INQUIRY INTO THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE REPORT: *FORGOTTEN AUSTRALIANS: A REPORT ON AUSTRALIANS WHO EXPERIENCED INSTITUTIONALISED OR OUT-OF-HOME CARE AS CHILDREN* (AUGUST 2004)

Submission to the Senate Community Affairs References Committee

Frank Golding, 20 November 2008

I write this submission as member of the Committee of CLAN - and with their approval.

The writer made a written submission and appeared before the Senate Community References Committee in 2003. He is a member of the Alliance of Forgotten Australians, VANISH and the Victorian Sector Working Party on the Forgotten Australians, but does not claim to represent the views of those organisations in this submission.

1. A groundbreaking report with disappointing outcomes

The *Forgotten Australians* Report (the Report) was tabled in the Senate on the cusp of the Prime Minister of the day calling a Federal election. As a consequence of that accident of timing the Report was brushed aside and it has been difficult to put the issues on the public agenda.

Nevertheless, the Report was groundbreaking. It amassed more evidence about the experiences of growing up 'in care' in Australia than any other single document. The 39 recommendations reflected submissions from more than 600 people including hundreds of people who grew up in institutions or in foster care. The Committee identified the complex issues stemming from this unnatural childhood. The recommendations provided a blueprint for what needed to be done to ameliorate the damaging effects on thousands of people who were abused or neglected in their childhood.

However, with some notable exceptions, the actual outcomes for the people the Report called the 'Forgotten Australians' have been profoundly disappointing. This submission argues, among other things, that the lack of leadership and sympathy from the Commonwealth Government of the day has diminished the impact of the report and minimised the take-up of its recommendations across the nation.

2. The Australian Government's response (November 2005)

The former Government's response to the Report and the recommendations was deficient in at least two ways.

2.1 The former Government relied largely on jurisdictional excuses for inaction and failed the test of national leadership

The Government of the day took fifteen months to produce a response to the Report. The Government boldly acknowledged that the history of out-of-care care in Australia was a '*matter of shame for this country'* and that '*…we as a nation need to respond with appropriate help*'. Yet the chasm between that rhetoric and its own lack of action in response to the Report was profoundly disappointing. The Government failed to provide national leadership for the help it said was needed; and it showed no willingness to provide a lead in rectifying this national shame. Instead, the Government's response was overwhelmingly about denial of responsibility and shifting the blame to others.

The Government rejected or failed to support the majority of the Report's recommendations. Some of these were rejected out of hand (R. 4, 6, 8, 10, 11, 17, 32, 35, 36) without a proper discussion of their merit and without sufficient account of why the Government would not support them.

The Government rejected well over half of the 39 recommendations by reference to the constitutional responsibility lying with another level of government or with non-government agencies. The frequent repetition of the mantra: '*This is a matter for state and territory governments, churches and agencies*' reinforced the prevalent tone that we were not to expect any moral leadership from our national government on matters where it had no literal legal liability despite its bold assertion that "*The suffering experienced by so many children placed in institutional care is a matter of shame for this country*".

This jurisdictional rationale for failure to act was, however, unconvincing. The Commonwealth Government routinely works with the States and Territories on matters outside its jurisdiction. It does provide leadership and resources in areas where it has no formal powers but sees the need for national action. School education is an obvious example. The current Government's leadership towards a National Framework for Protecting Australia's Children is an even more pertinent example. Led by the Commonwealth, all State and Territory Governments are heavily involved in putting the Framework together, as are non-government organisations, academics and research entities. That approach should have been adopted for a national response to the *Forgotten Australians* Report. It's not too late. A socially responsible response required more than words of apparent sympathy from the nation's government. Social and moral obligations can't be quarantined by legal boundaries.

In its response to one of the recommendations (R. 39) the Government in fact demonstrated that 'where there is a will there is a way' around the problem of jurisdictional boundaries. The Government referred to the establishment of a Chair in

Child Protection at the University of South Australia. To say the least, the example was ingenuous. That initiative, announced in March 2004, was not related to the Report, dated August 2004. Nor was the incumbent, Professor Dorothy Scott, a participant in the Senate inquiry. The Chair in Child Protection provides a focus on contemporary child protection issues and prevention of child abuse, a much-needed initiative, but it does not relate to the matters raised in the *Forgotten Australians* report. However, it illustrates the point that when the Commonwealth Government has a commitment to working towards a solution to a social issue it is able to give leadership and resources to address the problem regardless of jurisdictional boundaries. The repeated mantra in response to recommendation after recommendation: *'This is a matter for state and territory governments, churches and agencies to consider'* was simply code for a lack of will.

