

## Submission to Senate Committee inquiry into Compensation for the Stolen Generations

David Hollinsworth

The Rudd Government was rightly congratulated on the long-overdue apology to the stolen generations. While the apology marks the beginning of a new relationship between indigenous and non-indigenous Australians, an appropriate compensation process is essential for genuine healing and justice. Andrew Bartlett's private member's Compensation Bill offers an excellent beginning to the process of developing a nation-wide system of non-adversarial compensation schemes for members of the stolen generations and their families.

Indigenous children have been removed from their families since settlement began. The reasons and circumstances have varied enormously but often it was thought to have been "in the best interests of the children". Regardless of the context or intention, the effects of such removals have been overwhelmingly damaging for those removed and for their families and communities. After decades of campaigning, in 1995 stolen generations people persuaded the Keating government to set up a national inquiry, conducted by the Human Rights and Equal Opportunity Commission.

The inquiry produced the *Bringing Them Home* report, which made 54 recommendations to the newly elected Coalition government in 1997. A key component of the report was measures to make reparations including an acknowledgement and apology, guarantees against repetition through community education and appropriate legislation, and measures for rehabilitation, including language and culture centres, family tracing and reunion services, and protection and access to records. It also called for measures for restitution: counselling services and indigenous control of the welfare of indigenous children.

The final element in the range of responses was monetary compensation for those directly affected by forcible removals for economically assessable damage, for example, for physical and mental harm, loss of opportunities, loss of culture and land rights.

The Howard government's response was primarily framed in terms of denying the harm of indigenous child removals, specifically rejecting the concept that the current generations should be held responsible for actions in the past. This position was morally bankrupt and legally incorrect.

In 1997 the non-government parties supported the recommendations of the *Bringing Them Home* report that a national compensation fund be established to avoid the need for very costly and traumatic court cases. The value of this sensible approach was reinforced by the Howard government spending \$11.5 million opposing the Gunner-Cubillo cases in the Northern Territory.

Under Howard, the Australian government's response was limited to

programs of rehabilitation and restitution, primarily counselling and reunion services. These individual services are very valuable but fail to recognise the need for restitution for the horrendous impact of forcible removals that ravaged almost every indigenous family between 1900 and 1970.

Last August Bruce Trevorrow successfully sued the South Australian government for false imprisonment and breach of fiduciary care for his removal in 1958. He was awarded \$775,000, however, the case took 13 years to finish and was enormously costly in terms of Bruce's health and finances. It is financially and morally hazardous to force stolen generations people to individually go to court to win such cases. It is disgraceful that having said they would accept the Trevorrow decision the SA state government now seeks to appeal the judgement.

To address the 'unfinished business' and to truly offer healing for all Australians, the national government must respond to all 54 recommendations of the Bringing Them Home report. Many people of stolen generations will choose not to seek monetary compensation, but all have the common law right to seek compensation for genuine harm resulting from their forcible removal. Others will seek support for reunions, memorials, to learn birth languages, and for support groups, forms of group compensation anticipated by the report.

Most waited for years for the formal apology. Many are deeply concerned that inappropriate child welfare practices continue today. None want to be faced with the very costly and traumatic option of fighting governments through the courts. They cry out for a humane, measured, and cost-effective tribunal.

If the Australian parliament genuinely wishes to make a new beginning on the journey of healing, more than an apology is required. All Australians must face up to the appalling damage done to those removed and to their families, and take proper steps to provide reparations in all its forms. To argue that efforts to "close the gap" for all indigenous people is the right way to make reparations to the stolen generations ignores their long-established and specific claims. Reparations are inseparable from a genuine acknowledgement and apology.

One essential component of reparations is a simple, non-adversarial and respectful system of compensation that recognizes the problems with litigation and offers a healing closure and acknowledgement to those harmed by previous government policies and practices. The Bill proposed by Senator Bartlett is a good beginning to such a long overdue system.

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Please note this submission is in a private capacity and does not necessarily represent the views of the Stolen Generations Alliance of which I am a member.