

ANTaR SA

Australians for Native Title and Reconciliation (South Australia) Inc

c/- 5 Hutt Street, Adelaide, SA, 5000 <http://antarsa.auspics.org>
ph 8227 0170 ; fax 8223 3039 ; email antarsa@internode.on.net



Submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Stolen Generation Compensation Bill 2008

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To: Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia
legcon.sen@aph.gov.au

To the Senate Standing Committee on Legal and Constitutional Affairs,

Australians for Native Title and Reconciliation, South Australia Inc, (ANTaR SA) is pleased to be able to make a submission to this Inquiry into a very important issue to the Australian nation.

We were heartened by the news that this Inquiry was underway, as we were a little over a year ago now, when we heard that Tasmania was establishing a scheme to compensate Tasmanian members of the Stolen Generations.

We have advocated to our State Government, the South Australian Government, that it needs to develop, with Aboriginal people, a scheme to compensate South Australian members of the Stolen Generations.

We are keen to participate in any national advocacy that the Australian Government needs likewise to develop, with Aboriginal people, a national scheme to compensate Australian members of the Stolen Generations in fulfilment of the 54 Recommendations of the 1997 *Bringing Them Home* Report.

It is critical that we, as a country, follow up with some haste the recent, very welcome and well-received National Apology to the Stolen Generations with equally just and well-informed policy that is implemented expeditiously to facilitate the healing processes for the Stolen Generations.

Such policy needs to include a just compensation scheme for the Stolen Generations.

The committee will doubtless be aware how it was in the South Australian Supreme Court last year that Mr Bruce Trevorrow, taken from his Ngarrindjeri family, community and nation, won his claim against the South Australian Government for his unlawful removal while a baby.

It has been a great disappointment to see the South Australian Government challenging the decision.

The case was in the court system for ten years. The State Government was strenuous in defending the claim. The protracted process and the extensive legal costs all round compounded the hurts of the original abrogation of Mr Trevorrow's rights, and ran up extremely expensive legal fees for him.

We recommend that the committee give due consideration to the reflections on the Bruce Trevorrow case of Julian Burnside QC in the 2008 Manning Clark Lecture, given recently by Mr. Burnside.

It is clear that grave injustices were done to Aboriginal and Torres Strait Islander people by the policies of forced removal of children.

Rather than questioning the justice of the right to compensation for Aboriginal and Torres Strait Islander people who have suffered from these policies, Australia should see clearly that they are amongst the most deserving of compensation, and not make them suffer more from having to face and overcome legal processes that will extend their hurts and make fees an obstacle to success.

In line with our support for advocacy for a national reparations scheme, we wish to emphasise one of the important points made by Julian Burnside QC - that a compensation scheme needs to be non-legalistic and substantially not require lawyers to undertake its main operation of offering redress.

Such a scheme, however, needs to deliver a just result, and it needs to do so without long delay.

Compensation Fund

We encourage the committee in its inclination to consider reparations under existing domestic and international compensation models, and review any relevant unimplemented recommendations of the 1997 *Bringing Them Home* report.

Responding to the full 54 recommendations of the *Bringing Them Home* Report is fundamental to Australia justly, sensitively and appropriately addressing the legacies of policies of forced removal that created the Stolen Generations of Aboriginal people and Torres Strait Islanders.

In his Manning Clark Lecture, Julian Burnside, QC, made some productive suggestions on essential provisions for a compensation scheme that may seem to be useful for informing the committee on specific details for a reparations scheme.

Indispensable to a just and effective scheme is that its establishment be negotiated with Aboriginal and Torres Strait Islander Stolen Generations' representatives and other interested parties (such as legal representatives properly authorised by Aboriginal and Torres Strait Islander Stolen Generations).

We encourage the Senate to give effective support to the full intention of the Private Senator's Bill introduced by Senator Andrew Bartlett that proposes a compensation model for ex gratia payments to be made to Aboriginal and Torres Strait Islander Stolen Generations: A "... *Bill for an Act to provide for ex gratia payments to be made to the stolen generation of Aboriginal children, and for related purposes*".

Time has not permitted us more extensive consideration of the detail of the provisions in the Bill.

The grave injustices of the forced removal of children policies that created the Stolen Generations were both individual and collective for Aboriginal and Torres Strait Islander peoples.

For Australians as a nation to progress the national healing process, there needs to be a range of initiatives, in a range of areas and fields, that allows us all together to understand from this shameful part of our common history just how necessary it is for us to live with the full facts of our past, as much as we have made it a necessity for the Stolen Generations by the forced removal of children policies.

One important initiative would be a truth commission into the history of the colonisation of these lands and its effects on its First Peoples. As a nation we need to make amends to Aboriginal and Torres Strait Islander peoples at all levels: as individuals and as a peoples whose national history is one of policies inflicting the forced removal of children.

Glenn Giles

ANTaR SA Co-ordinator