There are further reasons for a national approach to these matters. First, it is increasingly clear that 'Forgotten Australians' are by no means bound as adults to the locations where they once grew up in out-of-home arrangements. Many thousands have fled their state of origin in a bid to put physical and psychological distance between them and the trauma of tragic childhood abuse and neglect. State Governments are not willing in most cases to provide services to former residents who now live interstate. By the same token, some State governments are reluctant to service the needs of adults who grew up in other States. This form of the 'blame game' creates further acute difficulties for 'Forgotten Australians' who need to access specialised services.

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

Thirdly, the Commonwealth Government made family support payments to State governments, agencies or institutions on behalf of children in 'care'. Many of these recipients failed to provide children with proper protection, health care, nourishment, education and support and the shared duty of care was not properly discharged.

The Government's response to R. 6 on redress was in stark contrast to other national governments such as those of Ireland and Canada. Those national governments accepted the clear evidence of real, pressing and urgent need for compensation and reparations to allow victims of the system to:

- seek extended counselling for multiple personal problems associated with their ill-treatment as children;
- catch up on missed educational opportunities;
- pay for medical treatment associated with accumulated childhood neglect;

- find ways of establishing better family ties with siblings who have been out of their lives for decades through no fault of their own; and
- provide for accommodation and other necessities of life that have been lacking through their adult lives because of disadvantages compounding from childhood.

The Australian Government's expression of 'deep regret' was an insufficient response because it was not backed up by any resources aimed at redressing situations that should never have been allowed to exist in a civilised society. To simply 'pass the buck' on technically correct legal grounds, as it did on the issue of redress and many other issues, was a morally inadequate response. Governments are judged in history not on whether they were legally liable at the time but on the quality of their commitment to show a lead in putting things right.

2.2 Half-hearted support of the urgent needs of 'Forgotten Australians'

Ironically, in some instances where the Commonwealth Government does have jurisdiction (e.g. those referred to in R 31, 35, 36, 37, 38 and 39) the then Government's response was feeble. The unenthusiastic language is indicative: 'This recommendation will be revisited if…'; 'at arm's length'; 'no capacity to determine'; 'might be discussed'.

In response to a number of recommendations (e.g. R 1, 7, 11 and 22) the then Government urged some other agency to take action; but it failed to consider the mechanism for such urging. It is now clear that the Commonwealth Government had no strategy for following through to see that their urging had some effect. Indeed, there was no urging at all at the end of the day.

In respect of R. 5, the Government noted that issues would need to be 'explored' to see if legislation was 'possible, practical and appropriate'---which raises the question of what the Government has then or since done to 'explore' these issues. The answer is clearly nothing.

The Commonwealth Government supported only a handful of the 39 recommendations and those were on matters that were able to be accommodated within existing resources and required no additional funding, e.g. R. 28, 29. Very modest new funds were made available for R. 19 and R. 34: $100,000 for a one-off conference and $100,000 for memorials (split mechanically six ways regardless of the number of institutions in each State and the number of residents). These new funds were derisory in the overall context of the Senate Committee finding that more than 500,000 Australian children grew up in Australian institutions in the period covered by the Committee's inquiry.

Even when the Commonwealth Government said it 'strongly' supported or supported a recommendation 'in principle', for the most part it inserted qualifications that neutered that support. For example, the 'strong support' for R 12,13, 21, and 'support' for R. 16, 22, 23 were diminished by the Government's reiteration that these were matters for others to consider.

3. The response of other governments

Since the *Forgotten Australians* Report was tabled (August 2004) and the then Commonwealth Government's response was issued (November 2005), it has become clear not only that the Commonwealth's response was inadequate but also that the responses of the States, churches and charities have been highly variable, lack coordination and result in lack of equity for 'Forgotten Australians'. Five key issues illustrate the problem.

3.1 Redress

Queensland, Tasmania and Western Australia have introduced redress schemes and South Australia is currently considering such a scheme. However, if you grew up in 'care' in NSW or Victoria you do not have – and will not have, as things stand - access to a redress scheme but must fight the authorities on a case-by-case basis in the courts. Not only is this manifestly difficult, and almost impossible for many, it is also unfair and unjust. A National scheme would have introduced some uniform protocols and ensured equitable treatment for 'Forgotten Australians' no matter where they grew up or now reside.

