



CARE LEAVERS AUSTRALASIA NETWORK

CLAN is a National, Independent, Peak Membership Body which supports, represents and advocates for people who were raised in Australian Orphanages, Children's Homes, Foster Care & Other Institutions.

PO Box 164, Georges Hall, NSW, 2198

Why do Care Leavers continue to be ignored in Australia?

**CLAN's Submission to the Australian Law Reform
Commission Issues Paper – Justice Responses to Sexual
Violence**



**They called it Virginity Testing
We call it Rape**

REDRESS can't be refused

CLAN - Care Leavers Australasia Network is a national, independent, peak membership body which represents and advocates for those who were raised in **Australia and New Zealand's Orphanages, Children's Homes, Missions and Foster Care.**

There were more than 500 000 children in Australia who grew up in 900 plus Orphanages, Children's Home, Missions and Foster Care. CLAN's main objective is to assist and support Care Leavers and their families through the wide variety of work we do including but not limited to advocacy, counselling, casework, records searching and publishing Care Leavers' stories.

We thank you for the opportunity to comment in this submission regarding justice responses to sexual violence. CLAN have submitted many submissions in the past to various government inquiries and more recently regarding the National Redress Scheme (NRS) where our input has fallen on deaf ears. Therefore, we won't go into too much detail in this submission but rather address some of your Terms of Reference and some questions that are of relevance to Care Leavers. We will also include our submissions to the Inquiries relating to the NRS for your perusal and for a more in depth understanding of the issues we may touch on here.

Firstly, CLAN believes that this Inquiry is of relevance to our organisation and the people we support. Whilst CLAN are not a specialist legal support service, we are a Redress support service, and we have been supporting large numbers of Care Leavers through the Redress process since its inception in 2018.

Prior to the establishment of the National Redress Scheme, CLAN supported Care Leavers to attend and participate in the **Royal Commission into Institutional Responses to Child Sexual Abuse**, as well as the **Senate Inquiry into Children in Institutional Care** before that.

Additionally, prior to the Royal Commission, CLAN have been involved and supported Care Leavers to access various other schemes which provided some sort of 'response' to the abuse that was perpetrated upon them as children. These 'responses' included various state based redress schemes, various state based Victims of Crimes schemes, as well as institutional based professional standards schemes like Towards Healing which was run by the Catholic Church, as well as others including the Anglican and Salvation Army schemes.

Furthermore, prior to the National Redress Scheme, CLAN supported some Care Leaver's to access the civil litigation system via legal representation, as well as providing emotional support for those reporting the crimes committed against them to the police and continuing this support if the case resulted in the perpetrator being charged and the case being held in court.

Thus, over our 24 years of supporting and advocating for Care Leavers, CLAN has had much experience in assisting and supporting Care Leavers to access various 'Justice responses' to sexual violence and other alternative approaches designed to bring about some semblance of justice.

Unfortunately, based upon this experience there has not been an ideal 'response' to date and there certainly has not been one that has shown it is truly trauma informed, and just as importantly, **Care Leaver informed.**

Terms of Reference

With regard to your Terms of Reference, it is interesting to note that Care Leavers or children in the current child protection system are not specifically mentioned as a population cohort that are disproportionately reflected in sexual violence statistics. Care Leavers as a cohort also tend to

intersect with other cohorts mentioned in your list, however, they were first and foremost sexually assaulted whilst in institutional 'care'. As you should be aware from the Final Report of the Royal Commission, 41.6% of all survivors who took part in the Royal Commission were sexually abused in out-of-home care, the majority of these being pre-1990 Care Leavers. This is a HUGE cohort to ignore when inquiring into the under-reporting, and the impact of laws and frameworks on these cohorts that are disproportionately reflected in sexual violence statistics.

The ALRC should be examining Care Leavers as a specific cohort who are over-represented in sexual violence statistics. The fact that once again, Care Leavers are ignored in Inquiries such as these, demonstrates the Australian Government and its, lack of understanding of the experience of a child in 'care' and the plight of many Care Leavers upon leaving the system. Many Care Leavers go on to find themselves in further situations where they are vulnerable and statistically more likely to be sexually assaulted again. Many Care Leavers spend time in prison, many are employed in sex work, many find themselves homeless and living on the streets. The fact that the majority of Care Leavers have been sexually abused in some way makes them more likely to be perpetrated against in the future. These realities seem lost on Government bodies such as the Australian Law Reform Commission.

