

Appendix i

The Hon. John Brumby MP
Premier of Victoria
145A Wheatsheaf Rd
Glenroy 3046

Cherie Marian
PO Box 5097
Ringwood
Victoria, 3134

29th of August 2008,

Dear Sir,

RE COMPENSATION / REDRESS FOR ABUSE IN STATE 'CARE'

Thank you for the announcement of 7.1 million over four years in the 2007-2008 State Budget to establish a Care Leaver Service (CLS) in the state of Victoria. Such a service is long overdue and much needed.

Unfortunately, however, I note that provisions for the establishment of a redress scheme for survivors of abuse in care (AIC) have not been made. A Department of Human Services (DHS) promotional flier distributed as part of sector consultation for the establishment of the CLS states, that the service is '*specifically for people ... who grew up in care in Victoria, including those who may have experienced harm and abuse, particularly in the period between 1920 and the introduction of the Children and Young Person's Act in 1989.*'¹

Attached is my submission to the Victorian Sector Working Party for Forgotten Australian's (VSWPFA) which is hosted by the Centre For Excellence in Child and Family Welfare Victoria (CECFWV), the State peak body for non government organisations (NGO's) involved in the provision of institutional and out of home care, which in collaboration with DHS has undertaken sector consultation re development of the proposed CLS. *Justice for Victorian Care Leavers*² comments on the establishment of the CLS, and the lack of provisions for redress. It was written in consultation with solicitors in the private and community legal centre sectors, and Care Leaver Australia Network (CLAN) which is the national body representing the interests of care leavers. Also attached is a legal discussion paper on AIC written by Angela Sdrinis, an accredited personal injury solicitor with Ryan Carlisle and Thomas, who represents AIC clients.

¹ DHS, *Forgotten Australians: New Care Leaver Service*.

² Marian, C. *Justice for Victorian Survivors of Abuse in Care: a care leaver service is no substitute for a compensation / redress scheme*. Submission to Victorian Sector Working Party on Forgotten Australians, August 2008.

As you are aware, currently, hundreds of Victorian 'care' leavers are in the terrible position of having to relive their trauma through the courts in order to attempt to access compensation for AIC. Significant deterrents to civil actions brought by AIC survivors include limitation periods, burden of proof and causation issues, and the stress, expense, risk of costs and delays associated with the litigation process. It is for this reason that a redress scheme for AIC is required. The Victorian Government's failure to establish such a scheme is indefensible in light of the findings of the Inquiry into Children Institutional Care, which produced the *Forgotten Australians*³ report, from which the term 'Forgotten Australians' originated.

It is the view of the writer, the Federation of Community Legal Centres, Waller Legal, Ryan Carlisle Thomas, and CLAN that the provision of a CLS in no way absolves the State Government of responsibility for the establishment of a compensation / redress scheme for survivors of abuse in care. Survivors of abuse in care are victims of crime. As such they are entitled to a victim of crime program which is consistent with the Victims Charter Act 2006, and redress for harms suffered including loss of income as a result of AIC.

At the time of writing Western Australia, Queensland, and Tasmania have already established redress scheme's for AIC - and South Australia has signalled its clear intent to do so. The combined budgets of the 3 State schemes already implemented, is approximately 312 million. This, in comparison to the 7.1 million announced for a Victorian CLS, clearly highlights the inadequacy of your Government's response to these issues.

Responsibility for victim of crime issues should sit with the Department of Justice (DoJ), as per other victim of crime programs, not DHS. The writer calls upon the Premier to not only to establish a victim of crime program and redress scheme for all Victorian survivors of AIC, but to please do so via the appropriate Ministerial department (i.e. the DoJ).

An explanation of why this is important follows. The title of the report *It's Not Too Late To Care*⁴ recently released by the Centre for Excellence in Child and Family Welfare Victoria (CECFWV), is repugnant to care leavers, whose view is that it is indeed 'too late'. Unfathomable damage has already been done and most survivors of AIC want nothing further to do with perpetrator

³ Senate Community Affairs Reference Committee, *Forgotten Australians: A report on Australians who experienced institutional or out of home care as children*, August, 2004.