As a committee member of CLAN I have been asked by a member why he – abused as a child in a Victorian home - is unable to access the Tasmanian redress funds when his siblings who grew up in Tasmanian institutions are entitled. The answer is disappointingly obvious (but not acceptable to him or to me): he was not a resident in a Tasmanian home while his siblings were. Yet they were all abused. This case highlights yet again the need for a national coordinated approach to redress and to other related matters.

I have been part of CLAN delegations that have met with successive Victorian Ministers and with former Premier Bracks. The Government's unwavering position is that, notwithstanding a formal apology and acknowledgement of the harm that was done, they will not deal with compensation through a redress scheme but will continue to rely only on a 'case-by-case' basis. In reality, as a recent exchange of views in *The Age* demonstrate, the Government adopts a strenuously aggressive defence in almost all cases – demanding to know precise dates of sexual abuse and precise dates when the victim's injury began - thus adding to the trauma of childhood neglect and abuse. The Victorian Government says it has outlaid more than $4m on out-of-court settlements (all victims are bound by confidentiality agreements). In the light of the sums made available in States where redress schemes are available - WA $114m, Queensland $100m and Tasmania $75m – it is hard not to conclude that the Victorian Government's approach is designed cynically to save money.

In Victoria, the Salvation Army, the Anglican Church, Uniting Church and the Roman Catholic Church as well as Ballarat Child & Family Services and the Victorian Government have made individual compensation payments to an unknown number of victims of abuse and neglect always with a confidentiality clause which prevents care

leaver organisations getting a clear picture of the extent and nature of redress offered and accepted in Victoria. While the churches and charities at least acknowledge their obligations to the children once in their care, the State Government sits on its hands knowing the massive impediments that confront anyone trying to get their complaints heads in the courts.

Chief among these impediments and disincentives to pursuit of compensation are that most people with a legitimate grievance are not prepared to run the psychological gauntlet of protracted legal action – or can't afford it. The Government knows this to be the case.

The Victorian Government has done nothing to remove or diminish these impediments which (as well as the psychological barriers and high costs already mentioned) include:

- the Statute of Limitations and the historic nature of almost all complaints
- the difficulty of proving injury and liability through causation
- excessively technical interpretations of 'vicarious liability'
- the legal structuring of some churches so as to be immune from lawsuits.

3.2 Justice and closure in cases of abuse

Aside from monetary compensation issues, there is the important issue of criminal charges that should be laid against alleged paedophiles especially in those incidents where repeat and multiple allegations are made. At the moment in Victoria this is rendered most difficult by the system that requires complainants to tell their story first to the local police and then again to the appropriate Sexual Offences and Child Abuse unit. Not only is this a needlessly repetitive, traumatic and insensitive process, police sources concede that if a complaint is lodged in one city in Victoria and another person makes a similar complaint against the same alleged abuser in another city, it is largely a matter of chance whether the alleged offences are matched up and the full extent of the alleged abuse discovered. Yet corroboration can be crucial in obtaining a conviction. Having your story heard through a redress scheme is for many victims an act of closure, but having your tormenter brought to justice is equally important (if not more so for some victims) in closing that chapter of a traumatic childhood and life to date.

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

3.3 Apologies

Apologies have been issued by governments in Queensland (1999), Tasmania (2005), WA (2005), NSW (2005), Victoria (2006) and South Australia (in conjunction with the churches, 2008). These apologies have been issued with various degrees of grace. In NSW, for example, former State wards were bitterly disappointed with the wording and spirit of the apology which has been described as "superficial, succinct and without compassion" (Gregory Smith, 'The Harm Done: Towards Acknowledgment and Healing in New South Wales', The Bellingen Institute, 2007).

Notwithstanding the issuing of apologies, services for 'Forgotten Australians' have improved marginally in some jurisdictions but otherwise there has been inadequate response to the Report's findings and recommendations especially in NSW and Victoria. For example, the Victorian Government has not yet issued a formal response to the *Forgotten Australians* Report despite assurances to the Victorian Sector Working Party that it would do so. In 2005, the welfare sector established this Working Party to coordinate the responses of the community service organisations and to liaise with the Department of Human Services and CLAN and VANISH, but the achievements of the Working Party have been modest and hamstrung by the lack of an official position from the Victorian Government. CLAN has met with and made submissions to the Minister on a number of occasions but such has been the lack of response that CLAN members have resorted to conducting silent protests each month on the steps of Parliament House in Melbourne. This is degrading and humiliating for people in this age bracket (40s to 80s).

If anything, the minimalist response by the NSW Government is even worse than the Victorian response, leading CLAN members in NSW to make similar public protests at the lack of action.

