

## CHAPTER 4

### REPARATION: ACKNOWLEDGMENT AND APOLOGY

#### Background to the Recommendations from *Bringing Them Home*

4.1 HREOC believed the first step in any system of compensation and healing for victims of gross violations of human rights to be an acknowledgment of the truth about the past and the delivery of an apology.<sup>1</sup>

4.2 Recommendations 5a, 5b and 6 of *Bringing Them Home* recommended parliaments, police forces, churches and others to acknowledge and apologise for the past laws, policies and practices of forcible removal. Recommendation 7 extended the meaning of acknowledgment to include the commemoration of the history of forcible removals and its effects.<sup>2</sup>

#### The Recommendations from *Bringing Them Home*

4.3 The specific recommendations of *Bringing Them Home* were as follows:<sup>3</sup>

##### *Acknowledgment and Apology – Parliaments and Police Forces*

5a: That all Australian Parliaments

1. officially acknowledge the responsibility of their predecessors for the laws, policies and practices of forcible removal,
2. negotiate with the Aboriginal and Torres Strait Islander Commission a form of words for official apologies to Indigenous individuals, families and communities and extend those apologies with wide and culturally appropriate publicity, and
3. make appropriate reparation as detailed in following recommendations.<sup>4</sup>

5b: That State and Territory police forces, having played a prominent role in the implementation of the laws and policies of forcible removal, acknowledge that role, and in consultation with the Aboriginal and Torres

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1 *Bringing Them Home*, 1997, p. 284

2 *Bringing Them Home*, 1997, pp. 284-293

3 *Bringing Them Home*, 1997, pp. 284-293. For a summary of all *Bringing Them Home* recommendations, see Appendix 5

4 For further discussion on reparations and compensation, see Chapter 8

Strait Islander Commission, make such formal apologies and participate in such commemorations as may be determined.

*Acknowledgment and Apology – Churches and others*

6: That churches and other non-government agencies which played a role in the administration of the laws and policies under which Indigenous children were forcibly removed acknowledge that role and in consultation with the Aboriginal and Torres Strait Islander Commission make such formal apologies and participate in such commemorations as may be determined.

*Commemoration*

7a: That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, arrange for a national 'Sorry Day' to be celebrated each year to commemorate the history of forcible removals and its effects.

7b: That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, seek proposals for further commemorating the individuals, families and communities affected by forcible removal at the local and regional levels. That proposals be implemented when a widespread consensus within the Indigenous community has been reached.

4.4 HREOC based these recommendations on numerous sources, including international law and the draft Van Boven Principles for reparation.<sup>5</sup> Other sources included the hundreds of submissions to the Inquiry, including those from State and Territory governments, non-government organisations, churches, Indigenous organisations and individuals, from which, *Bringing Them Home* states:<sup>6</sup>

[The Inquiry] heard demands for apologies to the individuals, families and communities who have survived the removal of Indigenous children.

4.5 In its submission to the HREOC Inquiry, ATSIC discussed the issue of acknowledgment and apology, concluding:<sup>7</sup>

... ATSIC considers that reconciliation must surely begin with this one elementary condition: an apology. Indigenous people may then feel that the issue of separation, and the injustices it caused, have been acknowledged by

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5 For full reproduction of the van Boven Principles, see Appendix 6. The elements of the van Boven Principles relevant to justifying an acknowledgment and apology include: (d) Apology, including public acknowledgment of the facts, and acceptance of responsibility; and (f) Commemorations and paying tribute to the victims. See also *Submission No. 93*, Human Rights and Equal Opportunity Commission, pp. 2177-2178; *Transcript of Evidence*, Human Rights and Equal Opportunity Commission, p. 100; *Transcript of Evidence*, Sir Ronald Wilson, p. 736; *Transcript of Evidence*, Mr Toni Buti & Mr David Markovich, pp. 341-342

6 *Bringing Them Home*, p. 284

7 *Bringing Them Home*, p. 285

those present-day government and non-government organisations who are directly connected with organisations responsible for past policies and practices.

4.6 Similarly, the Aboriginal Legal Service of Western Australia recommended to HREOC:<sup>8</sup>

That the State government [and the Commonwealth government] make a public statement in Parliament acknowledging the devastating impact of the policies and practices of removing Aboriginal children from their families, on individuals, their families and the Aboriginal community, and express regret, and apologise on behalf of the people of Western Australia [and Australia].

4.7 One of the sources listed for the incorporation of commemoration in acknowledgment was J Correa, *Dealing with Past Human Rights Violations: The Chilean Case after Dictatorship* which stated:<sup>9</sup>

Comparable experience suggests that satisfaction should go beyond a single instance of acknowledgment and apology. Victims should be appropriately commemorated.

### **What is acknowledgment?**

4.8 *Bringing Them Home* states:

For many victims and their families, an accurate and truthful description of past policies and practices and of their consequences is the first requirement of justice and the first step towards healing wounds. Also essential is an acknowledgment of responsibility.<sup>10</sup>

4.9 On this basis, an acknowledgment would involve a public recognition that Indigenous children were removed from their families, that this was the result of policy, as well as practice, and that these policies and practices created devastating consequences. In addition, acknowledgment involves an acceptance of responsibility for these policies, practices and consequences.

### **What is an Apology?**

4.10 *Bringing Them Home* did not specifically outline how an apology should be worded, specify what an apology might involve, or indeed specify that an apology must involve the use of the words ‘apologise’ or ‘sorry’, rather, that the form of such official apologies should be negotiated with ATSIC.<sup>11</sup> Negotiations and delivery of

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8 *Bringing Them Home*, p. 285

9 *Bringing Them Home*, p. 292

10 *Bringing Them Home*, p. 284

11 See Paragraph 4.3

official apologies were the responsibility of all Australian parliaments (as opposed to all Australian governments), all State and Territory police forces, churches and non-government organisations.

4.11 An apology, by definition, is a ‘frank acknowledgment’, by way of reparation, of offence given, or an explanation that offence was not intended, with ‘expression of regret’.<sup>12</sup> By contrast, the intention of an expression of regret may be defined as a ‘grievance at’, or ‘feeling of distress’ on account of an event, fact or action.<sup>13</sup> By these definitions, an expression of regret may be seen as something less than an apology as it is only one aspect of a complete apology. Commemoration may be seen as a natural progression whereby ‘regret’ is institutionalised.

## **Responses to the Recommendations**

### **The Commonwealth Parliament – Acknowledgment and Apology**

4.12 The Commonwealth Government is of the view that a formal apology is inappropriate in relation to events that, when occurring, were sanctioned by the law of the time, and were thought, at the time they occurred, to have been in the best interests of the community, irrespective of how those events are viewed today.<sup>14</sup>

#### *Continuing responsible government*

4.13 The Commonwealth Government has stated that whilst this generation should not be asked to ‘accept responsibility’ for earlier generations, this generation does have an ‘obligation’ to address the ‘consequences’ of those actions and policies.<sup>15</sup>

4.14 HREOC stated that the claim of a current government’s lack of any direct responsibility for the actions of past governments overlooks ‘a fundamental and enduring feature of Australian democracy, that of continuing responsible government’.<sup>16</sup> That is, the concept that governments are ‘responsible’ in the sense that they are answerable to the people through an election. This responsibility becomes continuous through being an integral part of the institution of government.

4.15 Similarly, when questioned on the importance of an apology from this government, ATSIC stated:<sup>17</sup>

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12 *Shorter Oxford English Dictionary*, p. 82

13 *Shorter Oxford English Dictionary*, p. 82; see, for example, *Transcript of evidence*, Northern Land Council, p. 487

14 See, for example, Transcript of the Prime Minister the Hon John Howard MP, Television Interview with Dennis Grant, *One-to-One*, SBS, 18 December 1997

15 *Social Justice Report 1998*, p. 113

16 *Social Justice Report 1998*, pp. 113-114

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

... why is ATSIC also responsible for all the Aboriginal and Torres Strait Islander issues in this country when ATSIC has only been around for 10 years? It does not matter who is in power on the day; it is what the institution stands for. This is our government of this country and I think it has a responsibility, regardless of whether the acts were committed in its time.

### *Legal Liability*

4.16 The Prime Minister has publicised concerns about the implications of a formal national apology. In outlining the reasons for not supporting such an apology, the Prime Minister stated:<sup>18</sup>

... a formal, unqualified apology does, according to legal advice that we have received have certain legal implications ...

The advice that I have received from a Government senior legal adviser is that an unqualified apology has significant legal implications and that is one of the reasons why the response to this report [*Bringing Them Home*] must be a considered response ...

4.17 The Prime Minister also stated:<sup>19</sup>

... once you get into the area of formal national apologies it raises all sorts of other implications and establishes all sorts of other precedents. And I think there are a lot of people in Australia who understand that my reluctance and unwillingness to do that does not suggest, in any way, that I am insensitive and lack compassion. It is just a view as to what is appropriate.

