

## CHAPTER 2

### THE FEDERAL GOVERNMENT RESPONSE TO THE *BRINGING THEM HOME* RECOMMENDATIONS

#### PART 1

##### Introduction

2.1 The response of the Federal government to the recommendations of *Bringing Them Home* report is seen as meeting a number of priority needs of the indigenous community generally. This is not perceived as contrary to the spirit of *Bringing Them Home*. However, as the government's response is primarily in the area of general reparation, there have been complaints that it is not appropriately directed and in any event is insufficient. Further public concern has been expressed in relation to the lack of an acceptable apology by the Commonwealth parliament<sup>1</sup> and the rejection of recommendations relating to financial compensation.<sup>2</sup>

2.2 The government has stated that it has responded fully to all appropriate recommendations and that it carries no responsibility in respect of a number of others. A central point of debate, therefore, has been whether the role of the Federal government should be that of a leader. This is perhaps more positive than one of the roles allocated by *Bringing Them Home* to the Commonwealth, which was as the responsible state party in international law (and therefore obliged to take the lead in restitution), but it is not one which the current government believes is appropriate.

##### Roles of the Commonwealth

###### *The recommendations allocated to the Commonwealth government*

2.3 Of the 54 recommendations made in *Bringing Them Home*, a substantial number require Commonwealth involvement. Several recommendations give a clear role to the Council of Australian Governments (COAG)<sup>3</sup> particularly in implementing the recommendations as a whole. Unfortunately, COAG has not discussed these issues. A separate council, the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA), is the major administrative body with responsibility for at least tracking the progress of recommendations.

2.4 Recommendation 2b requires the funding of a unit within HREOC to monitor the implementation of recommendations and to report to COAG. This unit has not been established and in theory the monitoring role has been assumed by MCATSIA.

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1 This matter is discussed in Chapter 4 below

2 See Chapter 7

3 *Bringing Them Home*, Recommendations 1, 2a,11

Recommendation 2d, which required Commonwealth and state governments to provide information to the monitoring unit has been met to an extent in that MCATSIA has provided a report on implementation thus far. However, the reporting format needs to be set up so as to more effectively trace the implementation process.<sup>4</sup>

2.5 The Commonwealth also is allocated a substantial role in funding, through COAG in respect of culture, language and history (Recommendation 11 and Recommendation 29b), family tracing and reunion services (Recommendation 30) and in the establishment of a national compensation fund (Recommendations 15, 16a). The administration and operation of this fund is set out at recommendations 17-19. The Commonwealth was also to be involved in preventing destruction of records (Recommendation 21) and the provision of funding to preserve records, including through the records taskforce (Recommendations 22,23,24,25). Funding to train archivists, researchers etc (Recommendation 28) and to establish an indigenous family information service (Recommendation 27) which will provide information about records was also seen as a Commonwealth responsibility in part. Recommendation 31 is solely a Commonwealth responsibility, the return of indigenous persons from overseas, including prisoners, and the issuing of citizenship to certain people.<sup>5</sup>

2.6 Funding is also required from the Commonwealth for research on the effects of removal (Recommendation 32) and, presumably, for the operation of various services and courses (Recommendation 33,34). COAG is also required to ensure that adequate funding is available for parenting programs (Recommendation 36) and also for health/well-being programs in prisons (Recommendation 37). It is given further responsibility for social justice issues, which are seen by HREOC as the basis of current separation policies (Recommendation 42).

2.7 A further responsibility for COAG is involvement in the establishment of national legislation for the well-being of children and young people (Recommendation 43) and national standards for the treatment of indigenous children (Recommendations 44-53). The Commonwealth is asked to amend the Family Law Act to take into account similar principles (Recommendation 54).<sup>6</sup> Recommendations 43-53 require substantial transfers of power to indigenous communities.

2.8 The Commonwealth is also asked to apologise through the Parliament for past actions of federal governments (Recommendations 5a,b) and, through implementation of the Genocide convention, limit the possibility of repetition.<sup>7</sup>

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4 See below, Paragraphs 2.148-1.155 and Chapter 5

5 As noted above in Chapter 1, Paragraphs 1.99-1.106 the Commonwealth believes these matters have already been dealt with in previously existing legislation

6 See above, Chapter 1, Paragraph 1.106

7 The issue of an apology is considered in Chapter 4; the state of legislation relating to the Genocide Convention is discussed in Chapter 1, Paragraph 1.100 and Chapter 7, Paragraphs 7.9-7.18

2.9 In terms of its recommendations, *Bringing Them Home* suggests the role of the Commonwealth is primarily that of partner with the states (through COAG) in the provision of funding for a range of reparation and ‘prevention of repetition’ services. However, through its examination of the context of the removal of children, the report itself places the Commonwealth in a somewhat different role.

#### The role of the Commonwealth - the *Bringing Them Home* report

2.10 As the report is written against principles of international law, the role of the Commonwealth as a State party in international law is primarily expressed in terms of its responsibility in the past in not preventing actions, in not taking steps to limit such actions, not compensating for these actions and taking no steps to prevent their repetition.

2.11 As noted in chapter 1, the framework of the report depends heavily on the existence of conventions ratified by Australia and on the elements of the van Boven principles. It avoids reference to the principle that the conventions have no effect at a domestic level unless they are specifically incorporated into domestic legislation,<sup>8</sup> (although this principle has been more generously interpreted at different periods). The other side of this argument is that Australia, at least recently, works on the basis that the principles of some conventions have not required specific domestic legislation because relevant legislation already exists.

2.12 *Bringing Them Home*’s use of conventions resulted in a conclusion that Australia had been responsible for actions that were contrary to various human rights principles, although none of the conventions had been incorporated into domestic legislation at the time during which most removals had occurred. Nor, it could be argued, was there a broad understanding at that time in the community of such principles or of the capacity of the community in general to be involved in social change.

2.13 An emphasis on human rights principles is also found in the first HREOC submission to this inquiry,<sup>9</sup> which refers to and quotes sections from the reports of the Social Justice Commission.<sup>10</sup> HREOC considers that it is these principles which must be re-iterated in any consideration of reparation and progress in the situation of indigenous people. This approach is more soundly grounded in that there is now some experience within the community of ‘rights’ issues. However, in terms of attempting to seek meaningful ways of linking the indigenous communities’ concerns with those

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8 This issue has been discussed extensively in several works. The current government attitude is that there is no reasonable expectation of the operation of the principles even though the convention may not be incorporated into domestic legislation. At the time of the planning of the inquiry, this situation was not quite so clear cut – see for example, the Teoh case, Senate Legal and Constitutional Legislation Committee, *Report on the Administrative Decisions (Effect of International Instruments) Bill 1995* (Canberra, 1995)

9 *Submission 93*, Human Rights and Equal Opportunity Commission

10 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2199 (Paragraphs 2.69-2.70)

of others in Australian society, in accordance with the aims of the Council for Aboriginal Reconciliation, there is still a need to establish a dialogue on human rights. 'Human rights', as a concept, has made much progress, in part through the work of HREOC. However, for some sections of the community, 'human rights' are more usually interpreted in terms of benefits, rights, or choices, and the use of these more familiar terms may also be useful.<sup>11</sup>

*The Constitution and the 1967 referendum - the Commonwealth as responsible for indigenous matters*

*Use of the external affairs power*

2.14 In considering both the government's response and future implementation of recommendations, other witnesses have emphasised the Commonwealth's role as a leader:

... in terms of leadership, in terms of negotiation and setting a starting point, the Commonwealth would be the lead player.<sup>12</sup>

2.15 This role is seen as based on two factors – Commonwealth responsibility for indigenous matters under s 51 (xxvi) and the capacity to use the external affairs power (s 51(xxix)). The first developed from the 1967 referendum.<sup>13</sup> Although this has been misinterpreted,<sup>14</sup> it does have a symbolic importance and was referred to by many witnesses.<sup>15</sup>

2.16 The second, perhaps over-emphasised by HREOC, has a more sound historical basis with reference to the development and use of the power within recent times. Where the emphasis is on the power of the Commonwealth to utilise this section to move forward (rather than to impose modern thinking on previous times) it is less confrontationist than the approach taken by HREOC. A third relevant factor, not clearly linked with specific powers, but probably reflecting s 51 (xxvi) is the Commonwealth demonstrating leadership through accepting the reality of past

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11 See *Submission 59*, Human Rights Committee, Law Society of New South Wales, p. 1130

12 *Transcript of evidence*, Mr Martin Flynn, p. 376

13 However, for limits to the use of this see Department of the Parliamentary Library, *Research Paper No. 27* (1998-99), *From Dispossession to Reconciliation*, pp. 4-6

14 Department of the Parliamentary Library, *Research Paper No. 27* (1998-99), *From Dispossession to Reconciliation*, p.4

15 See, for example, *Transcript of evidence*, Central Australian Stolen Generations and Families Aboriginal Corporation, p. 455

events,<sup>16</sup> and the fact that some of these have had unintended and harmful consequences.<sup>17</sup>

### Responsibility for indigenous matters

2.17 As well as s51 (xxvi)<sup>18</sup> which gives the Commonwealth power to develop legislation ‘for the people of any race for whom it is deemed necessary to make special laws’, the external affairs power enables the Commonwealth to utilise both general and specific human rights conventions,<sup>19</sup> such as the ICCPR and the ICESR.

2.18 As noted above, the extent to which the external affairs power was recognised by governments of the 1940’s-1960’s in the same way it has been more recently, is problematic. Several witnesses referred to Commonwealth involvement in the development of separation and removal policies,<sup>20</sup> and some considered that this made the Commonwealth ‘responsible’ in the sense of failing to act against any abuse:

If the federal government was supporting a policy, not just implicitly expressing a policy that was being practised throughout Australia, and there were accounts at the time of abuses – it just is not a modern phenomena – then the federal government should have shown some leadership in ensuring that was not happening.<sup>21</sup>

2.19 Similarly, it has been argued that the Commonwealth was also responsible for acts of racial discrimination including those prior to the introduction of the *Racial Discrimination Act 1975*, as well as subsequently.<sup>22</sup> Nonetheless, there is also a concession that most removals occurred prior to the existence of the various conventions,<sup>23</sup> and that assimilation was thought to be beneficial.<sup>24</sup> If this was the case, the understanding of genocide, and the issue of intent, at the time, would also have to be taken into account:

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16 See, for example, *Transcript of evidence*, National Sorry Day Committee, p. 63. The Human Rights and Equal Opportunity Commission also considers the importance of the Commonwealth demonstrating leadership but this is more in the sense of managing co-ordination and monitoring – see, for example, *Transcript of evidence*, Human Rights and Equal Opportunity Commission, p. 97

17 *Transcript of evidence*, National Sorry Day Committee, p.68, and see also p. 71: ‘Sadly, many of the issues become issues because we do not have a government which is receptive at the moment.’ See also *Transcript of evidence*, Mrs Hill-Wall, pp. 428-429

18 However, states still retained the original power, although Victoria transferred it to the Commonwealth in 1975

19 See, for example, *Transcript of evidence*, Mr Buti, pp. 339-340; *Transcript of evidence*, Mr Martin Flynn, p. 378

20 *Transcript of evidence*, Mr Buti, p. 340

21 *Transcript of evidence*, Mr Buti, p. 341, Mr Marcovich, p. 359

22 *Transcript of evidence*, Mr Buti, pp. 339-340, Mr Marcovich, pp. 344-345

23 *Transcript of evidence*, Mr Buti, p. 356

24 *Transcript of evidence*, Senator Abetz, Mr Marcovich, p. 357

The question that keeps coming up time and time again is that, in order to get to a point of dealing with it in the commonsense way... you also have to reconcile the history. It comes back to the question of why it is that the human rights declaration was accepted, that ...certain conventions and covenants were ratified, and the genocide convention was not implemented in domestic law.<sup>25</sup>

2.20 Regardless of what people may have wished the federal government had done in the past, the fact is that it did not.<sup>26</sup> The value of emphasis now on the relevant sections of the Constitution must be on their use to both acknowledge the past, and to overcome the effects of this. The government response does this to a degree, although its distinction between responsibility for, and regret for, the past, has been seen as evidence of a refusal to genuinely acknowledge the effect of separations:

