

Alliance for Forgotten Australians

Patron: Jack Thompson

2 June 2014

Submission from the Alliance for Forgotten Australians in response to the release of the Royal Commission's Issues Paper No 6: The Effectiveness of Redress Schemes

Introduction

The Alliance for Forgotten Australians (AFA) welcomes the Royal Commission's release of Issues Paper 6, and the opportunity to provide a submission on the important issue of redress and compensation arrangements for those who were subjected to sexual and other forms of abuse and neglect in a childhood institution and foster care.

Summary

This submission strongly supports the development of a national redress scheme for Forgotten Australians. The Senate Inquiry report, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* (2004) and the follow-up report *Lost Innocents and Forgotten Australians Revisited* (2009) recommended that the Commonwealth lead the development of consistent and ongoing redress schemes in all states. In NSW and Victoria, where no redress schemes have existed, Forgotten Australians can only seek compensation through adversarial means, which has left many feeling shattered and further abused by that process.

Rather than addressing each specific question in the Issues Paper, AFA's submission provides an overall assessment of the key issues involved in the history of previous redress schemes. In doing so, we have provided recommendations which go directly to a number of the questions set out in the Issues Paper.

AFA's key recommendation is that an independent national redress scheme and trust fund be developed to provide compensation and other forms of redress for those who, as children, suffered all forms of abuse, including sexual abuse, while in an institution or other forms of out of home care. In developing a national trust fund, the principles and standards to be applied for the use of the trust monies should be formulated following a comprehensive review of existing redress schemes, nationally and internationally, particularly the Irish redress scheme which opened in 2002. This should be a key task for the Royal Commission's research program.

AFA notes that the development of a national redress and compensation fund was a key recommendation in the report of the Senate Community Affairs Committee in 2004 (the *Forgotten Australians Report*)¹ which the government of the day chose not to support. AFA considers that a national redress scheme is long overdue. Many Forgotten Australians hope that the Royal Commission will finally provide an opportunity to attain justice, which includes access to compensation and redress. This opportunity has arisen because of changing attitudes in the community to childhood abuse and exploitation in institutional and other forms of 'care'.

A national trust scheme should be managed by a panel of government appointed trustees and the proceeds of this trust invested to create a long-term sustainable fund. This fund should provide the crucial health and priority access to services that Forgotten Australians need which are not currently available. This may include but not be limited to subsidised housing, health and aged care supports in the last years of their lives. There have been few social supports available that have been tailored for Forgotten Australians specifically. Past providers including charities, churches and governments should be expected to contribute substantially to this redress scheme.

The Alliance for Forgotten Australians

AFA is a national alliance of Forgotten Australians and supporters, who work in partnership to advocate for and promote, national policies and services to meet the needs and interests of Forgotten Australians.

AFA's vision is for recognition and healing for Forgotten Australians and encourages their active engagement in, and the development of, policy and services which are person-centred and strengths-based and which create opportunities and pathways to improve the lives of Forgotten Australians. AFA strongly encourages the inclusion of Forgotten Australians in service planning and delivery.

Through advocacy and awareness raising AFA values and strives for equity, equality, justice, resources and affirmation for all Forgotten Australians and their families. AFA considers that the issues raised in the Royal Commission's current Issues paper are of considerable interest to all Forgotten Australians and are closely related to aspects of the Royal Commission's questions raised in Issues Paper 5 on *Civil Litigation*. AFA recommends that the Royal Commission review AFA's submission to the *Civil Litigation* Issues Paper together with the matters raised here.

The lived experience of AFA members, and the understandings they have gained about their own and other Forgotten Australian's experiences seeking justice and redress for their treatment in state, church and private institutions, provides a unique perspective from which to inform the Royal Commission on a number of questions posed in the Issues Paper.

¹ 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.

Recommendation 1: That the Royal Commission review recommendations from all major previous state Inquiries into redress and compensation schemes as well as outcomes from the state Redress Schemes that were established.

The need for survivors of childhood institutionalisation to access schemes of redress and compensation has been a consistent recommendation from state and federal government Inquiries and parliamentary reports into the effects of systemic abuse in children's institutions and other forms of Out-of-Home-Care (OOHC). These include reports by the Australian Senate Community Affairs References Committee and the Government's responses to those reports².

