The Senate

Legal and Constitutional Affairs References Committee

Review of Government Compensation Payments

December 2010

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RECOMMENDATIONS

Recommendation 1

2.90 The committee recommends that the Queensland, South Australian, Tasmanian and Western Australian Governments review their redress schemes relating to children in institutional care to ensure:

- **a consistent and transparent approach to the quantum of compensation provided;**
- **consistent eligibility criteria for redress which avoid arbitrarily excluding applications for compensation based on where abuse occurred; and**
- **the application and assessment process for compensation appropriately reflects the traumatic experiences of care leavers.**

Recommendation 2

2.91 The committee recommends that the Queensland and Western Australian Governments consider applications for redress from care leavers who were unaware of the redress schemes which operated in those states prior to the closing dates for applications.

Recommendation 3

2.94 The committee recommends that the New South Wales and Victorian Governments establish administrative schemes to provide redress to people who experienced abuse or neglect while in institutional or foster care in those states.

Recommendation 4

2.95 The committee recommends that the Australian Government pursue all available policy and political options, including through the Council of Australian Governments and other appropriate national forums, to ensure that:

- **New South Wales and Victoria establish redress schemes for people who suffered abuse or neglect in institutional or foster care in those states;**
- **Queensland and Western Australia make provision to ensure continued receipt of redress claims; and**
- **greater consistency between the criteria applied under state redress schemes is achieved.**

Recommendation 5

2.98 The committee recommends that the Australian Government examine whether people who were placed in institutional or foster care in the Northern Territory or the Australian Capital Territory, during the periods that the Commonwealth directly administered those territories, suffered similar abuse and neglect to children placed in care in other jurisdictions.

Recommendation 6

3.51 The committee recommends that the Australian Government review 'waiver of debt' provisions contained in social security legislation and consider amendments to that legislation where current provisions could cause unfair and unjust outcomes for welfare recipients.

Recommendation 7

3.53 The committee recommends that the Department of Finance and Deregulation investigate the extension, in appropriate circumstances, of the Compensation for Detriment caused by Defective Administration scheme to *Commonwealth Authorities and Corporations Act 1997* agencies and to third party providers performing functions or providing services on behalf of the Commonwealth.

CHAPTER 1

Introduction

1.1 On 4 February 2010, the Senate referred various matters relating to government compensation payments to the Legal and Constitutional Affairs References Committee (committee) for inquiry and report by 30 September 2010. This reference was amended on 18 March 2010 so that the Senate referred the following more specific issues to the committee for inquiry and report:

> The administration and effectiveness of current mechanisms used by federal and state and territory governments to provide discretionary payments in special circumstances, or to provide financial relief from amounts owing to governments, namely:
>
> (a) state statutory schemes relating to children in care;
>
> (b) payments made under 'defective administration' schemes, such as the Commonwealth Scheme for Compensation for Detriment caused by Defective Administration;
>
> (c) act of grace and ex gratia payments; and
>
> (d) waiver of debt schemes.

1.2 On 23 July 2010, the committee tabled an interim report which stated that, as a result of the prorogation of the 42nd Parliament and the need to thoroughly consider the evidence received, the committee intended to table its final report as soon as practicable. The inquiry lapsed on 26 September 2010, the eve of the 43rd Parliament and, on 30 September 2010, the Senate re-referred the inquiry to the committee with a reporting date of 24 November 2010. The Senate subsequently agreed to extend this reporting date to 6 December 2010.

Background

1.3 The terms of reference raise matters which have been the subject of previous national and state inquiries, as well as litigation. From the outset the committee indicated that, due to previous opportunities for detailed consideration of issues by several Senate committees in relation to the Forgotten Australians, the Stolen Generations and Indigenous Stolen Wages, the primary focus of the current inquiry would be a legal, principles-based comparison between relevant payment schemes relating to children in care and other government schemes providing for discretionary payments.[1]

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1 See, for example, the committee's website at http://www.aph.gov.au/Senate/committee/legcon_ctte/govt_comp/info.htm.

Previous national inquiries regarding children in care

1.4 In particular, several national inquiries have examined the treatment of people who, as children, were taken into institutional care during the last century. These inquiries have recommended that such people receive some form of redress or compensation.

Stolen Generations[2]

1.5 In 1997, the then Human Rights and Equal Opportunity Commission (HREOC) tabled the report on its national inquiry into the separation of Indigenous children from their families: the *Bringing them home* report.[3] The report recommended that reparation be made to individuals who were forcibly removed as children, as well as their families, communities and descendants.[4]

1.6 The Senate Legal and Constitutional Affairs References Committee conducted an inquiry in 1999-2000 which focussed on implementation by the Australian Government of the recommendations in the *Bringing them home* report. The committee's report, *Healing: A Legacy of Generations*, was tabled in November 2000.[5] The committee recommended the establishment of a 'reparations tribunal' to address the need for an effective process of reparation, including the provision of individual monetary compensation.[6] In June 2001, the Howard Government tabled a response to the committee's report in which it stated that it did not support this recommendation.[7]

1.7 On 14 February 2008, the Stolen Generation Compensation Bill 2008, a private senator's bill, was introduced into the Senate by former Senator Andrew Bartlett. The bill proposed the establishment of a scheme to provide ex gratia[8]

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2 The term ‘Stolen Generations’ refers to Indigenous people who, as children, were forcibly removed from their families and placed in institutions, foster homes or adoptive families. These removals occurred under government policies which were in place from the mid-nineteenth century until the 1970’s.

3 HREOC, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families,* April 1997.

4 HREOC, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families,* April 1997, recommendations 3 and 4, pp 282-283.

5 Senate Legal and Constitutional References Committee, *Healing: A Legacy of Generations*: *The Report of the Inquiry into the Federal Government's Implementation of Recommendations Made by the Human Rights and Equal Opportunity Commission in Bringing Them Home*, November 2000.

6 Senate Legal and Constitutional References Committee, *Healing: A Legacy of Generations,* recommendations 7 to 9, pp 260-261.

7 Senator the Hon Ian Campbell, Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts, *Senate Hansard*, 28 June 2001, p. 25401.

8 ‘Ex gratia’ literally means ‘as a favour’. In legal terms, an ex gratia payment refers to one which is made when there is no legal obligation to make the payment.

payments to Indigenous people who were removed from their families as children and to descendants of deceased members of the Stolen Generations. In June 2008, the Senate Legal and Constitutional Affairs Committee tabled a report on the bill, recommending that the bill not proceed in its present form.[9] The Rudd Government's response to this report reiterated the position that the Australian Government would not be providing compensation to members of the Stolen Generations.[10]

1.8 On 30 September 2010, the Greens introduced into the Senate the Stolen Generations Reparations Tribunal Bill 2010. The Bill would establish a Stolen Generations Reparations Tribunal to provide a process for members of the Stolen Generations to receive reparation and/or an ex gratia payment by way of redressing the historical injustice of the forcible removal of Aboriginal and Torres Strait Islander people from their families.[11]

Child migrants

1.9 During 2000 and 2001, the Senate Community Affairs References Committee (the Community Affairs References Committee) conducted an inquiry into child migration to Australia during the 20th century. In August 2001, that committee tabled the *Lost Innocents* report which included recommendations aimed at providing support and redress to former child migrants.[12]

Children in institutional care

1.10 As a result of evidence received during the child migration inquiry, the Community Affairs References Committee subsequently examined the treatment of Australians who experienced institutional or out-of-home care as children, primarily between the 1920's and the 1970's. The committee tabled the report on this inquiry, the *Forgotten Australians* report, in August 2004.[13] Among many other recommendations, the *Forgotten Australians* report recommended that the Australian Government establish and manage a national reparations fund for victims of abuse in institutions and out-of-home care settings.[14]

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9 Senate Legal and Constitutional Affairs Committee, *Report on the Stolen Generation Compensation Bill 2008*, June 2008, recommendation 1, pp 47-48.

10 Australian Government, *Government Response to Senate Standing Committee on Legal and Constitutional Affairs Report: Stolen Generation Compensation Bill 2008,* December 2009, at: http://www.aph.gov.au/Senate/committee/legcon_ctte/stolen_generation_compenation/gov_response/gov_response.pdf (accessed 7 April 2010), p. 4.

11 *Journals of the Senate*, No. 3, 30 September 2010, p. 114.

12 Senate Community Affairs Committee, *Lost Innocents: Righting the Record - Report on child migration*, August 2001, recommendations 5, 18-22, 27, 30-32, pp xv-xix.

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

14 Senate Community Affairs Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children,* August 2004, recommendation 6, pp 226-228.

1.11 The Australian Government did not support this recommendation. The government's response to the recommendation stated:

> The Government deeply regrets the pain and suffering experienced by children in institutional care but is of the view that all reparations for victims rests with those who managed or funded the institutions, namely state and territory governments, charitable organisations and churches. It is for them to consider whether compensation is appropriate and how it should be administered, taking into account the situation of people who have moved interstate.[15]

1.12 In June 2009, the Senate Community Affairs Committee tabled the *Lost Innocents and Forgotten Australians Revisited* report which examined the implementation of the recommendations of the *Forgotten Australians* and *Lost Innocents* reports.[16] The Community Affairs Committee outlined the redress schemes which had been established in Queensland, Western Australia and Tasmania to provide compensation to people who suffered neglect or abuse in institutional care, and recommended that the Australian Government pursue all available policy and political options to ensure that South Australia, New South Wales and Victoria establish similar redress schemes.[17]

Apologies

1.13 In February 2008, the Federal Parliament formally apologised to members of the Stolen Generations.[18] In November 2009, a national apology was made to the Forgotten Australians and former child migrants.[19]

Previous state inquiries regarding children in care

1.14 In addition to these national inquiries, there have been various state specific inquiries.

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15 Australian Government, *Response to Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, tabled in the Senate on 10 November 2005, p. 6. See also Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 167*, p. 2.

16 Senate Community Affairs Committee, *Lost Innocents and Forgotten Australians Revisited: Report on the progress with the implementation of the recommendations of the Lost Innocents and Forgotten Australians Reports*, June 2009.

17 Senate Community Affairs Committee, *Lost Innocents and Forgotten Australians Revisited: Report on the progress with the implementation of the recommendations of the Lost Innocents and Forgotten Australians Reports*, June 2009, recommendations 4 and 5, pp 35-56 and 212-215.

18 House of Representatives, *Votes and Proceedings*, No. 9, 11 March 2008, p. 134; Senate, *Journals of the Senate*, No. 3, 14 February 2008, p. 158.

19 House of Representatives, *Votes and Proceedings*, No. 137, 26 November 2009, p. 1533; Senate, *Journals of the Senate*, No. 97, 16 November 2009, pp 2701-2702.

Forde inquiry – Queensland

1.15 The Forde commission of inquiry into abuse of children in Queensland institutions reported in August 1999 (the Forde report) and found:

> Over the years significant numbers of children in the care of the State in government and non-government institutions have been subjected to repeated physical, emotional and sexual abuse.[20]

1.16 The Forde report recommended:

> That the Queensland Government and responsible religious authorities establish principles of compensation in dialogue with victims of institutional abuse and strike a balance between individual monetary compensation and provision of services.[21]

1.17 In 2000, in response to this recommendation, the Queensland Government established a charitable trust, known as the Forde Foundation. The trust makes grants to people who were in state care in Queensland to help them overcome the disadvantages they now experience as a result of childhood treatment in relation to their education, employment, health and general well-being. The Forde Foundation has received a total of $4.15 million from the Queensland Government and has provided grants for dental and health treatment, education and training, furniture and white goods, and family reunion costs.[22]

Mullighan inquiry – South Australia

1.18 In November 2004, the South Australian Parliament established a commission of inquiry, with narrow terms of reference, to examine sexual abuse of children in state care and any criminal conduct resulting in the death of such children (the Mullighan inquiry).[23] The final report of the Mullighan inquiry was presented in

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20 Commission of Inquiry into Abuse of Children in Queensland Institutions, *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions,* August 1999, at: www.communityservices.qld.gov.au/community/redress-scheme/publications.html (accessed 30 March 2010), p. xii.

21 Commission of Inquiry into Abuse of Children in Queensland Institutions, *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions,* recommendation 39, p. 288.

22 The Forde Foundation, *Forde Facts*, at: www.fordefoundation.org.au/forde_facts.html (accessed 13 April 2010); Department of Communities (QLD), *Forde Foundation Review 2008: Summary*, at: www.fordefoundation.org.au/documents/Forde%20Foundation%20Review%20Summary-final%20copy-web%20page.pdf (accessed 13 April 2010), p. 1; Forde Foundation Board of Advice, *Submission 130*.

23 Schedule 1 of the *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004 (SA);* Dr Coral Dow and Janet Phillips, *'Forgotten Australians' and 'Lost Innocents': Child Migrants and children in institutional care in Australia*, Parliamentary Background Note, 11 November 2009, at: www.aph.gov.au/library/pubs/BN/sp/ChildMigrants.htm (accessed 31 March 2010), p. 9.

March 2008.[24] In total, the inquiry received allegations of sexual abuse relating to over 1,200 individuals.[25] The inquiry found that 242 of those individuals were children in state care in South Australia at the time of the alleged abuse (that is between the 1940's and 2004).[26]

1.19 The inquiry made recommendations in relation to redress and support for individuals who were sexually abused while they were children in state care, including that a task force be established:

(a) to examine the redress schemes established for victims of child sexual abuse in other Australian jurisdictions;

(b) to receive submissions from individuals and organisations on the issue of redress; and

(c) to investigate the possibilities of a national approach to the provision of services to victims.[27]

Litigation

1.20 The *Forgotten Australians* report by the Senate Community Affairs References Committee examined in some detail the difficulties care leavers confront if they seek to pursue compensation through civil litigation for the abuse or neglect they suffered while in care.[28] These difficulties include:

(a) statutes of limitations;

(b) identifying an appropriate respondent (especially if the organisation operating the institution was not incorporated);

(c) proving liability; and

(d) the cost of litigating.[29]

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24 Children in State Care Commission of Inquiry South Australia, *Report of Children in State Care Commission of Inquiry: Allegations of sexual abuse and death from criminal conduct,* March 2008, at: www.agd.sa.gov.au/resources/publications/Mullighan%20Inquiry%20in%20Children%20in%20State%20Care.pdf (accessed 31 March 2010).

25 Children in State Care Commission of Inquiry South Australia, *Report of Children in State Care Commission of Inquiry,* p. 24.

26 Children in State Care Commission of Inquiry South Australia, *Report of Children in State Care Commission of Inquiry,* pp xi and 24.

27 Children in State Care Commission of Inquiry South Australia, *Report of Children in State Care Commission of Inquiry,* recommendation 40, pp xix, xxx and 447-449. See also recommendations 37 to 39, p. xxix.

28 The term 'care leaver' refers to a person who was in institutional care or another form of out-of-home care, including foster care, as a child or youth, at some time during the 20th century. Some submitters to the inquiry have used the term 'Forgotten Australians' to refer to the same group. See also Mr Frank Golding, *Submission 102,* p. 1.

29 Senate Community Affairs Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children,* August 2004, pp 199-210 and 212.

1.21 Although there have been cases where compensation claims have been unsuccessful,[30] there have been cases in which religious groups or state governments have been sued by people who were in their care which have resulted in awards of damages or out of court settlements.[31]

Conduct of this inquiry

1.22 The committee advertised the inquiry fortnightly in *The Australian* from 24 March 2010 to 2 June 2010. Submissions were invited by 30 July 2010 but submissions continued to be accepted after that date. Details of the inquiry and associated documents were placed on the committee's website. The committee also wrote to 49 organisations and individuals inviting submissions.

1.23 The committee received 185 submissions from various individuals and organisations, and these are listed at Appendix 3. Due to the sensitive nature of the children in care aspect of the inquiry, the committee determined that certain submissions would be published with the name of the submitter(s) withheld and/or with particular information removed. A number of submissions were also accepted as confidential submissions and were not published. All public submissions were published on the committee's website.

1.24 Public hearings were held in Canberra on 29 October 2010, in Sydney on 2 November 2010 and in Melbourne on 3 November 2010. A list of witnesses who appeared at the hearings is at Appendix 4, and copies of the *Hansard* transcripts are available at http://aph.gov.au/hansard.

Scope of this report

1.25 The structure of this report is as follows:

- Chapter 2 discusses the existing state redress schemes, and considers evidence the committee received in relation to state redress schemes for former children in care; and
- Chapter 3 provides an overview of other mechanisms for making discretionary payments or waiving debts, and considers issues raised in evidence about these compensation mechanisms.

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30 See, for example, Ms Lily Arthur, *Submission 14*; *Arthur v State of Queensland* [2004] QSC 456.

31 Senate Community Affairs Committee, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children,* August 2004, pp 200-201. See also Origins Inc, *Submission 22*, pp 2-3; Mr Brian Cherrie, *Submission 26;* Mr Daryl Miechel, *Submission 43*, p. 4; Ms Angela Sdrinis*, Submission 75,* p. 10*;* Mr Brian Woods, *Submission 78,* p. 1*; Submission 85* (name withheld), p. 1.

Acknowledgement

1.26 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearings.

Note on references

1.27 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the *Committee Hansard* are to the proof *Hansard*: page numbers may vary between the proof and the official *Hansard* transcript.

CHAPTER 2

State redress schemes

Introduction

2.1 This chapter discusses the existing state redress schemes, as well as some comparable international redress schemes. It also considers the evidence the committee received in relation to state redress schemes for former children in care.

State schemes relating to children in care

2.2 Tasmania, Queensland, Western Australia and South Australia have established schemes to provide redress to people who were neglected or abused while they were children in care. The Senate Community Affairs Committee has noted that some inequity arises from the variable terms of state schemes with respect to eligibility requirements, methods of determining compensation and levels of compensation.[1] The schemes also vary in whether claims must be lodged by a particular date and whether claimants must sign a deed of release indemnifying the state in relation to claims they may have with respect to the abuse they suffered while in state care. Some have queried whether the schemes provide appropriate redress to claimants, particularly where claimants are required to trade-off their potential legal rights to compensation in exchange for an ex gratia payment.[2]

2.3 A table providing a brief comparison of the existing state schemes is contained in Appendix 1 to this report.

Tasmania

2.4 Tasmania was the first state to establish a redress scheme. In June 2003, the Tasmanian Government asked the Tasmanian Ombudsman to conduct an independent review of claims by adults who suffered abuse while they were children in state care. Six weeks after the review commenced, the Tasmanian Premier, the Hon Jim Bacon MP, announced that ex gratia payments of up to $60,000 would be made to provide some redress to eligible claimants. The Premier also appointed Mr Peter Cranswick QC as an independent assessor to review claims and determine the amount of ex gratia payments.[3] In order to receive an ex gratia payment applicants were required to

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1 Senate Community Affairs Committee, *Lost Innocents and Forgotten Australians Revisited,* June 2009, pp 51-55 and 213.

2 For example, see Dr Stephen Winter, 'Australia's *Ex Gratia* Redress', *Australian Indigenous Law Review*, Vol. 13(1), 2009, pp 49-61.

