

NSW SORRY DAY COMMITTEE

PO Box 3085 REDFERN NSW 2016

8 April 2008

Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam

Inquiry into the Stolen Generation Compensation Bill 2008

The New South Wales Sorry Day Committee Inc is a not-for-profit community organisation located in Redfern, NSW. The Committee is made up predominantly of members of the Stolen Generations who as children had been placed into institutions or fostered and adopted into non-Aboriginal families. The aim of the organisation is to provide a fully functioning support service for members of the Stolen Generations in NSW.

Our Stolen Generations members are now our well respected Elders and make a significant contribution to the Aboriginal and broader communities. Our Committee consults broadly and attempts to talk with as many members of the Stolen Generations as possible. This process takes time and is treated with the utmost sincerity, sensitivity and respect. Agreement is usually reached through consensus. Meetings are held on a weekly basis at Redfern. The meetings attract dedicated committee members who represent the children taken to various government institutions and church "homes" throughout NSW, and also children who had been adopted or fostered. Attendance at the meetings is voluntary. News from our meetings is spread by phone, fax, email and personal visits.

We are pleased to provide you with our submission to the Inquiry into the Stolen Generation Compensation Bill 2008. In our submission we wish to acknowledge the *Bringing them Home* Report which was tabled over a decade ago:

All the harms and losses suffered by people affected by forcible removals are recognised under the common law or under contemporary statutory regimes as losses for which compensation can be awarded. People who have suffered these harms and losses should not be denied a remedy just because the perpetrators were mainly governments or because the victimisation was on such a large scale. (HREOC: 302)

Our submission is divided into two sections. The first relates to the *Stolen Generation Compensation Bill, 2008* as a particular model for compensation to members of the Stolen

Generations. The second section of our submission relates to the Committee's term of reference relating to 'reviewing any relevant unimplemented recommendations of the 1997 *Bringing them home* report.'

1. STOLEN GENERATION COMPENSATION BILL 2008

Before addressing the specifics of the *Stolen Generation Compensation Bill 2008* we particularly wish to draw the Senate's attention to Recommendations 14 - 20 in the *Bringing them Home* Report which articulate the principles for payment of monetary compensation to members of the stolen generations. A thorough review of those recommendations should be made by the Committee and relevant material found in the Report *Restoring Identity* (Cornwall, 2002). That report which was the final report of the *Moving Forward* Consultation Project, which was coordinated by the Public Interest Advocacy Centre (PIAC) and the Aboriginal and Torres Strait Islander Commission, with significant input by members of the Stolen Generations. The report was written prior to the Canadian Residential Schools' Survivors compensation and model adopted in Canada, which has influenced the type of model adopted in the *Stolen Generation Compensation Bill 2008*. We strongly feel that the proposed Stolen Generations Compensation Bill 2008 in its current form is inadequate. It does not fully acknowledge, and in some cases misrepresents, compensation as was understood as part of reparations for the Stolen Generations, their families and the communities they were removed from. The intergenerational impact of the removal of Aboriginal and Torres Strait Islander children from their families and communities, which is what the *Bringing them home* Report clearly documented, is not addressed in this proposed bill.

Our recommendations are numbered according to sections of the proposed bill.

RECOMMENDATIONS:

1. Short Title

RECOMMENDATION: The title of the Bill should be amended from "Generation" to "Generations" and through out the Bill the term 'Stolen Generations' should be capitalised.

5. Eligibility criteria for ex gratia payment:

RECOMMENDATION: In the cases where descendents of members of the Stolen Generations are making claims and there are cases of sibling factionalism, mediation should be provided to ensure a fair process for all family members.

6. (3) Application for ex gratia payment

RECOMMENDATION: Due to the difficulty for some members of the Stolen Generations and their descendents to put together the relevant documentation to help support their claims and for individuals and families to come forward for such a process, point (3) where it says 'An application must be made within 7 years commencing on the commencement of this Act' should be changed to 10 years

11. Amount of ex gratia payment

RECOMMENDATION: Payments should be made to all members of the Stolen Generations which include children who were adopted and fostered.