While we do not believe that our generation should be asked to accept responsibility for the acts of earlier generations, sanctioned by the law of the times, we fully accept that we of this generation have an obligation to address the consequences of those actions and policies.<sup>27</sup>

#### *What action did the federal government take*

2.21 The federal government response to the recommendations has been to address what it perceives as key issues in the areas of reparation, rehabilitation and restitution. Further, the government considered that the measures it proposed would:

complement our major policy direction in indigenous affairs, which is to address directly the effects of severe socio-economic disadvantage suffered by indigenous people though improved outcomes in health, housing, education and employment.<sup>28</sup>

2.22 In itself, this was not an inappropriate response. *Bringing Them Home* had identified severe and ongoing problems arising from socio-economic status, and numerous reports and papers describe a cycle of poverty, poor health, limited

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25 *Transcript of evidence*, Senator Ridgeway, p. 380

26 Much has been made in discussion of various comments of notable public servants in the 1940's about the possible implications of the Genocide convention (*Transcript of evidence*, pp. 175-177). However, such ideas while 'advanced' for the time, were not part of government policy. They reflect the ideas of some individuals who were not themselves politicians. The extent to which the federal government avoided development of domestic legislation to prevent genocide, as opposed to not considering such legislation necessary or relevant to Australia, is also unclear: In 2000, the federal government still perceived that specific anti-genocide legislation was unnecessary since it claimed that all 'genocidal' actions were covered by existing legislation – see *Submission 36* to the Legal and Constitutional References Committee inquiry into the Anti-Genocide Bill 1999 . See also *Transcript of evidence*, Senator Abetz, Senator Ridgeway, pp. 360-361

27 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 629

28 'Bringing Them Home Government Initiatives', *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 629

employment and limited access to a range of other benefits.<sup>29</sup> According to the government, *Bringing Them Home* had identified family re-union as the major need of separated people,<sup>30</sup> followed by counselling and parenting services. These matters would be addressed by the allocation of specific funding.

2.23 Additional resources would be made available for:

- preservation of records and facilitating access to these;
- an oral history project;
- language and culture programs (restitution).

#### *Nature of response*

2.24 As indicated in Chapter 1, the government response, to a degree, has been shaped by the direction of *Bringing Them Home*. The a-historical nature of the report which seeks to impose relatively recent attitudes onto a very different past, has helped create a confrontationist situation. In its own submission to the Senate inquiry, HREOC continued its earlier approach, noting that:

The analysis of the report [*Bringing Them Home*] is based in a detailed examination of international law standards. The government's response to date has not addressed the human rights principles raised in the report or acknowledged their importance.<sup>31</sup>

2.25 In fact, the government has responded to HREOC by avoiding any specific reference to 'rights', although many of its actions necessarily are directed to improving access to benefits which constitute human rights: health (including mental health), knowledge of one's culture and family, the capacity to practice one's culture. In addition, much of its thrust is towards past and current responsibilities of the states, the churches and other organisations. While accurate in respect to the past, this approach does limit the capacity of the government to act differently in the present, using those powers which the Commonwealth has.

2.26 In this sense, it is difficult for the Commonwealth to meet the demand expressed by some that it be a leader in several ways – in acknowledging that people were affected by removal; that people have difficulty in coping with the fact that they were subject to various practices; and, by ignoring the legal, political and social restrictions of the past, to take more obvious responsibility in co-ordination.

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29 See, for example, Senate Legal and Constitutional References Committee, *Report on the Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999*, Chapter 7

30 See 'Bringing Them Home Government Initiatives', *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 630

31 *Submission 93*, Human Rights and Equal Opportunity Commission, Executive Summary, p.2175

2.27 It could be argued that the demand on the Commonwealth is based on the perception that it has the power to pass legislation which is beneficial to indigenous people. Few submissions or oral evidence referred to this specifically, but there was considerable evidence which effectively demonstrated a need for an authority which ignored the technicalities of past limits and offered a solution. Various forms of such action were suggested, including a meeting between the federal government and indigenous leaders to address a range of issues, not just those relating to the removals<sup>32</sup> The approach of the Northern Territory government appeared to encompass the preferred attitude:

When we say that we do not believe we are responsible for any reparation, we are talking about reparation in the form of compensation payments to individuals ... On the other hand, there is the question of reparation in terms of support services, acknowledgment of the pain and the anguish, not only for people directly affected but for the extended families of those groups – the need for counselling, the need for mental welfare services, the need for better health services for those who might have suffered substance abuse as a consequence of the traumas that were involved.<sup>33</sup>

2.28 Although the government's response to *Bringing Them Home* did discuss the importance of healing and addressing current problems related to past events, this appears not to have been sufficient to meet a broader demand for the issue to be totally embraced by the federal government.<sup>34</sup> The issue of an apology has also made it difficult for some to perceive the government as a leader. A satisfactory apology by the Commonwealth Parliament is perceived as being an unmet recommendation.<sup>35</sup> Nonetheless, the issue of government leadership does not necessarily mean that the federal government is solely responsible:

We saw the importance of national leadership that would coordinate a response to the recommendations. The alternative would have been the disparate attitude of governments, some minded to move towards the implementation, others not.

What we found in the subsequent review of government responses was that, without that leadership, virtually none – or very few – of the recommendations was being addressed...national leadership was the key to effective implementation.<sup>36</sup>

2.29 In terms of specific recommendations, the government response offered a number of programs and services which were intended to meet some of the needs

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32 See *Transcript of evidence*, Mr Martin Flynn, pp. 378-379

33 *Transcript of evidence*, Northern Territory Government, Office of Indigenous Development, p. 443

34 See below, Chapter 4

35 See Chapter 4

36 *Transcript of evidence*, Sir Ronald Wilson, p. 746



identified by *Bringing Them Home*.<sup>37</sup> Limited attention was paid to issues of monitoring and co-ordinating<sup>38</sup> and to the use of COAG in several other roles. Other recommendations were referred to briefly as already being met.<sup>39</sup>

### Co-ordination and Monitoring - COAG and MCATSIA

2.30 As a major federal, state/territory and local government body COAG was given an important role in the *Bringing Them Home* recommendations. However, a change in government between setting up the inquiry and the presentation of the report had resulted in little use being made of this body.<sup>40</sup> In its place, so far as the issue of separated children was concerned, the Commonwealth used the previously existing Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA).

2.31 Little information is publicly available about MCATSIA,<sup>41</sup> and many witnesses appeared to have little knowledge of its operations. While this is excusable for some, the Committee was surprised at the apparent lack of understanding of the role of MCATSIA by those expected to be aware of its functions.<sup>42</sup> Witnesses confused the Ministerial Council itself with working parties of officials.<sup>43</sup>

2.32 HREOC noted the existence of MCATSIA<sup>44</sup> but did not believe it was an appropriate forum because it met infrequently and had limited arrangements in respect of implementation and monitoring.<sup>45</sup> HREOC's main concern with MCATSIA was that it had no structure with respect to rate of implementation and no requirement to provide data to an independent body on implementation.<sup>46</sup> HREOC would prefer to be this independent body, but no funding has been granted by the government for this purpose.

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37 See below, from Paragraph 2.50

38 See below, Chapter 5

39 See 'Bringing Them Home Government Initiatives', *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, pp. 630a-631

40 See *Transcript of evidence*, Sir Ronald Wilson, pp. 746 -747

41 See *Transcript of evidence*, Department of Prime Minister and Cabinet, p. 649; *Transcript of evidence*, Minister for Aboriginal and Torres Strait Islander Affairs, pp. 649, 654

42 See *Transcript of evidence*, Human Rights and Equal Opportunity Commission, p. 101

43 *Transcript of evidence*, Northern Territory Government, Office of Indigenous Development, p. 441

44 *Submission 93*, Human Rights and Equal Opportunity Commission, , p. 2191

45 *Submission 93*, Human Rights and Equal Opportunity Commission, pp. 2191-2192 (Paragraphs 2.36-2.40)

46 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2191(Paragraph 2.38): 'In no way can the MCATSIA Working Group process be regarded as effectively monitoring implementation of the recommendations.'

2.33 MCATSIA has provided one report, a '1998-9 Monitoring Report' endorsed in September 1999.<sup>47</sup> It was also agreed in September 1999 that jurisdictional reports would be published annually and a thematic approach would be developed.<sup>48</sup> The first report is essentially a summary of what has been done but it is bureaucratic in approach and could be produced in a user-friendly format, with more detailed appendices.<sup>49</sup>

2.34 Nonetheless, this material did provide an update on the rate and nature of implementation of recommendations in various jurisdictions. It has no input on churches or other such organisations, but this shortcoming is expected to be rectified in subsequent reports.<sup>50</sup>

### Consultation

2.35 *Bringing Them Home* was emphatic about the involvement of indigenous organisations in the consultation process,<sup>51</sup> and its recommendations purport to reflect the demand for both consultation and self-management in a range of areas.<sup>52</sup> The value of consultation on what is required as a response to the report is also acknowledged by many groups.

2.36 However, some organisations and individuals believe that because of *Bringing Them Home*'s emphasis on removal as a generic rather than a series of individual issues, the inquiry itself was not genuinely representative of the needs of removed people. Its recommendations, therefore, were made without appropriate consultation with those most affected, and hence may not reflect what is required.<sup>53</sup>

2.37 Certainly many witnesses stated to the Committee that they had not been consulted on what was required and that, even when money was distributed to

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47 *Transcript of evidence*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 654

48 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *1998-9 Monitoring Report*, Executive Summary, p. 2

49 The Ministerial Council for Aboriginal and Torres Strait Islander Affairs has also published the collected responses of the states and territories in a much more attractive and accessible format: Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth, State and Territory Government responses to the recommendations of the Human Rights and Equal Opportunity Commission Report 'Bringing them home', Darwin 2000 (exact date not stated). References in this report are primarily to submissions where possible; when a state response to *Bringing Them Home* is not available in a submission to this inquiry, reference is made to the above work which is cited as Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*

50 Monitoring and co-ordination is discussed in more detail in Chapter 5

51 For example, *Bringing Them Home*, Recommendations 11, 12, 16, refer to various 'indigenous organisations' or 'indigenous communities', although some would argue that more representative people are excluded through these recommendations. ; see also *Submission 93*, Human Rights and Equal Opportunity Commission, Executive Summary, p. 2176

52 However, see below, Chapter 5, Paragraphs 5.78-5.84

53 *Submission 66*, Yilli Rreung, Regional Council, p.1414 passim. See also below, Chapter 5

‘mainstream’ indigenous organisations, these had not been interested in discussing service provision:

The \$64 million went to existing Aboriginal services. No service provider who has received the *Bringing them home* money has contacted our association and asked for our views on policy or service delivery which best suit us.<sup>54</sup>

2.38 The reasons for this are many, and perhaps include the fairly limited experience of some of the newer organisations in negotiation for funding. However, given that the allocation of funding was a responsibility at a much higher level, it cannot be expected that organisations with limited if any resources should have the capacity to bargain, especially in an environment which seems hostile to them. Those ostensibly in charge of the consultation process had the obligation to consult properly.

*The expectations of consultation*

2.39 It was apparent to the Committee that there were varying expectations about consultation and what it meant. According to HREOC, indigenous people expect to be consulted in decisions that affect them, as a right.<sup>55</sup> Some witnesses to the Committee suggested that they had not been consulted, not consulted often enough, or not provided with any information.<sup>56</sup> The responsibility for this is unclear.

2.40 Notwithstanding this, it is likely that the lack of a central body which has a responsibility for providing accurate and up-to-date information contributes to dissatisfaction with the level of readily available and comprehensible information. The Committee believes that the multitude of organisations involved in implementing parts of the reparations has made it almost impossible for people to understand who is responsible for different aspects, and how to find out what is happening. This is a major problem, affecting co-ordination and monitoring, and must be addressed.