3 Tasmanian Ombudsman, *Review of claims of abuse from adults in State care as children: Final Report – Phase 2*, June 2006 at: www.ombudsman.tas.gov.au/__data/assets/pdf_file/0005/64499/Final_Report_Phase_2_-_Version_2_-_060620.pdf (accessed 31 March 2010), p. 1.

indemnify the state against all current and future claims arising from the applicant's abuse in care.[4]

2.5 In addition to the ex gratia payments, the Tasmanian Ombudsman made recommendations to the Tasmanian Department of Health and Human Services for individual reparation which generally related to requests from claimants for:

(a) an apology;

(b) an official acknowledgement that the alleged abuse most likely occurred;

(c) an assurance that today's system prevents the sort of abuse they have suffered;

(d) guided access to personal departmental files; and

(e) professional counselling.[5]

2.6 The Ombudsman presented an initial report in November 2004 which recommended that the government continue to receive claims.[6] This recommendation was accepted and a statistical report on phase 2 of the process was presented in June 2006.[7] The Ombudsman reported that by the conclusion of phase 2 in June 2006, a total of 878 claims had been received, with 670 accepted as eligible.[8]

2.7 The Tasmanian Government has since announced that the scheme will be open-ended with new claims eligible for payments of up to $35,000. By November 2009, over 1,800 claims had been considered and ex gratia payments of over $37 million had been made.[9]

Queensland

2.8 In May 2007, the Queensland Government established a redress scheme with funding of up to $100 million.[10] The scheme provided for ex gratia payments of

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4 Dr Stephen Winter, 'Australia's *Ex Gratia* Redress', *Australian Indigenous Law Review*, Vol. 13(1), 2009, p. 51.

5 Tasmanian Ombudsman, *Listen to the Children*: *Review of Claims of Abuse from Adults in State Care as Children*, November 2004 at: www.ombudsman.tas.gov.au/publications (accessed 31 March 2010), p. 3.

6 Tasmanian Ombudsman, *Listen to the Children*: *Review of Claims of Abuse from Adults in State Care as Children*, pp 34 and 39.

7 Tasmanian Ombudsman, *Review of claims of abuse from adults in State care as children: Final Report – Phase 2*, June 2006.

8 Tasmanian Ombudsman, *Review of claims of abuse from adults in State care as children: Final Report – Phase 2*, June 2006, p. 1.

9 Minister for Human Service (TAS), 'Tasmania at Forefront of Addressing Abuse in State Care', *Media Release*, 16 November 2009, at: www.media.tas.gov.au/print.php?id=28420 (accessed 31 March 2010), p. 1.

10 Department of Communities (QLD), *About the Redress Scheme*, at: www.communityservices.qld.gov.au/community/redress-scheme/about-scheme.html (accessed 30 March 2010); Queensland Government, *Submission 168*, p. 10.

between $7,000 and $40,000, and was open to applications for a limited period. The scheme provided for two levels of payment. Level 1 payments of $7,000 were offered to applicants who:

(a) were placed in a detention centre or licensed government or non-government children's institution in Queensland covered by the terms of reference of the Forde Inquiry; and

(b) had been released from care, and had turned 18 years of age on or before 31 December 1999; and

(c) had experienced institutional abuse or neglect.[11]

2.9 An additional level 2 payment of up to $33,000 was made to applicants who suffered more serious abuse or neglect.[12]

2.10 Applicants were required to sign a deed of release which prevents them from making a further claim against the Queensland Government in relation to their abuse or neglect.[13] The scheme did not apply to people who experienced abuse or neglect while in foster care or in institutions which did not fall within the scope of the Forde Inquiry (such as adult mental asylums).[14]

2.11 The scheme received over 10,200 applications between 1 October 2007 and 30 September 2008 (the closing date of the scheme). Of these, over 7,400 were assessed as eligible for a level 1 payment. Approximately 3,500 applicants were offered an additional level 2 payment, ranging from $6,000 to $33,000.[15]

Western Australia

2.12 On 17 December 2007, the Western Australian Government announced the establishment of the $114 million Redress WA Scheme to provide adults who, as children, were abused or neglected in state care in Western Australia. The Redress WA Scheme includes access to counselling services, an ex gratia payments and an

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11 Department of Communities (QLD), *Redress Scheme application guidelines: About the Redress Scheme*, June 2008, at: www.communityservices.qld.gov.au/community/redress-scheme/documents/redress-application-guidelines.pdf (accessed 12 April 2010) pp 2 and 3; Queensland Government, *Submission 168*, p. 11.

12 Department of Communities (QLD), *Redress Scheme application guidelines*, p. 2; Queensland Government, *Submission 168*, p. 10.

13 Department of Communities (QLD), *Redress Scheme application guidelines*, p. 2.

14 Department of Communities (QLD), *Redress Scheme application guidelines*, p. 3; Ms Angela Sdrinis, *Submission 75*, p. 5.

15 Department of Communities (QLD), *Redress statistics*, at: www.communityservices.qld.gov.au/community/redress-scheme/update.html (accessed 30 March 2010); Queensland Government, *Submission 168*, p. 13.

apology.[16] Initially, the maximum payment under the scheme was to be $80,000 but that was subsequently reduced to $45,000.[17]

2.13 Application for a payment under the scheme can relate to harm caused by sexual, physical or emotional abuse, or neglect.[18] Applications are assessed to determine the level of abuse or neglect the claimant suffered and are categorised as either moderate, serious, severe or very severe abuse or neglect.[19] The scheme includes people who suffered abuse or neglect in foster care as well as those placed in institutions. There is provision under the scheme for interim payments, of up to $10,000, to be made to eligible applicants who have a terminal illness, prior to a final offer to the applicant.[20] Applications to the scheme had to be received by 30 April 2009.[21]

2.14 In February 2010, the Western Australian Government made the first offers of ex gratia payments to 100 applicants under the scheme, ranging from $5,000 to $45,000. The recipients of ex gratia payments are not required to waive their rights to seek further legal redress when accepting an ex gratia payment.[22] By June 2010, Redress WA had paid over $13 million to eligible applicants.[23]

South Australia

2.15 In November 2009, the South Australian Government indicated that it would consider making ex gratia payments to people who suffered sexual abuse as a child

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16 Department for Communities (WA), *About Redress*, at: www.communities.wa.gov.au/Services/Redress/aboutredress/Pages/default.aspx (accessed 30 March 2010).

17 Ms Angela Sdrinis, *Submission 75*, p. 5.

18 Government of Western Australia, *Redress WA Guidelines*, 15 February 2010, at: http://www.communities.wa.gov.au/Services/Redress/Documents/4760%20Final%20version%20of%20Redress%20WA%20Guidelines-100217.pdf (accessed 6 April 2010), p. 13.

19 Government of Western Australia, *Redress WA Guidelines*, pp 18 and 39.

20 Government of Western Australia, *Redress WA Guidelines*, p. 26.

21 Government of Western Australia, *Redress WA Guidelines*, p. 14. There was provision to extend this to 30 June 2009 where a person had indicated an intention to lodge an application by 30 April 2009.

22 Minister for Community Services, 'Start of Redress WA ex-gratia payment offers', *Media Statement*, 17 February 2010, at: www.communities.wa.gov.au/Services/Redress/Documents/redresswaexgratiamcs100217.pdf (accessed 30 March 2010).

23 Government of Western Australia, *Redress WA Newsletter*, No. 4, July 2010, at: www.communities.wa.gov.au/Services/Redress/Documents/DPC16690_4TH%20EDITION_1-4.pdf (accessed 17 November 2010), p. 1.

while in state care.[24] There is currently no closing date for this scheme.[25] The amounts of the payments will vary and are discretionary, however:

> ...money will be offered according to the severity of the sexual abuse. For example, a person who establishes that they have suffered serious and lasting harm from sexual abuse whilst in State care may receive up to $30,000. In exceptional circumstances, where extreme sexual abuse has occurred, a total of up to $50,000 may be granted by the Attorney-General.[26]

2.16 Applicants must sign a deed of settlement and release in order to receive a payment. Under the deed, applicants indemnify the state from claims arising from 'abuse of any kind' while in state care. The Victims of Crime Fund will pay applicants who wish to obtain legal advice in relation to the deed (up to $750 to meet the cost of legal fees).[27]

2.17 The statutory basis of this scheme is section 31 of the *Victims of Crime Act 2001* (SA) which provides that the Attorney-General has an absolute discretion to make payments from the Victims of Crime Fund to, or for the benefit of, victims of crime in order to help them to recover from the effects of crime or advance their interests in other ways.[28] A decision by the Attorney-General under section 31 is not reviewable.[29]

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24 Minister for Family and Communities (SA), *First Annual Report to the Children in State Care Commission of Inquiry Report: Allegations of Sexual Abuse and Death from Criminal Conduct*, November 2009, at: www.sa.gov.au/upload/franchise/Crime,%20justice%20and%20the%20law/Mullighan_Inquiry/ANNUAL%20REPORT%20NOVEMBER%202009.pdf (accessed 5 April 2010), p. 73.

25 Attorney-General's Department (SA), *Application Guidelines: For ex gratia payments for former residents in state care who experienced sexual abuse as children,* 2010, at: www.agd.sa.gov.au/pdfs/CISC%20-%20Application%20Guidelines%20(29-1-10).pdf (accessed 31 March 2010) p. 1.

26 Attorney-General's Department (SA), *Application Guidelines: For ex gratia payments for former residents in state care who experienced sexual abuse as children,* p. 2.

27 Attorney-General's Department (SA), *Application Guidelines: For ex gratia payments for former residents in state care who experienced sexual abuse as children,* p. 6.

28 Subsection 31(2) of the *Victims of Crime Act 2001* (SA). Other states and territories also have legislation providing for compensation for victims of crime. Some care leavers have applied for compensation under this legislation. See for example *Victims of Crime (Financial Assistance) Act 1983* (ACT); *Victims Support and Rehabilitation Act 1996* (NSW); *Victims of Crime Assistance Act* (NT)*; Victims of Crime Assistance Act 1996* (Vic)*;* Ms Angela Sdrinis, *Submission 75,* p. 9; Ms Cherie Marian, *Submission 93*, p. 5; *Submission 138* (name withheld), p. 2.

29 Subsection 31(3) of the *Victims of Crime Act 2001* (SA).

New South Wales and Victoria

2.18 The New South Wales and Victorian Governments have indicated that they will not establish redress schemes.[30] However, the Victorian Government has stated that it will deal with abuse claims on a case-by-case basis.[31] The Senate Community Affairs Committee received evidence in November 2008 that the Victorian Government has spent over $4 million on out-of-court settlement of claims, with some claimants receiving 'very low six-figure sums'.[32]

2.19 Similarly, in April 2009, the New South Wales Government gave evidence to the Community Affairs Committee that:

> New South Wales claims for compensation in relation to abuse in care are assessed on a case-by-case basis. The department makes a determination based on the available evidence. If a legal liability is considered to exist, the claim may be settled. Claimants may also have the option of filing a suit against the Department of Community Services. In addition, there may also be entitlement to make a claim under the victims of crime compensation in New South Wales.[33]

Northern Territory and Australian Capital Territory

2.20 There is no redress scheme for people who experienced abuse or neglect while in institutional care in the Northern Territory or the Australian Capital Territory. In commenting on its progress towards implementations of the recommendations of the Senate Community Affairs Committee's *Forgotten Australians* report, the Australian Capital Territory Government noted that 'self government was established in 1988 and previously, responsibility for the protection of children was a Commonwealth responsibility'.[34]

2.21 In evidence to the current inquiry, the Department of Families, Housing, Community Services and Indigenous Affairs suggested that there is a lack of evidence regarding the experience of children in institutional care in the Northern Territory:

> The Senate Community Affairs References Committee did not report any evidence of institutions in the Northern Territory during their Inquiry...

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30 Dr Coral Dow and Janet Phillips, '*Forgotten Australians' and 'Lost Innocents': Child Migrants and children in institutional care in Australia*, Background Note, November 2009, at http://www.aph.gov.au/library/pubs/bn/sp/ChildMigrants.pdf (accessed 25 November 2010), p.7.

31 Dr Coral Dow and Janet Phillips, *'Forgotten Australians' and 'Lost Innocents': Child Migrants and children in institutional care in Australia*, Background Note, November 2009, p. 10.

32 Senate Community Affairs Committee, *Lost Innocents and Forgotten Australians Revisited,* June 2009, p. 43.

33 Senate Community Affairs Committee, *Lost Innocents and Forgotten Australians Revisited,* June 2009, p. 37.

34 Senate Community Affairs Committee, *Lost Innocents and Forgotten Australians*, June 2009, ACT Government, *Submission 19*, p. 3.

> Further, available evidence as provided by the Northern Territory Government...is that no British child migrants were placed in the Northern Territory.
>
> Forgotten Australians and former child migrants who are now residents in the Northern Territory but were in institutional care in other states are, generally, able to access relevant services and redress schemes in the states where they were in care.[35]

2.22 However, the committee notes that the *Bringing them home* report includes material which suggests that the treatment of children in care in the Northern Territory from the late nineteenth century until the 1980's was similar to that of children in care in other jurisdictions.[36]

Other state and international redress schemes

2.23 In addition to redress schemes relating to children in care, Queensland, Tasmania and New South Wales have established redress schemes with respect to the historical treatment of Indigenous people in those states. However, the Tasmanian Government is the only Australian government to have paid specific compensation to Indigenous people affected by policies of forced separation.[37]

2.24 It should also be noted that some international jurisdictions have established compensation schemes which are analogous to the Australian state government redress schemes relating to children in care. In particular, schemes have been established in Canada and Ireland to provide redress to people who were placed in institutional care as children.[38]

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35 Department of Families, Housing, Community Services and Indigenous Affairs, *answer to question on notice*, 29 October 2010 (received 16 November 2010), p. 1.

36 HREOC, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families,* April 1997, pp 99, 117-129, 134 and 138.

37 *Stolen Generations of Aboriginal Children Act 2006* (Tas); Department of Premier and Cabinet (Tas), *Report of the Stolen Generations Assessor: Stolen Generations of Aboriginal Children Act 2006,* February 2008, at: www.dpac.tas.gov.au/__data/assets/pdf_file/0004/53770/Stolen_Generations_Assessor_final_report.pdf (accessed 8 April 2010).

38 Indian and Northern Affairs Canada, Government of Canada, *Indian Residential Schools - Frequently Asked Questions website*, at: www.ainc-inac.gc.ca/ai/rqpi/faq-eng.asp (accessed 12 May 2010); *Indian Residential Schools Settlement Agreement,* May 2006, www.residentialschoolsettlement.ca/Schedule_D-IAP.PDF (accessed 17 November 2010); Residential Institutions Redress Board, *A Guide to the Redress Scheme under the Residential Institutions Redress Act, 2002 as amended by the Commission to Inquire into Child Abuse (Amendment) Act, 2005*, December 2005, at: www.rirb.ie/application.asp (accessed 31 May 2010); Ms Angela Sdrinis, *Submission 75*, pp 2-3.

Redress for children in institutional care

2.25 Evidence received by the committee during this inquiry raised a number of concerns about existing state redress schemes relating to former children in care, as well as in relation to states which are yet to establish schemes.

2.26 Many submissions to the inquiry focused on the individual experiences of people who were children in care and, in particular, the continuing effect on their lives of the abuse and neglect they suffered while in care.[39]

Problems with existing state redress schemes

2.27 Many submissions were critical of existing state schemes which were established to provide redress to care leavers. In particular, there was criticism of:

(a) the time limits for making claims;

(b) the quantum of compensation available under the schemes;

(c) the limits on eligibility for compensation; and

(d) the application process.

Time limits on claims

2.28 Some submitters stated that they were unaware of the existence of state compensation schemes under which they were eligible prior to the closing date of the relevant scheme. This appears to have been a particular difficulty with the Queensland redress scheme.[40] Ms Leonie Sheedy of Care Leavers Australia Network (CLAN) also provided a specific example of a member of that organisation who was unaware of the Western Australian redress scheme until after the closing date for applications:

> One of our members is 88. She lives in Eurobodalla down near Bega and she did not know anything about the Western Australian redress scheme. The scheme had closed by the time she found out. We wrote a letter to the Premier, Colin Barnett, to ask whether they would accept a late application on behalf of Flo Hickson and they declined.[41]

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39 See, for example, Mr Brian Baker, *Submission 6*; Mrs Maria Starcevic, *Submission 11*; *Submission 30* (name withheld), pp 2-5; *Submission 31* (name withheld); *Submission 38 (*name withheld), pp 2-3; *Submission 40* (name withheld); Mr Stephen Sams, *Submission 61;* Ms Heather Templeman, *Submission 82;* Mr Bruce R. Hubbard, *Submission 99;* Mr William Baker, *Submission 100*; Ms Judith Mitchell, *Submission 101; Submission 107* (name withheld); *Submission 111* (name withheld); Mrs Margaret Hart, *Submission 115; Submission 122* (name withheld); *Submission 128* (name withheld), p. 1; Ms Diane Witchard, *Submission 146*.

40 Mr Maurice Vickers, Submission 1, pp 1-2; Ms Christine Waite, *Submission 3*, p. 1; *Confidential Submission 19;* Origins Inc, *Submission 22,* p. 3; *Confidential Submission 25.* See also *Submission 86* (name withheld), p. 8; *Submission 91* (name withheld), p. 1; Mr Frank Golding, *Submission 102*, pp 9 and 11; Ms Leonie Sheedy, CLAN, *Committee Hansard*, 2 November 2010, p. 8.

41 *Committee Hansard*, 2 November 2010, p. 8.

2.29 Wings for Survivors argued that insufficient publicity was given to the state redress schemes, especially given that some care leavers are illiterate.[42] The Alliance for Forgotten Australians explained in more detail that:

> Many Forgotten Australians have been disadvantaged by scheme cut-off dates. As with other hard-to-reach people and families, many Forgotten Australians are more mobile than the general population. They tend not to live in the State or Territory where they were children. Many are socially isolated, not part of community or support groups, don't regularly read newspapers or listen to the news. Frailty and old age have also created problems for individuals accessing redress schemes given their isolation from mainstream services.[43]

2.30 Origins Inc, an organisation which provides support to people adversely affected by adoption and family separation, explained the impact the time limit on claims under the redress schemes has on its clients:

> To this day we are still being approached by ex-residents for information regarding Redress schemes and they are devastated when learning that some [of] the schemes are closed, and states such as NSW Victoria and SA, etc have still not implemented redress schemes. This situation in effect leaves a large number of Australians that have not received redress in a particular state of inequity and injustice.
>
> To say that when finding out that one has missed out on the opportunity for redress is devastating to the client is an understatement, and leaves the victims of abuse feeling worthless and devoid of a sense of justice.[44]

Amount of compensation

2.31 Some submissions argued that the amount of compensation offered under the state schemes was inadequate. For example, Ms Cherie Marian submitted that:

> The proportionality of ex-gratia payments issued by redress schemes must take into account what the payment is being made for. The highest level [of] payment currently available ($35,000 in Tasmania) is equivalent to approximately a mere one year annual average full-time salary. The question must be asked; is this amount reasonable in the case [of] a survivor of sexual abuse spanning some years whose resulting psychiatric injuries have caused them to be unable to participate in paid employment for the majority of their adult life? To even the lay person, it would appear, surely not![45]

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42 *Submission 37*, p. 2. See also *Submission 127* (name withheld), p. 2; CLAN, *Submission 139*, p. 4.