⁴ Raman, S., and Forbes, C., *It's Not Too Late To Care: report on the research into life outcomes for people bought up in institutional care in Victoria*, Centre For Excellence in Child and Family Welfare Victoria, 2008.

organisations such as DHS or the NGO's under whose watch AIC occurred. Indeed the CECFWV hosting an entity responsible for sector consultation re the development of the proposed CLS (i.e. the VSWPFA) is a gross violation of respect for survivors of AIC, whose interests cannot possibly be served by the State peak body for NGO's vicariously responsible for AIC having occurred in the first place. The possibility that perpetrator organisations may now position themselves as providers of services for AIC, thereby further exploiting care leavers who wish to have nothing further to do with them, is cause for great concern and rightful indignation amongst care leavers, many of whom still suffer physical injuries, anxiety disorders, post traumatic stress disorder and depression as a result of AIC. The development of a CLS which places AIC survivors in the position of having to return to perpetrator organisations for assistance, would exacerbate this range of mental health conditions, and only be accessed by the most 'needy' of care leavers. Many more would choose to forgo the option of such so called 'support', as a matter of principle.

I request that you please look into these matters with Deputy Premier Rob Hulls, and Minister for Community Services Lisa Neville, and seek your assurance that care leavers will not re-victimised by the proposed CLS being in any way shape or form associated with perpetrator organisations such as DHS or NGO's involved in the past or present provision of institutional or out of home care, or their representatives.

It is also requested that your Government raise the need for redress and victim of crime programs for AIC in all States and Territories at the Council of Australian Governments. In addition, a Federal Government apology to survivors of AIC should be sought.

In the Victorian case, it is important to recognise that care leaver disadvantage in all areas of life chances will not be remedied in one 4 year funding round. Issues such as homelessness, substance abuse, crime and poor mental health, all of which are consequences of abuse in care, are entrenched problems requiring long term solutions. Recurrent funding of the proposed CLS will be critical to the success of the service to remedy care leaver outcomes not only for past and current generations, but importantly, for those still to come.

It is also strongly recommended that any future sector consultation with regards to AIC be undertaken by an independent consulting firm in order to spare survivors of AIC the trauma of having to interact with perpetrator organisations vicariously responsible for AIC, or their

representatives such as the CECFWV or its subsidiaries, in order to articulate their needs in relation to AIC. The oversight of this in the first instance is an indication that whilst the development of a Victorian CLS may be well intentioned, the department and persons responsible for the structure of the current consultation process, have little if any comprehension of the scale of abuse which has occurred and its devastating impact on survivors, or of appropriate mechanisms for dealing with victims of crime.

Lastly, it would be more cost effective for Victoria to establish a redress scheme for survivors of AIC, than it will be to continue to fight cases on an individual 'case by case' basis through the courts, as the vast majority of AIC applicants are judgement barred. Given that in the end, the tab for expensive legal fees will be picked up by the State, let us stop the shenanigans of the current arrangement, and instead establish a redress scheme through which the State Government can take rightful responsibility for restitution to all Victorian survivors of AIC, and not just the few who are able to overcome the many obstacles to justice in the courts. Failure to do so will result in a vigorous campaign to bring these matters to the full attention of the voting public, who will no doubt be appalled by the State's negligence, and embarrassed by the lack of a redress scheme, particularly in light of the nature of AIC crimes (including illegal experimental drug trials, sexual and physical abuse), and the overwhelming evidence of the impact of these experiences on survivors of AIC, their families and wider society as documented in *Forgotten Australians*.

Given reports that the proposed CLS will be established in January 2009, I would appreciate a reply to these matters at your earliest convenience.

Regards,

Cherie Marian⁵
Redress Vic Advocate

⁵ The views expressed in this letter are solely the writers except where otherwise indicated.