to the *Young Offenders Act (1994)* included provision for Aboriginal community members to be appointed to facilitate Regional Community Conferencing (RCC) on behalf of DCS and the Police in remote regional areas. A major focus for DCS has been on improving the quality of the restorative justice services in remote and

regional Western Australia, in particular to target and benefit Indigenous young persons. This is being achieved through the deployment of an additional four RCC Coordinators and eight JJT coordinators.

Recommendation 17:

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

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

The establishment of a national commissioner for children and young people is a matter for the Commonwealth Government.

Western Australia is participating in the development of the *National Framework for Protecting Australia's Children* which is being led by the Commonwealth, in collaboration with State and Territory child protection agencies and the non-government sector. The Framework is expected to be tabled at the Council of Australian Governments meeting in March 2009.

Related to the *National Framework for Protecting Australia's Children* is the work currently being progressed through the Community and Disability Services Ministers' Conference Cross-Jurisdictional Information Sharing Working Group. The focus is on improved information sharing between relevant Commonwealth agencies and child protection agencies; between child protection agencies across jurisdictions and within jurisdictions on children and young people in the child protection system and those who are at risk of abuse.

Recommendation 18:

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

Western Australia is working with the Secretariat of the Productivity Commission and Victoria to develop a common survey tool that can be used across all jurisdictions to collect expenditure information for out-of-home care. A trial is planned with four jurisdictions in February 2009.

In addition, seven jurisdictions including Western Australia will be reporting indicative unit costs (program dollars per placement day) for out-of-home care in the Productivity Commission *Report on Government Services 2009*, due to be released in January 2009.