43 *Submission 133*, p. 5.

44 *Submission 22*, p. 4. See also Ms Cherie Marian, *Submission 93*, p. 12; Mr Frank Golding, *Submission 102*, p. 11.

45 *Submission 93*, p. 14. See also Mr Tony Young, *Submission 35*, p. 2.

2.32 Ms Lily Arthur compared the compensation provided under the Queensland redress scheme with the $2.6 million in compensation provided to Ms Cornelia Rau for her unlawful detention:

> Many tens of thousands of young women forcibly incarcerated like myself, with the added trauma of having their newborns stolen from them at birth are owed that right, we should not have to go to the expense of taking legal action that is doomed to fail in order to receive justice, or redress, and this situation should apply to all those who have been harmed by governmental negligence.
>
> I would add here that in 2009 I received Redress payments from the Queensland Government of $21,000 for "serious harm suffered in a Queensland institution" whilst grateful to receive anything at all, it is a far cry from the judgment in the Cornelia Rau matter.[46]

2.33 Similarly, Origins Inc argued that the compensation offered under the Queensland redress scheme was inadequate:

> If a claimant sought similar relief though victims or workers compensation or a civil action the outcomes would be more generous.
>
> The "damages" received by some clients in no way represented the extent of the harm they [had] suffered with some receiving the basic lower level of $7000 others receiving around $20 000 and for the most [seriously] harmed, an amount of $40 000 which would not go far for an aging client suffering serious physical/psychological harm...[47]

2.34 There was similar criticism of the amounts payable under the South Australian and Western Australian redress schemes.[48] There was also intense criticism of the decision of both the Western Australian and Tasmanian Governments to reduce the maximum amount of compensation payable under those two schemes.[49]

2.35 Submitters expressed different views on whether compensation should be a flat amount or should be scaled to reflect the individual experience of claimants. For example, Mr Maurice Vickers submitted that:

> ...we should all be paid the same amount and not a graduated scale because of what the governments decide on how you [were] treated. It doesn't

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46 *Submission 14*, p. 6. See also CLAN, *Submission 139*, pp 5-7.

47 *Submission 22*, p. 3. See also *Submission 30* (name withheld), p. 6; Ms Muriel Dekker, *Submission 34*, p. 2; *Submission 86* (name withheld), p. 7.

48 Ms Alison G. Fuller, *Submission 2*, p. 1; Mr Kevin Uren, *Submission 136*, pp 3 and 6.

49 Ms Alison G. Fuller, *Submission 2*, Attachment 1, pp 1-3; Ms Muriel Dekker, *Submission 34*, p. 2; Mr Tony Young, *Submission 35*, p. 4; Wings for Survivors, *Submission 37*, p. 2; *Confidential Submission 74*, p. 2; Ms Cherie Marian, *Submission 93*, pp 10 and 12; Mr Frank Golding, *Submission 102*, p. 10; *Submission 127* (name withheld), p. 2. The Western Australian Government reduced the maximum payment from $80,000 to $45,000, while the maximum payment under the Tasmanian scheme was reduced from $60,000 to $35,000.

> matter how we were treated, "**We were all stolen from our mothers or parents"** and deserve the same.[50]

2.36 By contrast, other submissions argued that compensation should be scaled to reflect factors such as:

(a) the length of time in care;

(b) the type and severity of the abuse or neglect the claimant suffered; and

(c) the long term effects of the abuse or neglect.[51]

2.37 Ms Muriel Dekker acknowledged that it is fair for people who spent most of their childhood in children's homes to receive a higher amount of compensation than those who were only in care for a couple of years. However, she argued that the ongoing emotional, psychological and physical effects on the lives of people who were in care for a shorter period can be just as devastating and long lasting:

> Therefore it seems fairer that something over half the amount of compensation granted to those in "homes" for a longer period – should [be] given for those there for a lesser time – but who also suffer similar lifetime effects because of abuse in children's homes.
>
> ...I emphasize that once the abuse occurs the ongoing effects last a life time – whether the abuse was for a shorter or longer period – the damage is done.[52]

2.38 Mr Brian Hanrahan commented on how compensation was calculated under the Queensland redress scheme and queried whether sexual abuse should be given primacy in calculating the amount of compensation applicants receive:

> ...anyone who admitted to being sexually abused was considered to be a financial priority, I am a little curious how this was the motivating force over mental and physical abuse with long ranging financial effects, my suggestion [is that] in any future schemes more attention be given to such a delicate issue...[53]

2.39 Other submitters argued that they should be compensated not only to provide redress for their experience in care but also to reflect the ongoing impact this has had on their lives, particularly in terms of the economic impact of the health problems resulting from their time in care and the reduced income earning capacity caused by the limited education they received while in care.[54] One submission argued that, in

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50 *Submission 1*, p. 2 (Bold in original). See also Ms Irene Kalves, *Submission 59*, p. 4

51 Mr Phillip Chalker, *Submission 5*, pp 2-3; *Submission 30* (name withheld), p. 6; Mr Tony Young, *Submission 35*, pp 2-3.

52 *Submission 34,* p. 3.

53 *Submission 71*, p. 4.

54 Ms Dianne Hughes, *Submission 4;* Mr Daryl Miechel, *Submission 43*, p. 5; *Submission 85* (name withheld), p. 2; *Submission 126* (name withheld), p. 3; *Submission 132* (name withheld), pp 2-3; *Submission 149* (name withheld).

some respects, the situation of care leavers is analogous to that of people who receive workers' compensation:

> We should be in good health, physically active, functionally independent and able to work for as long as we choose but instead we are in poor health, deteriorating each year and becoming more dependent. Most Australians require health care in the last few years of their lives. Many of the Forgotten Generation need that assistance now. Our needs extend beyond medical care. We need considerabl[y] more support for daily living which is outside the scope of medical care in order to remain independent and live our lives in dignity. Some of our injuries are work related from the work regimes we undertook as children in the homes and the Good Shepherd laundries. We should be entitled to compensation as anyone else in Australia who suffers ill-health as a consequence of work.[55]

2.40 CLAN more broadly compared the circumstances of care leavers with the range of situations in which significant awards of compensation have been made by governments, including for wrongful immigration detention, injuries sustained while in jail, bullying in schools, and discrimination or harassment.[56] CLAN stated that:

> We struggle to understand the distinction in principle between the circumstances leading to these compensation payments and the circumstances of the many vulnerable children who were owed a duty of care and whose trust was violated. Many children were incarcerated in institutions for most of their childhood years because of their supposed need for 'care and protection'; but in fact they were neither cared for nor protected from sexual assaults, vicious beatings, emotional abuse, neglect and deprivation of access to their parents and siblings. A clear duty of care was owed by the states and churches and charities who failed to discharge that duty of care.[57]

2.41 Several submitters also noted that the consequences of their experiences in care have a continuing impact on their family members. For example, Ms Sandra Beaton, who was placed in care in New South Wales, explained*:*

> ...redress is important as not only did I suffer as an innocent child, my children also suffered, due [to] the lack of and love & care shown when I was a child & the emotional and psychological damage done.[58]

2.42 Finally, the transparency of the compensation payments made by the redress schemes was also raised. A lack of transparency was seen as creating uncertainty where compensation recipients were unable to assess whether they had received an

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55 *Submission 132* (name withheld), p. 5. See also CLAN, *Submission 139*, p. 10.

56 *Submission 139*, pp 5-7.

57 *Submission 139*, p. 7.

58 *Submission 72*. See also Mr Bruce Hubbard, *Submission 99;* Mr Gordon Waters, *Submission 110*, p. 1; *Confidential Submission 147*, p. 2; Mr William McLeary and Ms Avis Bowman, *Submission 148*, p. 2; *Submission 153* (name withheld); *Confidential Submission 160*; *Confidential Submission 161,* pp 3-4; *Submission 165* (name withheld), p. 2.

equitable amount. Mr Frank Golding compared the state redress schemes with the Irish scheme which had openly published criteria and distributed a newsletter to communicate 'how things were going and what sort of outcomes were being found'.[59]

Limits on eligibility

2.43 Several submissions were critical of the limits on eligibility applicable to existing state redress schemes. For example, the Queensland redress scheme was criticised on the basis that it excluded children who were placed in foster care or in institutions outside the scope of the Forde Inquiry such as adult mental asylums. CLAN noted that, under the Queensland redress scheme:

> ...those who have been in foster care are not eligible. For example, one of our members who was a Queensland state ward was not eligible for redress as she had been placed in foster care; however her 84 year old father received redress since he had been in a Queensland orphanage. Furthermore, only Care Leavers who were in orphanages, institutions and Children's Homes named in the Forde Report (1999) are eligible for redress. These terms of reference exclude foster care and Homes for disabled children like the Montrose Home for Crippled Children that one of our members was in...[T]he Queensland government has belittled the experiences of those who were in foster care and in homes for children with a disability and in doing so has not accepted its responsibility to those children whom they placed in foster care.[60]

2.44 Similarly, Ms Christine Waite and Ms Gwen Robinson submitted that compensation should be paid to people who were wrongfully placed in adult institutions when they were Queensland state ward children.[61] Ms Robinson noted that the Queensland redress scheme did not provide compensation to this group and described being held in an adult institution as 'the most horrific part of our childhoods'.[62]

2.45 The Tasmanian redress scheme does not apply to children who were voluntarily placed in care. The potential for inequitable outcomes to arise from this limitation is illustrated by the submission from the Hon Ruth Forrest MLC on behalf of Mrs Sandra Radford. In the case of Mrs Radford, she was too young to know the circumstances leading to her original placement in foster care and, as there is no documentary evidence to demonstrate that she was placed in care by the state, she has

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59 *Committee Hansard*, 3 November 2010, p. 8.

60 *Submission 139*, p. 3. See also Wings for Survivors, *Submission 37*, pp 10-11 and 13; Mr Frank Golding, *Submission 102*, p. 10; Ms Diane Tronc, *Submission 152*, p. 1.

61 Ms Christine Waite, *Submission 3a*, p. 1 and Attachment 1, pp 3-4; Ms Gwen Robinson, *Submission 8*. See also *Submission 69* (name withheld), p. 4.

62 *Submission 8*. See also Ms Patricia Pascoe, *Submission 17; Confidential Submission 18,* pp 3-4; *Confidential Submission 18a; Confidential Submission 41; Submission 69* (name withheld), p. 4.

been found to be ineligible under the Tasmanian scheme.[63] In another case, this limitation meant that a brother who was a state ward was awarded compensation under the Tasmanian scheme, while his sister who was a 'voluntary' placement was not eligible.[64]

2.46 Several submissions were critical of the South Australian redress scheme on the basis that eligibility is limited to those who suffered sexual abuse. This means that no compensation is available to care leavers who suffered other forms of abuse such as physical, psychological or emotional abuse.[65]

2.47 Some submitters also argued that payments under the South Australian scheme should not be reduced or refused where a person has a criminal record since many of the people eligible for an ex gratia payment under the scheme may not have ended up with a criminal record if they had not been placed in state care facilities.[66]

Application process

2.48 The application process itself is traumatic for many care leavers: a recurring theme in the submissions related to the pain, shame and humiliation involved in having to relive their experiences in order to apply for compensation.[67] For example, Mr Tony Young, a member of the Alliance for Forgotten Australians, stated that he had suffered 'sexual abuse, physical abuse, neglect, psychological abuse'. He described speaking to authorities regarding his experiences:

> When I went to the first review, I was given an hour and a half to tell my life's story, which I had tried to put it behind me. At 57 years of age or something, I had tried to forget about the majority of this abuse.[68]

2.49 Other care leavers have experienced difficulties in obtaining records relevant to their time in care.[69] This not only hampers their capacity to obtain compensation under the state redress schemes, but also effectively prevents them pursuing compensation through litigation. For example, one submitter was advised that their

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63 *Submission 88,* pp 1 and 7. See also Ms Varina Gilbert, *Submission 156*, p. 1.

64 Mr Frank Golding, *Submission 102*, p. 10. See also Mr James Luthy, *Submission 113*. pp 1-2; CLAN, *Submission 139*, p. 3.

65 *Confidential Submission 27,* pp 1-2; Mr Brian Woods, *Submission 78,* p. 1; Mr Frank Golding, *Submission 102*, p. 10; Mr James Luthy, *Submission 113*. p. 2; Alliance for Forgotten Australians, *Submission 133*, pp 3 and 5; Mr Kevin Uren, *Submission 136*, p. 1; CLAN, *Submission 139*, p. 3; Mr William Ward, *Submission 162*, p. 2.

66 *Confidential Submission 27,* p. 2; Mr Kevin Uren, *Submission 136*, p. 2.

67 Wings for Survivors, *Submission 37*, p. 9; *Submission 44* (name withheld), p. 2; *Confidential Submission 87*, p.2; *Submission 127* (name withheld), p. 2.

68 *Committee Hansard*, 3 November 2010, p. 26.

69 *Confidential Submission 87*, p. 2; Hon Ruth Forrest MLC on behalf of Mrs Sandra Radford, *Submission 88*, pp 2 and 6-7; Ms Lorraine McDonagh, *Submission 89*; *Confidential Submission 106*, p. 2; Child Migrants Trust, *Submission 142*, p. 5; *Submission 155* (name withheld); Ms Varina Gilbert, *Submission 156*, p. 3.

records had been destroyed in the 1974 Brisbane floods.[70] Ms Caroline Carroll from the Alliance for Forgotten Australians described the common experiences of those attempting to access records:

> Sometimes, depending on where you were, private places can still try to charge people for their own information. You get a copy of your ward file and it is read by the department, or whoever the agency is, and they deem whether it is worthy of giving to you. They make the final choice about what and how much you are able to access...Accessing ward files is not easy for people. We need to supply ID, and a lot of Forgotten Australians do not have ID.[71]

2.50 The submission from the Hon Ruth Forrest MLC, on behalf of Mrs Sandra Radford, outlined the unfairness to claimants which can result where redress schemes require applicants to support their claims with written records. The following specific issues were raised with respect to the Tasmanian redress scheme:

> • Proving eligibility for claimants puts great onus on the claimant to provide sufficient information for records to be checked and verified.
>
> • The absence of evidence, such as a birth certificate, can prevent a claim from proceeding despite all reasonable attempts to provide one [having] failed.
>
> • Failure to recognise that in many cases claimants were too young to be aware of some of the details surrounding their care and circumstances.
>
> • The current mechanisms make the assumption that records are traceable and complete.
>
> • Archival records are very difficult to trace, if available at all, and are necessary to provide evidence to support many of these claims.[72]

Jurisdictions which have not established schemes

2.51 Many submissions were critical of the New South Wales and Victorian Governments for failing to establish redress schemes relating to children in care.[73] The submission from the Centre for Excellence in Child and Family Welfare on behalf

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70 *Confidential Submission 19*.

71 *Committee Hansard*, 3 November 2010, p. 31.

72 *Submission 88,* p. 7. See also Mr Frank Golding, *Submission 102*, p. 10.

73 Wings for Survivors, *Submission 37*, p. 2; Mr Daryl Miechel, *Submission 43*, p. 1; *Confidential Submission 48*, p. 2; *Confidential Submission 50,* p. 2; International Association of Former Child Migrants and their Families, *Submission 51*, p. 3; Ms Irene Kalves, *Submission 59*, pp 3-4; *Submission 80* (name withheld), p. 2; *Submission 85* (name withheld), p. 1; Connecting Home Ltd, *Submission 90*, pp 1-2; Ms Cherie Marian, *Submission 93*, pp 8 and 18; Mr Frank Golding, *Submission 102*, pp 8, 9 and 11; *Submission 112* (name withheld), p. 4; Ms Kathryn Armstrong, *Submission 134*, p. 1; *Submission 141* (name withheld), p. 2; Ms Venetta Lohse, *Submission 145*, p. 8; *Confidential Submission 157,* p. 9; *Confidential Submission 158,* p. 1; Mr William Ward, *Submission 162*, p. 2.

of the Victorian 'Forgotten Australians Report' Sector Working Group (the Centre for Excellence in Child and Family Welfare submission) argued that:

> ...the time is well overdue for the Victorian and New South Wales Governments to determine what is required by way of redress for their "Forgotten Australians". In Victoria the Centre for Excellence has lobbied regularly [for] government to consider the establishment of a redress scheme that contains the best elements of other schemes – both within Australia and internationally. The Victorian Government's position, which provides funded services and possible legal redress to claimants, ignores the plight of Forgotten Australians for whom services are not adequate and who feel either unable or disinclined to take legal action.[74]

2.52 Ms Cherie Marian noted that failure to establish redress schemes in New South Wales and Victoria means that there is a great disparity in the resources allocated by different state governments to providing redress to care leavers:

> State redress schemes which have been established have been substantially resourced by those State governments. (Western Australia = $114 million, Queensland = $100 million, Tasmania = $25 million). In comparison, on the 9th of August 2006, the Office of the Victorian Premier issued a media release boasting settlement of approximately 60 compensation claims since 1995 totalling $4.3 million. The disparity between this figure and funding provided by the aforementioned States, is the measure of justice yet to be served to survivors of abuse in 'care' in Victoria and New South Wales.[75]

2.53 Ms Angela Sdrinis, who has represented many claimants in negotiations with the Victorian Government, acknowledged that the Victorian Government will now deal with claimants even where proceedings have not been issued or where legal defences would be available to a claim. However:

> ...the State of Victoria will not make offers where there is no "legal" basis for the claim ie they still require evidence of breach of duty and require that a claimant has "evidence" in support of their allegations. Further they will not make offers of compensation in cases of neglect, emotional abuse or where they believe that physical punishments were consistent with the standards of the time.[76]

2.54 Mr Brian Cherrie was also critical of the approach of the Victorian Government to claims by former children in care. He stated that he has been waiting two years for a settlement offer, and that the Victorian Government has requested the exact dates he had been abused as a child and required corroborative evidence from witnesses or other victims. He submitted that:

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74 *Submission 28*, p. 2. See also Ms Sonya Irving, *Submission 9;* Ms Irene Kalves, *Submission 59*, pp 1-2 and 3; Mr Danny Hewat*, Submission 95,* p. 1.

75 *Submission 93*, p. 9. See also Mr Frank Golding, *Submission 102*, pp 8 and 13; *Committee Hansard*, 3 November 2010, p. 3.

76 *Submission 75,* p. 7.

