The Hon Justice Peter McClellan AM
The Royal Commission into Institutional Responses to Child Sexual Abuse

Submission

Redress and Civil Litigation
February 2015

[redacted]

Introduction:

My name is [redacted]; I am a former child migrant having spent some 10 plus years in [redacted] in Western Australia during which I was sexually, physically and mentally abused; I gave evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse in a Private Session before Commissioner Helen Milroy on Tuesday 25th February 2014 and on Ms Milroy's advice, I followed this up with an additional written submission on 3rd June 2014 providing the Commission with further details of the abuse that I and other kids at [redacted] underwent.

I have only recently been made aware by the Child Migrants Trust of the consultation paper and other reports and information put out by the Royal Commission into Institutional Responses to Child Sexual Abuse regarding Redress and Civil Litigation seeking submissions from interested parties as to the form and recommendations of the Commission's final report which is to be released in the middle of 2015.

Firstly I would like to commend the Commission generally, and in particular Commissioner Milroy, for the manner in which I was treated whilst I gave evidence during my Private Session hearing, as this made an extremely painful and difficult occasion much easier to bear and accomplish.

Secondly, I would like to also state that I am disappointed that the serious of issue Child Migration, commonly referred to as Child Deportation, and the issues of sexual, physical and mental abuse associated with this program appears to have been pushed aside by the issue of sexual abuse. From my personal experience all three generally go together. I am also disappointed that I had to find out about the Commission's consultation paper and other documents via a third party, that is, The Child Migrant Trust.

I note from my reading of Justice McClellan's document that the closing date for written submissions is Monday 2nd March 2015 and that the Commission will receive oral submissions over three days of public hearings commencing on Wednesday march 25 March 2015.

I understand that the oral hearing sessions will be carried out in the eastern states and, as a Western Australian, I cannot afford to travel and stay in the east on the off chance I may get to present an oral submission to the Commission as it is my opinion, based on past practice and experience, that both the written and oral submission phases will be dominated by those parties, including governments, wishing to minimise any potential monetary payout to victims; as such I formerly submit the following submission to the Royal Commission into Institutional Responses to Child Sexual Abuse for consideration by the Commissioners for inclusion in to their final report on Redress and Civil Litigation that is to be submitted to the Federal Government in mid-2015.

The Child Migrant Trust referred me to the Royal Commission's website to access the consultation paper and other documents that relate to the Commission's impending report to the Federal Government; there were three [3] documents that I believed to be of importance and I have downloaded and read through each document prior to completing my submission to the Royal Commission. The three documents are;

1: Redress and civil litigation – The Hon Justice Peter McClelland: Chair - Royal Commission into Institutional Responses to Child Sexual Abuse.

2: Consultation Paper – Redress and civil litigation. January 2015. Royal Commission into Institutional Responses to Child Sexual Abuse.

3: National Redress Scheme – Participant and Cost Estimates. Finity Consulting January 2015

In his document titled Redress and civil litigation, the Chair of the Royal Commission into Institutional Responses to Child Sexual Abuse, the Hon Justice McClellan AM, states ***"Our Terms of Reference require us to make recommendations in relation to 'ensuring justice for victims through the provision of redress by institutions'***, and he goes on to further state ***"Many institutions have acknowledged that their previous response to survivors has been inadequate. Many survivors have a pressing need for assistance, including effective and just redress".***

I believe that the key words in the above statements by Mr Justice McClelland are [a] ***"ensuring justice for victims through the provision of redress"*** and [b] ***"many survivors have a pressing need for assistance, including effective and just redress"***, with, in my view, the words ***effective and just*** being of primary importance to both former child migrants and survivors of sexual, physical and mental abuse in institutions generally.

As a former child migrant who suffered sexual, physical and mental abuse during my 10 plus years at [redacted] and having spoken to a number of former child migrants from [redacted] and other institutions I submit the following from a former child migrant's view point.

Justice McClelland also discusses

Submission Content:

The Commission's Consultation Paper, Redress and civil litigation released in January 2015 is an extremely lengthy document and given the limited amount of time available to read, analyse and respond to the document I will attempt to provide some thoughts that I, as a former child migrant, believe must be considered by the Commission when making its final recommendations to the Federal Government.

The Consultation Paper places the main emphasis of responsibility and fault for abuse of children in institutions <u>on the institutions</u> and totally ignores the responsibility and fault that must fall on the Australian, British and Australian State Governments who agreed to and signed up to a "child deportation" scheme that allowed these same institutions access to the children who were subsequently abused. Clearly there has been a failure of all three governments to ensure the safety of the child migrants they so readily agreed to "deport" for no other reason than they came from poor families.

Many of the former child migrants in Australia fought for Australia in WW11, the Korean War and Vietnam, with some former child migrants paying the ultimate sacrifice; they all did so without ever being granted Australian Citizenship. Hopefully the recommendations of the Royal Commission will, if adopted by those responsible for the abuse, in some small and belated way go towards recognition of this.

Given the above, the Australian, British and State Governments should be treated in the same manner as the governing bodies of the various institutions where the abuse occurred, that is, these three governments <u>owed a duty of care to the child migrants</u> and are as equally responsible for the crimes against the child migrants as the institutions themselves, as the institutions concerned were "given" the child migrants with the blessing of the three governments.

Failure to treat the Australian, British and State Governments as being equally responsible for the abuse of former child migrants will be seen, by former child migrants in particular, and by other abused children generally, as <u>protecting the interests</u> of three of the major players/groups who should be held publicly responsible for the abuse of children and as such is in <u>direct conflict with the first principle espoused in the Commission's Consultation Paper.</u>

I take this opportunity to point out that as raised in the Commission's Consultation Paper, the Federal Government has already failed to accept previous recommendations of the Commission

regarding children in State run institutions as *"these institutions are primarily a responsibility of the individual States".*

[A] Redress:

On pages 9 through to 32 the Consultation Paper deals with issues associated with Redress and the setting up and implementation of a Scheme that is seen and considered to be "Fair and Just" to the survivors of abuse.

1. If a Redress Scheme is to be seen as fair and just by the survivors and to be successfully implemented, the Scheme must, with no exceptions, include all those groups who were responsible for and had a duty of care to, the child migrants and other children in institutions; a failure to do so will be no more than a continuance of the abuse against both former child migrants and other children who were in institutions.