The Royal Commission has examined some aspects of this topic in Issues Paper No 5: *Civil Litigation*. That paper examined the complexities involved for survivors to achieve fair and suitable reforms of redress through litigation. In AFA's submission to Issues Paper, No.5, we urged the Royal Commission to examine the outcomes from the major redress and compensation schemes that have operated in a number of jurisdictions, in order to compare and contrast the positive and negative outcomes from these schemes.

In particular the report of the Senate Community Affairs References Committee, *Lost Innocents and Forgotten Australians Revisited*, examined detailed evidence of the inadequacies and unfairness of state redress schemes.³ Deficiencies in the operation of these redress schemes in the states, and in particular in Tasmania and Queensland, are well known to members of AFA.

The inconsistencies and disparities between different redress schemes are unfair and has created confusion in the minds of many Forgotten Australians and their families; especially as significant numbers have missed the cut off dates for these schemes, proving that any future scheme need to be ongoing.

To address these deficiencies, and to ensure a consistent and fair framework for redress, a national scheme is needed and should recognise that children (now adults) experienced criminal forms of sexual and physical abuse as well as other forms of neglect and exploitation in childhood institutions and other forms of OOHC.

A separate scheme may also be needed for those subjected to abuse through their participation in clubs and societies.

² Key parliamentary reports are 'Lost innocents: righting the record report on child migration' (2001); 'Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children' (first report, 2004); 'Protecting vulnerable children: a national challenge' (2005); Australian Government response to the Committee's reports: Forgotten Australians: 'A report on Australians who experienced institutional or out-of-home care as children', and 'Protecting vulnerable children: a national challenge.' The second report on the inquiry into children in institutional or out of home care (2005).

³ Senate Community Affairs References 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, chapter 2, pp.7-62.

Recommendation 2: A National Redress Scheme be developed by the Commonwealth and administered by an Independent Trust

AFA has consistently advocated the development of a national redress scheme based on the establishment of a national trust fund similar to some existing government trusts schemes such as the Future Fund and Health and Hospital Fund.⁴

AFA's submission to this Issues Paper provides a further opportunity to reinforce our support for a similar initiative. We recommend that the Royal Commission give consideration to the establishment of a national independent trust scheme and include in their recommendations to government that the initial seed funding for the scheme be provided through Commonwealth funds.

As well as Commonwealth funding, contributions to the trust should be come from contributions from past providers, including charities, faith-based organisations and their modern counterparts and government departments that were responsible for the management of childhood institutions in which abuse took place.

The extent of the contributions made by each former institution or their successors in law should be formulated on the basis of a range of factors such as the number of children in their care, the evidence provided to the Commission on the level, consistency and forms of abuse that took place in those institutions and a range of other factors that can be determined and costed by expert advisers including actuarial and other assessments. All forms of abuse should be considered eligible for redress.

The opportunity to access a national scheme should be applicable to all Forgotten Australians and based on their experience; not on any perceived ability to overcome a defective childhood while in 'care'. This criterion should be a key feature of a national scheme and should be consistently applied to ensure justice and certainty for Forgotten Australians wherever they reside.

Additional features of a national scheme

The Scheme must be managed by competent government appointed trustees, be compulsory and provide redress for all forms of abuse suffered in childhood institutions for those survivors who are known as Forgotten Australians, former Child Migrants and Stolen Generations.

The Commonwealth should appoint independent trustees with skills in a range of business, financial and management areas to manage the scheme. The national and state Inquiry history of the 'care' of children in institutions and other forms of OOHC in the 20th century, demonstrates beyond reasonable doubt that the key decision-making elements of any redress and compensation arrangements, needs oversight and audit on a highly professional basis with independent processes for monitoring and governance.

⁴ AFA supported the recommendation of the Lost Innocents Report that a national reparations fund be established for victims of abuse, Recommendation 6, page 178. The Future Fund has established a Board of Guardians to invest the funds' assets. Information on the Future Fund and Health and Hospital Fund can be accessed at" <http://www.futurefund.gov.au/>

The extent of compensation to individuals should be funded by the national scheme and should be assessed by an independent panel established by the trustees of the scheme and also based on expert actuarial assessment. Those who have been the beneficiaries of previous redress schemes and private settlements with churches and other institutions should also have access to the national scheme, with the extent of the compensation previously received taken into consideration, as well as other factors.

Optional participation in a national redress scheme by organisations (both private and public) that managed institutions is undesirable. A consistent mandatory framework involving all former childhood institutions will highlight the contributions that will be made by each institution and minimise any effects of different practices or cultures across different institutions.