> It was nice that the Federal Government gave us an apology, at least it is an acknowledgement of our pain, but the matter of redress has been left to the state governments and that is just a total disaster.[77]

2.55 Another Victorian submitter argued that all care leavers should be compensated:

> I believe all forgotten Australians who grew up in these hell holes should receive some kind of compensation...If a parent [had done these things] it would be considered child abuse. I was a ward of the state (Victoria). As my legal guardian they abused me physically, emotionally and sexually.[78]

2.56 Submitters who were in state care in New South Wales made similar arguments as to why they should receive compensation. For example, Mr Edward Bain contended:

> I was not only robbed of my childhood, and of my mother and family, but I also suffered years of physical and emotional abuse at the hands of people who were meant to care for me. The state was meant to ensure that I was safe and educated, but I experienced neither.
>
> I believe the NSW government owes me a great deal. However, there are no avenues for me to follow. No compensation scheme that acknowledges the great harm done to me.[79]

2.57 Mr Donald Edwards was also in state care in New South Wales. He stated that:

> I feel we should be compensated for the loss of our childhoods, our families, and the abuse we suffered, both physical and mental as well as our ongoing problems over the years with our loss of self esteem and the ability to trust and show love.[80]

Litigation as an alternative to redress schemes

2.58 The committee notes that many care leavers simply do not have the financial means to pursue compensation through litigation, particularly given the risk of costs being awarded against them.[81] Origins Inc explained that it has explored the possibility of a class action to pursue compensation for 100 claimants with similar experiences. However, after significant preparatory work, a major law firm advised

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77 *Submission 26*. See also *Confidential Submission 104;* Mr William Ward, *Submission 162*, p. 1.

78 *Submission 40* (name withheld), p. 8.

79 *Submission 103*, p. 2.

80 *Submission 96,* p. 3. See also *Submission 97* (name withheld), pp 3-4; Mr Gordon Waters, *Submission 110*, p. 1; *Submission 125* (name withheld), p. 1.

81 Ms Ellen Bucello, *Submission 42*, p. 1; *Submission 84* (name withheld), p. 7; Mr Frank Golding, *Submission 102*, p. 12; *Submission 120* (name withheld), p. 5; *Confidential Submission 140*, p. 6.

that the action could take decades, would involve a tremendous amount of work and would be very costly.[82]

2.59 Care leavers also face a number of legal hurdles to successfully make out a claim for compensation. The most obvious hurdle is that, for most care leavers, the usual period for pursuing an action under state statutes of limitations has expired.[83] This difficulty is compounded by the fact that, for some care leavers, it was many years before they were able to speak of their experiences or thought that they would be believed.[84] Some submitters suggested that the Commonwealth should legislate so that state statutes of limitations do not prevent former children in care from pursuing legal action in relation to the abuse and neglect they experienced in care.[85]

2.60 Mr Frank Golding explained that, in addition to statutory limitation periods, legal hurdles include:

> [t]he difficulty in proving injury with claimants facing significant evidentiary barriers due to their vulnerability while in care, trauma both during and after 'care' and the passage of time since the events. It is exceedingly difficult to prove even on the balance of probabilities that abuse occurred after so many years when possible witnesses are dead, difficult to find, or when found, have become frail or ill...Yet Care Leavers have been confronted with extraordinary demands for detailed evidence such as the exact date and time of the abuse. Well-paid lawyers are instructed by government to set unreasonably high demands on claimants to demonstrate that their current injuries, including mental health problems, were causally connected to their alleged childhood abuse. Care Leavers find it extraordinarily hard to produce evidence because of the difficulties in establishing the required onus of proof with the passage of time and the loss or destruction of records and material documents.[86]

2.61 In addition, it can be difficult for care leavers to establish the liability of religious organisations which ran institutions, particularly where those organisations

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82 *Submission 22*, p. 2.

83 *Confidential Submission 73*, p. 1; Ms Cherie Marian, *Submission 93*, p. 6; Forde Foundation Board of Advice, *Submission 130;* Child Migrants Trust, *Submission 142*, p. 4.

84 *Submission 67* (name withheld); *Confidential Submission 87*, p. 2; Ms Cherie Marian, *Submission 93*, p. 6; Mr Frank Golding, *Submission 102*, pp 4-5; *Submission 118 (name withheld)*, p. 3; *Submission 129* (name withheld), p. 2; *Submission 132* (name withheld), pp 1-2; Alliance for Forgotten Australians, *Submission 133*, p. 6; Child Migrants Trust, *Submission 142*, p. 4.

85 *Submission 10* (name withheld) p. 2. See also yigss org, *Submission 12*, p. 1, Wings for Survivors, *Submission 37*, p. 2; Mr Frank Golding, *Submission 102*, p. 12; *Submission 118 (name withheld)*, p. 4; Forde Foundation Board of Advice, *Submission 130;* Child Migrants Trust, *Submission 142*, p. 5.

86 *Submission 102*, p. 12. See also *Submission 47* (name withheld), p. 1; Ms Julie Evans, *Submission 66*, p. 1; Ms Cherie Marian, *Submission 93*, p. 6; Australian Human Rights Commission, *Submission 124*, attachment 1, p. 4; *Submission 132* (name withheld), p. 6; CLAN, *Submission 139*, pp 4-5.

do not have a legal identity or are able to argue that they are not vicariously liable for the actions of their agents or employees.[87]

2.62 Mr Golding also noted:

> A lot of the losses that people suffered—loss of family, loss of dignity, being lied to as a child and having letters from your family withheld from you—are not matters which the courts will hear about. These are not matters that are considered actionable.[88]

2.63 A submitter from New South Wales pointed out that pursuing compensation through the courts would involve the additional trauma of having to relate their experiences of sexual abuse in court.[89] Even where matters are resolved through mediation rather than proceeding to court, the process of pursuing claims on a case by case basis appears to be both expensive and traumatic for claimants. For example, Mr Gordon Waters stated:

> I had to bring up all that had happened to me, which was gut wrenching just to be told "sorry for what might have happened".[90]

2.64 Similarly, Wings for Survivors argued that the process of pursuing compensation on a case by case basis traumatises care leavers again and means they will require further counselling.[91]

Need for a national redress scheme

2.65 Many submitters argued that redress for former children in care should be dealt with as a national issue.[92] In particular, it was argued that redress for former

87 Ms Cherie Marian, *Submission 93*, pp 7 and 18; Mr Frank Golding, *Submission 102*, p. 12.

88 *Committee Hansard*, 3 November 2010, p. 5.

89 *Confidential Submission 94*. See also *Submission 47* (name withheld), pp 1 and 2; Australian Human Rights Commission, *Submission 124*, attachment 1, p. 4; Alliance for Forgotten Australians, *Submission 133*, p. 4; *Confidential Submission 140*, p. 6; *Submission 163* (name withheld), p. 3.

90 *Submission 110*, p. 1. See also Ms Rozlyn de Bussey, *Submission 76*, p. 1; Ms Heather Templeman, *Submission 82*; *Submission 126* (name withheld), p. 3; *Confidential Submission 131,* p. 2; *Submission 138* (name withheld), p. 2; *Confidential Submission143,* p. 2; *Submission 153* (name withheld); *Submission 154* (name withheld).

91 *Submission 37*, p. 2. See also Mr Frank Golding, *Submission 102*, p. 12; *Submission 112* (name withheld), pp 4-5; *Submission 132* (name withheld), p. 7; Ms Kathryn Armstrong, *Submission 134*, p. 1.

92 Mr Geoff Steele, *Submission 7,* pp 1, 3 and 4; Wings for Survivors, *Submission 37*, p. 3; *Confidential Submission 54*, p. 2; *Confidential Submission 74*, p. 2; Mr Danny Hewat, *Submission 95*, p. 2; Alliance for Forgotten Australians, *Submission 133*, p. 6; Ms Kathryn Armstrong, *Submission 134*, p. 2; Child Migrants Trust, *Submission 142*, pp 6 and 7.

children in care should not depend on which state they grew up in.[93] The submission from the Centre for Excellence in Child and Family Welfare noted that:

> Neglect and abuse endured while in the "care" of the State should not be dismissed only as an issue for individual States – this is a national issue, as evidenced by Prime Minister Rudd's apology and some of the promises he made as part of that apology.[94]

2.66 At the committee's public hearing in Canberra, an officer from the Department of Finance and Deregulation noted that the Commonwealth has a limited role with respect to addressing concerns about the existing state redress schemes:

> The Commonwealth does continue to raise the issue of redress schemes with the states. Specifically the Australian government raised the issue of redress at the meeting of the Community and Disability Services Ministers Conference on 11 September 2009. It is the case that the Commonwealth's role in relation to those schemes is one of influence and discussion. It is not possible for the Commonwealth to direct states in relation to their redress schemes. But the Commonwealth...continues to be actively involved in discussing matters of redress with the states.[95]

2.67 The International Association of Former Child Migrants and their Families argued that the Commonwealth has a specific responsibility to provide redress to child migrants given its role in bringing the child migrants to Australia and its statutory responsibility for their guardianship and welfare.[96] The association submitted that:

> The Federal Government needs to take a more active role to ensure that redress is not a postcode lottery – justice should not be dictated by arbitrary details such as which State you finished up in when you landed in Australia as a child migrant.[97]

2.68 Even where states have established redress schemes, Mr Frank Golding noted that considerable inequity results from the variations between those schemes:

> Compensation and redress schemes in Australia are so inconsistent as to produce grossly inequitable outcomes. The States with a current or now-closed redress scheme all operate in different ways set different eligibility

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93 See, for example, Origins Inc, *Submission 22*, p. 4; Ms Glenda Farnham, *Submission 36;* Ms Ellen Bucello, *Submission 42*, p. 6; *Submission 91* (name withheld), pp 1-2; Mr Alfred Stirling, *Submission 98;* Mr Peter Schroder, *Submission 109;* Ms Sherrie Else, *Submission 117; Submission 120* (name withheld), p. 5; *Submission 129* (name withheld), p. 3; *Submission 135* (name withheld), p. 1; Ms Rayelene O'Hehir, *Submission 144*, p. 5.

94 *Submission 28*, p. 2.

95 Ms Jan Mason, *Committee Hansard*, 29 October 2010, pp 8-9.

96 *Submission 51*, pp 1 and 3-4; section 6 of the *Immigration (Guardianship of Children) Act 1946*. See also Child Migrants Trust, *Submission 142*, pp 2 and 7.

97 *Submission 51*, p. 3. See also Child Migrants Trust, *Submission 142*, p. 3.

criteria mandate different timeframes and offer different amounts of redress.[98]

2.69 In a similar vein, Ms Cherie Marian submitted that:

> Lack of oversight by the Commonwealth with regards to the establishment of redress schemes nation-wide has left the States 'rudderless'; floundering to address the issue in an ad-hoc fashion, which...in turn, has caused much confusion, dissention and in some cases outright bitterness, among those affected many of whom feel that such an approach has added mere 'insult to injury'.[99]

2.70 Many submitters expressed support for the establishment of a national redress scheme with financial contributions being made by all states.[100] It was also argued that churches and charities which operated institutions where children were abused or neglected should contribute to a national redress scheme.[101] CLAN submitted that:

> ...the Commonwealth must lead the way and encourage the states and churches and charities to contribute to a coordinated national redress or compensation scheme for Care Leavers. This is possibly the only way that universality, consistency, fairness, accessibility and equality can be achieved.
>
> Under current redress schemes in Australia, an intolerable injustice is being shown not only to those Care Leavers of states that do not have a redress scheme, but also to those within each redress scheme. As it stands, redress in Australia is sub-standard in comparison to international practice. By those standards Care Leavers are not attaining the justice they deserve.[102]

2.71 In her evidence to the committee at the public hearing in Sydney, Ms Leonie Sheedy of CLAN expanded on the argument that a national scheme is required:

> One of the recommendations in the Forgotten Australians report was that the Commonwealth set up a national reparations and redress fund, and the

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98 *Submission 102*, p. 9. See also *Submission 47* (name withheld), p. 1; Ms Cherie Marian, *Submission 93*, p. 13; *Submission 132* (name withheld), pp 6 and 7; Alliance for Forgotten Australians, *Submission 133*, pp 5 and 8; *Submission 163* (name withheld), p. 3.

99 *Submission 93*, p. 13.

100 See, for example, Ms Marie Armytage, *Submission 60*, p. 3; Mr James Priestley, *Submission 65*; Mr Brian Woods, *Submission 78,* p. 2; Mr Gordon Waters*, Submission 110,* pp 1-2; *Submission 112* (name withheld), p. 5; *Submission 127* (name withheld), p. 4; Ms Kathryn Armstrong, *Submission 134*, p. 2; *Submission 137* (name withheld), p. 1; *Submission 153* (name withheld); *Submission 154* (name withheld).

101 See, for example, *Submission 49* (name withheld), p. 27; Ms Irene Kalves, *Submission 59*, p. 4; Mr James Priestley, *Submission 65;* Ms Angela Sdrinis, *Submission 75,* p. 11*;* Mr Brian Woods, *Submission 78,* p. 2; Mr Peter Schroder, *Submission 109*; Mr Gordon Waters*, Submission 110,* pp 1-2; *Submission 127* (name withheld), p. 4; *Submission 132* (name withheld), p. 7; *Submission 135* (name withheld), pp 1-2; *Submission 137* (name withheld), pp 1-2; CLAN, *Submission 139*, p. 12. See also Ms Marie Armytage, *Submission 60*, p. 3; Ms Lois Raines, *Submission 164*, p. 2.

102 *Submission 139*, p. 11.

> federal government continue to wash their hands of this issue and say it is a states and territories issue...
>
> We want to be treated equally. It should not matter which state you were raised in. We are all Australian citizens and we all deserve redress and reparations regardless of where the harm and damage was done. I hope that in the recommendations to come out of this inquiry your committee will put pressure on the federal government to show leadership and set up a national reparations fund that creates equity for everybody.[103]

2.72 However, in response to a question from the committee, Ms Sheedy conceded that there would be no need for a national scheme if all states and territories established their own redress schemes:

> If South Australia, Victoria and New South Wales implemented redress schemes...there would not be a need for a Commonwealth one. But there is no pressure brought on those three states to bring this issue to a head and introduce schemes, and there is no pressure brought on the churches and charities that ran these institutions and caused this harm.[104]

2.73 Some submitters more specifically supported a national scheme modelled on the Irish redress scheme.[105] Ms Angela Sdrinis noted that the lowest band of compensation under the Irish redress scheme resulted in higher payments than the highest payment available under any of the Australian state redress schemes.[106] She submitted that:

> The strength of the Irish scheme has been firstly that adequate compensation was made available to victims but it also provided for a more "consistent" and transparent method of assessing compensation as compared to the Australian models.[107]

2.74 In states where a redress scheme has already been established, Ms Sdrinis suggested that the national scheme could provide top-up payments to claimants depending on the maximum payment available through the national scheme.[108]

2.75 One submitter, who was in institutional care in Victoria, explained that the national apology to Forgotten Australians led many to believe that redress would be dealt with as a national issue:

> It is time for the Government to provide financial redress to all Forgotten Australians / Care Leavers. The National Apology in 2009 led us to believe

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103 *Committee Hansard*, 2 November 2010, p. 2.

104 *Committee Hansard*, 2 November 2010, pp 6-7.

105 *Submission 10* (name withheld) p. 2; Mr Frank Golding, *Submission 102*, pp 15-17. See also CLAN, *Submission 139*, pp 11-12; Ms Leonie Sheedy, CLAN, *Committee Hansard*, 2 November 2010, p. 9.

106 *Submission 75*, p. 3. See also Ms Cherie Marian, *Submission 93,* p. 14.

107 *Submission 75*, p. 3.

108 *Submission 75,* p. 11.

> that, at last, our Government believed us when we told them what had happened to us. How can you believe us but not want to make true amends.[109]

Non-monetary compensation

2.76 Some submitters argued that care leavers should receive other forms of redress in addition to, or in place of, monetary compensation. The most common proposal was for a 'gold card' which would entitle care leavers to benefits such as:

(a) private medical insurance;

(b) dental services;

(c) psychological counselling; and

(d) free travel on public transport.[110]

2.77 The Alliance for Forgotten Australians proposed that the gold card should provide access to services similar to those provided to Department of Veterans' Affairs gold card holders:

> Providing 'gold card' access to health care would recognise the extreme disadvantage suffered by survivors who had poor medical and dental care as children and who now have high needs for which they cannot afford to pay. Some report refusal by private health insurers on the basis that their poor health arises from a prior, unspecified health condition. Dental care is a recurring theme in correspondence, as is mental health. A card would also be a useful signal to doctors and allied health care professionals, alerting them to the disadvantage and the multiple health issues faced by this group.[111]

2.78 Another common proposal was that care leavers should be given priority access to employment, education and training programs and have their TAFE fees or HECS debts waived.[112]

2.79 However, in evidence at the Melbourne public hearing, Mr John Dommett from Connecting Home distinguished between providing compensation and providing services:

> I do not think we can confuse the funding of support agencies, which are a social response by government, to compensation. People with disabilities,

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109 *Submission 47* (name withheld), p. 2. See also Ms Angela Sdrinis, *Submission 75,* pp 10-11; *Submission 118 (name withheld)*, pp 3-4.

110 *Confidential Submission 21*, p. 1; *Submission 23* (name withheld); Wings for Survivors, *Submission 37*, pp 5-6; *Submission 44* (name withheld), p. 2; *Submission 49* (name withheld), p. 26; Mr Michael Brown, *Submission 70*, p. 1; Ms Rozlyn de Bussey, *Submission 76*, p. 2; Mr Brian Woods, *Submission 78,* p. 2; Ms Diane Tronc, *Submission 152*, p. 1.

111 *Submission 133*, p. 11.

112 *Submission 84* (name withheld), p. 10; Alliance for Forgotten Australians, *Submission 133*, p. 12; Ms Diane Tronc, *Submission 152*, p. 1. See also Mr Frank Golding, *Submission 102*, pp 8-9.

> people who are elderly, people who have all sorts of issues have, as part of government's response to them, agencies that are funded. That is not even seen as part of compensation; that is seen as an inherent right of being a citizen of this country.[113]

2.80 A number of submissions pointed to the importance of redress schemes providing acknowledgement and recognition for recipients. Dr Jane Wangmann, who appeared with CLAN at the Sydney public hearing, noted that '[a]pplicants rarely talk about the process in terms of its numerical value...but they talk about whether or not they were believed, heard, listened to and acknowledged in the process'.[114] She argued this should be incorporated into redress schemes:

> Courts provide meaning to the decisions that they give. The judge provides extensive written decisions. We need to see how compensation schemes can include this so that people know that the money—which can never replace what has happened to them—has some sort of symbolic meaning and provides recognition of the harm that is done and is not seen as a payoff or a mechanism of silencing.[115]

2.81 Mr Alfred Stirling, who was a state ward in Victoria, noted that redress is important to care leavers because it is 'about acknowledgement that we are telling the truth about the abuse in "Care"'.[116]

2.82 Mr Frank Golding noted that there had been some forms of non-financial redress, through the establishment of specific services. However, he considered that it is 'very hard not to feel cynical about this exercise because of the amount of money...allocated', namely $7.1 million in Victoria, and $9.1 million in New South Wales over four year periods.[117] Mr Golding noted:

> Compensation is a tangible means of acknowledging the wrongfulness of the abuse and the harm that was done; it can close an unhappy chapter in a person's life and be the start of a healing process. Compensation is also a form of vindication: in acknowledging the truth of the matter the victim is set free from the suffering caused by abuse all those long years ago.[118]

2.83 Ms Varina Gilbert, who was in institutional care in Tasmania and Victoria, stated that, for her, recognition was the most crucial aspect of redress:

> I think it is much too late for me for apologies given under pressure, uncomprehending counselling and conditional compensation. The Salvation

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113 *Committee Hansard*, 3 November 2010, p. 15.