*The target group*

2.41 Another major difficulty was the confusion about whether the Federal government response was to be directed towards indigenous people generally or towards separated people, their communities and families.<sup>57</sup> Given that there seemed little agreement on outcomes, it was not surprising that many groups believed that had not been consulted or not listened to.<sup>58</sup>

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54 *Transcript of evidence*, Garden Point Association, p. 502

55 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2188 (Paragraphs 2.18, 2.19)

56 See, for example, *Transcript of evidence*, Western Australian State Aboriginal Justice Council, pp. 362-364

57 See above, Chapter 1, Paragraphs 1.68-1.96

58 See, for example, *Transcript of evidence*, North Australian Aboriginal Legal Aid Service, pp. 454-455

2.42 As noted in Chapter 1, specialised meanings of the terms ‘removed’, ‘separated’ and ‘stolen’ may have contributed to this situation. A number of Stolen Generation organisations noted that they had limited involvement in planning, discussion, access to funding, and management of services. Yilli Rreung, for example, believed that both the ‘pan-Aboriginalist’ approach of the HREOC report and the dominance of other indigenous groups led to the exclusion of some separated people’s organisations both from consultation<sup>59</sup> and from other appropriate programs and projects.<sup>60</sup>

HREOC has confused reparation for the Aboriginal survivors of gross violations of human rights with pan-Aboriginalist notions of self-determination. All of the above recommendations could be implemented and yet not one member of the Stolen Generations community would need to be consulted.<sup>61</sup>

2.43 A similar point was also made by an ATSIC Commissioner from the Northern Territory:

The people who have contacted us complained not only of the lack of compensation but also of the fact that these funds have gone to mainstream agencies. The funds that went to the health department have gone to agencies that they fund, some of which are Aboriginal medical services. The funds going to ATSIC have gone to Aboriginal Link-Up services, community controlled services and the funds that went to Archives and to the National Library have gone to government agencies. The stolen generation people who have contacted us say that none of the money the government has provided is specifically directed to them. It is only directed to providing basically family tracing, reunion and associated services for the stolen generation.<sup>62</sup>

2.44 This second statement in particular emphasises the distinction that must be made at two levels. The first is whether money should be directed towards particular groups for them to use as they decide. The second is a distinction between mainstream indigenous (Aboriginal medical services and Link Up) and stolen generation people. This has been emphasised strongly in the Northern Territory, but it is not unique to this area. Whether only ‘assimilated’ people are excluded from a lot of consultation in all areas is not clear.

2.45 An additional point that must be made is that there are clearly differences of opinion between ATSIC and some of its members. Given ATSIC’s substantial involvement in decision-making, it presumably has been instrumental in allocating the

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59 *Submission 66*, Yilli Rreung Regional Council, p. 1428

60 *Submission 66*, Yilli Rreung Regional Council, p. 1418

61 *Submission 66*, Yilli Rreung Regional Council, p. 1424; see also *Transcript of evidence*, Central Australian Stolen Generations and Families Aboriginal Corporation, pp. 455-456

62 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 6

funding to the mainstream indigenous groups (including, perhaps, people who were separated but not ‘assimilated’). Its approach seems to have been rejected by other indigenous people, including those closely associated with it, who feel that they are a group of separated people who are now excluded. These distinctions help to explain some of the apparent contradictions in evidence.<sup>63</sup>

2.46 That ATSIC – at least at Central Office– was not seen as supporting ‘stolen generation’ people, was specifically stated, again in the Northern Territory:<sup>64</sup>

ATSIC has an apparent transparency process whereby elections are held and so forth, but the dollars that were a result of the inquiry went to existing programs, particularly Link Up and the language programs.<sup>65</sup>

2.47 The Committee also heard that ongoing litigation had created additional problems, often indirectly, for some organisations and individuals. The fact that litigation itself has been required in order to address individual cases has been the source of much anger and grief, given the painful issues that must be dealt with in a public setting. This problem has been compounded by the claim that people have been prevented from dealing with their own and community issues because of a fear that any information will be subpoenaed:

How can you implement a change process if the very essence of change means talking about your past, which you have been advised by your legal representative and organisation not to do so.<sup>66</sup>

2.48 This must necessarily inhibit effective consultation as well as perhaps affect the extent to which people feel able to access services.

#### *The federal government*

2.49 The federal government has stated that there has been consultation in the development of its own response to the recommendations.<sup>67</sup> However, it is not clear if this consultation was broad or if it occurred after the general direction of the response had already been developed. According to HREOC, ATSIC had limited involvement in formulating the government’s response to *Bringing Them Home*.<sup>68</sup> ATSIC itself, however, has been involved in consideration of various programs,<sup>69</sup> manages the

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63 See also *Transcript of evidence*, Northern Territory Stolen Generations Corporation, p. 470

64 See *Transcript of evidence*, Mr Matthew Story, p. 455, where a distinction is made between the regional and central offices of ATSIC; however, ATSIC is only one of four parties involved in various of the health department funding allocations

65 *Transcript of evidence*, Central Australian Stolen Generations and Families Corporation, p. 456

66 *Submission 50A*, Karu Aboriginal and Islander Child Care Agency, p. 2

67 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 633

68 *Submission 93*, Human Rights and Equal Opportunity Commission, p.2189

69 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 633

language/culture program, and is a partner in various health agreements which should allow it a major role in funding decisions.<sup>70</sup> Nonetheless, ATSIC seemed to consider both the consultation and the government response as insufficient:

...when you have a look at it we are talking about peanuts again. It is over a four-year period, which we think is quite appalling in the sense that when you talk about the atrocities that have happened to our people, when you are talking about forcible removal, we feel there should be more money injected as part of the whole process, but in a way that Aboriginal and Torres Strait Islander people who have experienced that problem can be part of the decision making and have a say about what programs they need as part of the healing process.<sup>71</sup>

### **Specific programs**

2.50 In its submission to this inquiry, the government explained that its objective in providing certain services and funding projects was to meet the most obvious needs as identified by the *Bringing Them Home* report: reunion (including a number of projects designed to improve access to and knowledge about indigenous families and history and, to a degree, oral history), counselling, and parenting. These programs would serve all communities, and there was limited reference to 'separated' people.

2.51 In one sense, the programs addressed specific needs, but did not target them to some groups of separated people and their families or communities. The HREOC submission to this inquiry, however, and its earlier comments in the Social Justice Report of 1998 mark a break with HREOC's own earlier approach (emphasising services to all indigenous people and to communities), especially through noting some potential problems with generic programs.<sup>72</sup> A major issue, therefore, is whether the substantial funding devoted to the programs has met identified needs; and if all separated people, or indigenous communities in general (including some of the removed groups) are the main beneficiaries: in short, the targeting of reparation funding. A related and crucial issue is whether the funding allocated would have been an integral part of established services and was only re-directed and re-labelled.<sup>73</sup>

### *Health, including counselling*

2.52 A number of indigenous health services operate with State and Commonwealth funding, including the Well Being project which began in 1996, prior to *Bringing Them Home*. Indigenous Regional Training Centres had also been

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70 See *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Affairs, p. 705; see below, Paragraphs 2.52-2.64

71 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 5

72 *Submission 93*, Human Rights and Equal Opportunity Commission, p.2198 (Paragraphs 2.65-2.66)

73 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2199 (quoting from the 1998 Social Justice Report); *Submission 66*, Yilli Rreung Regional Council, pp. 1389-1390

established,<sup>74</sup> again, prior to *Bringing Them Home*. These services are directed to all indigenous people, and have a high level of indigenous input including management. Some \$33 million of the government funding was to expand and strengthen the network of Centres and to provide additional counsellors.<sup>75</sup>

2.53 Whether they meet the needs of removed people is not clear, although in some instances statements were made suggesting that services were available and were appropriate.<sup>76</sup> The *Bringing Them Home* inquiry did obtain some specialist advice with respect to support for witnesses to their inquiry,<sup>77</sup> and presumably this may have also helped in identifying likely needs of removed persons. A number of other groups provided information to this inquiry on the need for counselling.<sup>78</sup> However, such counselling was seen as being required by many people, whose connection with past removals at least was not always direct or obvious.

#### *Location of services*

2.54 According to OATSIH, the primary decision concerning the nature and the appropriate funding agency for services was determined by government. The extent of involvement of indigenous groups in this level of decision appears to have been limited. Following this, the location of services was determined, according to OATSIH, on the basis of demographic data which identified the communities most in need. This process did involve indigenous communities,<sup>79</sup> but these do not appear to have included some of the separated groups, or, possibly, the ‘stolen generation’<sup>80</sup> organisations.<sup>81</sup>

2.55 The existing Partnership Forums – which, again, do not appear to include any ‘stolen generation’ organisations – were considered to be the most appropriate means of providing ‘an integrated and co-ordinated approach to implementing the health initiatives coming out of the Government’s response to *Bringing Them Home*.’<sup>82</sup>

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74 See *Submission 65*, Office for Aboriginal and Torres Strait Islander Health, pp 1264-1265

75 See *Submission 65*, Office for Aboriginal and Torres Strait Islander Health, p1263. Originally there were to be 50 additional counsellors; this number was increased to 59, although not all were in place at the time of the Senate inquiry

76 See *Transcript of evidence*, Northern Territory Stolen Generations Aboriginal Corporation, p. 457

77 See *Bringing Them Home*, p. 19

78 See, for example, *Transcript of evidence*, Garden Point Association, p. 503; *Transcript of evidence*, Croker Island Association, pp. 510-511, *Transcript of evidence*, Northern Territory Stolen Generations Aboriginal Corporation, p. 511

79 *Submission 65*, Office for Aboriginal and Torres Strait Islander Health, p. 1265

80 That is, the assimilated groups

81 The Office for Aboriginal and Torres Strait Islander Health refers to consultation with the National Aboriginal Community Controlled Health Organisation, the Aboriginal and Torres Strait Islander Commission, the Secretariat of the National Aboriginal and Islander Child Care and Link-up

82 *Submission 65*, Office for Aboriginal and Torres Strait Islander Health, p. 1266

They were therefore asked to ‘recommend locations’ for the new counselling positions.

#### Appropriateness of this selection process

2.56 Given that there appeared to be no ‘stolen generation’ input into this process, it is difficult to determine the appropriateness of the outcome. OATSIH has stated that ‘ broad estimates of the populations **directly** affected by the past separation policies guided allocation of these new positions for specialist Indigenous counsellors’.<sup>83</sup>

2.57 In oral evidence to the Committee, OATSIH stated that:

We decided, in consultation with NACCHO, that the number of positions for each state were allocated on broad ABS data which focused on where there were concentrations of people who had been removed and communities that had been dislocated. The actual number of counsellor positions for each state was allocated on a rather broad basis like that with those broad indicators of need.<sup>84</sup>

2.58 On the basis of this statement, the Committee requested further information on the exact nature of this demographic data. Information provided was not satisfactory in identifying the exact method by which services were allocated. OATSIH’s first response to the Committee’s request was to requote a few paragraphs from its submission which did not refer to any demographic data at all.<sup>85</sup> On this information, there would be little to indicate the funding body knew why it was providing \$16 million. The meaning of the term ‘populations directly affected’ was also not specified, even though the above quote would suggest that both the people originally removed and their communities are living in the same area – but this is not always the case.

2.59 The Committee sought further information from the department in respect of the basis of funding. It received an answer which provided some information about the data used,<sup>86</sup> which included:

- Total indigenous population from the 1994 survey (which is an extrapolation from the 1991 Census)

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83 *Submission 65*, Office for Aboriginal and Torres Strait Islander Health, p. 1266 – bold emphasis added

84 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 27: ‘The principle on which they were to be allocated was that they would go to the Aboriginal community controlled health services unless there were areas of high need where there were not Aboriginal community controlled health services.’ However, evidence from the National Aboriginal Community Controlled Health Organisation, one of the parties involved, suggested that they had little choice in the allocation of funding.; *Transcript of evidence*, National Aboriginal Community Controlled Health Organisation, pp.77-78

85 See *Submission 65D*, Office for Aboriginal and Torres Strait Islander Health, answer to Question 2, pp. 2777-2778

86 This information is in *Submission 65E*, Office for Aboriginal and Torres Strait Islander Health, and is reproduced at Appendix 8 of this report



- The total indigenous population as at 1996;
- Distribution of population as at 1996 by urban, rural and remote region;
- Current service provision of primary health and other programs<sup>87</sup>

2.60 The target population was deemed to be ages 20-75 plus, which would cover anyone born between 1900 (at the outside) and 1980 and still living. It is greater than the 1994 survey population which was 25 plus, and which then stated the percentage of persons who considered they had been the subject of a forced removal (this is also at column 1 of Appendix 7). The assumption made appears to be that everyone in those age groups is the target population. However, this can only be calculated by assuming that all persons were affected in some way.