Abuse is abuse in any form or institution and should be treated in a similar fashion wherever it occurred and in any cultural or institutional context. The asset rich or poor situation of the institution should not generally be a factor in addressing the quantum of any redress schemes. Allowing some institutions to opt out of the arrangements will damage the operation of that principle. In a similar fashion, consistency in the operation of a national redress scheme would ideally be improved through a process that would involve all claimants and without time limits.

All forms of abuse, not only sexual abuse, that children endured and suffered in institutions needs to be covered by redress. This is partly because those who suffered sexual abuse were usually subject to related abuse such as bullying or other mistreatment leading up to the sexual crimes against them, and this associated abuse must be considered in any redress arrangements.

Many survivors of childhood institutions will be keen to participate in a scheme that will provide a high level of certainty and where an outcome will be obtained within a reasonable timeframe. It is important that such scheme be sustainable and based on a fair and reasonable assessment of their situation.

To ensure that the process of applying under such a scheme is encouraged and manageable for claimants, counselling and other supports need to be available before, during and after the assessment process. A sustainable independent redress scheme will enable such on-going support to be provided.

Recommendation 3: Providing Special Needs Services Support for Forgotten Australians

Special Needs recognition for services to be funded through a National Redress Scheme

Forgotten Australians are hampered by significant barriers to access services. These barriers have complex causes and those working with Forgotten Australians have reported that the service barriers may be lack of awareness by the human services systems, and may include psychological, physical and a lack of awareness on the part of Forgotten Australians, of the services that may be available⁵.

⁵ Department of Communities, Queensland Government, Snapshot of Consultations with Forgotten Australians, March 2011. The complete reports are available on the Department of Communities' website at www.communities.qld.gov.au

The establishment of a national redress fund should facilitate the funding of a range of health and social services that Forgotten Australians need. This form of 'practical compensation' is highly sought after by many Forgotten Australians, who are now in need of a range of medical, housing, social and aged care services.

The funding to provide such special needs services and support, along with the necessary training for health professionals and aged care providers, would be available from the funds provided under a national redress scheme. The panel of assessors appointed by the scheme would assess the quantum of funding provided for these services on an overall value for money basis.

A National Redress Scheme could also support priority access to housing and housing costs supplementation; help with TAFE and University education fees; access to legal support; access to records and ongoing counselling.

Some recognition has been achieved under the Personal Helpers and Mentors Scheme (PHaMS) a community mental health program funded by DSS. In addition, AFA would like to see other reforms within the abovementioned portfolios, including the development of a Pilot Forgotten Australian Liaison Officer program across the Centrelink network (similar to Grandparent Liaison Officers) and assistance with access issues to DisabilityCare for Forgotten Australians.

Professional education is an element for high quality service provision that is long overdue and which requires development across the tertiary and post-secondary education streams. Development of suitable training materials could improve service responses to Forgotten Australians and provide guidance material to ensure service providers have quality information about the needs of Forgotten Australians, when they present as clients to their services. Some preliminary work has been undertaken for the aged care sector on this requirement, which could be used as element in the development of professional training materials for the human services about this long 'forgotten' group of Australian citizens.

Thank you again for this opportunity to contribute to the national discussion on such an important issue for Forgotten Australians.

Yours Sincerely

A solid black rectangular box used to redact the signature of the sender.

Caroline Carroll OAM
Chair, Alliance for Forgotten Australians

Enclosure: Alliance for Forgotten Australians Submissions to Government Inquiries

Alliance for Forgotten Australians Submission to Senate Community Affairs References Committee Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports, 18 May 2010.

Alliance for Forgotten Australians (AFA) presentation to Senate Community Affairs References Committee, Opening Statement, 30 March 2009.

Alliance for Forgotten Australians, Supplementary Submission to the Senate Community Affairs References Committee Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports, 11 June 2010.

Alliance for Forgotten Australians, Submission to the Senate Legal & Constitutional Committee inquiry into the 'administration and effectiveness of current mechanisms used by governments to provide discretionary payments in special circumstances', 18 May 2010.

See also, Committee Hansard, Senate Legal and & Constitutional Committee inquiry into the 'administration and effectiveness of current mechanisms used by governments to provide discretionary payments in special circumstances', 3 November 2010 (Uncorrected Proof of Evidence).