### *Parliamentary Privilege*

4.18 Whilst legal advice provided to the Commonwealth Government suggests 'significant legal implications' may result from a formal apology, it fails to recognise the protection all statements have under the *Parliamentary Privileges Act 1987 (Cth)*, when made within the parliamentary chamber. The relevant provisions of this Act are as follows:

16(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

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18 The Hon. John Howard MP, Transcript of Interview with Paul Lyneham, *Nightline*, 29 May 1997

19 The Hon John Howard MP, Transcript of Television Interview with Dennis Grant, *One-To-One*, SBS, 18 December 1997. See also, The Hon John Howard MP, Television Interview with Bert Newton, *Good Morning Australia*, Network Ten, 3 July 2000; see also discussion of the protection extended under the *Parliamentary Privileges Act 1987* for statements made in Parliament relating to the former Senator, Mal Colston in *Legal and Constitutional Legislation Committee Hansard*, 10 June 1997, pp. 81-85

- (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
- (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
- (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

4.19 Similarly, HREOC highlighted the discussion of a formal apology by O'Loughlin J in the judgment of *Cubillo v Commonwealth* of the Federal Court in the Northern Territory.<sup>20</sup> O'Loughlin J presented a record of what had happened to date in the Parliaments of the States and Territories, and commented on the issue of a formal national apology and the position with respect to the Commonwealth Parliament, despite the fact that it was not an issue raised in the case:<sup>21</sup>

The position with respect to the Commonwealth Parliament, requires special mention. At common law anything said or done in the House is protected by absolute privilege – a privilege that can be traced back to Article 9 of the Bill of Rights 1688. In Australia, the privilege of the Houses of the Commonwealth Parliament derives from s 49 of *The Constitution* ...

4.20 In addition, HREOC cited French J of the Federal Court in his consideration of the *Parliamentary Privileges Act 1987* in *Hamsher and Ors v Minister for Immigration, Local Government and Ethnic Affairs* (1992) FCR 545. In this case, the applicants sought to rely on statements made by the relevant Minister in answer to a question on notice in the Senate, to which French J stated:<sup>22</sup>

In any event, sub s 16(3) is expressed in terms of an absolute prohibition. Whether that prohibition can be overcome by any permission of the House of Parliament concerned may be doubtful and need not be decided here. But it is apparent under the legislation as it now stands that the prohibition contained in sub s 16(3) cannot be waived in the absence of objection. The section does not affect the ability of the courts to resort to such matters as a record of parliamentary proceedings in aid of the interpretation of an Act ...

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20 *Submission 93A*, Human Rights and Equal Opportunity Commission, pp. 2812-2813

21 O'Loughlin J, *Cubillo v Commonwealth*, Federal Court of Australia 1084, 11 August 2000, Paragraphs 74-78. See also *Transcript of evidence*, Mr Toni Buti, p. 345

22 *Submission 93A*, Human Rights and Equal Opportunity Commission, p. 2814; See also *Submission 93B*, Human Rights and Equal Opportunity Commission, p. 2842: The Human Rights and Equal Opportunity Commission referred to comments made by Justice McHugh in *Egan v Willis* (1998) 158 ALR 527, at para 547. His Honour stated that "what is said or done within the walls of the parliamentary chamber cannot be examined in a court of law". This distinguishes between an apology of the government and one of the Parliament.

4.21 However, the ‘other implications’ and the establishment of ‘other precedents’ supposedly resulting from a formal apology, as referred to by the Prime Minister, are not specified.

*Lack of support for a formal national apology?*

4.22 In its submission, the Commonwealth Government cited research undertaken in 1999 for the Council of Aboriginal Reconciliation which indicated that a significant majority of Australians did not support a formal Government apology to Indigenous people for past events.<sup>23</sup> According to the Council's research, the majority's reasons for not wanting an apology were threefold:<sup>24</sup>

First they said 'we did not do it' and second, that the past was the past and reconciliation is about the present and the future. The further concern is that such an apology might lead to further substantial claims for compensation in one form or another.

4.23 As a result, the Minister for Aboriginal and Torres Strait Islander Affairs has stated:

... we do not believe that our generation should be asked to accept responsibility of earlier generations, sanctioned by the laws of the times...<sup>25</sup>

4.24 At the same time, the Prime Minister has stated:

Australians of this generation should not be required to accept guilt and blame for past actions and policies over which they had no control.<sup>26</sup>

*Nature of the argument: Move from parliaments to governments?*

4.25 *Bringing them home* clearly recommended parliaments to take responsibility and acknowledge and apologise for past policies and practices of forced separation. However, the Commonwealth Government appears to have changed the nature of the argument from one of governments accepting responsibility for the outcome of past policies and practices, by suggesting that *Bringing Them Home* requested a personal or ‘generational’ responsibility in which individual Australians should feel guilty. In addition, the Prime Minister has stated:

To say to them that they are personally responsible and that they should feel a sense of shame about those events is to visit upon them an unreasonable penalty and an injustice ...<sup>27</sup>

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23 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 600

24 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 600

25 *Social Justice Report 1998*, p. 113

26 *Social Justice Report 1998*, p. 113

27 House of Representatives *Hansard*, The Hon. John Howard MP, 26 August 1999, pp. 9206-9207

4.26 The result of this is that the Commonwealth Government has moved away from any ‘apology’ which it did not believe to reflect ‘Australians’ attitudes, and settled on a ‘motion of reconciliation’.

### **Motion of Reconciliation**

#### *The House of Representatives*

4.27 On 26 August 1999, the Prime Minister moved a motion in the House of Representatives, titled the Motion of Reconciliation. This read as follows:<sup>28</sup>

That this House:

- (a) reaffirms its wholehearted commitment to the cause of reconciliation between Indigenous and non-indigenous Australians as an important national priority for Australians;
- (b) recognising the achievements of the Australian nation commits to work together to strengthen the bonds that unite us, to respect and appreciate our differences and to build a fair and prosperous future in which we can all share;
- (c) reaffirms the central importance of practical measures leading to practical results that address the profound economic and social disadvantage which continues to be experienced by many Indigenous Australians;
- (d) recognises the importance of understanding the shared history of Indigenous and non-Indigenous Australians and the need to acknowledge openly the wrongs and injustices of Australia's past;
- (e) acknowledges that the mistreatment of many Indigenous Australians over a significant period represents the most blemished chapter in our international history;
- (f) expresses its deep and sincere regret that Indigenous Australians suffered injustices under the practices of past generations, and for the hurt and trauma that many Indigenous people continue to feel as a consequence of those practices; and
- (g) believes that we, having achieved so much as a nation, can now move forward together for the benefit of all Australians.

#### *Inconsistencies*

4.28 HREOC, in its submission, draws attention to an assertion made by the Federal Government in its submission, that:

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28 The Hon. John Howard MP, House of Representatives *Hansard*, 26 August 1999, p. 9205



... the Prime Minister moved a motion ... officially acknowledging the responsibility of the Parliament's predecessors for the past laws, policies and practices in separating Indigenous children from their families.<sup>29</sup>

4.29 The Motion of Reconciliation does not explicitly acknowledge the responsibility of the Parliament's predecessors, nor does it specifically mention the separation of Indigenous children from their families.<sup>30</sup>

4.30 The motion identifies 'practices of past generations', not acknowledging that these practices were the result of policy and laws. In addition, the motion only expresses 'deep and sincere regret' as opposed to apologising or being 'sorry' for the consequences of these laws, policies and practices.

#### *The Opposition's response*

4.31 In response to the above motion, the Leader of the Opposition, Mr Kim Beazley, moved:<sup>31</sup>

Omit paragraph (f), substitute:

- (f) unreservedly apologises to Indigenous Australians for the injustice they have suffered, and for the hurt and trauma that many Indigenous people continue to suffer as a consequence of that injustice;
- (fa) calls for the establishment of appropriate processes to provide justice and restitution to members of the stolen generation through consultation, conciliation and negotiation rather than requiring Indigenous Australians to engage in adversarial litigation in which they are forced to relive the pain and trauma of their past suffering; and

that paragraph (g) become new paragraph (h)

4.32 Following a lengthy debate, the amendment was defeated and the Motion was endorsed without a division.<sup>32</sup>

#### *The Senate*

4.33 The same Motion was introduced in the Senate on 26 August 1999, by Senator the Honourable Robert Hill.<sup>33</sup> Senator the Honourable John Faulkner moved the same amendments as Mr Beazley. However, the original motion had the support of Senator Aden Ridgeway who rose to speak on behalf of the Australian Democrats.