3.4 Access to records

Many former wards are required to chase their files through several agencies that dealt with them as children. Government departments give no advice to applicants about what other sources of information about their families might be worth investigating (e.g. police, military records, electoral rolls). Departments continue to take a narrow, mechanistic approach to helping applicants piece together the stories of their lost childhoods.

FOI requests take much longer to process than the statutory period requires in almost all instances. I know of instances where it has taken eight or nine months in Victoria, for example where the required response time is 45 days. In one case that I know of in NSW it took over eight months.

In some instances mistakes have been made and incorrect information has been supplied to applicants. This is probably the result of too few staff dealing with increased numbers of applicants.

FOI rules about third party confidentiality (s31.1 of the FOI Act in Victoria) are inappropriate in many instances where for example siblings can't see documents because they mention other family members. I know of no instances where an applicant for a file has been told of their rights under s30.3 of the Victorian FOI Act under which if it is 'reasonable' to do so the DHS may contact a third party to see if they have objections to information about them being released to an applicant. The gatekeepers are more inclined to keep the doors locked than to open them up. In some instances, these guarded attitudes raise the question: why keep these records for so many years if the subjects of those records can't now access them to piece together the story of their childhood?

There are grave doubts that all instances where documents have 'disappeared' are legitimate. It is suspected that files have been culled to make it more difficult for former care leavers to take legal action. It is, of course, difficult to establish that culling takes place but evidence within files makes it clear that certain documents have not been handed over in some instances.

Rights of appeal are sometimes explained to applicants but more often than not the explanation does not set down the full set of rights, starting with appeal to the next senior officer moving through ultimately to tribunals and the courts.

Counselling is available to applicants as part of accessing their records but sometimes it is inappropriately applied. I have personally sat in a room with a DHS officer who said he was 'counselling' me while refusing to let me see any part of a file relating to my aunt (my mother's sister) who is probably long since dead. He refused to provide even the most basic information because although she was ward of state she was subsequently adopted and thus automatically the ward files were closed unless I could provide proof positive that I was next-of-kin. This was a preposterous circular impasse because unless he told me the name of the adoption family (which he said he was not authorised to do) I was unable to ascertain whether she survived childhood and had children who would be her next-of-kin.

To get access to records about members of my family, I have had to make applications to both the Victorian County Court (for adoption information) and the Victorian Supreme Court (for information about my grandparents' divorce) in my quest to put together the story of my family. The system at point-of-contact seems to have very little capacity or willingness to see the holistic need for former wards to reconnect with family, to repair damaged childhoods and help with identity issues. It is fixated in an individualistic paradigm of personal records in which the personal and family information belongs to the organisation rather to the person who grew up in care. This is a paternalistic and out-moded approach, but State governments and other record holders seem unwilling to change it in favour of helping people reconstruct their often traumatic childhoods.

A guide to Victorian records has been promised by DHS for four years – and we have been shown drafts - but it keeps getting put to one side because DHS officers are over-worked or re-assigned to other duties. There are also unresolved issues about

jurisdictional problems as between DHS and the Public Records Office of Victoria (PROV) and between PROV and the non-government sector.

Recent changes to rules about access to records which were very quietly introduced make it more difficult for people to put together their family's history. In particular, there is now a 100-year embargo on public access to birth certificates where previously the limit was 75 years. This makes it very difficult for Victorians to construct a family tree as part of their quest to understand their identity. FOI rules have not changed for the better as recommended in the *Forgotten Australians* Report.

We know that some providers when supplying photographs to former wards adopt the practice of blotting out the faces of peers in group photographs on the spurious grounds of protecting those people's privacy. This takes the notion of privacy to ridiculous lengths and has the effect of denying former inmates the opportunity to reminisce about their peers. By contrast, it is common practice for schools to display historic group photos in public places and to sell reproductions for fund-raising.

3.5 Services

It is clear that the responses of governments and agencies to the issues raised in the Report at Chapter 6 ('Life long impact of out of home care') and Chapter 10 ('Provision of services') have been not only tardy but also inadequate. The Victorian Government, for example, has finally allocated a small sum in the 2008-9 Victorian State Budget for a new service for 'Forgotten Australians' ($1 million for 2008-9 and funding of $2 million per year for the following three years). Many Victorian care leavers take a cynical view of this initiative – the total allocation of $7.1m over four years is pitiful when placed alongside the redress schemes of WA ($114m), Queensland ($100m) and Tasmania ($75m). Too little too late for many Victorians.