2.61 The 1994 survey was extremely limited in its scope, and the understanding by participants of the meaning of 'forced separation' is not known. It could include short removals for reasons which would be considered 'appropriate', such as being cared for if there was no-one else to look after a child for a particular period of time. Nonetheless, should these percentages be accepted, they have no obvious relationship to the calculations apparently used by the planning group. The latter seem to have ignored the 1994 estimates of the percentage of persons separated, and worked on the basis that the target population was the entire age group. This varies from between a third and a half of the whole indigenous population.

2.62 The logic of this is difficult to follow, and the only conclusion is that services are deemed to be directed to people on the basis of having lived in the decades during which various policies and practices existed. The relationship between these figures and the allocation of services is not specified. What would be necessary if services were going to be directed to separated people in particular would be information showing the link between location of service and current location of separated people, which may be quite different to their original community. If such information is available it has not been provided by ATSIC, by the Department of Health and Aged Care, or by any state or territory government.

2.63 A further point that appears to have been ignored is that a major target of 'reparation' were 'communities, which, as a result of forcible removal of children, suffered cultural and community disintegration',<sup>88</sup> *not* communities generally. This particular recommendation in *Bringing Them Home* is a difficult and possibly even a contradictory one: if the removals were so extensive, what is the measurement of disintegration, and was it expected that such a community could still be revived in order to now operate and require services.

2.64 The Committee also asked for information on the understanding of the word 'dislocated' since this was the term used by OATSIH in discussion of service

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87 See *Submission 65E*, Office for Aboriginal and Torres Strait Islander Health, p. 2789

88 *Bringing Them Home*, Recommendation 4(3)

provision to communities. However, it is understood that the word 'dislocated' was not used in the sense meant by *Bringing Them Home*, and refers only to affected, not disintegrated, communities.

#### Location of positions in community-controlled health centres

2.65 In theory, the location of counsellors in indigenous controlled health centres<sup>89</sup> should not be a problem, although it does presuppose the existence of community-controlled health centres in all areas in which people directly affected by removal policies reside. However, there is no information provided by OATSIH as to whether all removed persons themselves invariably use community-controlled health centres and therefore whether these centres are the most appropriate for them.<sup>90</sup>

2.66 It was also suggested in the Northern Territory that the Gunner/Cubillo case had created such tensions and concerns, that people had not only been told not to tell their 'story' but to ensure that no material was available that could be subpoenaed.<sup>91</sup> The extent of involvement in at least the use, if not the planning, of counsellor positions appears to have been affected by this. One witness also noted that the issues of geographic location had to be considered, surely a fundamental point with respect to indigenous communities. In many instances, communities depended primarily on local services which, it was stated, did not always have the funding to provide the additional services:

These one off funding grants are often raggedy-ended –i.e. they do not mesh well with other funding sources and do not fit into existing collaborative planning processes.

Overall there continues to be less resources available for the smaller services which often, given the daily pressures of delivering a comprehensive primary health care service, do not have the opportunity to apply for other one off sources of funding.<sup>92</sup>

2.67 From information provided to the Committee, the relationship between some indigenous communities, and some removed people, is less than good.<sup>93</sup> Given that the consultation which resulted in the development of these projects involved several indigenous organisations, it needs to be determined what measurement of 'removed' groups they were referring to: those taken in the period before 1970, descendants of

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89 *Submission 65*, Office for Aboriginal and Torres Strait Islander Health, p. 1266

90 On the other hand, there was concern that funding would be split even further and hostility increased, by the provision of separate services – see *Submission 37A*, Aboriginal Medical Services Alliance Northern Territory, p. 1851

91 *Transcript of evidence*, Karu Aboriginal and Islander Child Care Agency, pp. 565, 580. It was also stated that to give such information to the *Bringing Them Home* inquiry was seen as perhaps jeopardising individual compensation payments: *Transcript of evidence*, Karu Aboriginal and Islander Child Care Agency, p. 575

92 *Submission 37*, Aboriginal Medical Services Alliance Northern Territory, p. 694

93 See for example *Transcript of evidence*, Mr Matthew Storey, p. 455

these; people who were not assimilated; or those who are currently subject to police or welfare orders and who would therefore be quite young.

2.68 In addition, there is no necessary correlation between communities that might have been affected in the past and the current location of removed people. Many people now live in the areas to which they were removed, which may be in another state, and many could no longer live in their original community, for several reasons including a limited feeling of belonging. There is therefore a risk that services may be directed to groups who have very limited connection with removals, even though they may have other health needs.<sup>94</sup> This is reinforced by the fact that OATSIH cannot provide data on those who use services and who ‘deem themselves as members of the stolen generation’.<sup>95</sup> At the least, the collection of such data as an integral part of management of the services should have been an essential requirement.<sup>96</sup>

2.69 The Committee does not believe this is the outcome that *Bringing Them Home* intended, nor does it seem to be an appropriate use of government funding that was established to meet some of the needs of all separated people as well as those of others ‘directly’ affected. In view of this, it is important that more detailed information on the basis of decisions be published on a regular basis.<sup>97</sup>

#### Expansion of Regional Centres

2.70 OATSIH also advised in its submission that the decision about the additional Regional Centres was made with the same ‘key players’ as had been involved in decisions about counsellor positions.<sup>98</sup> Although there may well be a need for these Centres in the areas where they have been located, this is not clearly demonstrated. For example, one of the Centres is apparently intended to serve the ACT as well as southern NSW. The majority of indigenous persons in the ACT apparently have come from other areas, and there is no information to demonstrate that any persons were removed from the ACT itself.<sup>99</sup> This of course does not deny there is a demand for services by removed people within the current population, but their needs would not reflect ACT history.

#### Parenting and Family Support

2.71 Another Government initiative in response to *Bringing Them Home*<sup>100</sup> was the provision of \$5.9 million for parenting and family support programs. These programs

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94 See also comments by Senator Cooney, *Transcript of evidence*, pp. 29-33

95 *Submission 65A*, Office for Aboriginal and Torres Strait Islander Health, p. 2095 (Question 7)

96 See below, Paragraphs 2.148-2.155

97 See below, Paragraphs 2.160-2.161

98 *Submission 65*, Office for Aboriginal and Torres Strait Islander Health, p. 1266

99 *Submission 42*, Australian Capital Territory Government, p. 728

100 See *Bringing Them Home*, Recommendation 36: ‘That the Council of Australian Governments ensure the provision of adequate funding to relevant Indigenous organisations in each region to establish parenting and family well-being programs.’ See also *Bringing Them Home*, pp. 396-397: evidence presented to the

were deemed to be necessary because of the long-term effects on people of removal and institutionalisation as well as more general factors:<sup>101</sup>

I had seen and also spoken to a number of the girls that were in Cootamundra with me...They are finding it very difficult even to bond with their own children and grandchildren and I see this every day.<sup>102</sup>

2.72 The parenting program has had an unfortunate start in some respects in that the funding was originally allocated to one department which then became two.<sup>103</sup> Transfer arrangements took a considerable period, and at the time of the Committee's last hearing arrangements for transfer had only been finalised – that is, more than two and a half years after the announcement of the government response, and two years after the money being available.

2.73 This situation has caused some confusion and annoyance,<sup>104</sup> although it has not resulted in any loss of funding. Nor has there been a total absence of relevant parenting programs, since these had commenced prior to the announcement of the government response to *Bringing Them Home*. However, the Committee considers that the lack of clarity of departmental information provided, the difficulty in obtaining some of this material from Family and Community Services, and the refusal of both Health and Aged Care and Family and Community Services departments to make any comment on what was perceived to be another department's area was unfortunately bureaucratic. This type of situation contributes to the feeling held by many in the community that it is impossible to obtain any information from government departments.

2.74 The Committee finally managed to obtain the following information, some of which was available in the 1999 report by MCATSI (although this was not widely available). Between receipt of funding and the present (late 2000), some \$580,000 had been spent. This meant that just over \$5.3 million would be available for use by FACS. According to Health and Aged Care, the funding that had been utilised, at least as at the end of 1999, was intended to lay the groundwork for later services:

At this stage, most projects have centred on undertaking mapping exercises or need assessment projects to identify gaps where Commonwealth funds

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Human Rights and Equal Opportunity Commission mentioned both removal-related effects and other factors as causing poor parenting

101 For a brief description of these additional factors, see *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, pp. 24-25

102 *Transcript of evidence*, Aboriginal Health and Medical Research Council of New South Wales, p. 75

103 Health and Aged Care and Family and Community Services; the program will be operated in the future by Family and Community Services but was managed by Health and Aged Care until September 2000. See *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, pp. 38-39

104 Some of the details of this situation were outlined in a brief submission from the Department of Family and Community Services, *Submission 101*

can usefully be applied to undertake development work that can inform future service provision in this area.<sup>105</sup>

2.75 In information provided later to the Committee, OATSIH stated that, in respect of the parenting programs (which also involve state /territory governments and the Aboriginal community controlled services)<sup>106</sup>:

The Commonwealth's role should primarily be to complement existing activities, develop a national perspective on parenting issues and facilitate development work that can promote improved service delivery for Aboriginal and Torres Strait Islander parents.<sup>107</sup>

2.76 The Committee accepts, in theory, that these may be useful approaches to take in allocating funding but does consider that one of the essential factors is a relationship between the intention of the funding and the actual programs or projects. Thus, while it accepts certain of the information provided by the OATSIH on the need for careful development of the projects,<sup>108</sup> it remains concerned about the extent to which these have much relationship with the needs of removed people, including their descendants. In its penultimate submission, OATSIH listed all projects and the amount allocated to these.<sup>109</sup> Very substantial amounts of funding have been spent on adolescent parenting services (over \$300,000) but the relationship between these projects and the needs of removed people and their families is not explained. Again, the emphasis by OATSIH is on the choices made by other organisations, and also on expected involvement of removed persons in the various indigenous organisations:

The services that we are funding are Aboriginal community controlled services. The staff and the board members would also identify as stolen generation people...The whole basis of the Aboriginal community controlled organisation is that it is managed by a board of Aboriginal people from the local community. They would *probably* be members of the stolen generation too.<sup>110</sup>

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105 *Submission 65*, Office for Aboriginal and Torres Strait Islander Health , p. 1269

106 However, the organisation representing the Aboriginal community-controlled services, the National Aboriginal Community Controlled Health Organisation, stated that as at July 2000, they had not been involved: 'We have not been approached either by DHAC or FACS for involvement, but certainly it is our intention to involve ourselves', *Transcript of evidence*, National Aboriginal Community Controlled Health Organisation, p. 78

107 *Submission 65A*, Office for Aboriginal and Torres Strait Islander Health, p. 2114, Attachment F; see also p. 2143 (Attachment K) which is one of the Government's progress reports on the implementation of the *Bringing Them Home* funding

108 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, pp. 706-708

109 Some of the projects had previously been listed but the complete list is at *Submission 65D*, Attachment B. There is some discrepancy – unexplained – in figures: for example the Parenting 21 project cost \$10,000 by December 1999, but in June 2000 the total cost was \$ 4,300 – see *Submission 65D*, Attachment B, p. 2784

110 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 709 (emphasis added) and see also p. 712

2.77 There is little direct evidence that persons most involved in the various indigenous community organisations are members of the removed groups, and less to suggest that they are members of the ‘stolen generation’ or ‘assimilated’ groups. However, direct involvement is not essential. What is important is consultation, assisting people to become involved, and genuinely representing the needs – however expressed – of those to whom the service is directed.<sup>111</sup>

Many of our clients *are these* people, whose inability to relate within society to others has compounded and led to various other problems. Their children are also caught in this cycle....We believe that a more humane and holistic approach needs to be taken.<sup>112</sup>

2.78 In this context, it seems inappropriate for very high levels of funding – over 50% of the total so far – to go to adolescent parents. Although they may be descendants of removed people and affected in some way by that experience, it is reasonable to expect that a fair proportion of the funding would have gone to help people who are older parents and who still have difficulties in dealing with their own family.