114 *Committee Hansard*, 2 November 2010, pp 5-6.

115 *Committee Hansard*, 2 November 2010, p. 5.

116 *Submission 98.* See also *Submission 38* (name withheld), p. 2; Ms Kathryn Armstrong, *Submission 134*, p. 1.

117 *Committee Hansard*, 3 November 2010, p. 3.

118 *Submission 102*, p. 3. See also *Submission 163* (name withheld), p. 3.

> Army owes me and State Governments should have been responsible for the institutions they were approving. They are the ones who should have the counselling and vocational training. What I need is recognition that I really did pass this way and live this childhood – just because records have been disposed of, people have died and buildings knocked down doesn't erase my history. I want everyone to know what happened to me and who did it.[119]

Compensation for members of the Stolen Generations

2.84 A few submissions and witnesses supported the establishment of a compensation scheme for the Stolen Generations. The Aboriginal and Torres Strait Islander Social Justice Commissioner reiterated a previous recommendation by the Australian Human Rights Commission (AHRC) that the Commonwealth should work with state and territory governments to develop a consistent approach to providing financial redress to the Stolen Generations.[120] The Social Justice Commissioner noted that the United Nations Human Rights Committee has also recently recommended that Australia:

> ...should adopt a comprehensive national mechanism to ensure that adequate reparation, including compensation, is provided to the victims of the Stolen Generations policies.[121]

2.85 Similarly, Connecting Home, an organisation which provides services to members of the Stolen Generations in Victoria, urged the committee 'to consider the establishment of a compensation scheme for Aboriginal and Torres Strait Islander people who were removed from family'.[122] At the Melbourne public hearing, Mr John Dommett from Connecting Home stated:

> The fundamental issue around compensation is that it is about righting a wrong. It is not about the money that people get. It is about a responsible government saying, 'We got it wrong'...When people from stolen generations try to access compensation through common law, they need to prove that there has been abuse. We would argue very strongly that the abuse occurred when they were taken. The abuse was systemic.[123]

Committee view

Redress for care leavers

2.86 On 16 November 2009, the national apology made by the then Prime Minister, the Hon Kevin Rudd MP, and the then Opposition Leader, the Hon Malcolm Turnbull MP, highlighted the situation of children who had suffered in institutional

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119 *Submission 156*, pp 3-4.

120 *Submission 124*, p. 2. See also attachment 1, pp 1 and 6.

121 *Submission 124*, p. 2.

122 *Submission 90*, p. 4. See also Public Interest Advocacy Centre Ltd, *Submission 114*, p. 3.

123 *Committee Hansard*, 3 November 2010, p. 16.

care in Australia. This followed a number of inquiries by the Senate Community Affairs Committee which focused attention on the historical abuse of children and the need for this suffering to be recognised and redressed.

2.87 In the context of the current inquiry, the committee is concerned about the lack of consistency under existing state redress schemes in the treatment of individuals who had damaging experiences while in institutional care as children. In the view of the committee, there is scope for improvements to these redress schemes. A consistent and transparent approach to determining the quantum of compensation would benefit those receiving redress, allowing them to be certain they were being treated fairly, regardless of where their claim was made. Similarly, consistent eligibility criteria for compensation in each state would mean that persons are not arbitrarily excluded from claiming redress merely because of the particular jurisdiction in which they suffered abuse. Persons making applications for compensations should also feel confident that their redress claims will be treated sensitively and thoughtfully, and the assessment process will not be unreasonably stressful or traumatic.

2.88 A further issue of concern is the evidence received by the committee from care leavers who would have been eligible for payments under the Queensland and Western Australian schemes but were unaware of those schemes until after the closing date for applications.

2.89 Many witnesses and submitters supported the establishment of a national redress scheme to ensure greater consistency and fairness in the treatment of care leavers. Given the operation of state redress schemes to date, the committee is of the view that the establishment of a national scheme would cause considerable duplication in states which have already provided some measure of redress to care leavers. Responsibility for reparations for victims ultimately rests with those who managed or funded the institutions where children suffered abuse, namely state governments, but also relevant charitable and religious organisations. The committee considers that the administration of state redress schemes is primarily a state responsibility. In the view of the committee, the best approach to this issue would be for state governments to agree to separate but consistent redress schemes to compensate care leavers. Nevertheless, the committee encourages the Australian Government to continue its dialogue with the states in relation to these schemes. That dialogue should seek to deliver greater consistency between the schemes, as well as more consistent treatment of analogous claims under the terms of each scheme.

Recommendation 1

2.90 The committee recommends that the Queensland, South Australian, Tasmanian and Western Australian Governments review their redress schemes relating to children in institutional care to ensure:

- **a consistent and transparent approach to the quantum of compensation provided;**
- **consistent eligibility criteria for redress which avoid arbitrarily excluding applications for compensation based on where abuse occurred; and**

- **the application and assessment process for compensation appropriately reflects the traumatic experiences of care leavers.**

Recommendation 2

2.91 The committee recommends that the Queensland and Western Australian Governments consider applications for redress from care leavers who were unaware of the redress schemes which operated in those states prior to the closing dates for applications.

2.92 The failure of the New South Wales and Victorian Governments to establish redress schemes is of significant concern to the committee. If governments approach the claims of former care leavers on a case-by-case basis behind closed doors, this would appear to limit liability as far as possible rather than to accept responsibility for providing redress. Furthermore, it means that the most marginalised care leavers (those who are illiterate, suffer from mental illness or are otherwise less able to protect their own interests) are the least likely to obtain any measure of compensation. It is clear from the evidence before this inquiry that, for care leavers, redress is as much about acknowledgement and recognition as it is about monetary compensation. The approach of the New South Wales and Victorian Governments ignores the crucial symbolic elements of redress.

2.93 The committee echoes the views of the Senate Community Affairs Committee that the Australian Government has a critical role to play in ensuring that redress schemes are established in New South Wales and Victoria.[124] More specifically, the Australian Government should pursue the establishment of redress schemes in those states through the Council of Australian Governments (COAG) and other appropriate national forums, such as the Standing Committee of Attorneys-General (SCAG).

Recommendation 3

2.94 The committee recommends that the New South Wales and Victorian Governments establish administrative schemes to provide redress to people who experienced abuse or neglect while in institutional or foster care in those states.

Recommendation 4

2.95 The committee recommends that the Australian Government pursue all available policy and political options, including through the Council of Australian Governments and other appropriate national forums, to ensure that:

- **New South Wales and Victoria establish redress schemes for people who suffered abuse or neglect in institutional or foster care in those states;**
- **Queensland and Western Australia make provision to ensure continued receipt of redress claims; and**

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124 Senate Community Affairs Committee, *Lost Innocents and Forgotten Australians Revisited,* June 2009, recommendations 4 and 5, pp 35-56 and 212-215.

- **greater consistency between the criteria applied under state redress schemes is achieved.**

2.96 The committee also notes that, in the period between 1911 and 1978, the Commonwealth was directly responsible for administration of the Northern Territory. Similarly, the Commonwealth was responsible for the Australian Capital Territory in the period between 1911 and 1989. It is not clear from evidence received by this inquiry, or previous inquiries, whether children who were placed in institutional care in the Northern Territory or the Australian Capital Territory during this period experienced similar abuse and neglect as children placed in care in other jurisdictions. However, the *Bringing them home* report contains sufficient material in relation to the experiences of Indigenous children in care in the Northern Territory to suggest that the experiences of all care leavers in the Northern Territory are likely to have been similar to those of children in care in other jurisdictions.[125]

2.97 Rather than rely on an absence of evidence, the committee considers that the Australian Government should take positive steps to establish whether abuse and neglect occurred in the territories and, if it did, to provide redress. Specifically, the committee considers that the Department of Finance and Deregulation and the Department of Families, Housing, Community Services and Indigenous Affairs should consult with the Northern Territory Government, the Australian Capital Territory government and the non-government organisations which represent care leavers in those territories to establish whether there is a need for a scheme to provide redress to people who were placed in care in the Northern Territory and the Australian Capital Territory.

Recommendation 5

2.98 The committee recommends that the Australian Government examine whether people who were placed in institutional or foster care in the Northern Territory or the Australian Capital Territory, during the periods that the Commonwealth directly administered those territories, suffered similar abuse and neglect to children placed in care in other jurisdictions.

125 HREOC, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families,* April 1997, pp 99, 117-129, 134 and 138.

CHAPTER 3

Other government compensation mechanisms

3.1 In addition to consideration of state schemes relating to children in care, the terms of reference required the committee to consider the administration and effectiveness of other mechanisms that enable governments to make discretionary payments or to waive the payment of debts, including:

(a) act of grace and ex gratia payments;

(b) waiver of debt schemes; and

(c) the Commonwealth Scheme for Compensation for Detriment caused by Defective Administration.

3.2 This chapter will examine those other compensation mechanisms.

Act of grace and ex gratia payments

Act of grace payments

3.3 At the Commonwealth level, act of grace payments are made pursuant to subsection 33(1) of the *Financial Management and Accountability Act 1997* (FMA Act). Under subsection 33(1) of the FMA Act, the Finance Minister (or his delegate) may authorise a payment if he considers it appropriate to do so because of special circumstances, even though the payment would not otherwise be authorised by law or required to meet a legal liability.[1]

3.4 The FMA Act does not define what constitutes 'special circumstances'. However, the Department of Finance and Deregulation has advised that an act of grace payment may be appropriate in relation to special circumstances that have occurred as a direct result of:

(a) the involvement of a government agency, where that involvement caused an unintended and inequitable outcome for the applicant; or

(b) the application of legislation or policy, which has resulted in an unintended, inequitable or anomalous effect on the applicant's particular circumstances.[2]

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1 Department of Finance and Deregulation, *Submission 92*, pp 4-5. Subsection 62(1) of the FMA Act and section 18C of the *Acts Interpretation Act 1901* allow the Finance Minister to delegate this power.

2 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, pp 2-3, 24 and 26-27. See also Department of Finance and Deregulation, *Submission 92,* p. 5.

3.5 An act of grace payment may also be appropriate where a matter is not yet covered by legislation or a specific policy, but the Australian Government intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy prospectively.[3]

3.6 There is no time limit within which an application for an act of grace payment must be lodged and there is no financial ceiling on the amount of such payments.[4] However, if a proposed payment is likely to involve more than $250,000, the Finance Minister must request a report from an advisory committee consisting of the chief executives of the Department of Finance and Deregulation, the Australian Customs and Border Protection Service and the agency responsible for the matter to which the payment relates. In these circumstances, the Finance Minister cannot authorise an act of grace payment without considering the report of the advisory committee.[5]

3.7 In its submission to this inquiry, the Department of Finance and Deregulation (Department) noted that, in 2008-09, act of grace payments totalling $3.2 million were approved.[6] In 2009-10, payments totalling just under $1 million were approved.[7] The variability of the payments in each year is evident in information the Department tabled at the Canberra public hearing:

Table 1. Act of grace payments[8]

Act of Grace Payments		
Financial Year	**Amount Sought**	**Amount Approved**
2000-2001	$18,238,198.92	$8,119,808.34
2001-2002	$6,818,571.00	$169,468.90
2002-2003	$12,061,680.22	$293,085.57
2003-2004	$26,729,812.48	$10,047,348.57
2004-2005	$31,732,071.52	$4,999,360.96
2005-2006	$133,930,660.84	$1,521,037.45
2006-2007	$18,247,417.95	$1,615,089.47
2007-2008	$26,834,658.97	$2,892,400.30
2008-2009	$363,016,955.10	$3,230,333.30
2009-2010	$41,556,861.13	$968,806.08

3 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, pp 24 and 27.

4 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 25.

5 Regulation 29 of the *Financial Management and Accountability Regulations 1997*; Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 26.

6 *Submission 92*, p. 11. See also Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 167*, p. 4.

7 Department of Finance and Deregulation, untitled document tabled on 29 October 2010.

8 Department of Finance and Deregulation, untitled document tabled on 29 October 2010, p. 1.

3.8 The submission from the Department provided the following example of an act of grace payment made under the FMA Act:

> A Disability Support Pensioner (Blind) enrolled in a university course which required the student to undertake a full year of study overseas.
>
> People who are permanently blind do not have to satisfy the work test applied to most Centrelink benefits for people of workforce age. They are still subject, however, to the pension portability provisions, and lose the pension if they leave Australia for longer than 13 weeks, except for an emergency. Being absent from Australia for study, rather than due to an emergency, the student lost Centrelink benefits and was forced to incur travel costs for trips back to Australia, and requested reimbursement amounting to over $5,000.
>
> It was considered that the failure to provide for extended portability of Disability Support Pension where the person is required to study overseas as part of an approved study course was not consistent with the Government's purpose of encouraging people with disabilities to study and participate in the workforce to the best of their ability. An act of grace payment was approved on this basis, and the apparent anomaly was brought to the attention of the Minister for Families, Housing, Community Services and Indigenous Affairs, for possible legislative change.[9]

3.9 In addition to the general provisions in the FMA Act, there is specific Commonwealth legislation which enabled one-off compensation payments of $25,000 to be made to veterans and civilians who were interned by Japanese armed forces during World War II.[10]

Ex gratia payments

3.10 In addition to the statutory power to make act of grace payments, the Commonwealth has an executive power to make ex gratia payments.[11] In 2004, the Australian National Audit Office (ANAO) reported on a cross-agency audit regarding compensation payments and debt relief in special circumstances (the ANAO report).[12] The ANAO report explained the difference between ex gratia payments and act of grace payments by the Commonwealth:

> Ex gratia payments are discretionary payments by the Commonwealth to a *group* of people who may have suffered a financial, or non-financial, loss. This contrasts with act of grace payments that tend to be based on an individual claim and paid to an individual. Ex gratia payments are based on

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9 *Submission 92*, appendix 3, p. 1. For another example see ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, p. 111.

10 *Compensation (Japanese Internment) Act 2001; Veterans' Entitlements (Compensation - Japanese Internment) Regulations 2001.*

11 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 39.

12 ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004.

> the inherent Constitutional power of the Government to redress the effects of particular negative circumstances. Ex gratia programs are approved by the Prime Minister and/or Cabinet and administered by relevant agencies.[13]

3.11 The ANAO report further explained:

> Ex gratia payments are made, usually, to restore equity to a group of persons, irrespective of whether the Commonwealth has any direct moral responsibility for the losses the group has sustained. (The provision of relief for the effects of flood and drought are examples of this type of assistance.) On the other hand, act of grace payments are made, usually, to effectively compensate individuals, in special circumstances, where the decision-maker determines that the Commonwealth has a direct moral responsibility to provide recompense.[14]

3.12 The payments made to persons affected by the Bali bombing in October 2002 are an example of ex gratia payments made by the Commonwealth.[15] As an officer from the Department of Finance and Deregulation explained to the committee at the Canberra public hearing:

> Ex gratia and act of grace are different mechanisms. Ex gratia is rooted in the Constitution in the executive power section 61. It is a decision that can be taken by the Prime Minister and/or cabinet in relation to events which are urgent or unforeseen. For example, after the Bali bombings the government immediately undertook decisions in relation to an ex-gratia scheme so that families with either dead or injured members could travel to Bali to be with them to deal with that situation...The responsibility for the policy for that mechanism rests with [the] Department of the Prime Minister and Cabinet...
>
> As to the decision-making processes, when that occurs, the relevant portfolio minister advises the Prime Minister and informs the finance minister, because financial matters are involved, and a decision is taken on that basis...Centrelink is responsible for administering those arrangements and how those payments are made.[16]

3.13 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) gave further examples of circumstances in which the Commonwealth has made ex gratia payments:

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13 ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, p. 26. See also Department of Finance and Deregulation, *Submission 92,* p. 6; Dr Guy Verney, Department of Finance and Deregulation, *Committee Hansard*, 29 October 2010, pp 3-4.

14 ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, p. 44. Brackets in original.

15 ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, p. 35.

16 Dr Guy Verney, *Committee Hansard*, 29 October 2010, pp 3-4.

> In recent years, FaHCSIA has provided assistance through the ex gratia mechanism in response to a number of disasters including the Victorian Bushfires, Samoan Tsunami, Sumatran Earthquake, Mumbai Terrorist Attacks and North Queensland Floods. Assistance has included $5,000 Funeral Memorial Assistance, the Newstart-style Income Recovery Subsidy and other tailored assistance measures.[17]

3.14 Some states, along with the territories, have specific legislation providing for act of grace or ex gratia payments,[18] while other states simply rely on the inherent executive power to make such discretionary payments.[19]

Settlement of claims for compensation

3.15 It is important to note the difference between act of grace or ex gratia payments and payments made to settle legal claims for compensation. The *Legal Service Directions 2005* apply where a legal claim for monetary compensation is made against the Commonwealth.[20] The *Legal Service Directions 2005* require that such claims may only be settled where there is at least a meaningful prospect of liability being established.[21] This contrasts with ex gratia and act of grace payments which are made despite there being no legal liability to make the payment.

3.16 Examples of payments made by the Commonwealth to settle claims for compensation include:

(a) the payment of $2.6 million to Ms Cornelia Rau in relation to her unlawful detention; and

(b) the reported payment of $4.5 million to Ms Vivian Solon with respect to her unlawful deportation.[22]

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17 *Submission 167*, p. 5.

18 Section 130 of the *Financial Management Act 1996* (ACT)*;* section 37 of the *Financial Management Act* (NT)*;* section 72 and the definition of 'special payments' in Schedule 3 of the *Financial Accountability Act 2009* (QLD)*;* section 80 of the *Financial Management Act 2006* (WA).

19 New South Wales Treasury, 'Ex Gratia Payments', *Treasury Circular NSW TC 05/05*, 29 June 2005; Department of Treasury and Finance (SA), 'Ex Gratia Payments', *Treasurer's Instruction 14,* 11 October 2005.

20 The *Legal Service Directions 2005* are a legislative instrument made by the Attorney-General under section 55ZF of the *Judiciary Act 1903*.

21 Appendix C of the *Legal Service Directions 2005;* Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, pp 4-5.

22 Minister for Immigration and Citizenship, 'Cornelia Rau's settlement offer finalised', *Media Release*, 7 March 2008, at: www.minister.immi.gov.au/media/media-releases/2008/ce08021.htm (accessed 2 June 2010); Jewel Topsfield and Andra Jackson, '$4.5m payout to Alvarez Solon for wrongful deportation', *The Age*, 1 December 2006 at: www.theage.com.au/news/national/45m-payout-to-alvarez-solon-for-wrongful-deportation/2006/11/30/1164777724375.html (accessed 2 June 2010).