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29 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2194, Footnote 25

30 See *Transcript of evidence*, Mr Markovich, p. 346

31 Mr Kim Beazley MP, House of Representatives *Hansard*, 26 August 1999, p. 9209

32 For full text of debate, see House of Representatives *Hansard*, 26 August 1999, pp. 9205-9222

33 Senator the Hon. Robert Hill, Senate *Hansard*, 26 August 1999, p. 7824

Again, the amendment was defeated and the Motion was endorsed by a majority vote.<sup>34</sup>

### *Consultation*

4.34 The Prime Minister indicated, upon moving this motion, that consultation took place with many Indigenous leaders who recognised that, in order to ‘move forward’, there needed to be an understanding of the concerns and reservations on the part of the Australian community, in relation to the kind of national response requested by *Bringing them home*. The Prime Minister indicated that these concerns and reservations were accepted by those Indigenous leaders, especially by stating:

Senator Ridgeway has come halfway and many of the indigenous leaders with him have also come halfway. They have recognised that, in order to move forward, there has to be an understanding of some of the concerns and some of the reservations that were genuinely felt by the people in the Australian community on this issue and which prevented them, and continue to prevent them, from embracing, in quite the terms that were asked for several years ago, the sort of reaction and the sort of formal national responses that were called for then and may still be called for today by those who sit opposite. But they made the decision, they extended the hand of friendship and the hand of cooperation and they said they would travel part of the journey if we would travel part of the journey.<sup>35</sup>

4.35 During debate of the Motion of Reconciliation in the Senate, Senator Ridgeway noted that the motion had been arrived at through consultation and discussions with Indigenous leaders such as the then Chairman of ATSIC, Mr Gatjil Djerrkura. Dr Lowitja O'Donoghue, former Chair of ATSIC, called for a ‘multipartisan’ approach from the Australian Parliament in relation to this motion, and the Chairperson of the Council for Aboriginal Reconciliation, Ms Evelyn Scott, also supported the motion.<sup>36</sup>

4.36 Mr Djerrkura stated:

I believe the proposed motion moves the debate on a national apology along and I believe those involved should be acknowledged for their efforts in this regard.<sup>37</sup>

4.37 Ms Scott stated:

That the Council for Aboriginal Reconciliation welcomes this motion with an open heart and open arms. This is a great day for reconciliation in this country. This motion reflects the broad-ranging aims of reconciliation that

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34 For full debate in the Senate, see Senate *Hansard*, 26 August 1999, pp. 7824-7838

35 House of Representatives *Hansard*, The Hon. John Howard MP, 26 August 1999, p. 9208

36 Senator Aden Ridgeway, Senate *Hansard*, 26 August 1999, pp. 7826-7828

37 Senator Aden Ridgeway, Senate *Hansard*, 26 August 1999, pp. 7826-7828

the Council has been striving to get across to the nation. If adopted by parliament, these words will impart tremendous new momentum to the reconciliation process. I am confident that all Australians can now move forward together to make reconciliation a reality in the everyday life of our communities, workplaces, organisations and institutions, as outlined in the Council's Draft Document for Reconciliation currently being discussed across the nation.<sup>38</sup>

4.38 The Commonwealth Government regards the Motion of Reconciliation passed by both Houses of Parliament, as historic.<sup>39</sup>

### *Personal apologies*

4.39 The Commonwealth Government state in its submission, that both the Prime Minister and the Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Honourable John Herron, have personally apologised on a number of occasions.<sup>40</sup> The Prime Minister, in his speech opening the Aboriginal Reconciliation Convention in May 1997, stated:<sup>41</sup>

Personally, I feel deep sorrow for those of my fellow Australians who suffered injustices under the practices of past generations towards Indigenous people. Equally, I am sorry for the hurt and trauma many people here today may continue to feel as a consequence of those practices.

4.40 On another occasion, the Prime Minister has stated:

I'm personally very sorry. I think we all are for any injustice.<sup>42</sup>

## **International Comparisons**

### *Canada*

4.41 The Canadian experience relates to the treatment of Aboriginal Canadians,<sup>43</sup> and specifically to the abuse or treatment they received in residential schools as a

38 Senator Aden Ridgeway, Senate *Hansard*, 26 August 1999, pp. 7826-7828

39 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 601. See also The Hon John Howard MP, Transcript of interview with Mike Munro, *A Current Affair*, Channel Nine, 26 August 1999

40 See, for example, *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p. 601; The Hon John Howard MP, *Aboriginal Reconciliation Convention Speech*, 26 May 1997; The Hon John Howard MP, Television Interview with Dennis Grant, *One-to-One*, SBS, 18 December 1997; The Hon John Howard MP, Television Interview with Bert Newton, *Good Morning Australia*, Network Ten, 3 July 2000; and Senator The Hon John Herron, Television Interview with Kerry O'Brien, *7:30 Report*, ABC, 3 April 2000

41 The Hon John Howard MP, *Aboriginal Reconciliation Convention Speech*, 26 May 1997

42 The Hon. John Howard, Transcript of Interview with John Laws, *2UE Radio*, 29 May 2000

43 See Department of the Parliamentary Library, *Indigenous Affairs in Australia, New Zealand, Canada, United States of America, Norway and Sweden*, 6 April 1998, p. 6: In the *Constitution Act 1982* Aboriginal peoples of Canada include the Indian, Inuit (once called 'Eskimos') and Metis peoples (people of mixed descent). Indians registered under the *Indian Act* are termed Registered Indians (once

result of a government policy of assimilation. The period in question runs from 1874 – 1969 during which the Government operated nearly every school in partnership with various religious organisations.<sup>44</sup>

### Canada's Policy of Assimilation

4.42 The Canadian Federal Government began to play a role in the development and administration of the school system in an attempt to meet its obligations under the *Indian Act 1876*.<sup>45</sup> The Government's obligations were to 'provide an education to Aboriginal people', as well as to 'assist with their integration into the broader Canadian society'.<sup>46</sup> Amendments to the *Indian Act* beginning in 1894 meant that when schools on the reserves were not well attended and 'First Nations' parents failed to send their children to residential schools, provisions allowing the governor-general-in-council to issue regulations and to commit children to such institutions.<sup>47</sup> In addition, when these provisions failed to obtain consistent attendance, the Act was strengthened by classifying as delinquent all children who did not attend and by making their parents subject to criminal penalties.<sup>48</sup> Clearly, although government

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called Status Indians) and are entitled to benefits which may not be available to other Indians. The latter are often descendants of Indians who were never registered, did not register as a matter of choice or lost their status under the original Act (an Indian woman and her children lost status rights if she married a non-status man, while a non-status woman gained status rights if she married a status man). In 1985 the *Indian Act* was amended to reinstate 'any Indian person who lost or was denied status because of the discriminatory sections of the previous Act'. It is estimated that 1.3 million (3.8 per cent) of Canadians have Aboriginal ancestry, half of whom are Registered Indians.

44 Department of Indian and Northern Affairs Canada, *Background: The Residential School System*, ([www.inac.gc.ca/gs/schl\\_e.html](http://www.inac.gc.ca/gs/schl_e.html)), p. 1; The Department of Indian and Northern Affairs, Canada stated that it is estimated that approximately 100,000 children attended these schools over the years in which they were in operation.

45 Department of Indian and Northern Affairs Canada, *Background: The Residential School System*, ([www.inac.gc.ca/gs/schl\\_e.html](http://www.inac.gc.ca/gs/schl_e.html)), p. 1

46 Department of Indian and Northern Affairs Canada, *Background: The Residential School System*, ([www.inac.gc.ca/gs/schl\\_e.html](http://www.inac.gc.ca/gs/schl_e.html)), p. 1

47 Andrew Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada and New Zealand*, 1995, p. 79; See also, Dillon J in *Mowatt* paras 58-59: The Government of Canada had jurisdiction over "Indians and lands reserved for the Indians" pursuant to s. 91(24) of the *Constitution Act, 1867*. Governmental policy in the 1890's recognised the increasing numbers of native people and governmental responsibility for "their advancement and civilisation". Accordingly, the Department of Indian Affairs acknowledged its duty to provide for the education of native children through native schools. Part of the policy called for children, especially boys, to remain in residential schooling until rudimentary education was attained and "their characters [were] sufficiently formed as to ensure as much as possible against their returning to the uncivilised mode of life". By 1894, the Canadian government had assumed responsibility for the education of all "Indian children" (*Indian Act*, R.S.C. 57-58 Vict., c.32) and authorised the establishment of industrial and boarding schools for that purpose. The Department of Indian Affairs was authorised to provide funding to religious organisations for them to house and educate Indian children as early as 1892. By 1951, Canada was obliged "to establish and operate schools for Indian children" and could do so on its own or enter into agreements with religious organisations for that purpose (*Indian Act*, R.S.C. 1951, c.29, s.113). The Ministry designated schools for each child based upon the child's religious affiliation.

48 Andrew Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada and New Zealand*, 1995, p. 79

policy and sanctioned by the law, this would be considered as ‘forcible removal’ as it is understood in *Bringing Them Home*.