2.79 In respect of the parenting program, the Committee believes there is a strong likelihood of funding being inappropriately allocated. This is not a rejection of the preference for careful planning. It is a rejection of any response by a government department that simply fails to demonstrate that there is a relationship between objectives and processes. Although the department has stated that the mapping exercises have included appropriate consultation,<sup>113</sup> it has not addressed the issues raised about the appropriateness of the projects or the extent of meaningful consultation.<sup>114</sup>

#### *State and territory responses in respect of parenting and family support*

2.80 The MCATSIA status report noted that all parties supported parenting and well being programs and already provided or were preparing to provide indigenous-specific programs.<sup>115</sup> The report also noted that there were: a culturally appropriate program designed by Indigenous people to be piloted in Western Australia, the funding in Queensland of indigenous Community organisations to provide family

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111 See, for example, *Transcript of evidence*, Central Australian Stolen Generations and Families Corporation, p. 456: ‘we say that what has happened through this process is the alienation and compounding of the problem. Instead of a government sitting there in front of us with the doors closed, what we have is almost our own organisation sitting there with their door closed saying, ‘You cannot enter. Go away. What is your problem?’ Although this refers to a reunion service, the feeling was common in respect of other services also

112 *Submission 50*, Karu Aboriginal Child Care Agency, pp. 973-974

113 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 707

114 See above, Paragraphs 2.35-2.48

115 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 666

support programs, and three regional Aboriginal Family Preservation Pilot projects in Victoria.<sup>116</sup>

2.81 ATSIIC advised the Committee that Victoria had stated it would provide \$240,000 for indigenous maternal and child health services, a review of 'Out of Home Care Services' for children and young people in addition to the three pilot projects mentioned above. ATSIIC notes, however, that although these and other projects are worthy of funding, they do not appear to be specifically related to *Bringing Them Home*, and 'at least some of the projects probably would have been developed irrespective of' the report.<sup>117</sup>

2.82 The response of the Northern Territory government to *Bringing Them Home* stated it strongly supported the direction of resources to Aboriginal welfare organisations for the prevention of child maltreatment and family support, including parenting education but a prior step was the identification of models appropriate to the different circumstances in urban, rural and remote areas. Some programs promoting parenting and health skills already existed in the Northern Territory.<sup>118</sup>

2.83 The child welfare organisation Karu gave evidence in August 2000 that it was currently involved in a Positive Parenting Program, which was funded by the Territory government, but also said that it was:

. . . not designed by Aboriginal people, and if we had the resources we would undoubtedly try to modify it.<sup>119</sup>

2.84 The Australian Capital Territory government response to *Bringing Them Home* stated it was to seek further Commonwealth funding through the ATSI Emotional and Social Well-being Action Plan for a regional centre in conjunction with Winnunga Nimmityjah and the Queanbeyan ATSIIC Regional Council.<sup>120</sup> Given the relatively small size of the ACT indigenous population, it is likely that the centre would provide a range of services.

#### Link Up and Family Tracing and Reunion<sup>121</sup>

2.85 Link Up is an integral part of the family reunion process. Link Up services were established in 1980 in New South Wales and are currently funded primarily by ATSIIC, although the New South Wales service at least also received additional

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116 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 666

117 *Submission 32B*, Aboriginal and Torres Strait Islander Commission, p. 1814

118 *Submission 64*, Northern Territory Government, Office of Aboriginal Development, p. 1246

119 *Transcript of evidence*, Karu Aboriginal and Islander Child Care Agency, p. 582

120 *Submission 42*, Australian Capital Territory Government, p. 770

121 Details of the services in operation, including the extent of state and territory government involvement, can be found in the KPMG 'Phase One' report which forms part of Aboriginal and Torres Strait Islander Commission, *Submission 32C*, pp. 2342-2488

support from the state government through the funding of mental health workers.<sup>122</sup> Link Up organisations have also been involved in research and certification of descent and, along with the Aboriginal and Islander Child Care agencies, were seen by HREOC to be those most appropriate to undertake these tasks.<sup>123</sup> *Bringing Them Home* also recommended that ‘community-based family tracing and reunion services’ be funded to ‘offer family tracing and reunion assistance and referral.’<sup>124</sup> Although this recommendation also mentioned smaller centres being funded through bodies such as health services, most of the reunion funding has gone to Link Up services, but it is not clear if the role they perform under this funding is as extensive as that proposed in the *Bringing Them Home* recommendations.<sup>125</sup>

2.86 The government response to *Bringing Them Home*, which emphasised the importance of family reunion, provided a further \$11.25 million over four years to enhance the service including through the provision of new services:

Partly because child separation was undertaken by the states, it is the proper responsibility of each state to support link-up services. However, the Commonwealth for its part will support the establishment of a national network of link-up organisations based on an equivalent of the New South Wales and Queensland services in each state....

Given the commitment to family reunion issues made by ministers at the Ministerial Council of Aboriginal and Torres Strait Islander Affairs (MCATSIA), and by their respective Parliaments, we would expect that if there is a demand to expand the national network within states and territories then they will accept this as part of their responsibility.<sup>126</sup>

2.87 The emphasis of the government response was therefore on joint responsibility, on the need for a national network of linked and compatible services, and on the use of Link-Up in New South Wales and Queensland as a model. While not obvious except to those familiar with the existing structure, this meant that services such as those attached to the indigenous child care agencies were not perceived as the appropriate model. The national tracing service will only come into being when the funded Link-up services are compatible.<sup>127</sup>

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122 See New South Wales Government response, in the Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p.37

123 See *Bringing Them Home*, Recommendation 13

124 See *Bringing Them Home*, Recommendations 30a and 30b

125 Especially *Bringing Them Home*, Recommendation 30

126 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 632

127 See Aboriginal and Torres Strait Islander Commission, *Development Plan for a National LinkUp Network*, Submission 32C, pp. 2580-2607; see also *Submission 32C*, Aboriginal and Torres Strait Islander Commission, KPMG reports, pp. 2342-2579



2.88 One new service has been established in South Australia<sup>128</sup> and arrangements for one in Western Australia were completed in August/September 2000.<sup>129</sup> Funding to establish a Link Up service for Western Australia had been delayed for several years, which placed the indigenous people of that state at a serious disadvantage. Although one witness stated that she had managed to locate family without Link Up, her search was facilitated by already knowing names, location and dates.<sup>130</sup> Thus the development of the service was seen as an advance, although it may be primarily to the benefit of people in the Perth and surrounding region.

2.89 Information on the new service from the Western Australian government suggests that its target group is quite wide as it combines a number of services provided by different levels of government.<sup>131</sup> It is described as ‘a collaborative Commonwealth-state model which would combine all sorts of services that are associated with Link Up and support and so on in the one service model...’<sup>132</sup>

2.90 It provides both information and support service, especially for those:

- affected by family separation, trauma, grief and loss;
- affected by mental health problems; and
- at risk of self-harm.<sup>133</sup>

2.91 The effect of this would seem to be to have counsellors specifically linked to the tracing and reunion service. In some ways this may be preferable in that it should avoid the type of duplication that could occur if there is no effective integration of Link-Up and counsellor services from the regional centres. On the other hand, it may be more difficult for some indigenous people to identify with the counselling service, if they feel it is only for those who are connected with Link-Up. Updates on the operation of the service will be a useful means of monitoring its effectiveness for a number of different groups. ATSIC’s position in the issue of removed persons’ funding is difficult. A range of health services for indigenous people is now funded under Health and Aged Care rather than ATSIC, including the counselling and regional centre programs. The parenting and family support is also provided through a mainstream department. ATSIC’s involvement in high-level decision-making about the nature of the government’s response appears to have been minimal. Its own

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128 *Submission 32*, Aboriginal and Torres Strait Islander Commission, p. 512; *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 21

129 See *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, pp. 6-7

130 *Transcript of evidence*, Mrs Rene Powell, pp. 388-389

131 Nonetheless, some of the other Link Up services were also apparently attempting to provide an integrated or co-ordinated service: *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 7

132 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 6, and see also p. 7

133 *Submission 107*, Western Australian Government Aboriginal Affairs Department, p. 2888

language program was re-badged as a *Bringing them home* service,<sup>134</sup> and therefore Link Up and language services are the only areas in which there is direct involvement.

2.92 Nonetheless, ATSIC's attitude was not particularly positive,<sup>135</sup> given that it does play a role in funding allocation. With respect to Link Up, it appeared to the Committee that many of the complaints made about Link Up were complaints about ATSIC and about more dominant indigenous groups.<sup>136</sup>

2.93 Although the Committee accepts the possibility that on some occasions removed people may be seeking individual compensation, many of the complaints they made were that they had been excluded from processes, including the provision of services and the capacity to purchase these from other indigenous organisations. In short, their complaints were also about the limitations imposed on owning a project and being consulted.<sup>137</sup>

We want a bit of honesty. We want to say, on behalf of those people to whom the moneys have gone, that they can be accountable to us. All the way through, let us be in the process.<sup>138</sup>

2.94 Given this, it is difficult to determine what services the various link-ups have been providing in the past if their main concern has always been to provide information to separated people. The recently revised access protocol does suggest, however, that the services may have been providing a more general service to people who had lost contact with families:

ATSIC's position on this is that Link-Up funding need not be strictly confined to support only those who can demonstrate that they lost contact with their families and communities as a **direct** result of the past laws, policies and practices of Australian governments, that is, the Stolen Generations. ATSIC recognises that many Aboriginal and Torres Strait Islander people have lost contact with their families as a result of social circumstances which, in turn, resulted generally from past Australian governments' assimilation practices.<sup>139</sup>

2.95 While appearing to clarify the situation, the protocol actually blurs it. According to the same document, ATSIC does not 'locate missing persons', yet the services provided in respect of 'social circumstances' would appear to be doing just this. Given also that priority is supposed to be given to those who were directly

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134 See Chapter 3

135 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 6

136 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 6

137 See for example, *Transcript of evidence*, Ms B. Cummings, p. 457

138 *Transcript of evidence*, Northern Territory Stolen Generation Corporation, p. 459; see also *Transcript of evidence*, Garden Point Association, p. 500: 'We want to deliver the program ourselves because we have the ability, know-how and solutions to address the social, economic and cultural needs of our people.'

139 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p.2637 (emphasis in original)

affected by past laws and practices, there appears to be a need for an explanation of who has been assisted over the past several years if ‘assimilated’ people in particular feel they have been and still are kept out.<sup>140</sup>

2.96 The responsibility for the decision that existing Link Up services would be enhanced with some of the new money is attributed to the government. Strictly speaking, the enhancement was supposed to be limited to New South Wales and Queensland: ‘We will allocate an additional \$11.25 million over the next four years to expand the existing New South Wales and Queensland services and to establishing similar services in other jurisdictions.’<sup>141</sup> The indigenous child care services (Aboriginal and Islander Child Care Services) who have been closely involved in Link Up<sup>142</sup> retain that position and it has been difficult for some other organisations to be funded.<sup>143</sup> While it is likely that the limited amount of funding available has influenced some choices – especially with the need to establish a national network – many of these decisions have been made by the broader indigenous communities, and to that extent reflect some consultation processes.

2.97 Only in one case – in Central Australia – was there sufficient recognition of the problems experienced by some of the separated groups to allow the child care agency to transfer funding to a ‘stolen generation’ group in order that particular needs could be met.<sup>144</sup> Yet, according to some witnesses, there was a particular need for institutionalised people to have a specialised Link-Up or family tracing and re-union service. Two main, and connected, reasons were given for this: the uncertainties and fears faced by long-institutionalised people on return to country, and their needs for support from their institutional family;<sup>145</sup> and their need for a more extensive service than was deemed provided by Link-Up.<sup>146</sup>

2.98 For some people, the issue of going home is a difficult one, and in certain instances people may decide that they either cannot return or if they do, they cannot stay. As so much of their lives has been lived elsewhere, they are no longer a part of that original community or do not feel at ease:

The past cannot be changed.