2. Any Redress Scheme that is finally approved must adopt and adhere to, as a minimum, the four principles outlined on Page 9 of the Consultation Paper and these principles must be equally applicable to all of the governments, religions and other groups who were ultimately responsible for the safety and wellbeing of the child migrants and children in their care.

3. The four [4] general principles proposed by the Commission on pages 53 and 54 of its Consultation Paper must also be accepted and adhered to by all parties to the Redress Scheme; this includes the Federal and State Governments, Religious, Charitable and other organisations who ran the institutions where child migrants and other children were abused. These four general principles, as re-stated immediately below, are considered to be vitally important to those former child migrants who I have discussed this issue with;

    - ***redress should be survivor-focused – redress is about providing justice to the survivor, and not about protecting the institution's interests;***
    - ***there should be a 'no wrong door' approach for survivors in gaining access to redress – whether survivors approach a scheme or an institution, they should be helped to understand all the elements of redress available and to apply for the types of redress they wish to seek;***
    - ***all redress should be offered, assessed and provided with appropriate regard to what is known about the nature and impact of child sexual abuse – and institutional child sexual abuse in particular – and to the cultural needs of survivors. All of those involved in redress, and particularly those who might interact with survivors or make decisions affecting survivors, should have a proper understanding of these issues and any necessary training***
    - ***all redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors. It should be ensured that survivors can get access to redress with minimal difficulty and cost and with appropriate support or facilitation if required.***

4. I, and other child migrants I have spoken to, strongly object to any "common approach" to setting up a Redress Scheme as hard past experience has taught us that such approaches tend to benefit the perpetrators and those organisations with responsibility for the abuse rather than benefit the survivors. In some instances, such as with [redacted] [redacted] where I spent some 10 plus years, the organisations have ceased to exist and as such, any child migrant or other child who was in an institution run by these organisations will be further abused by being "discounted or discarded" due to no organisation being available to make payments to the Redress Scheme. Additionally, those larger religious based organisations and others would see this as a means of reducing their responsibility and culpability for any Redress payments.

5. As past Australian Governments, both Federal and State, have continually demonstrated a deep seated reluctance to admit that the abuse of child migrants and other children in care did in fact happen, they should not be the final arbiters on deciding the level of payments, both maximum and minimum that should be set for any Redress Scheme.

6. On Pages 51 and 52 of the Commission's Consultation Paper reference is made to the potential relevance of the Van Boven principles as adopted by the General Assembly of the United Nations in 2005; whilst these principles are new to me and to most former child migrants, their concept appears to have possibilities and merit with regard to the Commission's reference to developing and implementing a system of Redress that is "Fair and Just" to the survivors of abuse, particularly as the principles outline the victim's rights to;

   - equal and effective access to justice;
   - adequate, effective and prompt reparation for harm suffered; and
   - access to relevant information concerning violations and reparation mechanisms.

   Given that Australia is a signatory to the adoption of these principles by the United Nations, this should provide some leverage to have the Federal Government accept the final recommendations of the Royal Commission. A failure to do so would see Australia in direct breach of a principle of the United Nations.

   The Commissions' comment that the Van Boven principle of "Restitution" as adopted by the United Nations cannot assist survivors of child abuse as the survivors cannot be restored to their original situation is particularly relevant to former child migrants who were deported under a child migrant scheme that was in many ways similar to what happened to Jews and other nationalities under the Nazi regime. As us this leaves former child migrants in something of a limbo in that their only option is civil litigation which the greater majority of child migrants cannot afford.

7. In developing a Redress Scheme I noted that the Commission has looked at numerous schemes adopted by various Australian States, Religious organisations, large and small, and other instances of Redress or Compensation, as well as schemes adopted in Canada and Ireland

8. In Western Australia we had a Redress Scheme that the State Liberal Government arbitrarily cut the maximum allowable payout under the State's Redress Scheme, with the Premier commenting on television that ***"This all happened a long time ago and it is time for those involved to forget about the past and move on with their lives"***; we currently still have this same Liberal Government and the same State Premier who is also on public record as saying that whilst he supports the Royal Commission, he will not reverse or reinstate the Redress Scheme in Western Australia. Quite simply the Redress Scheme in Western Australia failed miserably in addressing the real issues associated with the abuse of children in State or institutional care and any Redress scheme that adopts or follows the methodology of the Western Australian Redress Scheme is doomed to failure in the eyes of former child migrants and therefore open to challenge.

   In this regard I am speaking from personal experience in that despite my registering with the Redress WA Scheme, speaking with a person on the telephone about my claim and submitting a formal application on the appropriate form, I received no payment from the scheme as the department responsible claimed they had not received my application; another extension of the continued mental abuse by the state government and or their departments. I kept a photocopy of the document I submitted to Redress WA and intend to use that in a civil litigation claim once the Commission's report is made public.

9. The application of "affordability" in setting the maximum allowable payment of a Redress Scheme should not occur as, in my view, this is direct opposition to the principle of ***"ensuring justice for victims through the provision of redress"*** as espoused by Justice McClelland in his

paper. It must be remembered that in the case of the governments, their decisions are made by people who enjoy some of the best remuneration, workplace and retirements benefits in the country, whilst many of the religions involved are extremely rich, pay no taxes and enjoy numerous other benefits because they are "religious" or "charitable" organisations and therefore bludge on the taxpayer.

It appears from a victim's point of view that the Commission's actuary consultants, Finity Consulting, have based their findings and recommendations on affordability rather than the seriousness and depravity of the crimes committed against children when they were most vulnerable and with little or no protection provided to them by their carers, or in my case, and that of all child migrants in Western Australia, the State of Western Australia who under the state's Child Welfare Act, had full responsibility for the care of **all child migrants** until they turned 21 years of age.

10. Given that in many instances the actual physical crime against most child migrants occurred 50 or 60 years or more ago, if the maximum level of payout is set too low, monetary redress or compensation could amount to no more than $1000 to $2,500 for each year of additional mental abuse which followed due to the continual denial that such abuse ever occurred and the lack of appropriate action by Governments and other bodies responsible for the abused children.