Waiver of debt schemes

3.17 Under subsection 34(1) of the FMA Act, the Finance Minister (or his delegate) has various powers in relation to amounts owing to the Commonwealth including the power to waive the Commonwealth's right to payment.[23]

3.18 Once a debt is waived it is no longer recoverable at law.[24] The Department of Finance and Deregulation (Department) has advised that it may be appropriate to exercise the power to waive payment of a debt where the debt arises as a direct result of:

(a) the involvement of a government agency (in cases where the debt should not have arisen); or

(b) the application of legislation in cases where repayment would be inequitable in the circumstances, or cause severe ongoing financial hardship.[25]

3.19 There is no time limit within which an application for waiver of a debt under the FMA Act must be lodged and there is no financial ceiling on the amount which may be waived.[26] As is the case with act of grace payments, if a proposed waiver is likely to involve more than $250,000, the Finance Minister must request and consider a report from an advisory committee before he can authorise waiver of the debt.[27]

3.20 The Department advised the committee that, in both 2008-09 and 2009-10, debts totalling approximately $3 million were waived under the FMA Act.[28] Debts waived between 2000 and 2010 are set out in the table below:

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23 Subsection 62(1) of the FMA Act and section 18C of the *Acts Interpretation Act 1901* allow the Finance Minister to delegate these powers.

24 ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, p. 27; Department of Finance and Deregulation, *Submission 92,* p. 6.

25 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 3; See also Department of Finance and Deregulation, *Submission 92,* p. 7.

26 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 33.

27 Regulation 29 of the *Financial Management and Accountability Regulations 1997*; Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 34.

28 *Submission 92*, p. 11; Department of Finance and Deregulation, untitled document tabled on 29 October 2010.

Table 2. Waiver of debt payments[29]

Waiver of Debt		
Financial Year	Amount Sought	Amount Approved
2000-2001	$55,745,140.24	$53,162,301.15
2001-2002	$58,601,638.57	$56,774,063.84
2002-2003	$11,986,783.69	$8,717,930.57
2003-2004	$28,067,655.26	$23,851,747.28
2004-2005	$16,652,254.87	$2,171,868.65
2005-2006	$9,800,401.92	$2,810,525.31
2006-2007	$21,972,546.81	$2,925,807.82
2007-2008	$28,481,426.45	$7,362,363.62
2008-2009	$23,861,579.42	$3,117,584.05
2009-2010	$18,166,756.49	$3,021,009.12

3.21 The Department also outlined that a number of agencies have limited waiver powers 'which relate to specific and easily definable circumstances of limited complexity and predominantly involving routine administration, under specific legislation'. These include:

- the *Income Tax Assessment Act 1936* gives the Commissioner of Taxation limited powers to remit personal income tax debts, certain other associated debts and General Interest Charges;
- the *Social Security Act 1991* gives a limited power to waive a debt if the money had been received in good faith, if the money was paid because of an administrative error, if the debt had existed for a period longer than six weeks and if the person is in financial hardship; and
- the *Child Support (Registration and Collection) Act 1988* gives the CSA a limited power to remit late payment penalties.[30]

3.22 In its submission, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) advised that the administration of debts incurred under social security law and family assistance law is undertaken by Centrelink on behalf of the secretaries of FaHCSIA and the Department of Education, Employment and Workplace Relations. These may include situations where:

- debts may be written-off temporarily for periods of time to allow for customer circumstance to improve prior to debt recovery, or where it is not cost effective for the Commonwealth to recover the debt;

29 Department of Finance and Deregulation, untitled document tabled on 29 October 2010, p. 1.

30 *Submission 92*, p. 7.

- debts may be waived where they are attributable solely to an administrative error made by the Commonwealth and the debtor received the payment(s) in good faith; and
- debts may be waived under special circumstances.[31]

3.23 The Australian Capital Territory and the Northern Territory have equivalent statutory provisions to subsection 34(1) of the FMA Act which enable the treasurer to waive the repayment of debts.[32] The statutory provisions in Queensland, Victoria, Tasmania and Western Australia refer only to the power to write off debts or losses and not the power to waive repayment.[33] In New South Wales and South Australia, the treasurer has issued instructions in relation to the exercise of the executive power to waive a debt.[34]

Criticism of debt waiver schemes

3.24 The committee received evidence during the course of its inquiry that raised concerns about debt waiver schemes. For example, the Welfare Rights Centre viewed the current debt waiver provisions in social security legislation as 'unbalanced and unfair' and, in some cases, leading to 'perverse and unintended onerous outcomes'. It suggested that there had been a tightening of social security legislative provisions, noting that while in the past 'not all overpayments were actually recoverable debts, now regardless of the cause almost all are recoverable debts'.[35] It also highlighted a number of specific waiver of debt provisions which related to situations where Centrelink was the sole or primary cause of a debt or where a person owes a debt 'but they are in that position due to domestic violence or acting under duress, usually from an ex-partner'.[36]

3.25 The Welfare Rights Centre proposed a number of legislative amendments to the *Social Security Act 1991* (SSA) and the *Family Assistance (Administration) Act 1999* to improve the position of welfare recipients in relation to debt waiver. These

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31 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 167*, p. 6.

32 Section 131 of the *Financial Management Act 1996* (ACT); subsection 35(2) of the *Financial Management Act* (NT).

33 Section 72 of the *Financial Accountability Act 2009* (QLD); section 62 of the *Financial Management and Audit Act 1990* (Tas); section 55 of the *Financial Management Act 1994* (Vic); section 48 of the *Financial Management Act 2006* (WA).

34 New South Wales Treasury, 'Recovery of debts due to the State', *Treasurer's Directions*, at: www.treasury.nsw.gov.au/__data/assets/pdf_file/0007/6559/treasurer_directions.pdf (accessed 4 June 2010), TD93/4, 450.01; Department of Treasury and Finance (SA), 'Ex Gratia Payments', *Treasurer's Instruction 5,* 19 June 2006. See also Department of Treasury and Finance (Vic), *Standing Directions of the Minister for Finance and Associated Rules and Supplementary Material*, January 2008, pp 44-46.

35 *Submission 172*, p. 2.

36 *Committee Hansard*, 2 November 2010, p. 27.

amendments included removing the word 'solely' from section 1237A of the SSA, which currently requires a person to prove that their debt was 'solely' caused by administrative error in order to have it waived. The Welfare Rights Centre argued that this provision means that Centrelink can be 99 per cent responsible for a debt but it will not be waived because of a one per cent contributory error of the relevant individual. Similarly, the Welfare Rights Centre proposed an amendment to section 1237AAD of the SSA to make allowance for situations where women have been pressured by an abusive partner to claim a social security payment as a single person or not to declare the correct amounts of their earnings.[37]

3.26 The Welfare Rights Centre also suggested that such an 'unbalanced' position between Centrelink and its clients could encourage poor public administration. Ms Jackie Finlay stated at the public hearing in Sydney:

> It seems to us that the risks in receiving payments are borne totally by social security recipients and there is very little risk to Centrelink. Due to the way the legislative provisions are drafted and have been tightened over the years, there is essentially little incentive for Centrelink officers or Centrelink in general to get a decision right and to prevent debts, because ultimately, if someone owes Centrelink money, most of the time they are going to have to pay it back...[38]

3.27 Connecting Home also raised the issue of the visibility of existing debt waiver schemes:

> ...a cursory desktop review of some government websites revealed a lack of information [on] debt waiving schemes. Some members of the Aboriginal community, for a range of reasons, experience falling into debt with some government departments such as Centrelink and the ATO for example. Often people will attempt to avoid addressing debt, which only exacerbates their situation. This is largely because there is little information about the way government departments can negotiate with the debtor in relation to the amount outstanding.[39]

3.28 FaHCSIA was of the view 'that the current debt waiver provisions provide an appropriate balance between recovering amounts that exceed a person's entitlement and avoiding onerous outcomes for customers'.[40] It advised:

> At the beginning of the financial year 2009-10, there were approximately 485,000 debts relating to customers in receipt of FaHCSIA payments. Approximately 975,000 new debts were raised and the balance, at the end of the year, had dropped to approximately 439,000. Of these debts,

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37 *Submission 172*, pp 3 and 6.

38 *Committee Hansard*, 2 November 2010, p. 27.

39 *Submission 90*, p. 2. See also Ms Julie Anderson, *Submission 77.*

40 *Submission 167*, p. 7.

approximately 40 per cent overall were for amounts of less than $50 and were automatically waived.[41]

3.29 However, FaHCSIA also noted that the National Welfare Rights Network (which includes the Welfare Rights Centre as a member) had provided the Hon. Jenny Macklin MP, the Minister for Families, Housing, Community Services and Indigenous Affairs, with a report entitled *Redressing the Balance of Risk and Responsibility Through Active Debt Prevention Strategies*. Further, FaHCSIA intends to provide the Minister with advice on 'waiver of debt' provisions. In relation to the specific amendments proposed by the Welfare Rights Centre, FaHCSIA provided short responses outlining the purpose of each section, noting some of these provisions are 'of long standing'.[42]

Compensation for Detriment caused by Defective Administration

3.30 The *Scheme for Compensation for Detriment caused by Defective Administration* (the CDDA scheme) is a Commonwealth administrative scheme which was introduced in 1995. Under the scheme, each Minister (or officers authorised by a Minister) has a discretionary authority to compensate individuals or other bodies who have suffered detriment due to the 'defective' actions or inactions by an agency within the relevant Minister's portfolio.[43]

3.31 'Defective administration' refers to actions by an agency official such as:

(a) a specific and unreasonable lapse in complying with existing administrative procedures;

(b) an unreasonable failure to institute appropriate administrative procedures;

(c) an unreasonable failure to give proper advice within an official's power and knowledge to give; or

(d) the provision of advice that was, in all the circumstances, incorrect or ambiguous.[44]

3.32 The 'detriment' to the applicant can relate to a personal injury, an economic loss or damage to property that results from the defective administration.[45] In general

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41 Department of Families, Housing, Community Services and Indigenous Affairs, *answer to question on notice,* received 10 November 2010, p. 1.

42 Department of Families, Housing, Community Services and Indigenous Affairs, *answer to question on notice,* received 10 November 2010, attachment A.

43 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 2; ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, p. 9.

44 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 11; ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, pp 10 and 43.

terms, the principles applied in assessing the loss to the applicant are equivalent to those which would be applied in assessing damages for the tort of negligence. For example, the loss must have been directly caused by the defective administration and it must have been a reasonably foreseeable consequence of the defective administration.[46] The Department of Finance and Deregulation has advised that offers of compensation under the CDDA scheme:

> ...should be calculated on the basis of what is fair and reasonable in the circumstances and in consideration of the fact that the Commonwealth should not take advantage of its relative position of strength in an effort to minimise payment.
>
> The overarching principle to be used in determining the level of compensation is to restore the applicant to the position he or she would have been in had defective administration not occurred.[47]

3.33 The CDDA scheme applies where the claimant has no legal or statutory right to compensation but there is a moral obligation to provide compensation.[48] The power to make payments under the CDDA scheme arises from the Commonwealth's executive power under section 61 of the Constitution.[49] There is no time limit within which an application under the scheme must be lodged and no financial ceiling on the amount of compensation which may be paid under the scheme. The scheme only applies to FMA Act agencies, and not to *Commonwealth Authorities and Corporations Act 1997* (CAC Act) agencies such as Comcare.[50] A list of agencies and organisations which operate under the FMA Act and the CAC Act is provided at Appendix 2 to this report.

3.34 The Commonwealth Ombudsman's factsheet on the CDDA scheme states that common examples of circumstances in which CDDA payments are made include where:

(a) a person incurs expenses or loses eligibility for a benefit because of incorrect agency advice;

(b) a penalty or debt is wrongly imposed;

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45 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 13.

46 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, pp 13-15.

47 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, p. 15.

48 ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, p. 9; Commonwealth Ombudsman, *Putting things right: compensating for defective administration - Administration of Decision-making under the Scheme for Compensation for Detriment caused by Defective Administration,* Report 11/2009, August 2009, p. 2.

49 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, pp 7, 8 and 15.

50 Acting Commonwealth Ombudsman, *Submission 57*, p. 2.

(c) personal property is damaged or documents are lost by an agency; or

(d) a computer error results in a delayed payment or unreasonable delay in approving an application.[51]

3.35 For example, FaHCSIA outlined that, for social security matters, a CDDA claim would normally originate from Centrelink customers, but that Centrelink is also able to instigate own motion payments. Centrelink receives direct funding appropriations for paying compensation claims.[52] In 2008–09, Centrelink made 738 payments totalling $3.15 million under the CDDA scheme. In comparison, the Australian Taxation Office made 250 payments totalling $550,000.[53]

Role of the Commonwealth Ombudsman

3.36 An applicant for compensation under the CDDA scheme may complain to the Commonwealth Ombudsman if the application is refused, or if the applicant rejects an offer as insufficient or subject to unreasonable conditions. The Ombudsman may investigate and, if the Ombudsman considers it appropriate to do so, may propose that the decision of the agency be changed. The Ombudsman does not have the power to overturn or vary the agency's original decision.[54]

3.37 It is also possible for an applicant who is refused an act of grace payment or waiver of a debt to complain to the Ombudsman.[55] However, in the case of decisions under the CDDA scheme, because it is an executive scheme rather than a statutory one, a complaint to the Ombudsman is effectively the only recourse the public has for external review of a decision under the scheme.[56]

3.38 The Ombudsman's office deals with about 200 complaints annually that specifically raise CDDA issues.[57] In 2009, the Ombudsman conducted an own motion

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51 Commonwealth Ombudsman, *Compensation for detriment caused by defective administration*, Fact Sheet 9, February 2010, p. 1. See also ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, pp 111-112; Department of Finance and Deregulation, *Submission 92*, appendix 3, p. 3.

52 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 167*, p. 2.

53 Centrelink, *Annual Report 2008-09*, p. 209; Australian Taxation Office, *Annual Report 2008-09*, p. 267. See also Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 167*, p. 2; Commonwealth Ombudsman, *Putting things right: compensating for defective administration,* Report 11/2009, August 2009, p. 2.

54 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, pp 17-18.

55 Department of Finance and Deregulation, *Discretionary Compensation and Waiver of Debt Mechanisms*, Finance Circular No. 2009/09, pp 31 and 38.

56 Acting Ombudsman, *Submission 57*, p. 1; ANAO, *Compensation Payments and Debt Relief in Special Circumstances*, Audit Report No.35 2003-04, March 2004, p. 96.

57 Acting Commonwealth Ombudsman, *Submission 57*, p. 1.

investigation of the CDDA scheme. The findings of that investigation are set out in the *Putting Things Right* report. Those findings included that there was a need for:

(a) greater visibility of the scheme;

(b) better assistance to claimants in accessing the scheme and making a claim; and

(c) less defensive and legalistic approaches to CDDA decision-making by agencies.[58]

3.39 In evidence to the current inquiry, the Department of Finance and Deregulation noted a number of actions that have been undertaken in response to the *Putting things right* report recommendations.[59] These include:

> The Finance circular entitled *Discretionary compensation and waiver of debt mechanisms* was reissued in November 2009 to bring greater focus to the requirements of administrative law and to align the commentary on CDDA with lessons learnt from departments and agencies.
>
> Finance established an interagency forum on discretionary compensation mechanisms to share information on best practice in order to encourage a consistent whole-of-government approach to approaching and managing claims...
>
> [A]pplication forms for discretionary assistance are available on the finance website, along with information about the discretionary mechanisms themselves. Australian government agencies can link to [the] finance website for those forms if they wish...
>
> [F]inance has encouraged departments and agencies to provide claimants with a copy of the papers which will be taken into account in making a decision...
>
> In terms of increased visibility of the CDDA scheme, the...ombudsman has published an information sheet that supplements the finance circular and the Attorney-General's Department's administrative justice framework refers to the discretionary compensation mechanisms.[60]

Issues with the CDDA scheme

3.40 Several submissions raised specific issues about the CDDA scheme. In particular, the Acting Commonwealth Ombudsman suggested that two limitations on the CDDA scheme require further consideration and reform. The first limitation is that

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58 Commonwealth Ombudsman, *Putting things right: compensating for defective administration,* Report 11/2009, August 2009, pp 1, 9-10, 24-27 and 33-35; Acting Commonwealth Ombudsman, *Submission 57*, pp 1-2.

59 Department of Finance and Deregulation, *answer to question on notice*, received 10 November 2010, Table 1.

60 Ms Jan Mason, *Committee Hansard*, 29 October 2010, pp 2-3.

the CDDA applies only to agencies that come under the FMA Act, and not to CAC Act agencies such as Comcare. The Acting Ombudsman noted that:

> The office has investigated a number of complaints where a person claims they have suffered a financial loss due to defective administration by a Commonwealth entity [subject to the CAC Act], but is unable to have their claim considered because the entity does not fall under the FMA Act.[61]

3.41 Furthermore, the Commonwealth Ombudsman noted:

> From the point of view of individuals who suffer loss or damage, it seems to us to be largely irrelevant about the nature of the legal instrument by which the agency was established. If the nature of the loss or damage is quantifiable then, under that moral principle, people should be equally entitled to recover.[62]

3.42 A representative from the Department of Finance and Deregulation told the committee that some Commonwealth company bodies have arrangements for dealing with claims, while others do not, depending on their particular governance arrangements.[63] Another representative from the Department noted that, while it is relatively easy to apply a consistent approach to Commonwealth agencies covered by the FMA Act, those covered by the CAC Act can have specific legislation that govern the way they operate, making it more difficult to apply a consistent approach.[64] Bodies under the CAC Act can make arrangements for compensation to the extent their enabling legislation allows.[65] In the specific case of Comcare:

> The Department of Education, Employment and Workplace Relations (DEEWR) and Comcare are currently developing a scheme similar to the Scheme for Compensation for Detriment caused by Defective Administration within the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) to enable payment of compensation when the administration of bodies under the SRC Act have been defective.[66]

3.43 The second limitation raised by the Acting Ombudsman relates to the application of the scheme where a government agency contracts out the provision of services. Compensation under the CDDA scheme is not available where the defective administration relates to actions or omissions of a non-agency person such as a

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61 *Submission 57*, p. 2. See also Acting Commonwealth Ombudsman, *Comcare and Department of Finance and Deregulation – Discretionary Payments of Compensation*, Report 04/2010, March 2010, p. 1.

