

QUESTIONS ON NOTICE TO DR KATH MCFARLANE ON FRIDAY, 14th MAY 2021

QON 1. Mr DAVID SHOEBRIDGE: You have seen on multiple sides the way this whole system works or does not work. One of the options that the Committee could consider would be delivering a report sometime maybe in the middle of the year or the end of the year. The Government then has six months to respond to it, but then the Committee could actually schedule, if you like, one or two days of hearings 12 months after we deliver the report to actually check on the implementation and where that is going and have some kind of accountability itself. Given you have worked both sides of the record, do you think there might be some utility in that?

Response:

In my initial response to the Committee, I noted there was a federal precedent for revisiting Committee recommendations, namely, the 2009 Senate Community Affairs References Committee 'Lost innocents and Forgotten Australians' report¹. The 2009 report revisited the progress regarding the implementation of the recommendations of two earlier Committee investigations into the treatment of children in institutional care^{2 3} and the treatment of child migrants to Australia,⁴ as well as the Human Rights and Equal Opportunity Commission's inquiry into the removal and treatment of Indigenous children.⁵ The Senate Committee determined that notwithstanding information provided in government responses to these earlier inquiries, its recommendations had only been partially implemented, and so reconvened the Committee to specifically examine the issue in greater detail.⁶

In my view, the renewed political and media attention directed towards the treatment of children in institutional care brought about by the 2009 inquiry, was instrumental in achieving recognition of the widespread and systemic abuse experienced by many children in institutional care in the 20th century.

¹ 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*, Canberra, June 2009.

http://www.aph.gov.au/Senate/committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/report/report.pdf

² Senate Community Affairs References Committee, *Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children*, Canberra, August 2004, viewed 16 July 2009, http://www.aph.gov.au/Senate/committee/clac_ctte/inst_care/report/report.pdf

³ Senate Community Affairs References Committee, *Protecting vulnerable children: a national challenge: second report on the inquiry into children in institutional or out-of-home care*, Canberra, March 2005, viewed 16 July 2009, http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2004-07/inst_care/report2/report.pdf

⁴ Senate Community Affairs References Committee, *Lost innocents: righting the record report on child migration*, Canberra, 30 August 2001, http://www.aph.gov.au/Senate/committee/clac_ctte/completed_inquiries/1999-02/child_migrat/report/index.htm

⁵ The Human Rights and Equal Opportunity Commission (HREOC) 1997 *Bringing Them Home*, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families <https://humanrights.gov.au/our-work/bringing-them-home-report-1997>

⁶ The Committee recommended that the Commonwealth Government, state governments and religious organisations issue formal acknowledgement and expression of regret to child migrants and to other children who suffered abuse in institutions; establish redress schemes; and the establishment of a whole of government approach and multi-jurisdictional consistency for the provision of support services and the handling of abuse claims.

It is doubtful if the issuing of the national Apology to the Forgotten Australians⁷, the establishment of the Commonwealth Find and Connect services⁸; the National Library's oral history project which records the lives and experiences of Forgotten Australians and Former Child Migrants; and the Museum of Australia's Inside Out exhibition on the experiences of children in Out-Of-Home-Care, among other initiatives, would have eventuated without the Senate Committee's decision to revisit its original recommendations. The 2009 Inquiry was also an important catalyst for the establishment of various state and territory Redress Schemes, and in the subsequent establishment of the 2013 McClellan Royal Commission into Institutional Responses to Child Sexual Abuse, resulting jurisdictional inquiries into this and related child protection/child welfare concerns, and a raft of law reform initiatives and legislative reform designed to compensate survivors for past abuse, and ensure improved access to and experiences of the criminal and civil legal systems.

The Senate Committee's decision to revisit its original report recommendations had significant and ongoing benefits for survivors of childhood institutional abuse, the legal and welfare systems, and wider society in general. Given this precedent, the current Committee's suggestion to schedule one or two days of hearings 12 months after delivery of its report into the support provided to children of incarcerated parents, 'to check on the implementation and where that is going and have some kind of accountability itself' would seem to possess great utility.

QON2. Mr DAVID SHOEBRIDGE: What would be a time frame for that? Would it be 12 months after the delivery of the report, 18 months after the delivery of the report? I suppose I am conscious about the end of the parliamentary term happening at some point. Would it be in the life of this parliamentary term... I am thinking in terms of being able to actually expect some partial implementation or something along the way.

Response:

With the proviso that the following is not legal advice but the author's opinion only, it would seem that the timeframe for the Committee's deliberations is a matter for it; in that it would not be affected by the adjournment or proroguing of the Parliament.

This is because pursuant to the *Advocate for Children and Young People Act 2014* No 29 [NSW] Schedule 2 Parliamentary Joint Committee, Part 4(9), 'The Committee may sit and transact business *despite any prorogation* of the Houses of Parliament or any adjournment of either House of Parliament' (my emphasis).

Revisiting its recommendations would also be facilitated by 6(3) of Schedule 2 to the Act, which states that even if the Committee ceases to exist before reporting on the matter, if the Committee as constituted at any time has taken evidence in relation to a matter, 'the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence'.

⁷ Commonwealth Parliamentary Debates, Representatives, 16 November 2009. *National Apology to the Forgotten Australians and former Child Migrants*. (Prime Minister Kevin Rudd).

⁸ Find and Connect provides specialist trauma informed counselling, referral services, peer support, education and social support programs, and assistance to locate and access records and reconnect with family members.

There would therefore seem no legal or procedural impediment to providing a report and revisiting the implementation of its recommendations some months or even a year or so down the track.

I make no comment on the political aspects of any proposed timeframe. As I stated in my submission and verbal evidence to the Committee, the issues impacting children of imprisoned parents have existed through successive governments of both political persuasions. A consistent bi-partisan approach is required to overcome the obstacles that prevent these children from receiving the acknowledgement, services and assistance they need in order to become thriving, contributing members of our society.

A key argument in support of this position is presented, as the Committee has heard in evidence before it, in the documented lack of progress over the past 20 years regarding the implementation of the recommendations of the previous Committee that examined this issue, the Ann Symonds-chaired Standing Committee on Social Issues Children of Imprisoned parents inquiry.

Recommendation:

I suggest that the Committee consider issuing an interim report, containing recommendations, and review the government's response to that report and its acceptance of the Committee's recommendations, in a subsequent report 12 to 18 months later.

A precedent for the issuing of an Interim report is seen in the NSW Parliament's Select Committee on the Increase in Prisoner Population (2000).⁹

This would enable the Committee to speak to the Interim report in both houses upon its tabling, and receive the government response to the report within the following six months.

The Committee could then determine to hold supplementary hearings on the progress of the implementation of its recommendations, before tabling and speaking to a final report in due course. As the procedures state that the debate on a Committee report ends 12 months after tabling, it would seem prudent to adopt a course that enables discussion of the issues in both houses at various points.

This Committee could also resolve to have a message transmitted via the Clerks of both houses of the parliament to the new chair of the Committee in the incoming 58th parliament, that the implementation of the recommendations of this inquiry has been an area of ongoing concern to the Committee, and requesting that investigations into their implementation continue through that Committee.

⁹ The interim report on issues relating to women was issued in July 2000 <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=244#tab-reportsandgovernmentresponses>. The final report was issued in Nov 2001 and the government response was received in Sept 2002.