

Legal and Constitutional Affairs Committee

Inquiry into the Stolen Generation[s]

Compensation Bill 2008

This submission is made in their private capacity by:

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We wish to acknowledge the contribution and support of **Elizabeth Rice** who has made a separate submission to this Inquiry.

This submission is derived directly from a submission accepted by the NSW Legislative Council Standing Committee on Social Issues Inquiry into Overcoming Indigenous Disadvantage in NSW (Submission No 57). Confirmation of acceptance was sent on 3 April 2008 by the Principal Council Officer of the NSW Legislative Council Standing Committee, Victoria Pymm, who has given verbal and written permission to Sally Fitzpatrick that contents may also be submitted in whole or in part to the Commonwealth Inquiry into the Stolen Generation[s] Compensation Bill 2008.

The central argument of the following submission is that **a comprehensive response to *Bringing them home* (HREOC, 1997) is essential to ‘closing the gap’.**

In order to meet the tight submission deadline for this Inquiry, we have not redrafted this earlier work. Instead we draw the Committee’s attention to the following sections, and ask that the Committee consider the implications for the Commonwealth with respect to the arguments posed.

Page/s	Paragraph/s
7	Keating quote
8	General argument (all following paras)
12	Part 1 Acknowledgement of Issues
16	The denial of Aboriginal culture
18	Control of wages and entitlements
21	The duty of care; Breaches of the Duty of Care
24	The consequences of child removals (including all following sub-sections)
29	Reflections on Mutual Responsibility
31 onwards	Part 5 (all sections and sub-sections)

Thank you for the opportunity to submit to this Inquiry. We would be pleased to discuss any of the matters raised in this submission with Committee members, at your earliest convenience.

**Submission to Legislative Council Standing
Committee on Social Issues Inquiry into
Overcoming Indigenous Disadvantage in NSW
29 February 2008**

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PURPOSE AND SCOPE OF THIS SUBMISSION

It begins, I think, with the act of recognition. Recognition that it was we who did the dispossessing. We took the traditional lands and smashed the traditional way of life. We brought the disasters. The alcohol. We committed the murders. We took the children from their mothers. We practised discrimination and exclusion.

It was our ignorance and our prejudice. And our failure to imagine these things being done to us. With some noble exceptions, we failed to make the most basic human response and enter into their hearts and minds. We failed to ask – how would I feel if this was done to me? (Keating, 1992, cited in Baum, 2007, p 117).

Purpose

Through a social determinants and human rights approach, this submission comments on a number of historical factors related to Aboriginal disadvantage in NSW. The submission concentrates largely on the effects of NSW Government policies, which dislocated Aboriginal people, particularly children, from country and family and on events which mitigated against their full enjoyment of economic rights and hence, health, wellbeing and quality of life. The submission is also concerned to highlight for the Committee the concomitant responsibility of the NSW Government to make amends for these policies.

Scope

Terms of Reference

The submission does not address all of the terms of reference (TOR). It focuses on:

TOR 1(b) the impact of the following factors on the current lifetime expectancy gap:

- i. environmental health (water, sewerage, waste, other)
- ii. health and wellbeing
- iii. education
- iv. employment
- v. housing
- vi. incarceration and the criminal justice system
- vii. other infrastructure

TOR 1(d) the Federal Government intervention in the Northern Territory and advise on potential programs/initiatives that may or may not have relevance in terms of their application in New South Wales,

TOR 1(e) opportunities for strengthening cultural resilience within Aboriginal communities in New South Wales with a focus on language, cultural identity, economic development and self determination.

General Argument

In summary the argument in this submission is that governments must:

- acknowledge that current Indigenous disadvantage is a direct consequence of past government laws, policies, practices and attitudes
- acknowledge the way Indigenous disadvantage has been deepened by the intersection of different types of discriminatory laws, policies, practices and attitudes
- acknowledge the interactions among different types of disadvantage, including the way social factors are determinants of economic disadvantage and poor health outcomes
- take responsibility for overcoming Indigenous disadvantage
- commit themselves to developing and funding policies, programs and services to overcome Indigenous disadvantage
- undertake these tasks:
 - according to a rights based approach
 - in conjunction with Indigenous people
 - with a commitment to transparent and culturally appropriate monitoring
 - where relevant, in conjunction with other levels of government.