11. Although it is only a small increase to the maximum allowable payout as recommended by the actuarial accountants employed to make recommendations to the Commission, having had several discussions on this matter with a number of former child migrants, both from [redacted] and other institutions in Western Australia, it is our view that the maximum figure of any Redress scheme should be set at $350.000.00. This figure is less than what a politician received for merely falling off a training bike in the gymnasium in Parliament House some years ago.

12. In determining who is to receive payment from any Redress Scheme there are a number of issues which should be considered and these should, in my view, include;

- Each application should be dealt with on a case by case individual basis.
- The current age of the individual as many former child migrants were abused over 50 years ago and time is rapidly running out for them.
- The proven fact that as people get older, abuse issues that they have managed to successfully suppress and hide over the years with the help of work and deliberate mental 'block out" techniques start to resurface and eat away at the individual.
- The type of and degree of the abuse the individual suffered, i.e. sexual, physical or mental abuse or all three forms of abuse.
- The current situation of the individual regarding health and wellbeing with regard to the urgent need for assistance of the individual.
- The level of payment each applicant is to be recompensed should be determined on a case by case individual basis.

13. From my view in particular, and from views that have been expressed to me by former child migrants that I grew up with at [redacted] we want nothing to do with the organisation anymore and personally, I feel that any "apology" that is given now is purely an apology that is given under the pressure and urging of others and is not a genuine apology. An example of just such an ingenuous apology is the apology delivered by the then Prime Minister Kevin Rudd which the greater majority of former child migrants treat with disdain as it is commonly known he did not want to do it but was pushed in to apologising by colleagues in an effort to make the government feel good.

In paraphrasing the words contained with the Commissions Consultation Paper, it is important, that the wrongdoers, such as governments and institutions, should not to dictate the agenda for making apologies, as this will simply reinforce any power imbalance that exists between the victim and the wrongdoer in greater favour of the wrongdoer; this is the perception held by most former child migrants I have spoken to about Mr Rudd's apology.

Personally, I have no desire to accept an apology from the [redacted] organisation as past history and hard experience has shown that they and governments cannot be trusted.

14. With regard to as to how a Redress Scheme should be set up, i.e. as a national scheme or as state based schemes, I again point out that those with responsibility for child migrants include both the Federal and State governments and as such the Scheme **must** include both the Federal and State governments as contributors to any Redress Scheme in the same manner that Religious and other organisations who ran the institutions where children were abused.

15. Whatever the final model that is put in place for a Redress Scheme, be it National or State based I feel that if it is to be seen by the victims as being fair and just, there must be a national oversight body to oversee that the implementation of the Scheme/Schemes is done in line with the principles of equality, fairness and justice as espoused by the Commission; such a body should include equal representation from government and non-government institutions, and most importantly, **from the survivors themselves.**

16. In responding to the three specific issues raised on Page 189 of the Commissions Consultation Paper, as a former child migrant who will be affected by the final outcomes of the Royal Commission I submit as follows;

- appropriate funding arrangements: The arrangements should include levies on all those organisations that were responsible for the running of an institution where children in their care were abused, be they government, religion, charity or community based organisations.
- appropriate funder of last resort arrangements: With the exception of former child migrants, in all other cases, the State governments should be determined as being "funders of last resort"; in cases that relate to former child migrants, both the Federal and State governments should be identified equally as "funders of last resort".
- the level of flexibility that should be allowed in implementing redress schemes and funding arrangements: There should be minimal flexibility with adherence to principles recommended by the Commission and implemented by Federal Law being primary determiner of flexibility.

17. In responding to the issue of interim arrangements and possible structures raised on Page 195 of the Commission's Consultation Paper I also submit the following for consideration by the Commission;

- Governments, both Federal and State must be involved in any interim arrangements and structures that are put in place for any Redress Scheme prior to a final system being adopted and implemented.
- A set of guidance principles developed by the Commission must be included in any interim arrangements and possible structures that are put in place prior to a final system being adopted and implemented.
- An interim panel consisting or representatives from governments, institutions and victims/survivors be put in place to provide oversight of any interim arrangements and possible structures that are put in place prior to a final system being adopted and implemented, with the oversight panel reporting back to the Royal Commission.

[B] Litigation:

In Chapter 10 on Page 196 of the Commission's Consultation Paper, begins its comments on the issue of Civil Litigation, and on Page 232 the Commission invites submissions to the question of Civil Litigation, in particular submissions on the issues of;

- the options for reforming limitation periods and whether any changes should apply retrospectively;
- the options for reforming the duty of institutions and whether any changes should apply retrospectively;
- how to address difficulties in identifying a proper defendant in faith-based institutions with statutory property trusts;
- whether the difficulties in identifying a proper defendant arise in respect of institutions other than faith-based institutions and how these difficulties should be addressed;
- whether governments and non-government institutions should adopt principles for how they will handle civil litigation in relation to child sexual abuse claims;
- whether any changes may have adverse effects on insurance availability or coverage for institutions, including specific details of the adverse effects and the reasons for them.

1. On reading through this Chapter of the Consultation Paper I noted that all Australian Governments and the institutions where children were abused have continually relied on the various Statutes of Limitations involved as a means of fending off any potential civil litigation cases. I submit that as a victim of all three types of child abuse, that is, sexual, physical and mental, and as a former child migrant and survivor of the subsequent years of ongoing dishonesty and disregard by the authorities, and given that there is a documented history of the abuse going back over 70 years, I am of the firm opinion that the various Statute of Limitations that apply in Australia should be amended so as not to apply to any child abuse no matter when it occurred.

   It must be remembered that the people who implemented the Statutes of Limitations were not victims or survivors, but were legislators, often with ties to the religious and other organisations who ran the institutions where the abuse occurred and as such it is the voice and opinions of the victims/survivors that should take precedence in determining this issue.

2. In my particular case the organisation that ran [redacted] in Western Australia has disappeared; however both the Federal and State governments still exist and as both governments signed up to and supported the deportation system of child migration to Australia, I am firmly of the opinion that governments, religions and other organisations that ran or supported the institutions where the abuse occurred should be considered as equally responsible and at fault as the individuals who committed the crime. Therefore I fully support any change that applies such responsibility to the governments, religions and other organisations and fully support such changes being retrospective to when such activity first occurred.