62 Mr Allan Asher, *Committee Hansard*, 2 November 2010, p. 22.

63 Dr Guy Verney, *Committee Hansard*, 29 October 2010, p. 17.

64 Ms Jan Mason, *Committee Hansard*, 29 October 2010, p. 17.

65 Department of Finance and Deregulation, *answer to question on notice*, received 10 November 2010, p. 13.

66 Department of Finance and Deregulation, *answer to question on notice*, received 10 November 2010, p. 11.

contracted service provider.[67] The Acting Ombudsman pointed out that this may mean that:

> ...the Australian Government agency has effectively contracted out of its accountability for matters that it would otherwise be responsible to deliver. It also creates an inequitable situation as clients of those service providers currently do not have any obvious means of having their claims of defective administration addressed in a consistent manner.[68]

3.44 The Acting Ombudsman also reiterated the findings of the *Putting things right* report in relation to the need to increase the visibility of the CDDA scheme, provide better assistance to CDDA claimants, and for agencies to adopt a less defensive and legalistic approach to CDDA decision-making.[69] An organisation which has improved its response to claims for compensation is the Child Support Agency:

> That response included some reforms around a specific hotline in relation to compensation—not just CDDA but other forms of compensation—having a dedicated team and actually putting more resources into their staffing of compensation. They put a whole lot of information online, making sure that people had greater access to claim forms as well as information about the schemes. They took into account the issues that we had around procedural fairness deficiencies and actually put procedural fairness into their instructions and their team processes. They took into account the concerns we had about administrative drift, and they acknowledge each claim within 48 hours and have put in a 90-day ceiling...Importantly, too, they are trying to utilise the CDDA or compensation claims to improve their systems, so part of the process has a feedback loop back into business improvement.[70]

3.45 The submission from Connecting Home supported the view that there is a need to raise the profile of the CDDA scheme:

> [I]t is not unreasonable to assume that information on this kind of redress is not commonly known throughout the Australian community, let alone in communities that experience poor literacy levels. It can be safely assumed that there is scant awareness of the CDDA scheme in the community.[71]

3.46 The Women's Legal Service NSW raised several concerns about the CDDA scheme. These concerns were based on an unsuccessful application for compensation under the scheme, lodged on behalf of a client with the Australian Federal Police and the Child Support Agency. The concerns include:

(a) that 'detriment' is defined too narrowly under the scheme and that the threshold for demonstrating economic loss is very high;

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67 *Submission 57*, p. 2.

68 *Submission 57*, pp 2-3.

69 *Submission 57*, pp 1-2.

70 Mr George Masri, *Committee Hansard*, 2 November 2010, pp 20-21.

71 *Submission 90*, p. 2. See also Ms Julie Anderson, *Submission 77*.

(b) the difficulties applicants face where the defective administration involves more than one agency, as each agency may assume the other is responsible; and

(c) the time taken to process an application under the scheme.[72]

3.47 Echoing the Acting Ombudsman's concerns about agencies adopting an overly defensive and legalistic approach to CDDA decision-making, the Women's Legal Service NSW noted that:

> We suspect that the costs of 'defending' our client's claim were probably disproportionate to any possible compensation award as both agencies hired leading commercial law firms to represent them. This is not in the spirit of the 'moral' as opposed to 'legal' obligation that is central to CDDA.[73]

3.48 A specific recommendation from the Commonwealth Ombudsman's report *Putting things right*, was that the Australian Government consider the merits of establishing an interdepartmental advisory or review panel to deal with disputed or exceptional CDDA claims. The committee notes that this recommendation has not been implemented, however the Department of Finance and Deregulation indicated that a review panel was under consideration by the interagency forum on discretionary compensation mechanisms.[74]

3.49 The Department also identified a number of advantages and disadvantages in the establishment of an interdepartmental review panel for the CDDA scheme. The advantages include that the proposed panel: would supplement the Commonwealth Ombudsman's oversight of the CDDA scheme; provide a right of review; and provide an opportunity for a second opinion. The disadvantages identified include that the proposed panel: would be a duplication of the Commonwealth Ombudsman's role; does not reflect that the CDDA is permissive and operates to remedy situations where there is no legal obligation; and would require increased funding for secretariat functions and associated administrative costs.[75]

3.50 Finally, the Department suggested that consideration be given to requiring that claims of $250,000 or more under the CDDA scheme be referred to an advisory committee. That committee would be similar to the advisory committee required (under the FMA Act) to report on applications for act of grace payments or waiver of debts of $250,000 or more.[76]

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72 *Submission 108,* pp 2-3.

73 *Submission 108*, p. 3; also see Welfare Rights Centre, *Submission 172*, p. 9.

74 Department of Finance and Deregulation, *answer to question on notice*, received 10 November 2010, p. 5.

75 Department of Finance and Deregulation, *answer to question on notice*, received 10 November 2010, p. 4.

76 *Submission 92*, pp 15 and 16.

Committee view

Waiver of debt schemes

3.51 The committee acknowledges the concerns raised during the inquiry regarding the operation of 'waiver of debt' provisions within current social security legislation. The committee considers that it is important that persons who receive welfare payments obtain appropriate amounts and that overpayments are recoverable as debts. However, the recovery of debts from persons who receive welfare payments where Commonwealth agencies are predominantly at fault, or where debts have been caused by the duress of another person, can clearly create unfair and unjust outcomes.

Recommendation 6

3.52 The committee recommends that the Australian Government review 'waiver of debt' provisions contained in social security legislation and consider amendments to that legislation where current provisions could cause unfair and unjust outcomes for welfare recipients.

Compensation for Detriment caused by Defective Administration scheme

3.53 The committee acknowledges the actions of the Department of Finance and Deregulation in responding to many of the recommendations of the Commonwealth Ombudsman's report into the CDDA scheme, *Putting things right*. The committee considers that the CDDA scheme provides a useful mechanism for addressing harm caused by defective administration; however, from the evidence received, it appears that the CDDA scheme has not 'kept pace' with changes in Commonwealth public administration.[77] In particular, the application of the CDDA scheme to FMA Act agencies only appears to create anomalous outcomes. If a person suffers loss or damage due to defective administration they should be entitled to appropriate restitution, regardless of whether the loss or damage was caused by a FMA Act agency, a CAC Act body or a third party contracted to provide a Commonwealth service.

Recommendation 7

3.54 The committee recommends that the Department of Finance and Deregulation investigate the extension, in appropriate circumstances, of the Compensation for Detriment caused by Defective Administration scheme to *Commonwealth Authorities and Corporations Act 1997* agencies and to third party providers performing functions or providing services on behalf of the Commonwealth.

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77 Mr Adam Stankevicius, *Committee Hansard*, 2 November 2010, p. 23.

Senator Guy Barnett

Chair

ADDITIONAL COMMENTS BY THE AUSTRALIAN GREENS

1.1 The committee heard from a significant number of individuals and groups representing Australian citizens whose lives, life prospects, physical and mental health, prosperity and well-being had been significantly affected by past government policies and practices. These included members of the Stolen Generations, the 'Forgotten' Australians, former child migrants, children placed in institutional care or foster homes, and others. Their stories are deeply affecting, and many of the childhood experiences they recounted included harrowing tales of neglect and abuse as a result of the failure of the state to deliver on its duty of care to some of its most vulnerable citizens.

1.2 While for many of these people the legally responsible and culpable authority was their State government, this was not exclusively so – with the Commonwealth bearing some responsibility, for instance, for its role in inviting, accepting and delivering former child migrants into state care. In any case, given the decidedly national character of this issues (that is, that the same policies and practices were applied by State and Territory Governments across the nation during the same periods of recent history) and given the compelling evidence that the committee heard of the inadequacies and inconsistencies of the state schemes for compensation and redress (where they exist or have existed at all), I do not believe that it is enough for the Commonwealth to say that the responsibility for action must lie exclusively with the States and Territories. This is particularly true when we consider the situation of those who suffered as a result of the policies and practices of the State governments of Victoria and New South Wales – where it appears that their state governments intend to continue to do all they can to avoid taking any responsibility, and individuals only recourse is an individual legal challenge they cannot afford to mount.

1.3 I think that the only way that we as Australians can properly discharge our duty and moral obligation to the young and innocent who were neglected, mistreated and abused in our name is to ensure that there is a universal, consistent and equitable approach to all those so affected – so that all of those who suffered the same treatment can expect the same redress, irrespective of which state they lived in or whether they were informed of their right to redress in time to lodge an application. The injustice suffered by those affected by these past policies and practices is undeniable. It is clear that in taking an unnecessarily narrow or legalistic approach to compensation and redress – with high thresholds set for evidence, limited timeframes given for applications, and sufferers forced to give detailed and traumatic accounts of abuse and resolve the State of any further responsibility in exchange for relatively small amounts of monetary recompense – justice as their fellow citizens would understand and expect it is not being delivered.

1.4 It is entirely understandable that many of the victims of past government policies and practices feel deeply frustrated and profoundly let down by the failure of

Australian Governments to properly acknowledge and redress the neglect, abuse and trauma they have suffered. It is also understandable that they become distressed when they compare their own suffering to that of others who have received multi-million dollar payouts.

1.5 In June 2009, the Senate Community Affairs Committee *Lost Innocents and Forgotten Australians Revisited* report recommended that the Australian Government pursue all available policy and political options to ensure that South Australia, New South Wales and Victoria establish redress schemes. Given the influence that the Commonwealth has over these state governments and the means at its disposal, it would seem clear from the lack of action of these state parties and the evidence they presented to this inquiry that the Commonwealth has not pursued all available options. On this basis I have reason to be concerned that this committee report is simply making very similar recommendations[1], in a context where the evidence we received to the inquiry from the Commonwealth would lead us to believe we are unlikely to get a meaningful and effective response.

1.6 The Greens believe that the Australian Government should lead in the development of a national standard for redress schemes. Where there are issues – such as the Stolen Generations, "Forgotten" Australians and former child migrants – where there is a clear pattern of consistent policy failure across States and Territories then we believe there is a role for a national framework and mechanism. This would allow all Australians – irrespective of the state in which they were neglected or abused and the one in which they now reside – access to support to pursue restitution and redress from the state party that bears the direct legal responsibility. In the cases of Victoria and New South Wales this might mean the Commonwealth provides the resources through this mechanism to mount a class action against the recalcitrant state party on their behalf.

1.7 The Australian Government has a specific responsibility to investigate the circumstances of those citizens of the Northern Territory and ACT who may also have been affected by these past policies and practices, and to ensure that they have access to appropriate compensation and redress in a timely fashion.

1.8 In the case of the Stolen Generations we believe that, in light of the community response to the National Apology to the Stolen Generations delivered by former Prime Minister Kevin Rudd and the expectations it engendered, there is a compelling case for a national reparations scheme established, as outlined in The Greens *Stolen Generations Reparations Bill 2010*.

1.9 I also wish to make additional comments on the discussion of 'waiver of debt schemes', particularly in relation to debts incurred by income support and social security payment recipients as a result of administrative errors made by Centrelink. I am concerned that the evidence to this and other inquiries together with what we have

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[1] For example, Recommendation 4, pp 35-36.

learned in Senate Estimates over a number of years and through contacts to my electoral office indicate that there continues to be a disproportionately high number of overpayment errors and that little appears to have been done to date to reduce their incidence.

1.10 I am inclined to agree with the analysis of the National Welfare Rights Network, who suggest that Centrelink payment recipients now seem to disproportionately bear the risk for over-payment errors, and that the current compliance regime does little to encourage efficiency, responsibility or care in its administration.[2] I believe that there is need for more than just a review (as recommended by the committee) and that there is a compelling case for reform in this area – to deliver a greater focus on debt prevention over debt recovery. I support the call for the development and implementation of a comprehensive debt prevention strategy across all relevant government departments. I think that the Social Security Act should be amended along the lines suggested by the National Welfare Rights Network[3] and recommend that the government act to implement a comprehensive debt collection strategy to reduce the incidence of social security debts, provide fairer debt recovery methods and ensure that debts are not unfairly raised.

Recommendation 1

1.11 That the Australian Government develop a national standard for redress schemes.

Recommendation 2

1.12 That the Australian Government develop and support a national service to provide information and support to all those affected by past government policies and practices (irrespective of whether Commonwealth, State or Territory) to access or pursue compensation, restitution or redress.

Recommendation 3

1.13 That the Australian Government ensure that citizens affected by the past policies and practices of the Northern Territory or the ACT have access to appropriate compensation, restitution and redress in a timely fashion.

Recommendation 4

1.14 That the Australian Government establish a national reparations scheme for the Stolen Generations as outlined by The Australian Greens Stolen Generations Reparations Bill 2010.

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2 National Welfare Rights Network, *Redressing the Balance of Risk and Responsibility Through Active Debt Prevention Strategies*, May 2009, Document 1 of 2 tabled by Welfare Rights Centre at a public hearing on 2 November 2010, pp 3-4.

3 National Welfare Rights Network, *Redressing the Balance of Risk and Responsibility Through Active Debt Prevention Strategies*, May 2009, Document 1 of 2 tabled by Welfare Rights Centre at a public hearing on 2 November 2010.

Recommendation 5

1.15 That the Australian Government develop and implement a comprehensive debt collection strategy to reduce the incidence of social security debts, provide fairer debt recovery methods and ensure that debts are not unfairly raised.

Recommendation 6

1.16 That the Australian Government amend the Social Security Act to remove anomalies and unfair aspects of its debt waiver provisions along the lines recommended in the evidence presented by the National Welfare Rights Network.

Senator Rachel Siewert

Australian Greens Whip

APPENDIX 1

State ex gratia redress schemes[1]

STATE	TAS	TAS	SA	WA	QLD
Eligibility criteria	Members of Stolen Generations and children of deceased Stolen Generations members	Abused whilst a child in state care	Sexually abused whilst in state care	Abused or neglected whilst a child in state care	Abused or neglected whilst a child in institutional care
Time open for applications	Jan 07 to Jun 07	Open ended	No closing date announced.	May 08 to Apr 09	May 07 to Sept 08
Amount	$58,333 for members $4,000 or $5,000 for children of deceased members	Initially $60,000 max. Claims from Aug 08 $35,000 max.	Usually $30,000 max. $50,000 max. in 'exceptional circumstances'	Four levels of payment ranging from $5,000 to $45,000. Initially max payment was set at $80,000.	$7,000 to $40,000
Deed of release	No	Yes	Yes	No	Yes
Major exclusions		People placed in care arrangements voluntarily by their parents or relatives	People who suffered neglect or other forms of abuse.		People abused or neglected while in foster care or in adult institutions.

1 This table is based on the table prepared by Dr Stephen Winter. See Dr Stephen Winter, 'Australia's *Ex Gratia* Redress', *Australian Indigenous Law Review*, figure 1, p. 52.

APPENDIX 2

Australian Government
Department of Finance and Deregulation

Chart of 87 bodies under the *Commonwealth Authorities and Companies Act 1997* (CAC Act)

63 statutory authorities are Commonwealth authorities for CAC Act purposes

Agriculture, Fisheries and Forestry: 7
- Australian Wine and Brandy Corporation *(Wine Australia)*
- Cotton Research and Development Corporation
- Fisheries Research and Development Corporation
- Grains Research and Development Corporation [M] Ⓟ
- Grape and Wine Research and Development Corporation
- Rural Industries Research and Development Corporation
- Sugar Research and Development Corporation

Attorney-General's: 4
- Australian Government Solicitor [M] Ⓢ
- Australian Institute of Criminology Ⓟ [I]
- Australian Law Reform Commission Ⓟ
- Criminology Research Council [I]

Broadband, Communications and the Digital Economy: 3
- Australian Broadcasting Corporation [M]
- Australian Postal Corporation [M]
- Special Broadcasting Service Corporation [M]

Defence: 7
- Army and Air Force Canteen Service *(Frontline Defence Services)*
- Australian Military Forces Relief Trust Fund *(Army Relief Trust Fund)*
- Defence Housing Australia [M]
- Royal Australian Air Force Veterans' Residences Trust Fund
- Royal Australian Air Force Welfare Trust Fund
- Royal Australian Navy Central Canteens Board
- Royal Australian Navy Relief Trust Fund

Education, Employment and Workplace Relations: 4
- Australian Curriculum, Assessment and Reporting Authority [I]
- Australian National University
- Coal Mining Industry (Long Service Leave Funding) Corporation [M]
- Comcare [M] Ⓟ Ⓢ *

Families, Housing, Community Services and Indigenous Affairs: 8
- Anindilyakwa Land Council
- Central Land Council
- Indigenous Business Australia [M]
- Indigenous Land Corporation
- Northern Land Council
- Tiwi Land Council
- Torres Strait Regional Authority
- Wreck Bay Aboriginal Community Council

Finance and Deregulation: 2
- Albury-Wodonga Development Corporation *(Albury-Wodonga Corporation)* [M] [I]
- Australian Industry Development Corporation [M]

Foreign Affairs and Trade
- Export Finance and Insurance Corporation [M] Ⓟ ^

Health and Ageing: 4
- Australian Institute of Health and Welfare Ⓟ *
- Food Standards Australia New Zealand [I]
- Health Workforce Australia [I]
- Private Health Insurance Administration Council

Human Services
- Australian Hearing Services *(Australian Hearing)* [M]

Infrastructure and Transport: 3 #
- Airservices Australia [M]
- Australian Maritime Safety Authority Ⓟ
- Civil Aviation Safety Authority [M]

Innovation, Industry, Science and Research: 4
- Australian Institute of Aboriginal and Torres Strait Islander Studies
- Australian Institute of Marine Science Ⓟ [I]
- Australian Nuclear Science and Technology Organisation [M] Ⓟ
- Commonwealth Scientific and Industrial Research Organisation [M] Ⓟ

Prime Minister and Cabinet: 9
- Australia Council
- Australian Film, Television and Radio School
- Australian National Maritime Museum Ⓟ
- Australian Sports Commission *(Australian Institute of Sport)* [M]
- National Film and Sound Archive
- National Gallery of Australia [M] Ⓟ
- National Library of Australia [M]
- National Museum of Australia [M] Ⓟ
- Screen Australia *

Resources, Energy and Tourism
- Tourism Australia [M] Ⓟ

Sustainability, Environment, Water, Population and Communities: 2 #
- Director of National Parks Ⓟ Ⓢ
- Sydney Harbour Federation Trust Ⓟ [I]

Treasury: 2
- Australian Reinsurance Pool Corporation [M]
- Reserve Bank of Australia [M] Ⓟ

Veterans' Affairs
- Australian War Memorial [M] Ⓟ

 # There are 2 statutory corporations subject only to certain CAC Act provisions

Infrastructure and Transport
- *National Transport Commission* * [I]
  Sections 9, 18, 20 and Schedule 1

Sustainability, Environment, Water, Population and Communities
- *NEPC Service Corporation* * [I]
  Sections 9, 18, 20 and Schedule 1

24 Commonwealth companies under the CAC Act
(ie. the Commonwealth controls the company)

15 limited by guarantee — *Corporations Act 2001*

Climate Change and Energy Efficiency
- Australian Carbon Trust Limited

Defence: 3
- AAF Company
- Australian Strategic Policy Institute Limited
- RAAF Welfare Recreational Company

Education, Employment and Workplace Relations: 2
- Australian Institute for Teaching and School Leadership Limited [I]
- Australian Learning and Teaching Council Limited

Families, Housing, Community Services and Indigenous Affairs
- Aboriginal Hostels Limited Σ

Health and Ageing: 3
- Aged Care Standards and Accreditation Agency Ltd Ⓟ
- General Practice Education and Training Limited
- National Breast and Ovarian Cancer Centre

Prime Minister and Cabinet: 4
- Australia Business Arts Foundation Ltd
- Australian Sports Foundation Limited Σ
- Bundanon Trust
- National Australia Day Council Limited

Resources, Energy and Tourism
- Australian Solar Institute Limited

9 limited by shares — *Corporations Act 2001*

Broadband, Communications and the Digital Economy
- NBN Co Limited [M]

Families, Housing, Community Services and Indigenous Affairs
- Outback Stores Pty Ltd

Finance and Deregulation: 3
- Australian River Co. Limited
- ASC Pty Ltd [M]
- Medibank Private Limited [M] Σ

Infrastructure and Transport
- Australian Rail Track Corporation Limited [M]

Innovation, Industry, Science and Research: 2
- IIF Foundation Pty Limited
- IIF Investments Pty Limited

Treasury
- HIH Claims Support Limited

Key to Symbols

- (light orange) 13 bodies encompass a Statutory Agency under the *Public Service Act 1999* (PS Act). These comprise a Commonwealth company and 12 Commonwealth authorities, of which 3 are marked * as they can engage personnel under their enabling Act along with the PS Act. # There are also 2 statutory corporations, subject only to certain CAC Act provisions, that are Statutory Agencies under the PS Act and can also employ their own staff (*).
- (teal) 7 Commonwealth authorities are established by regulations: comprising 5 of the 6 research and development corporations, plus both the Army and Air Force Canteen Service and the Royal Australian Navy Central Canteens Board.
- (yellow) 3 Commonwealth authorities and 4 Commonwealth companies are also government business enterprises (GBEs) under section 5 of the CAC Act.
- (red) 2 Commonwealth authorities are exempt from being notified of general policies of the Australian Government, under sections 28 and 48A of the CAC Act.
- (magenta) 2 Commonwealth authorities are partially exempt from ss 28 and 48A of the CAC Act.
- (brown) 1 Commonwealth authority is a statutory marketing authority (SMA): Australian Wine and Brandy Corporation.
- 70 General Government Sector (GGS) bodies. The National Interest Account is also classified as GGS, but is administered by the Export Finance and Insurance Corporation (EFIC) ^ which is a Public Financial Corporation.
- (blue) 9 Public Non-financial Corporations (PNFC).
- (green) 6 Public Financial Corporations (PFC) - ^ EFIC also administers the National Interest Account, which is classified as GGS.
- (grey) 2 Unclassified bodies (plus there are 2 statutory corporations # which are unclassified and subject only to certain CAC Act provisions).
- [M] 29 CAC Act bodies are material entities (comprising 99% of revenues, expenses, assets and liabilities). 25 are Commonwealth authorities and 4 are Commonwealth companies, limited by shares.
- Ⓟ 18 Commonwealth authorities and 1 company are also subject to section 47A of the CAC Act, which allows for directions on procurement matters.
- [I] 8 Commonwealth authorities, 1 Commonwealth company and 2 statutory corporations are inter-jurisdictional in nature, e.g. involving the States or Territories or New Zealand in their governance structure or establishment.
- Σ 3 Commonwealth companies are mentioned in statute.
- Ⓢ 3 Commonwealth authorities have a single person at their apex, rather than a multi-member board.
- # 2 statutory corporations are only subject to the provisions of the CAC Act mentioned beneath each entry.