### Canadian Federal Government Response

4.43 In January 1998, the Canadian Federal Government released *Gathering Strength*, its response to the Report of the Royal Commission on Aboriginal Peoples (1996).<sup>49</sup> *Gathering Strength*, Canada’s Aboriginal Action Plan, called for a renewed partnership with Aboriginal people based on ‘recognising past mistakes and injustices, the advancement of reconciliation, healing and renewal, and the building of a joint plan for the future’.<sup>50</sup>

### Acknowledgment and apology

4.44 Alongside the release of *Gathering Strength*, the Canadian Government released a ‘Statement of Reconciliation’. The Statement of Reconciliation is consistent with the approach taken in *Gathering Strength*, in that it is directed at the entire Indigenous population, although with specific mention of those who suffered abuse in the residential school system. Extracts of the Statement are below:

As Aboriginal and non-Aboriginal Canadians seek to move forward together in a process of renewal, it is essential that we deal with the legacies of the past affecting the Aboriginal peoples of Canada, including the First Nations, Inuit and Métis. Our purpose is not to rewrite history but, rather, to learn from our past and to find ways to deal with the negative impacts that certain historical decisions continue to have in our society today.

...

We must recognise the impact of these actions on the once self-sustaining nations that were disaggregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.

... The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the federal government which have contributed to these difficult pages in the history of our relationship together.

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49 Department of Indian and Northern Affairs Canada, *Backgrounder: The Residential School System*, ([www.inac.gc.ca/gs/schl\\_e.html](http://www.inac.gc.ca/gs/schl_e.html)), p. 1

50 Department of Indian and Northern Affairs Canada, *Backgrounder: The Residential School System*, ([www.inac.gc.ca/gs/schl\\_e.html](http://www.inac.gc.ca/gs/schl_e.html)), p. 1

One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School system. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continue to reverberate in Aboriginal communities to this day. Tragically, some children were the victims of physical and sexual abuse.

The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasise that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at residential schools, we are deeply sorry.

...

Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognises that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong country. We must instead continue to find ways in which Aboriginal people can participate fully in the economic, political, cultural and social life of Canada in a manner which preserves and enhances the collective identities of Aboriginal communities, and allows them to evolve and flourish in the future. Working together to achieve our shared goals will benefit all Canadians, Aboriginal and non-Aboriginal alike.<sup>51</sup>

4.45 Whilst the language of Canada's 'Statement of Reconciliation' is similar to that used by the Australian Parliament in its 'Motion of Reconciliation' (in using the word 'regret'), it is clear that the Canadian Government acknowledged its role and even responsibility in the past, together with making specific mention of those Canadian Aboriginals who were placed in residential schools, and the abuse they suffered.

#### *New Zealand*

4.46 The experience of New Zealand is somewhat different and essentially involves the settling of land matters.<sup>52</sup> However, formal parliamentary apologies are involved in this process.

#### Treaty of Waitangi

4.47 The Treaty of Waitangi was signed by Maori and the Crown in 1840 which established British sovereignty and recognised the prior occupation and rights of

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51 Canadian Government, *Statement of Reconciliation*, ([www.inac.gc.ca/gs/rec\\_e.html](http://www.inac.gc.ca/gs/rec_e.html))

52 See *Transcript of evidence*, Department of Prime Minister and Cabinet, p. 666

Maori.<sup>53</sup> The Treaty of Waitangi sets the legal and political framework for the recognition of Indigenous rights. Indigenous rights claims by Maori are made in the context of the Treaty and are expressed as breaches of rights and obligations created by the Treaty.<sup>54</sup> Claims concern sovereignty, discrimination, cultural dispossession and the loss of land and resources.<sup>55</sup>

### Acknowledgment and apology

4.48 Under the Treaty of Waitangi, the *Waikato Raupatu Claims Settlement Act 1995* gave effect to the settlement of a claim concerning the 1863 invasion of Waikato territory by imperial troops, and the Crown's confiscation of 1.2 million acres of the tribe's land. Redress provided by the Crown included a formal apology:

The Crown expresses its profound regret and apologies unreservedly for the loss of lives because of the hostilities arising from its invasion and at the devastation of property and social life which resulted ...

The Crown acknowledges that the subsequent confiscations of land and resources ... were wrongful ... and have had a crippling effect on the welfare, economy and development of Waikato ...

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and ... to begin the process of healing and to enter into a new age of co-operation with ... Waikato.<sup>56</sup>

### **Has the Commonwealth Government's Response been adequate and effective?**

#### *The Motion of Reconciliation*

4.49 The Committee received submissions and heard evidence from several Indigenous organisations and others, most of whom addressed the issue of an apology, and were not satisfied with the Motion of Reconciliation by the Commonwealth Parliament.

4.50 When asked to rate the Commonwealth Parliament's Motion of Reconciliation on a scale of one to ten (ten being an apology), Mr Welsh of the Anglican Diocese of Sydney stated:<sup>57</sup>

In my view, we are not even on No. 1 yet, because to use the word 'regrettable' means you are a witness; to use the word apology is saying 'I'm a part of'. An apology is saying, 'I have ownership'.

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53 See *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2250

54 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2250

55 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2250

56 *Submission 93*, Human Rights and Equal Opportunity Commission, pp. 2250-2251

57 *Transcript of evidence*, Anglican Diocese of Sydney, p. 196

4.51 HREOC acknowledges the Motion of Reconciliation, although it does not believe it satisfies recommendation 5a of *Bringing Them Home*, as policies and practices of forcible removal are not mentioned, and the Prime Minister has described the motion as generic.<sup>58</sup> Ultimately, however, HREOC is of the view that it is up to members of the stolen generations themselves to determine if this statement of regret is sufficient.<sup>59</sup>

4.52 The extent to which this is possible, however, is hard to determine, especially because of the different understanding of who separated groups are. The Committee heard from many members of what would be called 'stolen generation' organisations (as opposed to people who were separated for other reasons), and many of these did not perceive the Prime Minister's words as an apology. In part this may be because of the fact that they were carefully phrased, and therefore appeared to lack an element of spontaneity which may be seen to reflect real regret. It is possible, therefore, for the attitude rather than the words to be the main issue, and no amount of consultation on words will make a difference at this stage.

4.53 Whilst HREOC believes that the motion does not satisfy recommendation 5a of *Bringing Them Home*, it does not take into account recommendation 5b. Recommendation 5b specifies that the wording of 'official apologies' should be 'negotiated' with ATSIC. As demonstrated above,<sup>60</sup> significant consultation and negotiation was undertaken, not only with ATSIC but the Council for Aboriginal Reconciliation and other indigenous leaders who were in support of the motion. The continued dissatisfaction with the motion raises questions as to the representativeness of ATSIC for members of the stolen generation.

4.54 In addition, the Aboriginal Justice Council of Western Australia, in relation to the Motion of Reconciliation, stated:<sup>61</sup>

... the feedback from the community in terms of the wording of that, it does not [provide any healing and reconciliation].

I think the word 'sorry' is what Aboriginal people are looking at. I think it is simple: the word 'sorry', not 'with deep regret'.

#### *The need for an apology*

4.55 The Royal Australian and New Zealand College of Psychiatrists illustrated the importance a formal national apology holds for mental health. The College stated:<sup>62</sup>

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58 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2194; For comment by the Prime Minister relating to the generic nature of the Motion, see John Howard MP, Interview with Matt Peacock, *AM Programme*, ABC Radio, 27 August 1999

59 *Submission 93*, Human Rights and Equal Opportunity Commission, p. 2194; See also, O'Loughlin J, *Cubillo v Commonwealth*, Federal Court of Australia 1084, 11 August 2000, Para 78, in which O'Loughlin J states "the motion did not however include an apology"

60 See Paragraphs 4.34-4.37

61 *Transcript of evidence*, Western Australian Aboriginal Justice Council, pp. 368-369



The College believes that official recognition by the leaders of this nation of the harm done to Aboriginal and Torres Strait Islander people since the arrival of Europeans is necessary for reconciliation. It would make a major contribution to achieving better mental health outcomes for Australia's Indigenous people if the nation were to say sorry for having mistreated and injured and killed so many of its Indigenous people.

4.56 In support, the National Sorry Day Committee believes the Federal Government response, in terms of acknowledgment and apology, is inadequate. In its submission, the National Sorry Day Committee states:

The removal of children over several generations has left much of the Indigenous community with distrust, fear and anger towards the dominant society. The Federal Government has not adequately acknowledged this history, nor the trauma which it has caused to successive generations, and the continuing effects on the families of those who were removed.