3. Although the third issue above does not apply in my particular case, since my involvement with the Child Migrant Trust I have over the past few years met and discussed with fellow former child migrants who were the victims of child abuse in religious based institutions. I therefore submit on their behalf, that legislation should be enacted that requires all institutions to be incorporated and based with their parent organisation. This should be applied retrospectively to when such organisations first operated as institutions in Australia; any organisation which refuses to do so or disputes this should have any taxation benefits they currently receive discontinued.

4. With regard to the whether the difficulties in identifying a proper defendant in respect of institutions other than faith or religious based institutions; again I refer to my point at item 2 on Page 7 of this submission above in that in the case of former child migrants, both the Federal

and State governments still exist and as both governments signed up to and supported the deportation system of child migration to Australia, I am therefore firmly of the opinion that both governments should be held equally responsible.

In the case of institutions who were not faith or religion based and did not have child migrants, the various States must be held accountable in the same manner that the faith or religion based institutions are, as the States have final duty of care responsibility to children in care under the various Child Welfare Acts in each State or Territory.

5. In responding the issue as to whether governments and non-government institutions should adopt principles for how they will handle civil litigation in relation to child sexual abuse claims I submit as follows.

   History, particularly recent history, has shown that governments and non-government institutions will do whatever is necessary to defend themselves from civil litigation including bullying and intimidation of litigants, as such they cannot be trusted to develop a set of principles themselves. I strongly urge the Commission to listen to the voices of the victims and survivors and recommend a set of principles, agreed to by the victims and survivors, be enacted by Federal Legislation and imposed on all governments and non-government institutions in the event of civil litigation occurring.

   The Victorian and New South Wales sets of principles included on Pages 227 and 228 of the Commission's Consultation Paper would, in my view, be a good starting point for the Commission in developing a set of principles that would be imposed on all governments and non-government institutions in the event of civil litigation. I would also again submit that the voice of victims and survivors should take precedence in developing such a set of principles.

6. With regard to the final issue as to whether any changes may have adverse effects on insurance availability or coverage for institutions, including specific details of the adverse effects and the reasons for them I quite simply have no comment other than as a victim and survivor of a system that was deliberately imposed so that children in care basically had no rights, perhaps the potential for adverse effects on the institutions is a good thing rather than a bad or detrimental thing as this will make governments far more aware of the potential of child abuse in institutions in the future.

In addition to responding to the six specific issues above as identified by the commission in their Consultation Paper, I would also like to submit some issues for consideration that have not been addressed in the Commissions Consultation Paper that area relative to former child migrants; these include but are not limited to;

1. A great majority of former child migrants have no readily available family history; this can and does impose a tremendous mental impact on child migrants.

2. I know of child migrants that I grew up with who have managed to track down their families in the UK without any assistance from [redacted] or governments; in some instances they have been turned away by the families when they were physically approached by the child migrants, at times being told we gave you away all those years ago, why have you come back now?

3. The lack of a readily available family history can and has impacted on some former child migrants with regard to there being no readily available family medical history.

4. Whilst there is some support from the Child Migrant Trust, through the graces of the UK Government after its apology 5 years ago and individual donations to the Trust, this support is limited and many child migrants, myself included have spent many thousands of

dollars of their own money and invested hundreds or thousands of hours in attempting to track down their family records, more often or not with little or no result.

5. No Australian Government, Federal or State, has voluntarily stepped up to provide assistance to former child migrants who wish to track down their family histories or even return to the UK to see relatives that have been found or just to see where they originated from.

I draw the attention of the Commission to the very basic survival issues above that child migrants area dealing with every day so that when making its final findings and recommendations in the Commission's final report to the Federal Government with regard to Redress and civil litigation, it takes in to account these basic issues when recommending the final amounts of monetary compensation under a Redress Scheme and the right to civil litigation without the victim/survivors incurring additional costs and abuse.

The laws in England and Canada have developed so that the victim/survivors of all types of child abuse in institutions, that is, sexual, physical and mental abuse, are given precedence over the wrongdoers in the past, the present and in to the future.

IT IS TIME AUSTRALIAN LAWS WERE AMENDED ACCORDINGLY AND THE COMMISSION SHOULD NOT MISS THIS OPPORTUNITY.

IT HAS BEEN GIVEN A RARE OPPORTUITY TO ADEQUATELY PROTECT PAST AND CURRENT VICTIMS/SURVIVORS AND POTENTIAL FUTURE VICTIMS FROM THESE TYPES OF CHILD ABUSE.

[redacted] [redacted]
Former Child Migrant [1951 to 1962] and Victim/Survivor.

28 February 2015

The Hon Justice Peter McClellan AM
The Royal Commission into Institutional Responses to Child Sexual Abuse

Supplementary Submission

Redress and Civil Litigation
March 2015

[redacted] [redacted]
Former Child Migrant and Child Abuse Victim/Survivor

Introduction:

My name is [redacted] and I submitted a written response to the Commission's major consultation paper, ***Redress and civil litigation*** via email on 2nd March 2015, the published closing date for written submissions.

As I stated in my submission, I am a former child migrant having spent some 10 plus years, from 1951 to 1962, in [redacted] [redacted] in Western Australia where I was sexually, physically and mentally abused. As your records will show I have given evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse in a Private Session before Commissioner Helen Milroy on Tuesday 25th February 2014 and, on Ms Milroy's advice, I subsequently followed this up with an additional written submission on 3rd June 2014 providing the Commission with further details of the abuse that I, and other kids at [redacted] underwent.

I also stated that I had to find out about the Commission's consultation paper on Redress and civil litigation and other associated documents via a third party, that is, The Child Migrant Trust, with this only occurring a couple of weeks prior to the closing date for written responses to the Commission's consultation paper. This provided me with a very limited timeframe in which to read, analyse and then formally respond to the consultation paper which is in excess of 300 pages and, as described by Justice Peter McClellan AM in his paper released in conjunction with the consultation paper ***"it is a lengthy document".***

I would suggest that both the Commission's consultation paper and the actuary's report, prepared by Finity Consulting, took substantially longer to develop and write than the short timeframe I had available in which to read all relevant papers and then formerly respond to the Commission's consultation paper on Redress and civil litigation, both of which are issues that currently have an extreme impact on the lives and wellbeing of former child migrants and other children who were sexually abused in institutions. I would also suggest that the writing of the consultation paper and actuary's report would not have had the same mental impact and anguish on the writers of these papers, as did the re-dredging up of long forgotten and deliberately hidden memories of personal sexual, physical and mental abuse that my preparing a written response had on me and also resulted in many late nights and numerous amendments to my formal response.