Australian Government
Department of Finance and Deregulation

Chart of 104 Agencies under the *Financial Management and Accountability Act 1997* (FMA Act)

20 Departments of State [M] under the *Public Service Act 1999*

1. Department of Agriculture, Fisheries and Forestry
2. Attorney-General's Department
3. Department of Broadband, Communications and the Digital Economy
4. Department of Climate Change and Energy Efficiency
5. Department of Defence *
6. Department of Education, Employment and Workplace Relations
7. Department of Families, Housing, Community Services and Indigenous Affairs
8. Department of Finance and Deregulation
9. Department of Foreign Affairs and Trade
10. Department of Health and Ageing
11. Department of Human Services
12. Department of Immigration and Citizenship
13. Department of Infrastructure and Transport
14. Department of Innovation, Industry, Science and Research
15. Department of the Prime Minister and Cabinet
16. Department of Regional Australia, Regional Development and Local Government *(part of the Prime Minister and Cabinet portfolio)*
17. Department of Resources, Energy and Tourism
18. Department of Sustainability, Environment, Water, Population and Communities
19. Department of the Treasury
20. Department of Veterans' Affairs † *(part of the Defence portfolio)*

Note: there are 20 Departments of State and 20 Cabinet Ministers across 18 portfolios

5 prescribed agencies are non statutory and staffed through a Department of State

Defence: 1/1
Defence Materiel Organisation [M]

Innovation, Industry, Science and Research: 1/2
IP Australia ^

Resources, Energy and Tourism: 1/2
Geoscience Australia

Treasury: 2/14
Australian Office of Financial Management (AOFM) [M]
Royal Australian Mint

2 prescribed agencies are statutory, but staffed through a Department or agency

Education, Employment and Workplace Relations: 1/5
Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)

Treasury: 1/14
Commonwealth Grants Commission

62 prescribed agencies also encompass a Statutory Agency under the *Public Service Act 1999* (PS Act)

Agriculture, Fisheries and Forestry: 3/3
Australian Fisheries Management Authority †
Australian Pesticides and Veterinary Medicines Authority (APVMA) † [I]
Wheat Exports Australia †

Attorney-General's: 12/16 #
Administrative Appeals Tribunal
Australian Commission for Law Enforcement Integrity (ACLEI)
Australian Crime Commission [I]
Australian Customs and Border Protection Service [M]
Australian Human Rights Commission †
Australian Transaction Reports and Analysis Centre (AUSTRAC)
Family Court of Australia [M]
Federal Court of Australia
Federal Magistrates Court of Australia
National Native Title Tribunal
Office of Parliamentary Counsel
Office of the Director of Public Prosecutions *

Broadband, Communications and the Digital Economy: 1/1
Australian Communications and Media Authority (ACMA) † [M]

Climate Change and Energy Efficiency: 1/1
Office of the Renewable Energy Regulator

Education, Employment and Workplace Relations: 4/5
Fair Work Australia (FWA)
Office of the Australian Building and Construction Commissioner
Office of the Fair Work Ombudsman
Safe Work Australia [I]

Families, Housing, Community Services and Indigenous Affairs: 1/1
Equal Opportunity for Women in the Workplace Agency

Finance and Deregulation: 3/4
Australian Electoral Commission * [M]
ComSuper
Future Fund Management Agency † [M]

Foreign Affairs and Trade: 2/4
Australian Centre for International Agricultural Research (ACIAR)
Australian Trade Commission (Austrade) [M]

Health and Ageing: 7/7
Australian Organ and Tissue Donation and Transplantation Authority
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)
Cancer Australia
National Blood Authority [M] [I]
National Health and Medical Research Council (NHMRC) [M]
Private Health Insurance Ombudsman
Professional Services Review Scheme

Human Services: 2/2
Centrelink (Commonwealth Services Delivery Agency) [M]
Medicare Australia [M]

Immigration and Citizenship: 1/1
Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT)

Infrastructure and Transport: 1/1
Australian Transport Safety Bureau (ATSB)

Innovation, Industry, Science and Research: 1/2
Australian Research Council [M]

Prime Minister and Cabinet: 8/11
Australian Institute of Family Studies (AIFS) *
Australian National Audit Office
Australian Public Service Commission (APS Commission)
Australian Sports Anti-Doping Authority (ASADA)
Office of National Assessments *
Office of the Australian Information Commissioner
Office of the Commonwealth Ombudsman
Office of the Inspector-General of Intelligence and Security

Regional Australia, Regional Development and Local Government: 1/1
National Capital Authority [M]

Resources, Energy and Tourism: 1/2
National Offshore Petroleum Safety Authority (NOPSA) † [I]

Sustainability, Environment, Water, Population and Communities: 3/4
Great Barrier Reef Marine Park Authority † [I]
Murray-Darling Basin Authority † [I]
National Water Commission [I]

Treasury: 10/14
Australian Bureau of Statistics * [M]
Australian Competition and Consumer Commission † [I]
Australian Securities and Investments Commission (ASIC) † * [M] [I]
Australian Taxation Office [M]
Corporations and Markets Advisory Committee (CAMAC) † *
Inspector-General of Taxation
National Competition Council
Office of the Auditing and Assurance Standards Board (AUASB) *
Office of the Australian Accounting Standards Board (AASB) *
Productivity Commission

6 prescribed agencies also encompass an Executive Agency under the *Public Service Act 1999*

Attorney-General's: 2/16
CrimTrac Agency [I]
Insolvency and Trustee Service Australia (ITSA) † ΔΣ

Foreign Affairs and Trade: 1/4
AusAID (Australian Agency for International Development) [M]

Prime Minister and Cabinet: 2/11
National Archives of Australia [M] Σ
Old Parliament House

Sustainability, Environment, Water, Population and Communities: 1/4
Bureau of Meteorology [M] Σ

3 Departments of the Parliament, under the *Parliamentary Service Act 1999*

Department of the Senate
Department of the House of Representatives
Department of Parliamentary Services [M]

6 prescribed agencies engage personnel under their own Act, and not the PS Act

Attorney-General's: 2/16 #
Australian Federal Police [M] [I]
Australian Security Intelligence Organisation [M]

Finance and Deregulation: 1/4
Australian Reward Investment Alliance (ARIA) † Δ

Foreign Affairs and Trade: 1/4
Australian Secret Intelligence Service

Prime Minister and Cabinet: 1/11
Office of the Official Secretary to the Governor-General

Treasury: 1/14
Australian Prudential Regulation Authority (APRA) †

Key to Symbols

FMA Act agencies comprise all Departments of State, Departments of the Parliament and "prescribed agencies" named in the FMA Regulations. These agencies are all able to receive appropriations in their own right.
Also, note that all FMA Act agencies are in the "General Government Sector".

[M] 43 agencies are material entities. Material entities comprise 99% of revenues, expenses, assets and liabilities. Note too, that all of the 20 Departments of State are "material in nature".

† 16 agencies also encompass bodies corporate formed under statute.

[I] 12 agencies are interjurisdictional in nature, e.g. involving the States or Territories in their governance structure or establishment.

* 10 agencies can engage personnel under their enabling legislation as well as under the *Public Service Act 1999*. These include Defence, under the *Defence Act 1903*, *Naval Defence Act 1910* and the *Air Force Act 1923*.

12/16 – Indicates number of prescribed agencies of that type (e.g. statutory agencies) out of the number of prescribed agencies in the portfolio generally.

Δ 2 agencies handle money other than public money.

Σ 3 Executive Agencies have statutory functions.

^ IP Australia encompasses some office holders, ie. for registering patents, trademarks and designs.

\# The Attorney-General's portfolio includes the High Court of Australia, which is part of the Commonwealth, is an "agency" named in the annual Appropriation Acts and is in the "General Government Sector". However, it is not an agency under the FMA Act, due to its status under its enabling legislation, which also sets its employment framework.

APPENDIX 3

SUBMISSIONS RECEIVED

Submission Number	Submitter
1	Mr Maurice Vickers
2	Ms Alison Fuller
	Supplementary Submission
3	Ms Christine Waite
	Attachment 1
	Supplementary Submission
	Supplementary Submission
4	Ms Dianne Hughes
5	Mr Phillip Chalker
6	Mr Brian Baker
7	Mr Geoff Steele
8	Ms Gwen Robinson
9	Ms Sonya Irving
10	Name Withheld
11	Mrs Maria Starcevic (Bennett)
12	Yigss Org
13	Name Withheld
14	Mrs Lily Arthur
15	Confidential
16	Confidential
17	Ms Patricia Pascoe

18	Confidential
19	Confidential
20	Confidential
21	Confidential
22	Origins Inc
23	Name Withheld
24	Confidential
25	Confidential
26	Mr Brian Cherrie
27	Confidential
28	The Victorian “Forgotten Australians Report” Sector Working Group
29	Confidential
30	Name Withheld
31	Name Withheld
32	Mr Les Doyle
33	Mr Mark Torr
34	Ms Muriel Decker
35	Mr Tony Young
36	Ms Glenda Farham
37	Wings For Survivors
	Attachment 1
38	Name Withheld
39	Ms Jenny Tiffen
40	Name Withheld
41	Confidential

42	Ms Ellen Bucello
43	Mr Daryl Miechel
44	Mr Wayne Bradwell
	Supplementary Submission
45	Confidential
46	Confidential
47	Name Withheld
48	Confidential
49	Name Withheld
50	Confidential
51	International Association of Former Child Migrants and Their Families
52	Confidential
53	Confidential
54	Confidential
55	Confidential
56	Confidential
57	Commonwealth Ombudsman
58	Confidential
59	Ms Irene Kalves
60	Ms Mary Armytage
61	Mr Stephen J Sam
62	Confidential
63	Mr Robert Valbusa
64	Confidential
65	Mr James Priestly

66	Ms Julie Evans
67	Name Withheld
68	Mr Peter Edwards
69	Name Withheld
70	Mr Michael Brown
	Supplementary Submission (Confidential)
	Supplementary Submission (Confidential)
71	Mr Brian Hanrahan
72	Ms Sandra Beaton
73	Confidential
74	Confidential
75	Ms Angela Sdrinis
76	Ms Rozlyn de Bussey
77	Mrs Julie Anderson
78	Mr Brian A Woods
79	Confidential
80	Name Withheld
81	Name Withheld
82	Ms Heather Templeman
83	Mrs Diane Mancuso
84	Name Withheld
85	Name Withheld
86	Name Withheld
87	Confidential
88	The Hon Ruth Forrest MLC
89	Ms Lorraine McDonagh

90	Connecting Home Limited
91	Name Withheld
92	Department of Finance and Deregulation
	Attachment 1
	Attachment 2
	Attachment 3
93	Ms Cherie Marian
94	Confidential
95	Mr Danny Hewatt
96	Mr Donald Edwards
97	Name Withheld
98	Mr Alfred Stirling
99	Mr Bruce Hubbard
100	Mr William Baker
101	Ms Judith Mitchell
102	Mr Francis (Frank) Golding
103	Mr Edward Bain
104	Confidential
105	Confidential
106	Confidential
107	Name Withheld
108	Women's Legal Services NSW
109	Mr Peter Schroder
110	Mr Gordon Waters
111	Name Withheld
112	Name Withheld

113	Mr Jim Luthy
114	Public Interest Advocacy Centre
	Attachment 1
115	Mrs Maggie Hart
116	Confidential
117	Ms Sherrie Else
118	Name Withheld
119	Ms Robin Henderson
120	Name Withheld
121	Confidential
122	Name Withheld
123	Confidential
124	Australian Human Rights Commission
	Attachment 1
	Attachment 2
125	Name Withheld
126	Name Withheld
127	Name Withheld
128	Name Withheld
129	Name Withheld
130	Forde Foundation Board of Advice
131	Confidential
132	Name Withheld
133	Alliance for Forgotten Australians
	Supplementary Submission
134	Ms Kathryn Armstrong

135	Name Withheld
136	Mr Kevin Uren
137	Confidential
138	Name Withheld
	Supplementary Submission (Confidential)
139	Care Leavers of Australia Network (CLAN)
	Supplementary Submission 1
	Supplementary Submission 2 (Confidential)
	Supplementary Submission 3
140	Confidential
141	Name Withheld
142	Child Migrants Trust
143	Confidential
144	Ms Rayeleene O'Hehir
145	Ms Venetta Lohse
146	Ms Diane Witchard
147	Confidential
148	Avis Bowman and William McLeary
149	Name Withheld
150	Confidential
151	Confidential
152	Ms Diane Tronc
153	Name Withheld
154	Name Withheld
155	Name Withheld
156	Ms Varina Gilbert

157	Confidential
158	Confidential
159	Confidential
160	Confidential
161	Confidential
162	Mr William Ward
163	Name Withheld
164	Ms Lois Raines
165	Name Withheld
166	Confidential
167	Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)
168	Queensland Government
169	Andrew Binks, Annette O'Connor and Michelle Greaves
170	Forgotten Australians Victorian Action Group
171	Ms Sovina Olle
172	Welfare Rights Centre
173	Name Withheld
174	Confidential
175	Mr John Priestley
176	Ms Leonie Sheedy
	Supplementary Submission (Confidential)
177	Confidential
178	Confidential
179	Confidential
180	Mr Eric Wheeler

181	Ms Kay Pitts
182	Ms Dianne Gallagher
183	Mr Eric Wilson
	Attachment 1
	Attachment 2
	Attachment 3
	Attachment 4
184	Name Withheld
185	Ms Diane Bradwell

ADDITIONAL INFORMATION RECEIVED

1	Document tabled by Department of Finance and Deregulation at public hearing on 29 October 2010
2	Four documents tabled by CLAN at public hearing on 2 November 2010
3	Two documents tabled by Welfare Rights Centre at public hearing on 2 November 2010
4	Two documents tabled by Alliance for Forgotten Australians at public hearing on 2 November 2010
5	Answers to Questions on Notice provided by Department of Finance and Deregulation on 10 November 2010
6	Answers to Questions on Notice provided by Department of Families, Housing, Community Services and Indigenous Affairs on 10 November 2010
7	Answers to Questions on Notice provided by Dr Jane Wangmann (on behalf of CLAN) on 11 November 2010
8	Answers to Questions on Notice provided by Women's Legal Services NSW on 11 November 2010
9	Answers to Questions on Notice provided by Commonwealth Ombudsman on 15 November 2010

10	Answers to Questions on Notice provided by Department of Families, Housing, Community Services and Indigenous Affairs on 16 November 2010

APPENDIX 4

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Canberra, 29 October 2010

EDGE, Mr John, First Assistant Secretary, Government Business, Special Claims and Land Policy Division, Department of Finance and Deregulation

EMERSON, Mr Ty, Branch Manager, Social Security Policy, Department of Families, Housing, Community Services and Indigenous Affairs

ESSEX, Ms Allyson, Branch Manager, Family and Child Support Policy Branch, Department of Families, Housing, Community Services and Indigenous Affairs

MASON, Ms Jan, Deputy Secretary, Asset Management and Parliamentary Services Group, Department of Finance and Deregulation

VERNEY, Dr Guy, Assistant Secretary, Special Claims and Land Policy Branch, Department of Finance and Deregulation

Sydney, 2 November 2010

ASHER, Mr Allan, Commonwealth Ombudsman

FINLAY, Ms Jackie, Principal Solicitor, Welfare Rights Centre

JONES, Ms Carolyn, Solicitor, Womens Legal Services NSW

MACDONALD, Ms Edwina, Solicitor, Womens Legal Services, NSW

MASRI, Mr George, Senior Assistant Ombudsman

MAWULI, Ms Vavaa, Senior Solicitor, Indigenous Justice Program, Public Interest Advocacy Centre

RUNDLE, Mr Graham, Member, Care Leavers Australia Network

SHEEDY, Ms Leonie, President and Co-Founder, Care Leavers Australia Network

STANKEVICIUS, Mr Masri, A/Deputy Ombudsman

THOMAS, Mr Gerard, Policy and Media Officer, Welfare Rights Centre

WANGMANN, Dr Jane, University of Technology Sydney

Melbourne, 3 November 2010

CARROLL, Ms Caroline, Chair and Victorian Representative, Alliance for Forgotten Australians

CONROY, Ms Stella, Policy Officer, Advisory Group, Alliance for Forgotten Australians

DOMMETT, Mr John, Chief Executive Officer, Connecting Home Ltd

EDWARDS, Ms Evago, Caseworker and Programs Officer, Connecting Home Ltd

GOLDING, Mr Frank, Private capacity

YOUNG, Mr Tony, Tasmanian Representative, Alliance for Forgotten Australians