Since that announcement by the Victorian Government there has been a long period of consultations – unnecessary in many people's view because the needs were clearly identified in the Report back in 2004 (e.g. R. 20, 21, 22, 23,24, 25, 26, 27, 28, 29, 30, 31, 32, 33). Nonetheless, the consultations in Victoria have clearly demonstrated again that many care leavers favour the concept of establishing a care leavers card (in the style of a Gold Card) that would enable care leavers priority access to services, and would provide additional benefits, discounts or concessions to cover care leaver needs. It was suggested that priority or free access should be enabled in areas such as housing, medical and dental treatment, medication, legal assistance and accessing records. Other concessions included access to financial advisors, funeral expenses, fitness and dietary specialists, public transport and utility expenses.

In other words, the needs are huge and varied; and were properly identified by the Senate Committee's Report in 2004. But what is currently offered is minimal and difficult to access.

CLAN remains the only national body providing direct services to former institutionalised children across Australia. People who grew up in Victoria, for example, but who now live in Western Australia have great difficulties in accessing services from interstate. The same is true in regard to gaining access to their files and dealing with other life matters. It is of little benefit to a person now living in Tasmania but who grew up a church-based home in NSW and is now looking for help in reconstructing their lost childhood, to be told *'This is a matter for churches and agencies to consider.'* Especially when that institution and the church body that ran it no longer exist.

These were matters raised in the *Forgotten Australians* Report. R. 22 in particular advised the Commonwealth and State Governments and churches and agencies "…to 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…"

This Recommendation has not been implemented by the Commonwealth and only in piecemeal and *ad hoc* fashion (or not at all) by the States, churches and agencies. The Commonwealth's counter-action of funding a new body, the Alliance for Forgotten Australians (AFA), while commendable in stimulating much-needed discussion and advocacy at a national level, has not improved the daily lives of 'Forgotten Australians' but has deflected much needed funds from the only national organisation that provides direct services to former care leavers. AFA had no resources to tackle the day-to-day problems and cannot be expected to respond to individuals and groups in the way CLAN and other support groups have been doing. AFA is an excellent concept and should continue to be supported but it is not a substitute for CLAN and the other support groups which provide direct services to 'Forgotten Australians'.

In the light of the poor track record of conventional agencies in dealing with these matters which has led the nation to the state of 'shame for this country' it is important that an ongoing grant be made available to CLAN - the one organisation that has 'effectively reshaped the nation's history' – and to other organisations at the coal face.

What should the current Australian Government be advised to do now?

The issues raised in the *Forgotten Australians* Report are matters of national importance on which the Commonwealth must take a moral and a political lead bringing the States and non-government sector along with them in a national effort. The Australian Government's rejection of so many of the recommendations of the Report (especially the bold R. 6 on a national reparations scheme) represents a sadly missed opportunity. It is not too late for a more socially inclusive government to make amends and produce a more positive and productive response to a matter of 'national shame'.

The current Government's leadership on the development of a National Framework for Protecting Australia's Children is a model that may yield positive outcomes. In that project, the Commonwealth has engaged all State and Territory Governments in putting the Framework together, and has involved relevant non-government organisations, academics and research entities.

I recommend a five-point plan for action.

1. As indicated above, the three existing State redress schemes vary one to the other. We can learn from their experiences in generating a national approach. One other State is considering a redress scheme and the other two States have yet to act at all and are unwilling to review their position. A national scheme partly-funded by the States, churches and charities, but coordinated by the Commonwealth should be the current Government's top priority. Commonwealth leadership may cause the recalcitrant States to reconsider their negativity and lead to a more equitable situation across the nation.

2. A formal national apology in accordance with R. 1 of the Report. 'Forgotten Australians' rejoiced in the Prime Minister's apology in Parliament to the Stolen Generation. This was a noble and generous act on behalf of the people of Australia and was almost universally applauded throughout Australia and overseas. It would be a fitting next step if the Prime Minister could make a similar gesture to the 'Forgotten Australians' (who far outnumbered the Stolen Generation).

3. The responses of the previous government to the 39 recommendations should now be revised by the current Government such that it provides national leadership and makes a more meaningful Commonwealth contribution especially in coordinating responses across the States and the non-government sector.

4. In particular, the current government should re-visit all those recommendation where it was deemed that it had no jurisdiction and consider ways of working closely with the States, churches and charities so that it stimulates real action on the recommendations.

5. In the case of recommendations where the Commonwealth has jurisdiction it should strongly encourage if not require relevant agencies to develop implementation strategies without further delay and to report formally on measures of success.