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140 See above, Chapter 1, Paragraphs 1.64-1.91

141 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 632

142 These services are primarily child welfare rather than child care, although they do provide some child care services- see *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 8, and *Transcript of evidence*, Karu Aboriginal and Islander Child Care Agency, p 576. They also provide information on families and have experience in tracing people

143 See *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 13

144 *Transcript of evidence*, Central Land Council, p. 480

145 *Submission 22*, Yirra Bandoo Aboriginal Corporation, p. 409; *Submission 63*, Garden Point Association, p. 1208: ‘the strength of family support is a community resource that is not being utilised.’

146 *Submission 66*, Yilli Rreung Regional Council, pp. 1440-1441

[The majority of the Kimberley Stolen Generation people] need the support and confidence to live and work within a region not of their own. They live on the fringe of Indigenous and European society.<sup>147</sup>

2.99 This point was made by a number of stolen generation organisations, whose concerns related less to return than to language, land and a place of coming together.<sup>148</sup> For those who have returned, also, there can be problems when an individual's past is brought home to them:

...it is at these times that somebody can turn around and just with a few words slice you back to a nobody. Things like that really hurt - 'You are not so and so clan; you are not one of my people, you are nothing.' So we get stolen again and again - every time that there is a denial of our history - and that causes a lot of distress and angst ...<sup>149</sup>

2.100 The reason for extensive support and a more intensive service suggested, perhaps unfairly, that Link-Up did not provide much in the way of 'reunion' service.<sup>150</sup> However, some Link-Up services were well aware that 'going home' was not always easy and that it could be a source of serious conflict in communities and with the returning person:

There need to be resources allocated to Link Up services to alleviate the conflict between the ones going home and the ones already there, a process needs to be established to recognise and assuage the differences both culturally and socially.<sup>151</sup>

Funds are required to employ local indigenous people with knowledge from that particular area who can assist with the social and cultural reunification of those returning to their country.<sup>152</sup>

2.101 Northern Territory and Western Australian witnesses were the most apparent in their criticism of Link-Up which may suggest that the 'model' service was not appropriate, or that additional components were required, at least for a period of time, to enable specific individual organisations to be more involved;

The Link Up service needs to be structured so that the groups have control over the application of the program in each individual case. This not saying

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147 *Submission 58*, Kimberley Stolen Generation Committee, p. 1117

148 See below, Chapter 3, where the issue of access to land is also discussed

149 *Transcript of evidence*, Northern Land Council, p. 484

150 This was suggested in *Submission 66*, Yilli Rreung Regional Council, pp. 1440-1441

151 *Submission 50*, Karu Aboriginal Child Care Agency, p. 967

152 *Submission 50*, Karu Aboriginal Child Care Agency, p. 969; see also *Submission 58*, Kimberley Stolen Generation Committee, p. 1116: 'Restoration of a person's place in the society they were stolen is a difficult issue to address and is a very personal and individual matter, It needs to be implemented on a case by case basis. After being away from their traditional homelands and people for so long some stolen generation people may find it difficult to have their place in this particular society restored.'

that other agencies are not required in this process. They are. It is saying that the inclusion of the institutional groups in the structure of the Link Up organisation can ensure that the program is applied appropriately, including the appropriate involvement of the other agencies, as required, in each individual case.<sup>153</sup>

2.102 Northern Territory witnesses stated that ATSIC was aware of the specific model proposed which would meet their needs but would not accept it. Not all such rejection can be attributed however to existing policy limitations as, when necessary, changes have been made to the supposed immutable limits of Link-Up services: combined services (as in Western Australia), more than one service (in the Northern Territory) and transfer of funding (in Alice Springs). Although it is important that there be limited fragmentation, it may well be that models which meet some needs in large states, may not meet all needs, and may meet very few needs in other areas.

2.103 In spite of the fact that there was an emphasis on using the New South Wales and Queensland Link-Up as a basis for future development<sup>154</sup> the opposition referred to above in fact concerns the need for the location of services in regional and remote areas, and objection to the services provided through the indigenous child care service (in the Northern Territory).

2.104 Witnesses also pointed out that the *Bringing Them Home* recommendations had given substantial authority to existing services, without perhaps being aware that this would limit access by other groups. Nor, it appeared, was HREOC aware of possible conflicts between separated peoples which might lead to the need for some groups to at least be able to purchase services from others.<sup>155</sup>

2.105 It is not clear if the dissent which exists has been exacerbated by *Bringing Them Home*, or has only emerged since the report was published. However, as it is most unlikely that the objective of either *Bringing Them Home* or the government response was to exclude many who may be seen as especially in need, the issues with respect to re-union and family history services also require careful auditing.

*The extent to which ATSIC has followed the government proposal*

2.106 The Committee received little evidence that major changes had occurred in the structure of link-up services. The proposal was that the New South Wales and Queensland organisations, which would receive enhancement money, would be the model for other services. However, it is not clear whether this is the case with any new services such as that in South Australia, and one of the Northern Territory services is still operated by a child welfare body.

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153 *Submission 63*, Garden Island Association, p. 1214

154 See Government response, *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 632

155 *Transcript of evidence*, Mr Matthew Storey, pp. 461-462

2.107 There were several restrictions placed on the \$11.25 million granted. Some of these were noted in the Government response; others appear to have been developed subsequently. As part of the work to be done on developing link-up services, some preliminary work was required.<sup>156</sup> It appears from this that changes were gradually made to government guidelines, including the restriction of the ‘model’ to the New South Wales example.<sup>157</sup>

- The model for funding was to be Link-Up in New South Wales and Queensland-Government response
- There would be an enhancement of services in those two bodies only - Government response
- No enhancement or establishment funding would be provided until research had been done - ATSIC states that this was a government condition<sup>158</sup>

2.108 ATSIC stated in a submission to the Committee that:

- The independent evaluation of services was to make recommendations for a best practice model based on New South Wales only;<sup>159</sup> as this differs from the Government statement, a source should be noted by ATSIC;
- Because of a delay in the evaluation report, the Minister agreed that funding should be given to enhance services as part of the National Network;<sup>160</sup>
- The enhancement of existing services – supposedly to be restricted to NSW and Queensland – included funds for Victoria, and Tasmania.<sup>161</sup>

2.109 The KPMG report suggests that there are some problems in various services, including Tasmania. In view of this it appears inappropriate to provide additional funding to Tasmania until it provides the required information about use of staff<sup>162</sup>. This would seem to be the case especially if, as estimated, there were a very small number of people who may need assistance (although KPMG suggests that some people may have long been removed to mainland Australia).<sup>163</sup> Even the ‘model’

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156 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2332

157 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2332

158 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2332 (item1)

159 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2332 (item1)

160 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2332 (item3)

161 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, Aboriginal and Torres Strait Islander Commission Development Plan for a National Network Linkup, Attachment B, pp. 2591-2592

162 KPMG Phase One report, Section 9.7 p. 53, in *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2401

163 See KPMG Phase One report, Section 9.7, p. 53, *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2401

NSW service appeared to have drawbacks, particularly with respect to lack of outreach services.

2.110 However, the factor of most concern is the generally poor level of service provided, with no organisation receiving a 'high' quality mark, and most being classed as 'medium' or 'low'.<sup>164</sup> The government's consideration of this report and any action to be taken based on it, would appear to be crucial to the development of any effective national network.

*State and Territory involvement in Re-union services*<sup>165</sup>

2.111 All States and Territories commented that they were in support of the 'Link-Up' type services,<sup>166</sup> and such services are generally seen as a means of reparation and restitution. However, much of the funding for these at present is provided by the federal government which has noted that states need to contribute further if they want a more extensive operation: the Commonwealth is only committed to providing one service per state and territory.<sup>167</sup> New South Wales,<sup>168</sup> the Northern Territory<sup>169</sup> and Western Australia do provide some funding. Victoria stated that it would seek funding, but this would be from the Commonwealth,<sup>170</sup> and the ACT's application for funding from the Commonwealth included resources for a mental health counsellor.<sup>171</sup>

2.112 In evidence, ATSIC stated that the Western Australian government funding effectively went to departmental expansion [although in fairness some of this expansion should be beneficial to service users].

Stolen Generations people say that some of the funds are really directed at enhancing government departments (e.g. establishing regional Aboriginal Affairs offices) and not at providing services to the Stolen Generations.<sup>172</sup>

2.113 The Western Australian government's submission stated that the services provided sought to develop a 'comprehensive family tracing and information service... by providing from one central point a search of records held by other

164 See KPMG, Phase One report, Appendix A7, in *Submission 32C*, Aboriginal and Torres Strait Islander Commission., pp. 2484-2485

165 See also *Submission 32C*, Aboriginal and Torres Strait Islander Commission, KPMG Phase One report for details of services in operation in the states and territories

166 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 664; *Social Justice Report 1998*, p.129

167 Though it has funded two in the Northern Territory, one in Alice Springs and one in Darwin

168 New South Wales response, in Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p.37

169 *Submission 64*, Northern Territory Government, pp. 1233, 1242

170 See above, Paragraph 2.89

171 *Submission 42*, Australian Capital Territory Government, p. 765

172 *Submission 32B*, Aboriginal and Torres Strait Islander Commission, p. 1814

departments and agencies.’ Its expansion of the Aboriginal Affairs department’s regional offices was seen as a means of raising awareness and providing information about tracing and reunion.<sup>173</sup>

### *Counselling*

2.114 The Social Justice Report stated that the need for counselling of those who are searching or have had access to records is recognised by all governments. For example, in Tasmania, legislation (the Adoption Act 1988) makes it compulsory. However, minimal counselling is provided through the resources or offices of governments. There was no automatic ‘on-site’ counselling or subsequent counselling – only advice on counsellors.

2.115 According to the Social Justice Report, it was stressed by indigenous representatives on the project teams that governments were not taking the most responsible course of action possible by leaving it to the individuals concerned to decide if and when to seek counselling. At the very least, people seeking access to records should be given more advice as to the objects of, and potential need for, counselling. Seemingly, the Commonwealth provision for health and counselling issues was seen by state and territory officials as filling recognised gaps and justifying the failure of states and territories to commit themselves.<sup>174</sup>

2.116 Since the Social Justice report, however, there have been some changes in approach, given that New South Wales does provide funding to link-up for counselling, and the new Western Australian service is an integrated one which would facilitate access to counselling. The Northern Territory government advised that counselling services were available for those who may need help to come to terms with the discovery of sensitive family information and information counselling is compulsory in the case of access to adoption records.<sup>175</sup> As noted, limited availability of counselling, difficulty of access to appropriate services, and the belief that people have been cut off from access to funding, will continue to be major problems for reunion services.

### *Structure*

2.117 In 1998 the reunion services were provided by public service departments in South Australia, Tasmania and the ACT, and this was seen as possibly inappropriate.<sup>176</sup> The new services established in Western Australia and South Australia are different, the first being more innovative, the second, apparently, being operated by a community based service provider.