Unfortunately, the system is not designed to collect information, statistics or data regarding Care Leavers. For many years CLAN have been advocating for having a tick box question on Government forms asking if someone is a Care Leaver but to no avail. Even in the National Redress Scheme there is no overarching category of Care Leaver for someone to tick to identify themselves or their situation as. Refusing to acknowledge and collect valuable data from such an important cohort only serves to perpetuate this cycle of abuse and denial created first and foremost by the various governments around Australia.

Recently, there was a case in Victoria where an 18year old Care Leaver died after an accidental overdose and whose death was Inquired into by the Coroners Court. According to Lacadou-Wells (2024), this Care Leaver's "demise could also be traced back to significant childhood trauma. At 5, Child Protection had moved her out of her parents' home due to their family violence and drug-taking. "(Her) story is incredibly sad and distressing," state Coroner David Ryan stated on 14 May."

This girl's story is a current example of the vulnerability of Care Leavers and children in the child protection system. According to the coroner, more needed to be done to focus on safe and stable housing for this Care Leaver.

"She had just turned 18 years old and was no longer in the care of the State, but she remained in a particularly vulnerable position given her complex history and lowered tolerance to illicit drugs after a period of abstinence."

She had lived with her grandmother for much of her childhood under a child protection order.

However due to the girl's challenging behaviours, the grandmother told Child Protection in 2019 she could no longer look after the child.

She was moved to various care homes, lock-up accommodations and a therapeutic care property as well as offered support by the Youth Support and Advocacy Service (YSAS).

Her living placements broke down due to her abscondment, disengagement and drug use.

In the two years leading up to her death, she presented to hospital about 20 times to treat drug abuse. She was reported missing on 231 occasions with 142 Childrens Court warrants. (Lacadou-Wells, The Star Journal, 2024)

Whilst it is not mentioned in this article, with this degree of vulnerability it would not be surprising if this young girl had also experienced some degree of sexual violence. Nevertheless, when imagining a teenager living in circumstances such as these, it is of no surprise that sexual violence is not disclosed or reported. It is also of no surprise that living in circumstances such as these makes anyone, let alone a child, more vulnerable to sexual violence.

In 2021, it was reported that there were approximately 46,200 children in child protection around Australia (Australian Institute of Health and Welfare, 2022). The rates of children entering child protection are also similar to the rate of children being discharged from the system, meaning there are just as many children leaving care every year as there are entering it. Therefore, the number of current Care Leavers in the last 10 years based on these figures is well into 100 000 children and young people. How can a cohort this large, and this vulnerable, continue to be ignored in Inquiries such as these?

**CLAN HOLDS A MINUTE SILENCE
TO REMEMBER ALL
CARE LEAVERS WHO HAVE DIED
NEVER GETTING
RESPECT
RECORDS
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Care Leavers experiences in reporting sexual violence and the justice systems response

For many Care Leavers the ability to report the sexual violence committed upon them safely was non-existent. These crimes were committed upon children by the very people who were meant to look after them. If it wasn't perpetrated by a carer of some sort, the institution responsible was aware, and in many cases did nothing to stop the abuse occurring. In fact, in many cases the Institution was responsible for allowing the offender to keep offending by moving them from Home to Home. In an environment such as this, where children were removed from parents, who was there to safely report the sexual violence to?

Whilst things have changed today, the experience of Care Leavers must be examined two fold – how does this apply to children in child protection today, and how has this impacted Care Leavers of previous generations moving forward?

Whilst there are things like Working with Children's Checks and National Criminal History Checks etc, there is always the possibility of offending, and it happens all too often with children in the child welfare system. It must always be remembered that these children are our most vulnerable because they are exposed to system without a true advocate with them. They do not have parents looking after them who are stable and have their best interests at heart, they are in the system for a reason, and this leaves them vulnerable to begin with. How can children like this ever feel truly safe to report their abuse?

