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The Solicitor
Child Abuse Royal Commission
GPO Box 5283
Sydney
NSW 2001.
11th August, 2013.

Re. Issues Paper#4: Preventing Sexual Abuse of Children in out of Home Care..

Broken Rites welcomes the opportunity to respond to this very important Issues Paper.

You will be aware that we wrote to you about the substance of this paper soon after it was released. We expressed a concern that the paper had not considered in the first instance, this fundamental question of the separation of children from parents/ family with the state using legal powers to sometimes bring this separation about. We see that many of the matters in Issues Paper #4, about which the Commission is seeking a response, are a consequence of this initial decision and event.

Broken Rites does not have any direct experience in working with children. However we have advised and sometimes assisted adults who experienced OOHC in their childhood years. Having had this experience we feel that we should contribute to a discussion of the issue.

Yours sincerely,

Chris MacIsaac
President.



The almond flower – a symbol of Hope



The almond flower – a symbol of Hope

Issues Paper #4.

PREVENTING SEXUAL ABUSE OF CHILDREN IN OUT OF HOME CARE.

General statement.

It is our understanding that the Commission is seeking responses to this Issues Paper with respondents considering the experience of Out of Home Care (OOHC) as it is being currently provided and operated within the various jurisdictions. In the early paragraphs, the Issues Paper identifies a number of characteristics including:

- children staying outside of the family home,
- persons in the age cohort 0-17 years,
- financial payments possibly being made,
- OOHC being either the consequence of a court order or voluntary placement by a parent(s),
- a minister or departmental head assuming responsibility for the child,
- the provision of OOHC by government and non-government organisations.

Historical and anecdotal information suggests to us that there are additional characteristics and these will be identified.

The Issues Paper identifies eleven matters that are of interest. We understand that this list is not exhaustive and this is not being suggested in any way in the Paper. However it is our view that **the** most important matter has been overlooked. This is the matter of how a state implements a policy that can enable the forced separation of the child from parent(s), immediate family and/or some other significant kinship or adult figure, with the state using legal powers to place children in OOHC. There is also an important variant and this is the situation where the child wishes to leave the parent(s) and be placed voluntarily in OOHC.

In both situations, in present-day society, we see the need for thorough assessment and sophisticated risk analysis being carried out before any decision is made. From our experience with many adults who were sexually abused as children, we suspect that any consideration of risk to the child was not carried out.

Separating children from family.

Whilst comparative data about the practice of directed and/or state-sanctioned separation of children from parents/families is not easy to find, there are some recorded and partially-researched instances that have involved very significant numbers of children:

- The sending of a large number of English-born children to the new settlement of Virginia in response to a decision of the court of Queen Elizabeth 1.
- The experiences of hundreds of German-born, “Schwarbian” children around the middle of the last century.
- The several thousand “stolen children” placed with rural families (over a period of 200 years) within Switzerland.
- The thousands of children across Europe who, along with parents and other family members, experienced the Holocaust.
- In Ireland, the placement of about 150,000 boys into Industrial schools and 30,000 girls into the “Magdalene” laundries during the last century.
- The experiences of more than 100,000 “First Nation” children in Canada.
- The participation of Britain and Malta in Child Migrant Schemes that involved the sending of about 100,000 children to Canada (80,000 plus), Rhodesia and Australia during the last century.

What must be understood is that a majority of these children were not orphans They were children living in families and their parent(s) happened to be poor. In many cases the family unit was a sole-parent family where the mother had no social or community support. What must also be understood is that with such large numbers of children being involved, hundreds of adults would have been involved in running the schemes and the associated OOHC arrangements, and hundreds more adults must have known what was going on.

The Australian Experience.

In Australia, towards the end of last century, six reports documented how large numbers of children were separated from families and then raised in institutional “care” and in other arrangements that were more akin to what today is defined as OOHC.

The reports that now document this history are:

Bringing them Home: A Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. (1997). Australian Human rights Commission.

The Forde Inquiry into the Abuse of Children in Queensland Institutions (1999). A report to the government of Queensland.

“Lost Innocents: Righting the Record” A report of the Senate Community Affairs References Committee of Inquiry into the Child Migrants (2001). A report to the Parliament of Australia.

“Forgotten Australians”. A report of the Senate Community Affairs References Committee of Inquiry into Children in Institutions (2004). A report to the Parliament of Australia.

“Listen to the Children: Review of claims of abuse from adults in state care as children” (2006). A report to the Parliament of Tasmania.

“Children in State Care” Commission of Inquiry by the Hon E.P. Mulligan QC (2008). A report to the government of South Australia.

Throughout the pages of these documents the reader is confronted with deeply moving stories about the individuals’ experiences of being separated (often by force) from parents and/or family members. These accounts are then followed by stories of widespread neglect, exploitation, physical and sexual abuse, being denied opportunities to become educated and even slavery.

The children in these reports were either indigenous, Australian-born and non-indigenous or child migrants. While most of the child migrants were English-born, some were Irish-born and about 400 were Maltese-born. In the case of the “Forgotten Australians” report, the children were orphans, state wards or persons who were just placed into the care arrangement by a reluctant parent or some other person. For this last group there is a serious paucity of official records and information as to what actually occurred.