I would also like to bring to the Commission's attention that;

[a] in forwarding my formal written response to the email address as given in the Commission's consultation paper my email continually bounced back with the response as being an **"invalid recipient"** or **"bad destination host";** fortunately a lady named Ingrid at the Commission assisted me and after a couple more attempts at using variations of the recommended email address, she eventually advised me to disregard this email address and the other variations she had advised me to send my email to, and to forward my formal response to the Commission's *"Contact"* email address which was successful; and,

[b] the Commission's consultation paper stated the closing time for written responses was ***"midday 2nd March 2015"***; no mention was made of Eastern Daylight Saving Time and it appears the Commission was not aware of the detrimental impact and disadvantage that the "Daylight Saving" time differential has on individual persons in Western Australia when responding to timelines based purely on Eastern Daylight Saving time.

From my reading of the Commission's various papers and documents I could see no reference to the acceptance or applicability of supplementary responses submitted after the closing time and date of midday 2nd March 2015 and as such I submit the following as a supplement to my formal response dated 28 February 2015 and emailed to the Commission on 2nd March 2015.

Finally, on Page 3 of my formal response submitted by email on 2nd March 2015, immediately prior to the heading **"Submission Content"** you will note an unfinished sentence that states *"Justice McClelland also discusses*"; this sentence referred to the paper by Justice Peter McClellan that was released with the Commission's consultation paper and unfortunately, due to the stress and anguish I was under in attempting to formerly respond to the Commission's consultation paper, I had inadvertently misspelt Justice McClellan's name and, during my cutting and pasting of various comments within my formal response, I had inadvertently left this partial sentence in my response. That partial sentence should be ignored as the points I was making were in fact been included within my formal response document emailed to the Commission on 2nd March 2015.

Supplementary Submission Content:

Due to the limited time constraints in my attempting to respond to the Commission's consultation paper on ***Redress and civil litigation*** and to meet the deadline of midday 2nd March 2015 my reading of the document was naturally less than in depth and consequently some response I would have liked to make were inadvertently missed out; I formally submit the following supplementary responses for the Commission's information and consideration for possible inclusion in their final report to the Federal Government.

[A] Redress:

1. On Pages 22 and 160 of the consultation paper it states *"We welcome submissions that discuss the issues raised in Chapter 6, including the purpose of monetary payments. In particular, we welcome submissions on:"*

• *the assessment of monetary payments, including possible tables or matrices, factors and values*
• *the average and maximum monetary payments that should be available through redress*
• *whether an option for payments by instalments would be taken up by many survivors and whether it should be offered by a redress scheme*
• *the treatment of past monetary payments under a new redress scheme.*

Response:

In considering a possible format to be used for the assessment of monetary payments to be made to victims/survivors of child abuse I have looked at my own situation where I was sexually, physically and mentally abused from 1951 to 1962 and still bare the physical and mental scars some 56 plus years later.

From my personal view, and that of other former child migrants I have discussed this with, for the system to be considered fair and just, the format finally adopted must include such factors as, [a] the type of abuse, that is, sexual, physical and mental abuse or even all three; [b] the length of the period that the abuse occurred; [c] was it reported to those with a duty of care for the child and if so what happened in response as often the child was punished for reporting the abuse and treated as a liar; [d] the on-going impact on the abused child's later life, bearing in mind that most children abused in institutions learnt to deliberately hide their feelings and emotions so as not to give the abusers another opportunity to inflict further abuse, In my case I managed to successfully do this until I reached 60, with the memories of the sexual, physical and mental abuse and the impact of these memories increasing over the last 10 years to the point where, on recently hearing of my younger brothers attempted suicide because of what happened to him at [redacted] I was low enough to briefly consider suicide as a possible solution. I didn't, as I intend to stay around and beat the bastards who robbed me of my childhood, and [e] the subsequent impact the abuse has had on the family [husbands, wives, and children] of the abused child.

I do not believe that a Redress scheme should have a fixed closing date, particularly in a country the size of Australia where many people are living in places where they cannot be easily found or contacted; this was the case in the Redress WA scheme and numerous former child migrants and other abused children failed to receive reparation payments simply because they could not respond by the fixed closing date.

Additionally, any Redress scheme must be well publicised to ensured that the maximum number of abused former child migrants and other children are made aware of the Redress Scheme; again this was a major failing of the Redress WA scheme. Given the personal information that governments currently hold on people living in Australia through Medicare, the ATO, Centrelink and others, surely contact with individuals could be made via a personal letter address to the individual advising them of the scheme and their eligibility to apply for reparation payments.

The idea of values being placed on the various factors to be used in a monetary assessment system is hard to come to grips with, particularly if the factors are being assessed and determined by persons who have no personal experience of the devastating impact such abuse and trauma can have on individuals. What might be seen as minor or low grade by one person may well be considered a high grade major trauma by the individual on whom the abuse was inflicted. All applicants should be given the right to appeal any decision of the assessment team where the applicant considers the monetary reparation recommended does not equate to the severity of the abuse crimes committed against them and the subsequent trauma that followed such crimes.

As I indicated in my submission emailed on the 2nd March 2015, having discussed this with several other former child migrants I recommend that, if the Commission can provide a format for former child migrants and other abused children to successfully undertake civil litigation action against those with a duty of care to the children in care, then the maximum figure should be at least set at $350.000.00; additionally if the Commission cannot provide a format for former child migrants and other abused children to successfully undertake civil litigation action against those with a duty of care to the children in care, the maximum limit should be set at least double that , i.e.$700.000.00. The average payment would flow from the final figure the maximum payment is set at but, should in my view be at least around $80,000.00.