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173 *Submission 107*, Western Australian Government, Aboriginal Affairs Department, p. 2884

174 *Social Justice Report 1998*, pp. 127-128

175 *Submission 64*, Northern Territory Government, pp. 1240-1241

176 *Social Justice Report 1998*, p. 128



2.118 The Social Justice Report had commented that the provision of reunion services by child-care agencies was ‘far from ideal’ because such bodies did not have the funds, personnel or expertise to undertake such a task. Further, the objectives of such bodies were not necessarily suited for the specific task of providing tracing and reunion services to people affected by separation policies. Such people are now almost invariably adults, even if their relevant experiences occurred when they were children.<sup>177</sup>

2.119 Many organisations would agree with this, although they might also point out that it was the *Bringing Them Home* recommendations which made it very easy for the established organisations to obtain or retain funding, and for new bodies to be excluded. As noted, in Alice Springs the linkup function had been transferred to the Central Australian Stolen Generations and Families Aboriginal Corporation, but such a transfer had not happened in the Top End.<sup>178</sup>

#### *Certification of descent*

2.120 The effect of HREOC’s recommendations in respect of Link Up and the Aboriginal and Islander Child Care Services may also be to further exclude some separated people from the indigenous community. There is already concern about the exclusion from traditional land and, apparently, from the benefits of the Land Fund.<sup>179</sup> It would be inappropriate for people to be excluded from being able to ‘prove’ indigenous descent because organisations opposed to the ‘assimilated’ had a definitive power with respect to classification.<sup>180</sup>

2.121 The potential for certification of descent to be at least derogatory was noted by one witness, who commented on Recommendation 13, especially in relation to Recommendation 14 which emphasised the importance of identity:

...we have to go to recommendation 13 to reclaim our identity. To do that, we go to an institution and ask them to identify us and give us a dog tag. That goes back to the years of forcible removal and the dog tags of the 1950s and 1960s. So there is some contradiction in this and I think it needs to be addressed.<sup>181</sup>

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177 *Social Justice Report 1998*, pp.129-130

178 *Transcript of evidence*, Central Australian Stolen Generations and Families Aboriginal Corporation, p.456

179 See *Transcript of evidence*, Northern Land Council, p. 478. See also Chapter 3, Paragraphs 3.125-3.135

180 See New South Wales Government response (Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 36) which notes that Link-Up ‘does not provide certification of Aboriginal identity for government departments.’

181 *Transcript of evidence*, Central Land Council, p. 478

*Links with other organisations*

2.122 One of the points made by ATSIC was that there should be better co-ordination and integration of services because of multiple needs, and that it appeared this outcome would not be achieved because of the dispersal of funding and the different areas of responsibility:

Regardless of what government department does have those fundings...there is proper monitoring and an accountability process that is expected of ATSIC to ensure that these services are there for our people.<sup>182</sup>

2.123 This is a sound approach, but the fact is that ATSIC itself does **not** have the responsibility for all outcomes arising from *Bringing Them home* funding. One of the major problems, according to some witnesses, is that it is not clear if there *is* any strategy for assessing outcomes as an entity.<sup>183</sup> However, another approach could be that each of the projects and programs is a long-term process, contributing to outcomes which may be difficult to measure. It perhaps would be more practical for ATSIC to worry less about the overall view and concentrate more on whether it has assisted removed people in those areas where it has responsibility or other input.

2.124 One area in which there should be more obvious co-ordination is the provision of counselling by Link Up. While in theory the counselling services are supposed to make contact with Link Up<sup>184</sup> it is not clear if they do so, and if Link Up runs its own service. As noted above, funding is provided in New South Wales for mental health workers to Link-Up, but the ways in which these could be linked to regional centres has not been discussed.

*New or Re-Labelled Funding?*

2.125 Another issue that was raised with the Committee was whether there really was new funding and new services, or if the programs were simply a re-labelling of existing services. From evidence provided, most of the funding itself appears to be new, apart from \$9 million that was in effect taken from ATSIC to fund language and culture programs.<sup>185</sup> However, the issue of whether the programs and services themselves are new in their direction, relative to services that had already been established, is somewhat more complex.

2.126 ATSIC has advised the Committee that in its view many of the programs 'developed' in response to *Bringing Them Home* had already been planned or

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182 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 9

183 See below, Chapter 5; see also *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission and Senator Crossin, p. 10, and Senator Ridgeway p. 12

184 See below, Paragraph 2.150 and see also *Transcript of evidence*, Central Land Council, p. 478

185 See *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 8

established, and therefore were not a response to the report.<sup>186</sup> Included in this category were the services to be provided by the department of Health and Aged Care:

The Commonwealth Government allocated about \$39 million over four years to the Department of Health and Aged Care. It seems that these funds will be used to provide services that are not specifically for Stolen Generation people, but for Aboriginal and Torres Strait Islander people generally, and that the Department had been planning the expansion of regional centres and its family support and parenting programmes before the *Bringing Them Home* report.<sup>187</sup>

2.127 The Committee accepts that *up to a point* there is value in developing existing services or even using existing organisations and infrastructure,<sup>188</sup> such as the Regional Centres and the Aboriginal Medical Services. It also accepts that the prior existence of various holistic approaches to health services<sup>189</sup> may have been a useful base on which to build, and that radical new approaches which did not meet identified needs would not be of value.<sup>190</sup>

2.128 That said, there are several factors which perhaps should have been studied prior to the allocation of various funds. These include approaches which the department appears most reluctant to utilise, particularly direct consultation with persons most affected and their organisations, and a willingness to impose specific and strict conditions on funding.

2.129 The Committee is aware of the emphasis on community controlled organisations and services, and of their choice of services. However, this always has to reflect a variety of needs and, where specific funding is allocated, it has to reflect the needs of the specific groups. OATSIH explains how possibly sound decisions may be amended, but fails to address the basic fact that, if the decision does not represent objectives, the department should not sign off on it:

The actual numbers of counsellor positions for each state was allocated on a rather broad basis like that with those broad indicators of need.

But then the decision about where those counsellor positions were to be placed went to the State forums...and the state forums each debated at

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186 *Submission 32B*, Aboriginal and Torres Strait Islander Commission, p. 1814

187 *Submission 32B*, Aboriginal and Torres Strait Islander Commission, p. 1814. However, similar comments have also been made about the Aboriginal and Torres Strait Islander Commission's use of the language program – see Chapter 3

188 See *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 703

189 See above, Paragraphs 2.50-2.51

190 However, see comments by the Aboriginal and Torres Strait Islander Commission, that the health services were for primary health care 'and we do not want them to get away from their major responsibility and that is why it is so essential that these services are put with organisations which can keep to the focus of what they are set up for.' - *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p.11

length where they wanted to allocate those positions. But the principle on which they were to be allocated was that they would go to the Aboriginal community controlled health services unless there were areas of high need where there were not Aboriginal community controlled health services.<sup>191</sup>

2.130 Other factors that may have limited the meaningful involvement of stolen generation people in decisions have not been alluded to by the department to any great extent, although it is assumed they are aware of them. These include:

- an awareness that factors such as age, health and limited ‘public’ experience may have led to stolen generation people not playing a major role in organisations;
- uncertainty about identity<sup>192</sup> and possible greater vulnerability to stress;
- indigenous politics;<sup>193</sup>
- limited access to information;
- the possibly uncertain or disparaged status of some separated people within indigenous communities;<sup>194</sup>
- generational differences;<sup>195</sup> and
- limited access to funding in order to develop skills and experience.

2.131 The department’s belief that there has been appropriate representation and consultation appears to be based on the existence of indigenous organisations, the expectation that some stolen generation members are in these organisations,<sup>196</sup> and that there are various processes of accountability:

In terms of accountability there are performance indicators...where each of the services are requested to report in terms of those counsellor positions, but also we have underway an evaluation of the Ways Forward Mental Health Action Plan...<sup>197</sup>

The whole reporting issue is a very sensitive one for Aboriginal groups as a whole. The community controlled sector, I guess, is very special in that they have their own accounting to the community through the committee

191 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 27

192 That is, the knowledge that they are sometimes seen as not fully ‘indigenous’, not part of the past history of the community,

193 *Transcript of evidence*, Garden Island Association, p. 506

194 As noted in footnotes, 142, 152, 153 and Paragraphs 2.98-2.99 above, and also in Chapter 1

195 For example, it may be difficult for older people in particular to address many painful issues, especially as these were seen as normal. Some organisations mentioned the importance of obtaining some outcome for older people, and these may be very individual matters not easily addressed by generic programs –see for example, *Submission 55*, Australian Council of Social Services, p. 1086

196 See above, Paragraph 2.76

197 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, pp. 27-28

structure and through having people on their reference groups. I think that provides a second form of audit. A very strong message they give to us is that the accountability is two ways; from governments to communities, and from community controlled health centres to the community within which they are situated....

There are also opportunities for ATSIC, speaking for Aboriginal people, to report in those forums, *and for organisations and individuals to contact us directly.*<sup>198</sup>

2.132 From evidence provided to the Committee, the above measures are not sufficient to ensure a clear and unambiguous allocation of funding to meet specific needs, regardless of the issue. The first quote refers to matters which have no relevance to the extent of control over specific funding, and the performance indicators for the service do not include any reference to removed people.

2.133 The first part of the second quote presupposes that community involvement will guarantee specific outcomes, but this is not certain. With respect to the second part of the second quote, criticisms have been made of ATSIC as a representative of stolen generation members; and the likelihood of individuals and organisations contacting a 'white' and 'mainstream' department is remote, given that people may not even have information about the actual funding. For the reasons mentioned above,<sup>199</sup> as well, contacting departments is not a realistic expectation

2.134 In addition, the reluctance of departments to be seen to impose what may be thought of as inappropriate measures on community organisations can lead to funding being diverted away from intended recipients:

A. As part of the conditions of grant, there is a very clear requirement that those services make links with the local stolen generation groups and with Link Up services to ensure that they are meeting the needs of those groups. I am aware that, in the evidence, there has been a suggestion that this is not necessarily the case. But that is certainly part of the conditions of grant and the intention.<sup>200</sup>

Q. Do you have any idea how many people who have been separated from their families as children are using the counselling services that are specifically made available under the government's response?...

A. That sort of information is almost impossible to find out.

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198 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 704 – emphasis added

199 See above, Paragraph 2.130

200 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 703

We are trying to collect information this year on the sorts of key issues coming up and that was certainly one of the categories that we were seeking to find information about as an issue....<sup>201</sup>

2.135 Certainly the complex nature of problems may make it difficult to easily identify removed people<sup>202</sup> but a range of factors may make it difficult for such people even to access indigenous health and related services. In addition, the need to feel in control of the process, which is presumably the basis of community controlled organisations generally, should also be extended to people who may either feel marginalised or may need a period of transition before they can use ‘mainstream’ indigenous services.

2.136 On this basis, it is important for departments to ensure that these options are available (for example, though funding small groups to purchase services which are provided in their environment). These alternatives may not be developed when the whole program is handed over without establishing and enforcing some basic principles:

.... Service providers, before they receive resources identified for our benefit,...[should] be made to sign off on their accountability. There should be consultation with us, the client group. No funds should be released to service providers unless there is transparent and endorsed representation of the stolen generation institutions’ involvement.<sup>203</sup>

2.137 ATSIC has also commented on behalf of various bodies that services may not be meeting specific needs:

They have similarly questioned that much of the funding that was allocated to the Commonwealth Department of Health and Aged Care was a direct response to the *Bringing them home* Report: this funding is seen as mainly enhancing existing programs which are not exclusively addressing Stolen Generations people’s issues.<sup>204</sup>

2.138 ATSIC does not note, however, that it has been directly involved in the decision-making process of the Health and Aged Care funding, at least in respect of the regional centres and the counsellor positions:

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201 *Transcript of evidence*, Senator Payne and the Office for Aboriginal and Torres Strait Islander Health, pp. 704-705

202 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 705

203 *Transcript of evidence*, Garden Point Association, p. 502

204 *Submission 32*, Aboriginal and Torres Strait Islander Commission, p. 522. See also *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, pp. 6-10. The apparent variations at times in the Aboriginal and Torres Strait Islander Commission’s opinions is partially explained by submissions and witnesses apparently having different beliefs, or, possibly, witnesses either not knowing of the Commission’s involvement in decision-making, or its opposition to ‘mainstream’ organisations having any ‘Commission’ funding

The decision about where those counsellor positions were to be placed went to the state forums. State forums are created under a framework agreement we have between Commonwealth Health, state Health, ATSIC and the community controlled health sector.<sup>205</sup>

2.139 Nor does ATSIC acknowledge the existence of the community controlled health sector or its direct involvement in the allocation of \$33 million.<sup>206</sup> Instead, it refers to the need for such bodies:

Advisory bodies and mechanisms could be established to enable the Indigenous community to have a direct input into effective ways of implementing recommendations of the Report...