This piece of potted history is relevant to the point that now needs to be made. There is a theme that runs through all of this history and the separation of the child from the parent is at the centre of it.

Starting with the First Fleet.

Robert Holden's book "Orphans of history"¹ records that thirty four children under fourteen years of age were distributed across six of the ships included in the first fleet. A further twenty six babies were born during passage with six of these failing to survive. Included in the consignment of convicts were thirteen children with convict mothers and three who were sentenced convicts themselves! The three child convicts might well be regarded as the first unaccompanied minors who became a responsibility of the Crown in the form of the colonial administration. All would contribute to the establishment of the new colony in Australia.

Early in the history of the new colony a (policy) matter arose about marines who wished to marry convict women. Governor Macquarie agreed to permit such marriages even though it was known that some likely applicants would already be married. There was a caveat, in cases where a marine returned to England at the end of a posting, any family would also be required to return with him. The decree, published in the NSW Government Gazette, might be considered as a decision by the colonial administration that breaking up families was going to be avoided and that over time the colony would not become a repository for abandoned women and children.

Four episodes of separation.

From this point it is possible to trace four episodes during which very large numbers of indigenous and Australian-born children were assigned to either institutional or OOHHC. Two of these appear to be driven by economic factors and two were a consequence of war. These episodes can be seen as the response of governments when faced with social situations where mothers and children were experiencing extreme poverty. The four episodes occurred during the course of the Australian gold rush, in the aftermath of the Great War, in the aftermath of the Great Depression and following World War 2.

Each episode was also driven by the fact that progressive ideas about social safety nets, welfare programs and transfer payments etc had either not evolved or were just beginning to evolve. Each was also driven by societal attitudes about the alleviation of poverty; that it should come about through the provision of charity in the form of gifts, charitable works and over time, some services. Thus during the gold rush, wealthy citizens and charities provided money for the construction of large

facilities to house children and by the time of Federation, these individuals had moved on. The charities continued with their work, new organisations formed (eg The Child Protection Society) and they were joined by various religious and church organisations.

In the report “Forgotten Australians” it is estimated that during the last century alone, more than 500,000 non-indigenous children were raised in OOHC. This is the greatest number of children being placed into care by any nation state. The phenomenon must have had a significant effect upon how Australian society has developed and evolved and the placement of children in OOHC continues today.

We are not suggesting that there will never be circumstances where placement of a child in OOHC is the appropriate response, being carried out with the welfare and protection of the child foremost.

However the practise of effecting an early separation of the child from the parent/family seems to have become entrenched and there are questions to be asked about the persistence of this mindset in modern Australia and for how long it is going to continue? There is a need for a community wide discussion here against the background of how existing government support and services to families are configured and the level of this support in early childhood years.

Responses to questions.

#2. Different strategies for keeping children safe.

This question appears to be asking about the safety of the child in the relationship with whoever the adult carer/ supervisor might be. There is another consideration here also. This is the risk posed to younger children by older ones, where they are in the same facility/residence etc. We understand that organisations like CASA and staff in sexual assault treatment units within the various children’s hospitals have clinical and forensic data about these situations.

#3. Models that check OOHC practises.

An issue that is relevant to this question is the issuing of exemption status to OOHC providers. In Victoria the Hospitaller Order of St John of God, and its not-for-profit business St John of God Services, Victoria, operated homes for boys and later community residential units. A group of at least twelve, paedophile, religious brothers were active for years

and the facilities were exempt from any external visitation or checking until late in the 1990s. Around seventy of the residents had varying degrees of intellectual impairment.

Another matter related to his question of external scrutiny and visitation practises is the differing levels of risks for different children. Our experience suggests that children with intellectual impairment and in particular, persons who cannot speak, are probably at higher risk than children who participating in schooling, sport etc. Children with impaired vision might have a different risk level again. This begs the question should OOHC arrangements with higher risk children be subjected to greater levels of scrutiny?

Consideration could be given to requiring OOHC services becoming subject to a cycle of external survey and accreditation in the same way as hospital services are required. Operations would be reviewed against a set of national quality standards. A good example of how this might be developed and then operate would be the Australian Council on Health Standards.

#6 & #10. Training and oversight mechanisms.

We do not have expertise to be able to comment about type and standards of training etc. We do wish to comment about the extent of the training and the opportunity for appropriately trained staff to influence the practises of the service provider.

In addition to training in inter-personal dynamics, communication skills etc, we believe that it is important that some employers working in various OOHC services, have competencies in risk assessment and analysis. Oversight mechanisms would then include the operations of an appointed committee, along the same lines as an occupational health and safety committee operates. The appointed committee would have an appropriate reporting relationship and mechanism within the governance structure. This would also include the maintenance of and reporting from a risk register about the service. Risk registers would be subject to external audit.

#11. Effects of delayed reporting.

It is possible that with appropriate mechanism being set up, as suggested in the previous answer, the frequency of delayed reporting might over time, be reduced. What needs to happen here is that mandatory systems

as well as reporting and external audit cycles, drive a culture change whereby OOHC service providers move from being reactive to becoming proactive.

1. Holden, R. (2000). Orphans of history: the forgotten children of the First fleet. Text Publishing, Melbourne.

Prepared by Wayne Chamley.