Secondly, Care Leavers of previous generations have experienced sexual violence in many ways, both institutionally and personally. In all cases, the experience reinforced to them that they were worthless and that nobody cared about what happened to them. It is decades later, and they are still trying to get some sense of justice for the crimes perpetrated against them as children. These experiences have shaped their dealings with authority and have tainted their trust in the system.

For a great deal of Care Leavers their first experience with police was the forcible removal from their family and being placed in an Orphanage or Children's Home. For many other Care Leavers it was when they ran away, 'absconded', and were picked up by police, of which CLAN has conducted research of absconders dating over a 60 year period which details police involvement. Police never asked 'why' when these children had bruises. They didn't believe children when they complained about their treatment, they were never helped, they were sent straight back to the Homes they were being abused in. Furthermore, many Care Leavers were bashed in Police Stations and had more violence perpetrated upon them by police themselves.

These historical experiences with police, hinders Care Leavers ability to trust them and to move forward with reporting the crimes committed against them, either in Children's Homes or in the decades that have passed since. Anyone who has worked with Care Leavers and is educated about the history of child welfare in Australia will understand why Care Leavers are hesitant to approach the police. This is also a common understanding amongst Government Departments and has been reported in all Inquiries regarding Care Leavers. It would make sense then, that the Police Departments around Australia need to be proactive in gaining and building the trust of Care Leavers. Approaching organisations such as CLAN to educate the current police force on Care Leavers and their negative experiences with police would aid tremendously and would also show Care Leavers that the police are interested and care about their history and wellbeing.

Historically, Police and the justice systems responses to sexual violence have been extremely poor and anyone who is dealing with historical sexual violence knows this.

Due to these factors, the majority of Care Leavers have not and will not report their abuse to the police. Their prior experiences with police and other authority figures are too much to overcome. They are also aware that there is very little that can be practically done for historical crimes and in many cases the perpetrator has died. It is also hard for many Care Leavers to overcome the shame and stigma associated with sexual abuse and many fear their family and friends finding out.

As stated earlier, CLAN are not specialists in the legal system and our extensive experience has not involved a great deal of work with Prosecutors or the trial process. The few that we have provided support for has been an extremely traumatic process for the Care Leaver involved. The whole process from start to finish is a lengthy one, the questioning from both sides is retraumatising and triggering, and the level of communication has been lacking.

With reference to the trial of notorious paedophile William Houston of which CLAN did provide support to some of the Care Leavers involved, the judge needs to be commended on his understanding of the particular vulnerabilities of children in the child protection system. Judge Peter Kidd stated:

"They were wards of the state. They were young and they were under your control....You were fully cognisant of this vulnerability." Houston told one victim: "Don't tell anyone ... Oh, that's right, you can't tell anyone because you've got no one." Judge Kidd said Houston was meant to protect and nurture the boys, but didn't.

"Instead you arrogantly abused your authority over each of them for your own perverse sexual gratification....What occurred here amounted to a disgraceful breach of trust....Tragically the complaints or partial complaints of three of your victims were variously met with denials and physical punishment by other staff members at the orphanage....The reaction of staff simply serves to demonstrate how it was virtually impossible for a child in those circumstances to come forward and meaningfully pursue a complaint...It also explains how you were able to continue to offend in this disturbing atmosphere of impunity." Megan Neil, Geelong Advertiser, 2016.

Judge Kidd's words perfectly sum up exactly why Care Leavers are an extremely vulnerable group when it comes to sexual violence, and why it is beyond difficult for them to disclose to someone safely due to the responses they got when they tried to disclose.

CLAN also has to provide positive feedback on the ODPP who gathered everyone involved in the prosecutions case outside the courtroom and gave a heartfelt thank you and recognition of the work involved to have Houston convicted. There was however a victim who was not believed and William Houston was not found guilty of the charges against this man. CLAN wonders what supports were given to this victim after the legal system let him down?