This refusal to hear and acknowledge the pain ... has had an extremely negative effect on the people who were removed from their families. The refusal of the Government to apologise to them, and to the Indigenous community as a whole, symbolises the refusal to acknowledge the history. This refusal is a denial of the pain they have endured, and a denial of the integrity of the people who have revealed that pain.<sup>63</sup>

4.57 Similarly, the North Australian Stolen Generations Aboriginal Corporation (NASGAC) and the Central Australian Stolen Generations and Families Aboriginal Corporation (CASGFAC) note this inadequacy by drawing attention to the fact that whilst all other States have apologised,<sup>64</sup> the members of the stolen generation in the Northern Territory 'wait in vain', as an apology to those in the Northern Territory can only come from the Federal Government. This is on the basis that it was Commonwealth legislation, policy and administration that directly affected them.<sup>65</sup>

4.58 One witness linked the issue of a national apology to the issue of national leadership. The Uniting Aboriginal and Islander Christian Congress stated:

For the Prime Minister to apologise as an individual is one thing; for the Prime Minister to apologise as Prime Minister and leader of this country is another. It is an issue of accepting responsibility for the leadership of this country.<sup>66</sup>

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62 *Submission 88*, Royal Australian and New Zealand College of Psychiatrists, p. 1746

63 *Submission 25*, National Sorry Day Committee, p. 425

64 See discussion of State and Territory responses at Paragraph 4.73

65 *Submission 54*, North Australian Stolen Generations Aboriginal Corporation and the Central Australian Stolen Generations and Families Aboriginal Corporation, p. 1033

66 *Transcript of evidence*, Uniting Aboriginal and Islander Christian Congress, p. 290; See also, *Transcript of evidence*, Liberty Victoria, p. 285; and Chapter 2, Paragraphs 2. 26-2.28

### *Reconciliation*

4.59 The Social Issues Committee of the Anglican Diocese of Sydney believes that the lack of an apology is a serious stumbling block for the process of reconciliation, and that moreover, an apology is the essential starting point to ensure that the Government's response to the recommendations of the *Bringing Them Home* report have any impact on the process of reconciliation.<sup>67</sup>

#### *The need for an apology specific to the members of the stolen generation*

4.60 The Uniting Aboriginal and Islander Christian Congress also expressed their concern that the Federal Parliament has been unable to apologise to the 'stolen generation', due to the Government's position. The Government's decision, in the opinion of the Uniting Congress, underscores its failure to acknowledge the past practice of 'racially based' separation of indigenous children from their families.<sup>68</sup> In relation to the Prime Minister's personal apology, the Congress stated:<sup>69</sup>

The alienation of aboriginal people from the prosperity that came with development was not a matter pertaining to the individual; it was a matter pertaining to the government and government policies.

4.61 Another witness stated, that it is important in respect of the stolen generations that an apology is made to them. Mr Toni Buti claimed to have interviewed and spoken with numerous members of the stolen generation, with respect to the Motion of Reconciliation:<sup>70</sup>

... They wanted to hear the word 'sorry'. ... And they wanted stolen generations as a group. The stolen generations wanted their name to be specified in the statement, and it was not.

4.62 One witness, who was herself removed from her family, stated:

I want an apology from the federal government. They do not want to acknowledge what happened about the stolen generation. These words of John Howard's were an insult. I feel like a non-citizen. Nobody wants to acknowledge us and the treatment we receive is still the same. They still think they are superior. They still live in a fantasy world and do not care about us. I want a real apology from the federal government.<sup>71</sup>

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67 *Submission 72*, Social Issues Committee, Anglican Diocese of Sydney, p. 1531. See also *Transcript of evidence*, pp. 192-196

68 *Transcript of evidence*, Uniting Aboriginal and Islander Christian Congress, p. 288

69 *Transcript of evidence*, Uniting Aboriginal and Islander Christian Congress, p. 290; See also *Submission 54*, North Australian Stolen Generation Aboriginal Corporation and Central Australian Stolen Generation and Families Aboriginal Corporation, p. 1034

70 *Transcript of evidence*, Mr Toni Buti, p. 346

71 *Transcript of evidence*, Mrs Rene Powell, p. 387

*Attitudes toward an apology now from the Commonwealth Government*

4.63 There are two important aspects to an apology in this matter, and both were recognised by HREOC: acknowledgment and apology. The complex nature of an apology has resulted not only in the words of the Commonwealth Parliament being analysed. The actions and attitudes of the Commonwealth Government toward the indigenous population are also assessed. There is much similarity between the wording of many of the State and church apologies and that of the Commonwealth Parliament. However, it is really only the Parliament's Motion of Reconciliation that has been scrutinised.<sup>72</sup>

4.64 In relation to the Motion, one witness stated:

My own view is that, by that stage, it is not a matter of whether it constituted a genuine apology or an expression of regret. I think the process that led to it, the background of it and the attitude of the Prime Minister and the government leading up to it suggested to people in the community that it was not sincere. The words may have come close to what was required, but the wheeling and dealing and the fact that the government were doing other things in other areas suggested that they were not sincere. I think that is a large part of why it has not been accepted in the same way.<sup>73</sup>

4.65 The complexity in this issue has resulted in the Commonwealth Government being criticised for its actions, its words and its sincerity. It was stated to the Committee that an apology now from the Prime Minister would be insincere and worth nothing.<sup>74</sup> Indeed, the Prime Minister himself has stated that he would be criticised and accused of being insincere if he was now to make an official apology to the stolen generation on behalf of the Commonwealth Parliament.<sup>75</sup>

4.66 During proceedings, a member of the Committee raised the question of 'where to go from here' in this regard, if the motion is regarded as 'insincere', it would not matter what words were used to 'apologise'.<sup>76</sup>

*Acknowledging more important than apologising?*

4.67 Numerous witnesses have expressed points of view on the Motion of Reconciliation, the issue of an apology and whether 'regret' equates to 'sorry'. However, other witnesses felt that a true acknowledgment would be more far-reaching than an apology:

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72 See also, *Transcript of evidence*, Australian Catholic Social Welfare Commission, pp. 605-607

73 *Transcript of evidence*, Victorian Aboriginal Legal Service, p. 222

74 *Transcript of evidence*, Ms Trish Hill-Wall, p. 428

75 The Hon. John Howard MP, Transcript of Interview with John Laws, *2UE Radio*, 29 May 2000.

76 *Transcript of evidence*, Senator Abetz, p. 223

... it is not about an apology. It is about acknowledging and believing that there was a genocide which took place; that people were removed from their families, that people did suffer extreme brutality, isolation, degradation and humiliation.

It is not about, 'Hey, I'm sorry that your people were removed or that you were removed.' It is more about saying, 'Look, I really do believe that this happened. It wasn't just 10 per cent of you' – because 10 per cent was just in Western Australia. It is about saying that we are believed, that we are not liars. I am a survivor. I am sitting here in front of you. I survived the horrific degradation and brutality and I am still standing ... That would mean more to indigenous people in this country than an apology.<sup>77</sup>

4.68 This has become a consistent theme in the arguments of members of the stolen generation and their representative organisations. Whilst an apology as such may include a specific acknowledgment of what the apology is for, the fact that the Commonwealth Parliament's motion does not specifically acknowledge the 'stolen generation' has resulted in dissatisfaction for members of the stolen generation, irrespective of what actual words were used to 'apologise'.

## Conclusions

4.69 The Committee wishes to note the important distinction between the Commonwealth Parliament and the Commonwealth Government. After examining the evidence provided to the Committee, the Committee is of the view that there is confusion on the issue of who should deliver an apology. The *Bringing them home* recommendation in this area pertained to the Commonwealth Parliament.

4.70 The Committee acknowledges that some consultation took place with ATSIC and other members of the Indigenous community on the wording of the Motion of Reconciliation, as recommended by the *Bringing Them Home* report. However, the consultation may not have been broad or wide enough and as a result, the wording remains unsatisfactory to some.

4.71 Nevertheless, the Committee believes the Motion of Reconciliation was a fundamental step in the acknowledgment of the history that stands between Indigenous and non-Indigenous peoples. However, this does not constitute a formal national apology on behalf of the Commonwealth Parliament to members of the stolen generation, as recommended.

4.72 The Committee is also of the view that no matter how well-intentioned the wording of the Motion of Reconciliation or subsequent motions of apology, all such statements must be acceptable to members of the stolen generation (however broadly defined). An overwhelming majority of evidence to the Committee suggested that the wording of the Motion of Reconciliation was not acceptable as a national apology to

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77 *Transcript of evidence*, Ms Trish Hill-Wall, pp. 428-429

members of the stolen generation who gave evidence to the Committee. This in turn, inhibits reconciliation.