Payment by instalment may be an option but such option should only be on a case by case basis and by agreement with the individual involved; where an individual who has been assessed and is subsequently taken ill and not expected to live to the end of the time frame set down for the payments by instalments, the outstanding amount should be paid in full as a lump sum to that individual.

All former child migrants and children who were abused either sexually, physically or mentally whilst in the care of institutions should be eligible for a monetary payment after assessment; any monies paid to individuals under previous redress schemes should be included in the assessment process. I believe this would be seen as being both fair and just by the victims/survivors of abuse.

I further point out that the report by the Commission's actuarial consultants, Finity Consulting, is already flawed in the eyes of former child migrants and other abused children in Western Australia because, as stated on Page 19 in the Commission's consulting paper, *"Finity Consulting have used a variety of data for their modelling, particularly detailed data from Redress WA."*

As previously advised, I doubt the Commission will find support from any abused former child migrant or other abused child who had dealings with the WA Redress for any redress scheme recommended by the Commission that is based on the Redress WA scheme, as this scheme was seen as not being fair and just to victim's/survivors and was heavily biased in favour of protecting the State government and preventing civil litigation as is evidenced by the continued comments of Premier Colin Barnett when referring to the maximum payout cut to Redress WA in 2009 ***"This all happened a long time ago and it is time for those involved to forget about the past and move on with their lives"*** and then again only last year [2014] when the State Treasurer smashed up a government ministerial car and damaged several other motor vehicles, street signs and other property whilst driving the ministerial car when he was drunk, Barnett stated, ***"Look Troy is suffering from depression and should be left alone to get well"***.

Apparently, in Mr Barnett's eyes, depression and other trauma doesn't apply to former child migrants and other children who were abused whilst in care within institutions in Western Australia; depression and other trauma only applies to his political colleagues, friends and mates when they are caught out.

2. On Page 24, of the consultation paper it states *"We welcome submissions that discuss the issues raised in Chapter 7, including any aspects of redress scheme processes."* and on Page 25 it continues, *"In particular, we welcome submissions on":*

• *eligibility for redress, including the connection required between the institution and the abuse and the types of abuse that should be included*
• *the appropriate standard of proof*
• *whether or not deeds of release should be required.*

The above is repeated on Page 177 at the end of Chapter 7

Response:

It is my view, based on my personal experience of all three types of abuse, that all children who were abused of any type, i.e. sexual, physical or mental abuse, whilst in care within any institution, state, religious or private, should be eligible to apply for redress; the main connection between the abused and the institution should be, was the victim/survivor actually in care within that institution when the abuse occurred; if so, then the institution and the state government in the state where the abuse are equally responsible.

The appropriate standard of proof required should be based around a plausibility or reasonable likelihood test, such as the claim being "***within the bounds of probability***" based on the evidence or statements of the individual who was abused. I would like to see representatives of victims/survivors involved in the decision making process when determining the level of proof for each individual case. I also put forward the suggestion that where possible, former inmates of the institution where and when the abuse occurred, should be acting in an advisory capacity to the assessment panel as they will have a firsthand insight as to the plausibility and probability of the abuse as described by the applicant actually occurring. I base this last comment on my discussions with other former child migrants who were in [redacted] during my 10 plus years there and I was surprised at what they actually knew about what was occurring in my cottage, Hudson, and who was involved.

In determining the recommendation for redress payments to victims/survivors, there should not be any *Deed of Release* requirements made on the individual applicant, applicants should not be required to agree to offset any redress payments against any common law damages in the future and all applicants should be eligible for support in the form of counselling and legal aid/assistance and there should not be any confidentiality or non-disclosure requirements attached to any monetary payout.

The above comments are strongly held and supported by the former child migrants placed in [redacted] and in religious based institutions within Western Australia that I have spoken to since the announcement of the Royal Commission by the former Labor Federal Government.

3. On Pages 30 and 189 of the consultation paper it states "*We welcome submissions that discuss the issues raised in Chapter 8, including the modelling of required funding and the possible approaches to funding redress. In particular, we seek the views of the Australian Government, state and territory governments and institutions on:*

• *appropriate funding arrangements*
• *appropriate funder of last resort arrangements*
• *the level of flexibility that should be allowed in implementing redress schemes and funding arrangements.*

Response:

In my verbal and written evidence to the Royal Commission into Institutional Responses to Child Sexual Abuse in February and March 2014 I had included an number of points that I believed then, and still do,

that the Commission must consider when making its recommendations on redress and civil litigation to the Federal Government; I am pleased to say that on reading the consultation paper and other associated papers on these two issues it appears many other victims/survivors and their supporters have had the same line of thought as a number of the points I made appear to have been adopted by the Commission.

Although I responded to the above three issues raised by the Commission on Pages 30 and 189 of the consultation paper in my formal submission emailed to the Commission on 2nd March 2015, by way of further commenting on the three issues I take the opportunity to reiterate some of those points initially included in my written evidence to the Commission February and March 2014, updated and amended in this submission, in the hope that the Commissioners, and their advisors or assistants, can see the theme of **fairness and justice for all victims/survivors of sexual, physical and mental abuse** that runs through them and the opportunity for a means of ensuring funding for a redress scheme can be funded by those responsible, that is, the Federal and State governments, religious institutions and non-religious institutions who operated under the guise of charities so as to obtain taxation benefits.

- **Immediately take away from all of the various institutions, both religious and otherwise, where child abuse of all types has occurred, the privilege to operate as a charity and therefore pay no taxes; with the taxes collected going towards a Reparation Fund for all Child Migrants and others who have suffered sexual, physical and mental.**

- **Require all of the various institutions, both religious and otherwise, where child abuse has occurred and their parent religions to immediately pay taxes on their profits as these taxes should go towards a Reparation Fund for all Child Migrants and others who have suffered sexual, physical and mental abuse at the hands of these institutions, religions and the various governments.**

- **Set up a formal Reparation Fund for Child Migrants and others who have suffered at the hands of these institutions and religions and enshrine the formation and operation of the fund in Federal Legislation/Law so that no Federal or State governments, of any political persuasion, can amend the Reparation Fund as history has shown no government or political party can be trusted**

- **Require by Law all of the institutions and religions and Governments, including the British and Australian Federal and State governments, who were/are ultimately responsible for the mental, physical and sexual abuse of children in their care to be part of and to contribute to the Reparation Fund.**