CLAN were disappointed that in this case, the very first victim to come forward over 20 years ago and report the crimes committed against him by Houston was not tracked down to take part in this case. [REDACTED] publicly accused Houston of sexually abusing him, came forward to the police and his story was covered in the media, however an effort to involve him in this case was not made. [REDACTED] case was also raised in parliament as you can see from the following excerpt:

"Mr F** has been denied his day in court. He believes he has been denied access to justice. If the allegations are correct action should be taken. We all cherish our young people. Many times honourable members have spoken in the house about our duty of care to young people in the community. We have a particular duty of care when young people who are placed in institutions***

for their own safety and wellbeing are abused. It is something that all honourable members find very difficult to deal with. (Broken Rights, Victim Gets his sex-abuse allegations raised in Parliament).

This is extremely disappointing as the police and ODPP were well aware that he was also a victim of this paedophile and deserved for his case to be heard after he was previously denied.

It is vital that ALL judges, legal practitioners and police officers are educated and receive training regarding Care Leavers so they too can share this type of insight into Care Leavers experiences and their struggles historically.

With reference to other parts of the justice system, there needs to be a focus on communication between the Care Leaver and the ODPP, speeding up the whole process, minimise repeating the Care Leavers/victims testimony, and minimise traumatic and aggressive questioning. For many, a large reason they do not pursue charges is because of the nature of the process they know they are going to face which is all too much for them.

With regards to the civil litigation system these factors are also relevant however there needs to be a focus on legal practitioners not exploiting Care Leavers experiences for monetary gain and providing enough unbiased information for Care Leavers to make informed choices between using the civil litigation system and accessing other redress/compensatory schemes.

Whilst this fear of authority (including police) and the distrust of the legal system, may not be overcome for current Care Leavers, implementing Care Leaver training to all involved in the justice system including police, judges and legal practitioners, will be a start in overhauling the way sexual violence is approached in responding to children in the child protection system today.

Other Compensation Schemes

CLAN have commented at length on the National Redress Scheme (NRS) which is the main alternative for Care Leavers who have had sexual violence perpetrated upon them. CLAN will attach copies of our submissions to the Inquiries on the NRS so as not to repeat ourselves here. There are many issues with the scheme and how it operates at present which prevents Care Leavers from accessing fair and just outcomes within its current guidelines. In short, the NRS cannot be seen as the best alternative for Care Leavers to access justice or compensation.

CLAN would like to draw your attention to the issue of State Sanctioned Rape which the National Redress Scheme refuses to acknowledge. CLAN will include a short excerpt from our last submission to the Inquiry on the NRS but we encourage you to examine this issue further as well. As long as state sanctioned rape is being rationalised as a medical procedure and the impacts of this violation on young girls is being overlooked CLAN cannot accept that the NRS is focused and cares about the sexual violence perpetrated upon Care Leavers. Please see the excerpt below:

A current example of this inconsistency is what is termed State Sanctioned Rape (Penglase, 2008). This term refers to the act of female state wards being penetrated digitally by a doctor or supposed medical professional to determine the presence of STD's and virginity. These girls were never asked consent, they were not given an explanation as to what was about to happen and they were not supported or comforted during this 'procedure'. As such there was nothing about this experience that was medical and in modern terms

would be labelled a crime, such as the case of the Australian women who were forcibly gynecologically examined without explanation at Doha airport in October 2020.

However, they do not reject it in all cases, it seems to be a subjective decision by the IDM's as to whose application they approve and award an outcome to and whose is rejected. Seeing the applications (and completing these applications) ourselves we know that there is no difference in circumstances that warrant the rejection of some and approval of others. Furthermore, for the Australian Government to decide that this sort of routine sexual abuse is acceptable because it was 'what was done back then' is reprehensible. Is the Commonwealth Government really providing redress for sexual abuse and then saying that this sexist and discriminatory practise was okay because it can be disguised as a medical procedure? If it is not acceptable today, then it should be seen and labelled for what it is – penetrative sexual abuse without informed consent.

CLAN have viewed footage of an interview with a male Dr tasked with carrying out these 'internal examinations' who states that the procedure was medically invalid and ethically unsound. He goes on to say that these girls were subject to a discriminatory, sexist type of law that never would have allowed for males/boys to have their genitalia examined in the same way. He even recognises the emotional impact that this 'procedure' had on these girls and that it was traumatic for them. This interview was conducted in 1973 for an ABC broadcast of "This Day Tonight", and can be viewed on CLAN's twitter account https://twitter.com/CLAN_AU/status/1628024020556709894?s=20.