Lasting outcomes are achieved when Indigenous people are integrally involved in all aspects of the delivery of services to their community.<sup>207</sup>

2.140 ATSIC also commented in oral evidence about the problems involved with being held responsible for projects which they do not control.<sup>208</sup> However, it is difficult to see how both ATSIC itself and certain community organisations have not been involved in the Health and Aged Care projects.

2.141 In addition, Link Up services are managed by ATSIC and run by community controlled organisations.<sup>209</sup> Thus, although ATSIC notes that many of the removed people have complained about their very limited access to services, and about particular needs not being recognised, it suggests that this lack of access and appropriate service results from a situation which has excluded any indigenous involvement.

2.142 Part of the difficulty experienced by ATSIC seems to be its opposition to various programs having been moved from ATSIC to the Department of Health and Aged Care – that is, from an indigenous body to a mainstream non-indigenous body. It has also stated, possibly as part of the same argument, that the counsellor funding should not have gone to medical services: it should have been given to the indigenous child welfare agencies, which are also responsible for much of the family tracing:

...it should go to the appropriate organisation. As we know health medical services' primary function is primary health care and we do not want them to get away from their major responsibility and that is why it is so essential

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205 See *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 27

206 See *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 27

207 *Submission 32*, Aboriginal and Torres Strait Islander Commission, p. 523

208 See *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 9.

209 See *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 6

that these services are put with organisations which can keep to the focus of what they are set up for.<sup>210</sup>

2.143 ATSIIC elaborated on the limitations to funding for Link Up in a further submission,<sup>211</sup> and also assessed many of the comments made by witnesses to the Committee. Of these comments, the most important appears to be that which refers to charges that certain groups, encouraged by loose terminology in *Bringing Them Home*, have benefited at the expense of others. This is not a new point – specific stolen generation organisations have made it<sup>212</sup>.

2.144 In much the same way that the government responds to complaints about inadequate funding by saying that *Bringing Them Home* emphasised re-union as the most important service, so other organisations tend to point to government limitations, policies or directives to justify particular approaches. In response to complaints about Link-Up funding, ATSIIC stated that it would have been impossible to grant funds to any ‘stolen generation’ organisation, because the government in its response did not provide any specific funding to be allocated to ‘members of the stolen generations’; it only allowed funding ‘for initiatives to assist members of the stolen generations.’<sup>213</sup> This seems to be bureaucracy *par excellence* – and, as noted previously,<sup>214</sup> such limitations have not prevented the transfer of funding in Alice Springs.

2.145 The response does not concede discrimination against some organisations, but does imply that the existing Link Up groups feel they have a prior claim to funds, because they were doing reunion work long before *Bringing Them Home*<sup>215</sup> and, it would seem, because they deal with ‘non-assimilated’ separated people. They suggest that the nature of ‘removal’ may well affect access, and, possibly that there is a prejudice against some ‘removed’ people – a point which others have also made.

2.146 The complexities contained within this statement – which also appears to conflict with some earlier statements by different representatives of ATSIIC – are dealt with elsewhere.<sup>216</sup> In this context, the thrust of ATSIIC’s comments may be to agree that there has been discrimination, to justify it, and then to place the responsibility for any outraged feelings back onto government. If this is the case, then there are serious problems to be dealt with.

2.147 When given the opportunity to comment further on whether the funding was really directed to existing services, ATSIIC declined to elaborate in terms of

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210 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 11

211 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2332, Item 1

212 See the quotation above at Chapter 1, Paragraph 1.75

213 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2333, Item 4

214 See above, Paragraph 2.119

215 *Submission 32C*, Aboriginal and Torres Strait Islander Commission, p. 2331, Item 1

216 Chapter 1, Paragraph 1.82



‘misrepresentation’, but did suggest that the process of re-badging was common.<sup>217</sup> If ATSIIC’s complaint – that it does not know if the relevant programs are providing the right outcomes,<sup>218</sup> is valid, then many indigenous communities must bear much of the responsibility.

### Management and evaluation

2.148 Much emphasis has been placed on indigenous self-management and self-government. OATSIH outlined some of the difficulties involved in establishing services which were to meet particular needs, but felt they had done so by ensuring extensive input by indigenous, community-controlled organisations. Generally, the Committee accepts that it can take time to establish services and ensure that there are appropriate staff available. Hence, its criticism of the process does not necessarily relate to delays of this type. It is more concerned about the degree to which the original decision as to the nature of the response, and later decisions about location may have effectively made the reparation services ones that have a very limited place for some separated people both in terms of management and in access to services provision.

2.149 In this respect, the Committee notes that there are some problems not only with assumptions about representation of stolen generation people in community organisations, and their capacity to be involved or to make their concerns known, but also with the type of information that is apparently collected by the various services.

2.150 Reference has been made above to the fact that performance indicators for the counsellor positions are limited.<sup>219</sup> Although they include a request that information be provided about a service level agreement between the health service and Link Up ‘to ensure access to the counsellors by clients currently going through family reunion and experiencing emotional distress’<sup>220</sup> it is not clear if this requirement has been enforced. However, there also appears to be a discrepancy between the information provided by the department as to the extent of the links to be made and the information required in the performance indicators. The department stated that the

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217 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 8; see also *Submission 32B*, Aboriginal and Torres Strait Islander Commission, Attachment, p. 1814

218 *Transcript of evidence*, Aboriginal and Torres Strait Islander Commission, p. 9: ‘I think the question you are asking is: are we actually concerned about the outcomes being produced in the Commonwealth and state programs? I think the answer is yes. There is no definitive study or data available to tell us what those outcomes are and whether they are meeting the needs of Aboriginal and Torres Strait Islander people.’ See also *Transcript of evidence*, Senator Ridgeway and Aboriginal and Torres Strait Islander Commission, p. 13

219 These indicators are at *Submission 65A*, Office for Aboriginal and Torres Strait Islander Health, Attachment B, p. 2098

220 *Submission 65A*, Office for Aboriginal and Torres Strait Islander Health, Attachment B, p. 2098, Paragraph 1

services were to make links ‘with the local stolen generation groups and with Link Up services’,<sup>221</sup> but the form only refers to Link Up services.

2.151 Secondly, there is an in-built limit to the nature of the service that may be provided to removed people, depending on interpretation of the term: ‘clients currently going through family reunion and experiencing emotional distress’. Some people may be unable to begin ‘family reunion’ because of stress.

2.152 Thirdly, the information that is sought by the department from organisations could not really be classified as performance indicator data. Most of the information categories do not relate to any measurement of the effectiveness of the service provided, but to the qualifications and training of the counsellors. The department, although stating that it was ‘almost impossible’ to collect data on the clients in respect of removal issues<sup>222</sup> hopes to be able to obtain some aggregate data in the future. Given that the services were funded to meet the needs of removed people, it is a serious deficiency if there is no evidence available to demonstrate that any member of the target groups has had access to the service, directly or through Link-up.

2.153 Again, the emphasis on problems associated with obtaining information have been emphasised, and indeed, over-emphasised. The Committee accepts that people may not want to openly identify a need for counselling,<sup>223</sup> but it was quite clear that many people including members of stolen generation organisations wanted to use the counselling service.<sup>224</sup> Information provided about use of any health service should only relate to non-identifiable factors, and therefore any reluctance to provide such information appears contradictory.<sup>225</sup>

2.154 The Committee did receive information from one service which appears to be recording more complete data on clients, the Danila Dilba Medical Service run by the Aboriginal Medical Services Alliance Northern Territory (AMSANT). They stated that some 33% of their clients between August 1999-January 2000 were stolen generation (although some of these include 3<sup>rd</sup> and 4<sup>th</sup> generation). The service believes that this may be an under-representation as people did not necessarily identify separation as a factor in their current situation<sup>226</sup> - this would suggest that direct access to the medical service is better than a referral through Link-Up. Although the Committee believes that it is more difficult to connect current problems experienced by grandchildren and great grandchildren of people who were removed to

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221 See *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 703

222 See above, Paragraph 2.134

223 *Transcript of evidence*, Senator Payne, p. 704

224 See *Transcript of evidence*, Central Australian Stolen Generations and Families Organisation, p. 456

225 *Transcript of evidence*, Senator Payne and the Office for Aboriginal and Torres Strait Islander Health, pp. 704-705

226 *Submission 37A*, Aboriginal Medical Services Alliance Northern Territory, p.1854

that original separation, this data at least demonstrates it is not impossible to maintain information at this level of detail.

2.155 The same organisation had also provided counselling to people involved in the Gunner/Cubillo case<sup>227</sup> a fact which was noted with appreciation by other witnesses even though they themselves wished to have a service that was more under their control.<sup>228</sup>

### Qualifications of counsellors

2.156 Another issue related to quality control concerned the qualifications for counsellor positions.

...the regional centres provide the framework for the social and emotional wellbeing action plan. One of their key objectives is to develop training programs for Aboriginal and Torres Strait Islander people and for training in mainstream services. There is a very strong feeling amongst communities that there is a very heavy burden on community people, often untrained health workers, to try to respond and cope with what are often very complex issues.<sup>229</sup>

2.157 The Committee accepts that in some instances, formal professional qualifications may not be necessary.<sup>230</sup> It also acknowledges that there may be limited numbers of indigenous people with these qualifications who are available to take up the counsellor positions,<sup>231</sup> and that people with relevant experience in healing may well be appropriate.

2.158 Nonetheless, the Committee also believes it is essential for those choosing counsellors to ensure that persons do have appropriate skills and experience and are also provided with the relevant support. The department appears reluctant to 'interfere'<sup>232</sup> with the community controlled organisations' processes in these matters,

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227 *Submission 37A*, Aboriginal Medical Services Alliance Northern Territory, p.1853

228 *Transcript of evidence*, Northern Territory Stolen Generations Aboriginal Corporation, p. 457; Croker Island Association, pp. 510-511

229 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 26 and see also p. 27: 'part of what we are doing ... is to firstly try to develop a workforce of Aboriginal people in this area. Also there are other Aboriginal people who actually do work as health workers in medical services and we are also looking to provide opportunities for those groups of workers to expand their skills to include counselling and therapeutic work.'

230 See *Submission 65B*, Office for Aboriginal and Torres Strait Islander Health Attachment A, p. 2150; *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, pp. 710-711

231 See *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p. 24, and see also p. 26

232 See *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, pp. 699-700

but it nonetheless has an obligation to ensure that funding is being used appropriately. It itself has referred to a 'duty of care'.<sup>233</sup>

2.159 The department has advised that there are specific sections in grants and contracts relating to the purpose of funding and the reason why performance indicators are required.<sup>234</sup> A copy of a standard contract was provided.<sup>235</sup> Devised, apparently, for the ATSI Health and Substance Abuse Services, it has clauses which allow the department to terminate a contract or deduct funding if money is used inappropriately, and requires acquittal of funds. However, the measurement of inappropriate expenditure must presumably either be in specific clauses or in other guidelines. No guidelines, apart from performance indicators for the counsellor positions, have been provided. The department's capacity to evaluate services is therefore unknown. However, the limited information it appears to have required indicates that such measurement will be very difficult. It is salutary to note that individuals most affected, and apparently excluded from funding, are well aware that accountability is always required.<sup>236</sup>

2.160 The Committee also notes that there was some strong opposition to questions it raised about counsellor position qualifications and to the fact that questions were asked at all. The Committee wishes to state that it has been requested by the Senate to assess the effectiveness of these programs and that no organisation is exempt from such examination.

2.161 The Committee believes that the funding allocated for purposes related to separated people has been misdirected. It considers that an independent audit of the allocation of funding against the needs of the target population would be beneficial.

## Recommendation

### Recommendation 1

The Committee **recommends** that the federal government, in conjunction with state and territory governments, commission an independent evaluation of the progress of initiatives implemented by governments in response to the *Bringing Them Home* report. The independent evaluator should present its report within six months of the federal government's response to the report of this inquiry. .

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233 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, p.27

234 *Transcript of evidence*, Office for Aboriginal and Torres Strait Islander Health, pp. 699-700

235 See *Submission 65C*, Office for Aboriginal and Torres Strait Islander Health, Attachment A, pp. 2752-2774

236 See *Transcript of evidence*, Garden Point Association, p. 502