- **Have the Reparation Fund managed by an independent entity, which includes representatives of the child migrants who suffered the mental, physical and sexual abuse on the board/committee overseeing the Fund. [i.e. The Child Migrants Trust]**

- **Make the reparation payment commensurate with the level of crimes committed against the individual child. [The idea of a one size fits all redress scheme does not meet the minimal standards required for justice to be applied and to be seen to be applied fairly by all victims/survivors.]**

- **Change the current Federal taxation laws so that all companies that operate in Australia, including foreign owned companies, pay taxes in Australia prior to any profits being shipped offshore to avoid paying Australian Taxes.**

- **Impose a levy on the top Australian companies in the form or a Royalty or similar to help fund the redress reparation scheme.**

Finally, a more dramatic but considered a more appropriate and positive means of funding a redress scheme would be to force those organisations responsible, be they government, religious, charity or otherwise, to sell off some of their assets such as land, commercial properties etc. that are owned by

those same organisations who had the ultimate responsibility for a **Duty of Care** to the children that were in their care when the abuse occurred.

4. On Pages 32 and 195 of the consultation paper it states *"We welcome submissions that discuss the issues raised in Chapter 9, including the additional principles for interim arrangements and possible structures. In particular, we seek the views of survivors, survivor advocacy and support groups and institutions on whether there are other issues on which direction or guidance might be required for interim arrangements."*

Response:

I noted that throughout Chapter 9 of the Commission's consultation paper, continual reference is made to "institutions", yet in the case of former child migrants, governments, including the Australian Federal and State governments and the British Government, as the governments who allowed and signed up to the deportation scheme of children from the UK under the guise of child migration are equally guilty of the sexual, physical and mental abuse that occurred within those institutions where the abuse occurred; as such this guilt/responsibility must be clearly spelt out in any final recommendations by the Commission regarding civil litigation. Failure to do so will be seen as a continuance of the abuse of all former child migrants.

I also noted that on Page 190 of the consultation paper it states, *"No matter how quickly we report, implementing our recommendations will inevitably take some time. This time may be longer if larger or more complex structures are favoured. There is also the possibility that our recommendations may not be implemented, either nationally or in some states or territories."* These comments are also of concern to former child migrants particularly in Western Australia where the current Premier has already publicly stated he will not be making any further reparation payments to former child migrants by implementing any recommendations that may arise from the Royal Commission. As a former child migrant who has waited some 60 years for the abuse to be admitted to and properly addressed, I can state quite strongly that it is better to get it right, even if it is complex and takes longer to implement, than to get it wrong and so continue the lies to and abuse of former child migrants and other victims/survivors of child abuse.

On Page 191, in discussing the need for independence from institutions it is stated that *"It seems clear that any structures we recommend for redress should be designed to ensure that decision making is sufficiently independent of institutions. Until these structures are implemented, institutions will need to seek to achieve independence in decision making on any redress claims that they receive."* The Commission goes on to suggest that;

Independence should be considered at the stages of:
- *the survivor making a claim*
- *determining to the required standard of proof whether or not the survivor was abused*
- *determining the amount of any monetary payment to be offered*
- *determining what counselling or psychological care should be offered or supported.*

I agree with the Commission that any decision making as to reparation to victims/survivors must be seen to be sufficiently independent of the institution or government organisation responsible for the abuse of the victim/survivor making a claim making; if that independence is not clearly established throughout the total process, victims/survivors will continue feel cheated and abused by those with power as is demonstrated where the Commission also states on Page 191 *"As discussed in Chapter 4, some survivors do not want to have any contact with the institution in which they were abused. Ideally, a survivor should be able to make a claim for redress and receive any support needed to pursue their claim without having to engage with the institution or have any dealings with its representatives"*, and continues by further stating "*Decision making on the allegations of abuse and redress to be offered should also be independent of the institution to reduce the risk of bias or the appearance of bias."*

I advise the Commission that if any representatives of the [redacted] organisation were available to discuss the issue of sexual, physical and mental abuse with, I personally have no desire to meet and deal with such persons as I might be more than somewhat inclined to inflict physical abuse on them. I also know that [redacted] feels the same way, as do a number of other former child migrants I have spoken to who were at [redacted] and other institutions in Western Australia.

I agree with the Commission's 5 comments that start on page 191 and continue on Page 192 when referring to the need of institutions [and governments] to consider the following in seeking to achieve independence in an institutional redress process:

• they should provide information on the application process, including online, so that survivors do not need to approach the institution if there is an independent person with whom they can make their claim
• if feasible, the process of receiving and determining claims should be administered independently of the institution to minimise the risk of any appearance that the institution can influence the process or decisions
• institutions should ensure that anyone they engage to handle or determine redress claims is appropriately trained in understanding child sexual abuse and its impacts and in any relevant cultural awareness issues
• institutions should ensure that any processes or interactions with survivors are respectful and empathetic, including by taking into account the factors discussed in Chapter 4 in relation to meetings and meeting environments
• processes and interactions should not be legalistic. Any legal, medical and other relevant input should be obtained for the purposes of decision making.

I believe the above points are particularly important and relevant where children were abused in more than one institution, otherwise there will be too much trauma imposed on the applicant in having to go over and over the abuse issues on more than one occasion.

Finally I point out to the Commission that in making its recommendations with regard to a Redress Scheme, the Commission should remember that economics should never take precedence over the very basic human rights, including full access to justice and fairness, of former child migrants and all other sexually, physically and mentally abused children in care in institutions and other organisations in Australia.

[B] Civil Litigation:

Although I provided responses to the issue of civil litigation in my formal response emailed to the Commission on 2nd March 2015, I have since had more time to read the consultation paper and to digest more of the information material contained within Chapter 10 and I comment as follows.

1. On Pages 35 and 232 of the consultation paper it states *"We welcome submissions that discuss the issues raised in Chapter 10. In particular, we welcome submissions on:*

• the options for reforming limitation periods and whether any changes should apply retrospectively
• the options for reforming the duty of institutions and whether any changes should apply retrospectively
• how to address difficulties in identifying a proper defendant in faith-based institutions with statutory property trusts
• whether the difficulties in identifying a proper defendant arise in respect of institutions other than faith-based institutions and how these difficulties should be addressed
• whether governments and non-government institutions should adopt principles for how they will handle civil litigation in relation to child sexual abuse claims
• whether any changes may have adverse effects on insurance availability or coverage for institutions, including specific details of the adverse effects and the reasons for them."