Whilst this doctor was obviously uncomfortable with this practice and recognised it to be an inhumane way to treat girls and the traumatic nature of carrying this out, not all medical professionals seemed to have the same regard for the girls' wellbeing. Furthermore, if a medical professional who was conducting these examinations can say they were not medically sound and were sexist and discriminatory, how can the NRS still continue to view state sanctioned rape as a medical procedure?

NSW CHILD WELFARE DOCTOR



**HE'D EXAMINE YOU SEXUALLY
WHILE LAUGHING.
HE SAID 'YOU LIKE THAT'
BUT I WAS SCREAMING.**

– 83 YR OLD CARE LEAVER

Furthermore, when discussing particular aspects of the NRS and how it responds to sexual violence CLAN believes more can and should be done to report perpetrators of these crimes. Redress have an array of information which outlines the perpetrators of these crimes yet nothing is done with this information. Redress does not ask if these crimes have been reported to the police and there is no question or discussion of whether a Care Leaver would like to take things further and report their abuse to the police. Whilst it is a Care Leaver's choice what to do with their information, the choice is not presented to Care Leavers. The information that the NRS collates would show how widespread and extensive some perpetrators crimes were, yet upon being aware of this information nothing is done about it. Therefore, it must be said that the NRS is not focused on sexual violence, its objective seems to be to provide a mechanism which gives Care Leavers a minimum amount of compensation while preventing them from utilising any other measures in the future.

With regards to other compensation schemes, there has been state based compensation schemes for Care Leavers in Tasmania, QLD and Western Australia. In South Australia there was an option through Victims of Crime for a specialised compensation payment. The Victims of Crime Scheme is also an option in other states too. NSW is the only state to not have a specialised Redress scheme or payment for Care Leaver's abuse in 'care'.

Currently, the Victorian Government have announced a Victorian Scheme and have introduced an advanced payment for those with terminal and critical illnesses. There has been no further information at this stage about this Redress Scheme.

Unfortunately, none of the redress schemes have been inclusive and equitable for all Care Leavers which is why the success of the NRS was so important. Unfortunately, it has not met the mark and its success is still yet to be seen.

Conclusion

CLAN urge the Australian Law Reform Commission to examine the statistics relating to Care Leavers and sexual violence. Care Leavers are by far the majority when it comes to groups who were sexually abused in Institutional contexts. This then makes Care Leavers more vulnerable to further abuse throughout their lives. Unfortunately, the Australian Government has refused to collect data on Care Leavers to get a better understanding of these sorts of statistics.

CLAN are also aware, anecdotally, of the intergenerational trauma that Care Leavers experience and the increased likelihood of Care Leaver's own children also being placed in the child protection system. Growing up without parents and a family makes it incredibly difficult to go on and be a parent yourself. It leaves a lasting affect on your identity and a struggle to raise a family of your own.

Understanding the prevalence of sexual violence on Care Leavers will help you to target responses not only to older generations of Care Leavers but also to children within the current child protection systems across Australia.

Care Leavers are a particularly vulnerable group of Australians, specifically the older generations of Care Leavers who were exposed to other institutional crimes, torture, slave labour, state sanctioned rape, police who returned them to their abusers and Governments who colluded in their abuse. Whilst in many cases Care Leavers were removed from neglectful and dysfunctional environments, the state was an equally neglectful and dysfunctional parent. The state however, had and still has, a higher responsibility to ensure the care of the children it removes, and this is something that they have failed miserably at.

The current responses to sexual violence, from both the justice system and other compensation schemes, are inadequate. Care Leavers and current state wards are one of the most disadvantaged groups in Australia. It is well overdue for the Australian Government to finally acknowledge the legacy and the vulnerability of this disadvantaged group of Australians. Serious work needs to be done to remedy this and provide a proper sense of justice to Care Leavers around Australia.



Justice & Redress for ALL Australian Care Leavers

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