### **State and Territory Parliaments and Police Forces – Acknowledgment and Apology**

4.73 As previously mentioned, the lack of participation (or delayed participation in some cases), from many State Governments in this inquiry resulted in the Committee being unable to hold discussions with State Governments during its series of public hearings.<sup>78</sup> Therefore, there is a piecemeal understanding of the implementation of many of the recommendations of the *Bringing Them Home* report. However, in the area of acknowledgment and apology, the Committee was able to gain an understanding of the implementation of these recommendations from those governments who did participate (ACT, NT, SA, WA and Vic), and also from other sources.<sup>79</sup>

#### *New South Wales*

4.74 The process of acknowledgment and apology in New South Wales (NSW) began with a speech on reconciliation by the Premier of NSW, Mr Bob Carr, in the Legislative Assembly on 14 November 1996.<sup>80</sup>

4.75 In response to the recommendations of *Bringing Them Home*, Mr Carr moved a formal State apology to Aboriginal people for practices and policies that were responsible for the stolen generation. The motion was unanimously passed by both Houses of the NSW Parliament on 18 June 1997.<sup>81</sup>

4.76 The Committee received no evidence to suggest that these resolutions were not considered an apology, or was unacceptable for other reasons. The motion read as follows:

That this House on behalf of the people of New South Wales –

- (1) apologises unreservedly to the Aboriginal people of Australia for the systematic separation of generations of Aboriginal children from their parents, families and communities;
- (2) acknowledges and regrets Parliament's role in enacting laws and endorsing policies of successive governments whereby profound grief and loss have been inflicted upon Aboriginal Australians;

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78 See also Chapter 1, Paragraphs 1.6-1.11

79 See for example, *Social Justice Report 1998*, pp. 95-146; Individual State and Territory Government Responses; and State and Territory Parliament *Hansard* Transcripts

80 *Bringing Them Home*, p. 287

81 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 27

- (3) calls upon all Australian Governments to respond with compassion, understanding and justice to the report of the Human Rights and Equal Opportunity Commission entitled *Bringing Them Home*; and
- (4) reaffirms its commitment to the goals and processes of reconciliation in New South Wales and throughout Australia.

### New South Wales Police Service

4.77 On 22 May 1998, NSW Police Commissioner, Peter Ryan, offered an apology to members of the stolen generation on behalf of the NSW Police Service. The apology read as follows.<sup>82</sup>

On behalf of the Police Service, I offer a sincere apology to members of the Stolen Generations and to all Aboriginal and Torres Strait Islander people for the prominent role the police played in enforcing past unjust laws ...

4.78 Apologies in NSW also came from the NSW Department of Juvenile Justice, NSW Department of Community Services and NSW Health.<sup>83</sup>

### *Queensland*

4.79 On 3 June 1997, the then Leader of the Opposition, the Hon. Peter Beattie, introduced a motion of acknowledgment and apology into the Queensland Parliament. This motion was amended by the Government to be an expression of sincere regret for the hurt suffered by Aboriginal and Torres Strait Islander people who in the past were unjustifiably removed from their families.<sup>84</sup>

4.80 When Mr Beattie became Premier in 1998, he introduced a similar motion of apology. On 26 May 1999, this new motion was passed by the Queensland Parliament, despite being opposed by the Opposition.<sup>85</sup> The Committee again received no evidence to suggest that this more recent motion was unacceptable to the members of the stolen generation. The 1999 motion read as follows:

That this House apologises to the Aboriginal and Torres Strait Islander people in Queensland on behalf of all Queenslanders for the past policies under which Indigenous children were forcibly separated from their families and expresses deep sorrow and regret at the hurt and distress that this caused.

This House recognises the critical importance to Indigenous Australians and the wider community of a continuing reconciliation process, based on an

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82 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 27

83 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 27

84 Queensland Legislative Assembly *Hansard*, 3 June 1997, pp. 1193-2009

85 Queensland Legislative Assembly *Hansard*, 26 May 1999, pp. 1946-1982

understanding of, and frank apologies for, what has gone wrong in the past and total commitment to equal respect in the future.

### Queensland Police Service

4.81 The Queensland Government stated that whilst the Queensland Police Service have acknowledged the role of the police in the removal of children, and participated in appropriate commemorations, the Queensland Police Service have not formally apologised.<sup>86</sup>

### *Victoria*

4.82 Both Houses of the Victorian Parliament unanimously passed a motion of apology. The motion was passed in the Legislative Assembly on 17 September 1997 and in the Legislative Council on 7 October 1997.<sup>87</sup>

4.83 The apology on 17 September 1997 in the Legislative Assembly was done in the presence of representatives from the Koori community in which the former Premier, the Hon. Jeff Kennett, reaffirmed the Victorian Government's commitment to work in partnership with the Koori community to redress the disadvantages experienced by Koories.<sup>88</sup>

4.84 The Committee received no evidence to suggest that this motion was not appropriate. The motion passed in both Houses stated:

That this House apologises to the Aboriginal people on behalf of all Victorians for the past policies under which Aboriginal children were removed from their families and expresses deep regret at the hurt and distress this has caused and re-affirms its support for reconciliation between all Australians.

4.85 The Premier, the Hon. Steve Bracks, restated this motion in the Legislative Assembly during proceedings on 5 April 2000.<sup>89</sup>

### Victorian Police Service

4.86 The Victorian Government stated that an acknowledgment and apology consistent with the Parliamentary motion was to be considered by the Victorian Police.<sup>90</sup> In the Victorian Government's response to *Bringing Them Home* in November 1997, it was noted that Victoria Police, in its recently launched Aboriginal Policy Statement, acknowledged that the historical relationship between Indigenous people and law enforcement agencies, in particular police, has often been difficult.

86 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 143

87 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 86

88 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 86

89 Victorian Legislative Assembly *Hansard*, 5 April 2000, p. 709

90 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 86

The Aboriginal Policy Statement further acknowledged that the role of police historically in Victoria involved the enforcement of government policies that now are acknowledged as racist and as a significant cause of distrust of police by the Koori community.<sup>91</sup>

4.87 The Victorian Government's *Implementation Status Report* of November 1998 simply states that Victoria Police have recognised and acknowledged the past injustices done to Australia's Indigenous people through the enforcement of government policies, and the impact this has had on both individuals and communities. This implies that Victoria Police have not formally apologised. It should be noted however, that Victoria Police have participated in the *Bringing Them Home* commemorative activities.<sup>92</sup>

### *South Australia*

4.88 On 28 May 1997, both the South Australian House of Assembly and the South Australian Legislative Council made a bipartisan apology to the Aboriginal community for the mistakes of the past.<sup>93</sup> The formal motion read as follows:

That the South Australian Parliament expresses its deep and sincere regret at the forced separation of some Aboriginal children from their families and homes which occurred prior to 1964, apologises to these Aboriginal people for these past actions and reaffirms its support for reconciliation between all Australians.<sup>94</sup>

4.89 On 13 April 2000, the South Australian Parliament sought to reaffirm its apology to the Aboriginal people for the past policies of forcible removal and the effect of those policies on the Indigenous community.<sup>95</sup> The outcome of this motion is unknown, as debate was adjourned and has not since resumed.

### South Australian Police Service

4.90 Whilst the South Australian Police as such have not formerly apologised, the South Australian Government states:

It is accepted that the apologies made by the Premier and the Minister for Aboriginal Affairs in Parliament on 28 May were made on behalf of the whole community as well as the Government workforce. It is the belief of the South Australian Government that the apologies made by the Premier

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91 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 86

92 *Submission 109*, Victorian Minister for Aboriginal Affairs, pp. 2992-2993

93 See South Australian House of Assembly *Hansard*, pp. 1435-1443; and South Australian Legislative Council *Hansard*, pp. 1425-1432

94 South Australian House of Assembly *Hansard*, 28 May 1997, 1435-1443

95 South Australian House of Assembly *Hansard*, 13 April 2000, pp. 937-939



and Minister for the mistakes of the past include any relevant actions of South Australia Police.<sup>96</sup>

### *Tasmania*

4.91 On Wednesday 13 August 1997, the Tasmanian House of Assembly carried a motion, without dissent, of formal apology to the Aboriginal people and the Aboriginal children who were removed from their families and homes.<sup>97</sup>

4.92 This motion included an invitation from the Tasmanian House of Assembly to Ms Annette Peardon, as a representative of the Aboriginal community, to address the House at the Bar of the House. The motion read as follows:

- (1) That this House, on behalf of all Tasmanians, expresses its deep and sincere regrets at the hurt and the distress caused by past policies under which Aboriginal children were removed from their families and homes, apologises to the Aboriginal people for those past actions and reaffirms its support for reconciliation between all Australians.
- (2) That at the conclusion of the debate on the motion, the House invites Ms Annette Peardon as a representative of the Aboriginal community, to address the House at the Bar of the House.<sup>98</sup>

### Tasmanian Police Service

4.93 The Tasmanian Government states that an acknowledgment and apology consistent with the Parliamentary motion will also be extended by Tasmanian Police, after consultation with the appropriate agencies and organisations.<sup>99</sup> This has not been confirmed.

### *Western Australia*

4.94 A motion of apology was introduced by the Leader of the Opposition Dr Geoffrey Gallop, to the Legislative Assembly and was passed unanimously by all present.

4.95 The Committee heard little evidence to suggest that this State apology was not regarded as such.<sup>100</sup> The motion read as follows:

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96 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 161

97 Tasmanian House of Assembly *Hansard*, 13 August 1997, pp. 35-86

98 Tasmanian House of Assembly *Hansard*, 13 August 1997, pp. 35-86

99 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 251

100 Some witnesses in Western Australia did make suggestions or comments about the Western Australian government apology - that it would have been better if indigenous people had been able to hear it (*Transcript of evidence*, Anglican Social Responsibilities Commission, p. 326); or that, as the apology did not specifically mention the 'stolen generation', it had not been satisfactory (*Transcript of evidence*, Mr Buti, p. 346). However, similar sentiments may have been felt by people in other states about their relevant state government apology. The Committee is not implying that Western Australian government

That this House apologises to the Aboriginal people on behalf of all Western Australians for the past policies under which Aboriginal children were removed from their families and expresses deep regret at the hurt and distress that this caused.