Response:

As I indicated In my personal case, I was continually sexually abused from 1954 until 1959; when I reported it to [redacted] where I was housed, I was physically beaten with a length of rubber garden hose [redacted] until I was bleeding from the buttocks and the back of my legs for lying about [redacted]; this did not stop the sexual abuse and rape but increased the sexual, physical and mental abuse I had forced upon me.

In my submission emailed to the Commission on 2nd March 2015 I had raised some points regarding the issues raised in Chapter 10 of the Commission's consultation paper, however, I take this opportunity to respond to the specific issues as highlighted on Pages 35 and 232 of the consultation paper as follows;

- From my personal experience and that of other abused children I have spoken to, there is no limitation period on the memories of the abuse that was suffered, indeed, personal experience and scientific studies have shown that in the majority of cases the stirring of the bad memories actually gets worse as one gets older and there are no other distractions, such as raising a family or work, that the individual can hide behind. Additionally, recent Australian studies have shown that "markers" on the brains of children who were abused are can actually be passed on to their children via their DNA markers or profile, thus extending in to the next generation the impact of the abuse.
- With the above in mind, **all limitation periods** that are currently relied upon by governments, institutions and others as a defence against civil litigation by abused children should be abolished by Federal Law and replaced with a law clearly stating that like murder, there is no limitation period for child abuse. This should be applied retrospectively to go as far back as is required to cover any living former child migrant or other child who was sexually abused whilst in care.
- All institutions, whether they be government, religious or other institutions should be held responsible for the sexual, physical and mental abuse of children in their care; there should be no protection or defence that passes the ultimate responsibility from the "parent" organisation back to the individual who worked for that organisation as either an employee or a volunteer.
- Where faith based institutions are involved, the ultimate responsibility for the abuse of a child in such institutions should be placed squarely on the heads of the parent organisation of that particular faith.
- Where such organisation where child abuse has occurred are not faith based, and [redacted] fall in to that category, the ultimate responsibility must lie with either the State or Federal governments as the ultimate protectors of children in care. This particularly applies to a large number of abused former child migrants such as myself where the institution concerned was not faith based but had the approval and support of both the Federal and State governments to operate under the child deportation scheme which brought children out from the UK to various institutions throughout Australia.
- Any principles that are to be adopted by either government or non-government institutions for how civil litigation by abused children is to be handled should be overseen by a body separate from the government or non-government institutions and all such government or non-government institutions must be compelled to abide by the principles so determined. Representatives of former child migrants and other abused children must be on any such body set up to oversee the development and implement these principles. From my reading of the guidelines/principles currently in place in Victoria and New South Wales are seen as a good minimal starting point for any principles that may ultimately be put in place.
- Given the lack of support and sympathy offered by governments and institutions where children were abused, I really don't care about any adverse effects on insurance availability this may have on the governments and institutions ultimately responsible for the abuse of children in their care. At the end of the day, we all end up paying as insurance companies merely recoup their losses via the widespread increasing of insurance premiums.
- As is stated in the Commission's consultation paper, limitation periods have been used to force abused children *"to accept settlements without ever having their claims determined on the merits". In some cases, survivors have been poorly treated as they have sought redress or pursued civil litigation. This interaction with the institution in which they were abused has been the source of further trauma and distress to them".* I ask the Commission this simple question when considering their final recommendations to the Federal Government; **How long, and in what forms, must the**

abuse of former child migrants and other children in care go on in Australia before justice and fairness is achieved for the victims/survivors?

As with my comments referring to Redress issues in this submission above, I again take the opportunity to reiterate more of the relevant points initially included in my written evidence to the Commission February and March 2014, again updated and amended in this submission, in the hope that the Commissioners and their advisors or assistants, can see the theme of **fairness and justice for all victims/survivors of sexual, physical and mental abuse** that runs through them.

- **The Federal Government to immediately pass legislation that enshrines in Commonwealth Law, that no Commonwealth or State Law that refers to a Statute of Limitations that can be applied to the mental, physical or sexual abuse cases brought by former child migrants against the individual perpetrators of the crimes or against the organisations, institutions, religions or Governments who were legally responsible for the safety and welfare of the former child migrants. This law is to apply to both criminal and civil cases.**

- **Institute a separate and formal full Commonwealth Judicial Enquiry or Royal Commission in to the transportation and treatment of child migrants who were sent to the various institutions within the Commonwealth of Australia.**

- **Provide Australian Commonwealth support to all former child migrants to trace the families in the United Kingdom and assist them financially to travel to the UK to meet their families/relatives or for their families/relatives to visit the child migrants in Australia.**

- **Should the Australian Federal and State governments not accept the above in full, the former Child Migrants be given the right to take the case to the International Court of Justice with the cost to be funded by the British, Australian and State Governments and, that the issue of sexual, physical and mental torture of Child Migrants and other children in government, religious and other institutions be submitted to the United Nations for appropriate consideration and action against the perpetrators no matter who or what they are.**

- **Immediately take away any honours or awards that were granted/bestowed on those who committed the mental, physical or sexual abuse and from those persons who had responsibility for ensuring the children were safe. This includes both British and Australian awards and honours and those politicians, senior public servants, senior police officers and others who were granted these awards because of their alleged contribution to the welfare of child migrants and others in institutions as it is clear they completely failed to carry out their legal responsibilities to the children in their care or guardianship.**

Finally in closing, I again bring to the Commission's attention that in making its recommendations with regard to a Civil Litigation and in particular the various "Statutes of Limitations", the Commission should remember that the rights of the abuser, whether that be a religious or other institution or a government, should never take precedence over the very basic human rights of former child migrants and all other sexually, physically and mentally abused children in care in institutions and other organisations in Australia if justice and fairness is to be seen as being carried out without fear or favour.

[redacted] [redacted]
Former Child Migrant and Child Abuse Victim/Survivor
19 March 2015