



VICTORIAN ABORIGINAL CHILD CARE AGENCY CO-OPERATIVE LIMITED

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Victorian Aboriginal Child Care Agency Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Stolen Generations Compensation Bill 2008

Introduction

1. The Victorian Aboriginal Child Care Agency was the first organization of its kind to be established in Australia. In 1976, the first Program Director, the late Mrs Molly Dyer, reflecting widespread Aboriginal community concern about the ease with which Aboriginal children were still being fostered and adopted into non-Aboriginal families, gave institutional shape to the need for advocacy and support for children and their families.
2. Children were not the only concern however, as VACCA assisted many who had been removed, to seek and be reunited with their estranged families.
3. These early services are still part of the VACCA suite of programs.
4. VACCA played a key role in the campaign to establish the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, through material and moral support for the Secretariat of National Aboriginal and Islander Child Care (SNAICC).

Bringing Them Home

5. *Bringing The Home* (BTH), the Final Report of the Human Rights and Equal Opportunity Commission's National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families made a number of recommendations about the issue of monetary compensation to those individuals affected by the removal policies.
6. It is important not to forget that BTH did this within the framework of the van Boven principles as applied to those affected by acts of Genocide defined in the Genocide Convention Act.
7. Monetary Compensation is therefore, just one part of a package of reparations to ameliorate the impact of genocidal acts.

8. VACCA believes that other measures of reparations are still relevant and need to be assessed in the light of the widespread consequences of the removal policies for all Aboriginal People.
9. Specifically in relation to Monetary Compensation, Recommendation 14 stated that individuals should be compensated under the following “heads of damage”:
 - a. Racial Discrimination
 - b. Arbitrary deprivation of liberty
 - c. Pain and suffering
 - d. Abuse, including physical, sexual and emotional abuse
 - e. Disruption of family life
 - f. Loss of cultural rights and fulfilment
 - g. Loss of native title rights
 - h. Labour exploitation
 - i. Economic loss
 - j. Loss of opportunities
10. While there is no indication that the proposed Tribunal will not address compensation under these heads of damage, the flat rate plus supplement for time spent in institutions does not appear to be consistent with an approach that considers these “heads of damages” in compensation.
11. BTH also proposed that the following procedural principles should be applied in the operations of the Tribunal:
 - a. Widest possible publicity.
 - b. Free legal advice and representation for claimants.
 - c. No limitation period.
 - d. Independent decision-making which should include the participation of Indigenous decision-makers.
 - e. Minimum formality.
 - f. Not bound by the rules of evidence.
 - g. Cultural appropriateness (including language).
12. The Bill does not discuss procedural principles. We therefore urge the architects of this Bill to ensure that the principles outlined above and recommended in BTH are adhered to.

Compensation Amount

13. The matter of the amount of compensation is a significant issue for us. Between the amount awarded by the Supreme Court of South Australia to Mr Bruce Trevorrow - \$520,000 plus an amount of \$250,000 in interest – and the amount being offered by the Government of Tasmania – estimated to be in the region of \$50,000 at the upper level and \$5,000 at the lower end, there is clear discrepancy.
14. The Canadian Government is reportedly offering an amount equivalent to AUD 45,700 to the Native Canadians who were incarcerated in boarding schools.
15. The proposed *Stolen Generations Compensation Bill 2008* will make lump sum payments of \$20,000 to each individual supplemented by \$3000 per year of institutionalisation.
16. If one were to deduce that this amount includes consideration of all the heads of damage identified by BTH, it is a long way short of the SA Supreme Court’s assessment of compensation for damages and harm.

17. The Senate or the architects of the Bill need to make clear their rationale for arriving at the sum being proposed, particularly how the amount referred to in the Bill can be reconciled with the level of compensation offered by a Court that is likely to have stricter and higher standards of proof and evidence.
18. The supplement for “institutionalisation” is too narrow and could exclude “heads of damage” consideration in compensation amounts for those who were not “institutionalised” but were adopted or fostered out removed with any other justification.

Other Matters

19. BTH recommended that claimants should be provided free legal advice and representation. Claimants should also be provided free assistance in preparing their claims for the Tribunal through legal or other community services.
20. The Eligibility criteria exclude anyone removed after 31 December 1975. There is no rationale provided for this. In the light of testimony in BTH of some who were fostered or adopted after this date, it would be reasonable to suggest that at the very least, the Tribunal needs to include some mechanism for screening such claims on the margins of the dates selected.
21. Section 5 (2)[a] should include the wording “removed from his or her family during childhood by compulsion, duress or undue influence” (BTH Rec 18. pg 312).
22. The Senate Committee should seek Parliamentary support for an assessment of the total package of reparations provided by all Australian Governments in response to the BTH recommendations including their total monetary value.
23. Finally, we draw your attention to the van Boven principles regarding reparations for loss of culture due to removal. One of the consequences of the removal of children from their community and culture is that the transmission of culture from one generation to the next is disrupted or blocked depending on the particular experiences of families and communities. We urge this Senate Committee to consider strengthening of cultural revival programs to include culture as arts as well as culture as customs, beliefs and “a way of life”.

Muriel Bamblett
Chief Executive Officer