RECOMMENDATION: Payments of compensation should be determined on a case by case basis. Compensation should be appropriate for each individual claimant's circumstances. Payments should not be capped at \$20,000 and instead should be equivalent to the amounts awarded for damages in common law cases (see Recommendation 14 of the *Bringing them Home* Report).

RECOMMENDATION: Members of the Stolen Generations who were not placed into institutions, and were instead fostered or adopted, are disadvantaged by the \$20,000 cap. They are precluded from the additional \$3,000 payment for each year of institutionalisation even though they may have been subject to severe physical, sexual, emotional and psychological abuse. We recommend that members of the Stolen Generations who were not placed into institutions retain the right to make claims for compensation for each year they were removed from their natural family under legislation.

12. Payment of ex gratia payment

RECOMMENDATION: Payments made by the Stolen Generations Tribunal should not preclude individual claimants from making a common law claim, should their circumstances permit (see Recommendation 20 of the *Bringing them Home* Report).

RECOMMENDATION: All payments made under the Stolen Generations Tribunal should be tax free and not affect claimants' Centrelink payments.

15. Procedures for merit selection of appointments under this Act

Section 15 of the Proposed Bill describes the appointment of the Tribunal members but does not describe the logistical functioning of the tribunal and how its work will be monitored and input given to the tribunal about its work. We therefore feel there needs to be an advisory committee which reports to the tribunal on how its on-the-ground work is functioning.

RECOMMENDATION: There needs to be a tribunal advisory committee consisting of, among others, members of the Stolen Generations from each State and Territory. This should include 4 individuals (2 men and 2 women) from each State and Territory who would work at their state and territory levels and who would send one representative each to the tribunal when it sits to inform the tribunal of jurisdictional matters relating to the work of the tribunal. These advisory committees would also monitor the process and provide bi-monthly update reports to the tribunal. Funding for these committees would be provided by the Federal Government.

22. Additional Support:

RECOMMENDATION: That point (1) needs to be changed to include all members of the Stolen Generations irrespective of whether or not they have received compensation. And that these healing centres and services need be accessible

to the families of members of the Stolen Generations in order to address the transgenerational legacies of past Aboriginal and Torres Strait Islander child removals.

RECOMMENDATION: There needs to be counselling provided for all members of the Stolen Generations and their families when they go through the process of making an appearance before any type of Stolen Generations Tribunal. There also needs to be aftercare in the months after their hearings and when the Tribunal would rule on their compensation claims. This should be coordinated with State / Territory Link Ups, Bringing Them Home Counsellors and other relevant service providers who have established relationships with members of the Stolen Generations and the relevant issues relating to these individuals experiences. Relevant resources should be provided to these organisations so they can adequately provide support as is needed.

2. REVIEW OF THE UNIMPLEMENTED RECOMMENDATIONS OF THE *BRINGING THEM HOME* REPORT

In many ways, the effects of separation – the reactions to, strategies to cope with, and psychological and physical impacts of separation – may be passed from one generation to the next. This means that separation not only affects the many adults and their families and communities who experienced separation themselves, but also affects the children of those who were separated. This in turn affects the children of the children, resulting in a continual cycle....The effects of separation do not ‘die out’ or go away because separated people have died. The effects will remain embedded in ourselves, our children, our grandchildren and our communities unless and until they are effectively addressed. (Wilson, 1997: 168)

Before, stating our recommendations regarding this part of the Inquiry’s term of reference, we feel it imperative that the Committee understand the holistic value of the *Bringing them home Report*. Even one recommendation left unimplemented, even partially so, prevents the healing and moving forward for members of the Stolen Generations, their families and communities. This therefore impedes any prospect of true reconciliation – symbolic and practical – between Indigenous and non-Indigenous Australians. The National Apology offered by Prime Minister Rudd and endorsed by the Australian Federal Parliament, was the beginning of a process which still requires much more resources – both human and material – to be invested in achieving reparation for the Stolen Generations, their families and communities.

The Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA) found, in its latest report relating to the *Bringing them home* Report that

...those who were removed from their families suffered poorer outcomes over a range of discrete socio-economic indicators. (MCATSIA, 2006: 8)

The Report suggests that there is not one specific area in which removed Aboriginal and Torres Strait Islander Australians tended to suffer the most. (MCATSIA, 2006) **Rather Aboriginal and Torres Strait Islander Australians who were removed tended to suffer disadvantage over a range of indicators, which would suggest that their quality of life and social and emotional well being, is worse than their non removed Indigenous counterparts.**

2007 marked the 10th anniversary of the tabling of the *Bringing them home* Report in the Australian Federal Parliament. For many members of the Stolen Generations, their families, communities and organisations working with the Stolen Generations, this anniversary was a moment of reflection and disillusionment. The disillusionment was in large part due to the lack of progress on the implementation and fulfilment of the 54 recommendations from the *Bringing them home* Report and corresponding on-the-ground improvement in relation to the social and emotional well being of members of the Stolen Generations and their families and Aboriginal communities generally.

RECOMMENDATIONS:

- 1. Whole of Government funding and policy approach relating to services, programmes and resources relevant to implementing the 54 recommendations of the *Bringing them home* Report:**
 - a. There needs to be Ministerial coordination between the Federal Minister for Health and Aging and the Federal Minister for Families, Housing Community Services and Indigenous Affairs (FAHCSIA), which would create a working partnership between the Office of Aboriginal and Torres Strait Islander Health (OATSIH) and FAHCSIA's network of Indigenous Coordination Centres throughout the States and Territories.**
 - b. An inter-departmental memorandum of understanding needs to be established to facilitate these departments working together. As well, a coordination taskforce comprised of policy managers, project coordinators and other related staff of both departments needs to be developed. This taskforce would also include 5 Aboriginal or Torres Strait Islanders, three of whom would be members of the Stolen Generations. None of these five individuals should be employees of any government department.**
 - c. These taskforces would be responsible for updating both ministers on a monthly basis and before its commencement, establish a baseline evaluation model in order to monitor the progress of the taskforce and the work at the jurisdictional levels. These Federal departments would need to work in a coordinated fashion with relevant State and Territory Indigenous Affairs departments/agencies and state and territory departments which provide services to Indigenous Australians.**
- 2. Implementation / Monitoring Taskforces: There is a need to create at both the Federal and jurisdictional levels taskforces which will monitor the implementation status of the outstanding *Bringing them home* Report recommendations. The role of these taskforces and the membership composition of these taskforces need to be determined in full consultation with members of the Stolen Generations, their families, organisations working with the Stolen Generations, and other relevant individuals and organisations.**

There is no need to re-invent the wheel as many networks have already been established which have been supporting members of the Stolen Generations in their States and Territories. These networks though need to be better resourced to ensure their full participation in these taskforces and their ability to develop and help monitor work done in regards to implementing and

fulfilling the 54 recommendations as is required at local, regional, and state/territory levels.

IN SUMMARY

We appreciate the opportunity to provide a submission to the Stolen Generation Compensation Bill 2008. The Stolen Generations members, their families and communities have waited a very long time for acknowledgement and reparations. We see the Stolen Generations Compensation Bill 2008 as being the first step towards meeting the full requirements of reparations outlined in the *Bringing them home Report*. The Federal Government has demonstrated strong leadership in giving a national Apology. We are now asking for further commitment to commence the process of just and proper reparations and in doing so provide justice to a courageous and inspirational group of people, the Stolen Generations.

If you have any queries in relation to the above, please do not hesitate to contact the NSW Sorry Day Committee members on (02) 9319 2935. The NSW Sorry Day Committee members look forward to discussing these matters further with the Committee members at the hearing scheduled in Sydney.

Yours faithfully

Mrs Marie Melito-Russell
Chairperson
NSW Sorry Day Committee Inc

REFERENCES:

Cornwall, Amanda (2002) *Restoring Identity: Final Report of the Moving Forward Consultation Project*. Sydney: Public Interest Advocacy Centre (PIAC)

Human Rights and Equal Opportunity Commission (HREOC), (1997) *Bringing them home: report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. Sydney: HREOC

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Wilson, Tikka Jan & Link-Up (NSW) (1997) *In the Best Interest of the Child? Stolen children: Aboriginal pain / White shame* Aboriginal History Monograph 4: ACT