### Western Australian Police Service

4.96 In its response to *Bringing them home*, the Western Australian Government stated that the Western Australian Police Service ‘acknowledges the role played by police’ in the removal of Aboriginal children from their families and that the apology made by the Parliament of Western Australia ‘encompasses acknowledgment by the Western Australian Police Service, of its historical involvement in past policies and practices of forcible removal’.<sup>101</sup>

### *Australian Capital Territory*

4.97 On 17 June 1997, the first sitting day following the tabling of *Bringing Them Home* in Federal Parliament, the ACT Legislative Assembly unanimously carried a motion of apology to the ACT Indigenous community.<sup>102</sup> Pursuant to another motion, in August 1997, six Aboriginal people addressed the Legislative Assembly and told their stories of forced separation and its effects.<sup>103</sup> The motion of apology read as follows:

That this Assembly:

- (1) apologises to the Ngun(n)awal people and other Aboriginal and Torres Strait Islander people in the ACT for the hurt and distress inflicted upon any people as a result of the separation of Aboriginal and Torres Strait Islander children from their families;
- (2) assures the Aboriginal and Torres Strait Islander peoples of this territory that the Assembly regards the past policies of forced separation as abhorrent and expresses our sincere determination that they will not happen in the ACT;
- (3) affirms its commitment to a just and proper outcome for both the grievances of Aboriginal and Torres Strait Islander people adversely affected by those policies and the recommendations of the *Bringing Them Home* Report;
- (4) acknowledges that the Government is negotiating a Regional Agreement with the Ngun(n)awal people in relation to the Ngunnawal Native Title claim in the ACT; and

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apology was an exception, only noting that there was limited information on the attitudes of people in other states

101 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 204

102 Australian Capital Territory Legislative Assembly *Hansard*, 17 June 1997, pp. 1603-1617

103 *Submission 42*, Australian Capital Territory Government, pp. 737-738

- (5) by this resolution seeks to take an important step in the healing process which is fundamental to reconciliation between Aboriginal and Torres Strait Islander peoples and non-indigenous members of the ACT community.

4.98 The ACT only became a self-governing Territory in 1989 and was therefore not a party to the past practices, laws and policies. It is also unknown if any removals even occurred in the ACT. Despite these facts the ACT Parliament felt the need to offer the symbolic gestures of acknowledgment and apology. The Committee received no evidence to suggest that this motion of apology was regarded as inappropriate or unsatisfactory.

#### Australian Federal Police

4.99 The Chief Police Officer of the Australian Capital Territory is the Commissioner of the Australian Federal Police. As a Commonwealth officer, the Commissioner is bound by Federal Government policy, which does not support a formal national apology.<sup>104</sup>

#### *Northern Territory*

4.100 On 18 February 1998, the Leader of the Opposition, Mrs Margaret Hickey, moved a motion of apology in the Northern Territory Legislative Assembly. The motion read as follows:<sup>105</sup>

That this Assembly:

- (1) apologises to the Aboriginal and Torres Strait Islander people for the policies and practices under which children in the Northern Territory were forcibly separated from their families and expresses deep sorrow and regret at the hurt and distress that this has caused; and
- (2) recognises the critical importance to indigenous Australians and the wider community of a continuing reconciliation process, based on understanding of, and frank apologies for, what has gone wrong in the past, and a total commitment to equal respect in the future.

4.101 During a lengthy debate, the Hon Timothy Baldwin MLA, then Minister for Aboriginal Development, stated:<sup>106</sup>

Madam Speaker, the government will not be supporting the motion, nor will I support it personally. The Territory government is not responsible for the policies that are talked about here, and it will not be making an apology.

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104 *Submission 42*, Australian Capital Territory Government, p. 754

105 Northern Territory Legislative Assembly *Hansard*, 17 February 1998, p. 605

106 Northern Territory Legislative Assembly *Hansard*, 17 February 1998, p. 608

4.102 The then Chief Minister of the Northern Territory, the Hon. Shane Stone MLA, sought not to vote against the motion, rather to amend it. The amendments read as follows:<sup>107</sup>

Madam Speaker, I move that the motion be amended by omitting all words after 'that this Assembly' and inserting the following in their stead:

- (1) endorses the actions of the CLP government in supporting and continuing to provide support to Aboriginal Territorians, particularly those who were adversely affected by the previous policies and practices of Commonwealth governments under which mixed-race children were separated from their mothers and families;
- (2) notes that the CLP government of the Northern Territory has led the way for all Australian governments by contributing substantial funds to the 'Coming Home' conference in Darwin in September 1994, assisting the Stolen Generations reference group to make its submission to the Human Rights and Equal Opportunity Commission's inquiry and establishing a protocol to access relevant records held by the Northern Territory government to facilitate family unification;
- (3) recognises the valuable contribution made by the victims of the Commonwealth policy in later life to the social, economic and political development of the Northern Territory; and
- (4) acknowledges the personal trauma which inevitably resulted from such a policy, but affirms that positive and material support for the victims and their families is more beneficial than the empty-apology option taken by a number of parliaments in the Australian states.

4.103 Finally, Mr Sydney Stirling, Member for Nhulunbuy, moved an amendment to the amendment moved by the Chief Minister. The amendment was as follows:<sup>108</sup>

Omit from paragraph (4) the words: 'but affirms that positive and material support for the victims and their families is more beneficial than the empty-apology option taken by a number of parliaments in the Australian states'.

I am deleting that, and to the remainder of the amendment moved by the Chief Minister I wish to add the 2 paragraphs originally put forward in the motion by the Leader of the Opposition. I do not think I need to read through that.

4.104 The aforementioned amendment to the Chief Minister's amendment was not agreed to. The Chief Minister's amendment was agreed to by a 17 to 7 majority, with the motion, as amended, agreed to by a 16 to 7 majority.<sup>109</sup>

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107 Northern Territory Legislative Assembly *Hansard*, 17 February 1998, pp. 615-616

108 Northern Territory Legislative Assembly *Hansard*, 17 February 1998, p. 637

4.105 The Committee received minimal evidence as to the appropriateness or otherwise of the motion by the Northern Territory Parliament or whether members of the stolen generation felt it necessary for the Northern Territory Parliament to apologise. Some stolen generation members stated that they felt the Northern Territory Government had been helpful to them by supporting a number of initiatives,<sup>110</sup> and this may be seen in part as support for the broad approach of the Territory Government that it was not responsible for the past but it has helped overcome the effects of it.

4.106 In its submission, the Northern Territory Government stated that neither an apology nor compensation would be appropriate in its case:

The Chief Minister of the Northern Territory expresses regret at the effect of these policies but stresses that the Territory Government was not party to the removal of children. In particular the Chief Minister has stated that an apology and compensation are not appropriate, rather these are matters for Commonwealth consideration.<sup>111</sup>

4.107 Evidence to the Committee suggests that members of the stolen generation in the Northern Territory are more concerned with a formal apology from the Commonwealth Parliament.<sup>112</sup> Similar comments were also made in Western Australia.<sup>113</sup>

4.108 When asked to assess the Northern Territory Government's response to *Bringing Them Home*, and the fact that this response extends to not accepting responsibility for matters that occurred prior to the Territory coming into existence as a self-governing territory, NASGAC and CASGFAC stated:

... they are quite right. They were not responsible for the many years we were under Commonwealth rule. Usually when we wish to develop a project that may not be specifically NT government design or whatever, the NT government is very responsive in assisting us in finding resources or in-kind support to develop those projects.<sup>114</sup>

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109 For full debate, see Northern Territory Legislative Assembly *Hansard*, 17 February 1998, pp. 605-639

110 See *Transcript of evidence*, Ms B. Cummings, p. 459

111 *Submission 64*, Northern Territory Government, p. 1230; See also, *Transcript of evidence*, p. 442

112 *Submission 9*, Retta Dixon Home Aboriginal Corporation, p. 180; *Submission 22*, Yirra Bandoo Aboriginal Corporation, p. 410; *Submission 31*, Anyinginyi Congress Aboriginal Corporation, p. 496; *Submission 54*, North Australian Stolen Generation Aboriginal Organisation and Central Australian Stolen Generation and Families Aboriginal Corporation, pp. 1033-1034; *Submission 63*, Garden Point Association, p. 1204; *Submission 77*, Central and Northern Land Councils, pp. 1596-1597; and *Submission 99*, Croker Island Association, p. 2284

113 See, for example, *Transcript of evidence*, Mrs Powell, p. 387 and *Transcript of evidence*, Western Australian Aboriginal Justice Council, pp. 368-369

114 *Transcript of evidence*, pp. 459-460

### Northern Territory Police Service

4.109 The Northern Territory Government stated that the Northern Territory Police cannot be held accountable for actions and policies of past governments and jurisdictions. However, senior officers express sympathy, on behalf of the Department, for those affected by the separation policies.<sup>115</sup>

### **Conclusions**

4.110 Based on the evidence received, the Committee is satisfied with the apologies and statements of regret made by the ACT and all State parliaments. Evidence from the Northern Territory relating to the need for an apology, and the failure of the Northern Territory Parliament to pass a formal apology, strengthens the Committee's feeling that a formal national apology is needed. However, both Northern Territory and national apologies are desirable insofar as they would both acknowledge past and present hurt.

4.111 The Committee commends the NSW Police Services for the delivery of a separate formal apology and regards the motions by those State parliaments who included the police services to constitute apologies on behalf of the police services in question.

### **Churches and Others – Acknowledgment and Apology**

#### *Church Responsibility*

4.112 *Bringing Them Home* noted that there were early cases of removal of children by missionaries without the consent of the parents. More importantly, in Victoria, the absence of government oversight of welfare services enabled churches and other non-government agencies to remove children from their families without any court order or other official approval.<sup>116</sup>

#### *The role of the Churches*

4.113 The role of the churches is highlighted by a joint statement on behalf of the Bishops' Committee for Social Welfare, the National Aboriginal and Torres Strait Islander Catholic Council and the Australian Catholic Social Welfare Commission:

We do accept that there were cases where the actions of Church child welfare services and organisations were instrumental in keeping children separate from their families ...<sup>117</sup>

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115 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 279

116 *Bringing Them Home*, p. 405

117 *Bringing Them Home*, p. 405

4.114 *Bringing Them Home* stated that the churches share some responsibility for forcible removals because of their involvement in providing accommodation, education, training and work placements for the children.<sup>118</sup> Not only were churches involved in these aspects, they were, and continue to be, responsible for the records of those Indigenous children under their care.

4.115 As a result of the significant role churches played in this process, *Bringing Them Home* stated that submissions to the Inquiry called on the churches to acknowledge their respective roles and extend apologies to the children, their families and communities.<sup>119</sup>

#### *Statements of Acknowledgment and Apology*

4.116 While *Bringing Them Home* noted that many branches of different churches extended apologies in their submissions to the national inquiry,<sup>120</sup> the *Social Justice Report 1998* notes that all major denominations have acknowledged their role and apologised at the national level, although in quite diverse ways. Church acknowledgment and apology has also been offered at state, regional and local levels.<sup>121</sup>

4.117 An example of these apologies is that from the Anglican Church of Australia, passed at a General Synod meeting in Adelaide in February 1998. The apology read as follows:<sup>122</sup>

On behalf of the Anglican Church of Australia, the General Synod apologises unreservedly and seeks forgiveness for any part played, knowingly or unwittingly, by the Anglican Church that has ever contributed in any way to that hurt or trauma by the unjustified removal of Aboriginal and Torres Strait Islander children from their families, and for our past silence on this issue.

4.118 Whilst apologies have been extended by the major denominations, and smaller churches such as the Seventh Day Adventists, the Committee is not aware if all denominations that were involved have apologised.

4.119 The Committee received no evidence to suggest that the apologies from the churches were regarded as inadequate. Other church actions – such as returning land, participation in any financial compensation, and improving access to records, will be considered in later chapters.

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118 *Bringing Them Home*, p. 405; See also, *Submission 12*, Churches of Christ Federal Aborigines Board Inc, pp. 296-346

119 *Bringing Them Home*, p. 287

120 *Bringing Them Home*, pp. 288-292

121 *Social Justice Report 1998*, pp. 91-92

122 *Social Justice Report 1998*, p. 91; See also, *Submission 19*, Australian Catholic Social Welfare Commission, pp. 381-384; and *Submission 69*, The Anglican Church of Australia General Synod, p.1520

## Commemoration

4.120 Organisation of commemoration was recommended to be the responsibility of ATSIC and the Council for Aboriginal Reconciliation. A 'Sorry Day', as recommended by *Bringing Them Home*, was celebrated nationally on 26 May 1998, the first anniversary of the tabling of the *Bringing Them Home* report in Parliament. This has become an annual commemorative event.

### *Particular Responses*

4.121 The NSW Government participated in National Sorry Day and on this day in 1998, the Premier announced a \$45,000 Government grant to the Stolen Generations Memorial Foundation.<sup>123</sup>

4.122 The Western Australian Government has shown support for commemoration through initiatives such as when, on 20 May 1998, the then Minister for Aboriginal Affairs, Dr Kim Hames MLA, presented Aboriginal Elders with a *Sorry Book* held by the Aboriginal Affairs Department.<sup>124</sup>

4.123 The ACT Government acknowledges the importance of commemoration and has demonstrated its support through numerous initiatives. The ACT Government provided \$5,000 for the Journey of Healing event held at Parliament House on 26 May 1999 and gave an additional contribution of \$2,000 to assist with the delivery of community workshops on the *Bringing Them Home* report in the ACT.

4.124 In addition, the ACT Government flew Indigenous flags alongside the Australian flag on 26 May 1999 to commemorate the history of forcible separation and its effects on Indigenous people nationally, together with providing \$500 to assist with the staging of an exhibition titled *In the Interests of Bennelong*, which was opened on Sorry Day. The Indigenous Education Unit within the ACT Department of Education and Community Services played a major role in informing all ACT Government schools of important dates for Indigenous commemoration.<sup>125</sup>

4.125 The Journey of Healing Canberra outlined a series of events held in Canberra in support of commemoration, including a ceremony at Parliament House, a 'Coming Together' barbecue at Commonwealth Gardens, a 'Coming Home' cultural and fashion event, a 'Telling the Stories' breakfast, a 'Walk for Healing' and a special ecumenical service. Sorry Books were also signed and presented to Indigenous representatives at the Parliament House ceremony, and at the 1998 NAIDOC Week Catholic Mass. On the first anniversary of Sorry Day, a Journey of Healing was launched nationally.<sup>126</sup>

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123 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 30

124 Ministerial Council for Aboriginal and Torres Strait Islander Affairs, *Collected Responses*, p. 205

125 *Submission 41*, Australian Capital Territory Government, p. 803

126 *Submission 8*, Journey of Healing Canberra, p. 71



The Journey of Healing Canberra lists numerous other regional and local proposals for commemoration that are in progress.

4.126 Of more recent significance, are the walks for reconciliation that have taken place in most capital cities, such as the People's Walk for Reconciliation across the Sydney Harbour Bridge that took place on 28 May 2000. The Committee received no evidence to suggest that any of the above-mentioned initiatives for commemoration were regarded as inappropriate.

4.127 The Aboriginal Justice Council did raise with the Committee the apparent 'limited success' of Sorry Day in Western Australia. According to the Aboriginal Justice Council, this was the result of a 'lack of adequate information'.<sup>127</sup>

### *Further Proposals*

4.128 In relation to commemorative events, NTSGAC and CASAFAC stated in their submission that more symbolic acts of recognition are required to assist individuals overcome the past. However, where symbolic national events are being staged, greater measures need to be put in place to encourage the Northern Territory survivors to take a meaningful part, including the provision of resources to overcome the tyranny of distance.<sup>128</sup>

4.129 In their submission, the Croker Island Corporation stated that they require operational funds to be able to achieve the restoration of graves and memorials among other initiatives.<sup>129</sup>

## **Conclusions**

4.130 The Committee acknowledges that the recommendation for commemoration in the form of a 'National Sorry Day' has been satisfied.

4.131 The Committee believes, as a result of the Committee's direct consultation with members of the stolen generation and their representative organisations, that further proposals for commemoration, as outlined in recommendation 7b of *Bringing Them Home*, are desirable.

4.132 The Committee is also of the view that consultation with the respective stolen generation representative organisations is required to ensure the most culturally appropriate and effective transfer of information concerning local, regional and national commemorative events.

## **Recommendation**

127 *Transcript of evidence*, Aboriginal Justice Council, p. 363

128 *Submission 54*, North Australian Stolen Generation Aboriginal Corporation and Central Australian Stolen Generation and Families Aboriginal Corporation, p. 1045

129 *Submission 99*, Croker Island Association, p. 2284

**Recommendation 3**

The Committee **recommends** that recommendation 5a of *Bringing Them Home* be fulfilled by the Australian Parliament, and that a ‘Motion of National Apology and Reconciliation’ be settled following wide consultation with individual members of the stolen generation and representatives of stolen generation organisations.

**Recommendation 4**

The Committee **recommends**, as a gesture of good faith, as in the case of the Parliament of the Australian Capital Territory, that the Northern Territory Parliament make a formal apology to members of the stolen generation. The form of words for such an apology should be decided in consultation with representative members of the stolen generation in the Northern Territory.

**Recommendation 5**

The Committee **recommends** the Commonwealth Government consult with the Aboriginal and Torres Strait Islander Commission, Reconciliation Australia, members of the Stolen Generation and their representative organisations with a view to establishing a national memorial.