We argue that a comprehensive response to *Bringing them home* (HREOC, 1997) is essential to ‘closing the gap’

Before moving to the detailed examination of these issues outlined in the argument, it is worth:

- reflecting a little on the links between this argument and the lack of progress to date in implementing the *Bringing them home* recommendations
- highlighting the way failure to address the issues in the recommendations hinders reconciliation.

The submission authors note that for the NSW Government as well as the broader ‘reconciliation movement’, the long-term aspiration is ‘walking together’. However, in order for sufficient inter-communal trust to build between Stolen Generations survivors and the wider community in order to ‘walk together’, five steps are essential:

- Acknowledgement and apology;
- Guarantees against repetition;
- Measures of restitution;
- Measures of rehabilitation; and
- Monetary compensation (HREOC, 1997 p 282).

This submission draws on internationally recognised principles of reconciliation to argue that Aboriginal survivors of the Stolen Generations have a moral right to ‘compensation and reparation’ (Amnesty International in Green, 2004). With regard to the practice of withholding the wages and entitlements of Stolen Generations wards, we argue that the NSW Government must extend its efforts to repay the wages and entitlements withheld by previous governments to include reparations for the lost economic opportunities and disadvantages that previous policies and practices inflicted on Aboriginal people.

With respect to compensation, we refer the Inquiry to the work of Cornwall (2002) for a discussion of possible options from a local and national perspective to address the issue of reparations, including the establishment of a Reparations Tribunal.

Recommendations

This submission makes recommendations in relation to selected issues only.

These are made in the text immediately below the issues to which they relate, and are also listed together immediately after this section of the submission.

SUMMARY OF RECOMMENDATIONS

Recommendation 1

That no racially discriminatory policies be implemented in NSW to ‘close the gap’.

That in particular:

- the NSW Government develop and implement its policies to ‘close the gap’ in genuine partnership with Aboriginal people and communities.
- the Inquiry seek the advice of relevant groups in the NT to identify the current, and likely future, impacts of the intervention, including any unintended consequences.

Recommendation 2

That, where money management and budgeting skills are identified by Aboriginal people as an issue for them, the NSW Government work in partnership with them to develop and implement relevant programs and services.

Recommendation 3

That the Inquiry urge the NSW Government to include, as part of its review of the ATFRS, an examination of issues related to oral evidence.

Recommendation 4

That the Inquiry refer to the growing body of knowledge concerning the social determinants of Indigenous health and related evidence that separation and institutionalisation are linked to post traumatic stress, stress which is transferable across and between generations

Recommendation 5

That policies and strategies promoted by the Inquiry be empowering to Aboriginal people and recognise the protective effect of culture in Aboriginal health, well being and quality of life, taking into account developing literature on the social and cultural determinants of health.

Recommendation 6

That the Inquiry invite expert groups, such as the National Advisory Group on Aboriginal and Torres Strait Islander Health Information and Data to participate in this Inquiry.

Recommendation 7

That the Inquiry urge the NSW Government to commit to the publication of an annual report which provides comprehensive, up to date information on the ongoing implementation of the 54 Recommendations of the *Bringing them home* Report.

Recommendation 8

That the Inquiry recommend to the NSW Government that it has a moral responsibility to make reparations as defined in *Bringing them home* to survivors of the Stolen Generations and their families.

That the Inquiry urge the NSW Government to consider, as part of its approach to reparations, a tribunal process such as that recommended in PIAC's *Restoring Identity* Report.

That the Inquiry investigate the Stolen Generations reparations package instigated by the Tasmanian government with a view to recommending such a scheme in NSW.

THE SUBMISSION

PART 1: ACKNOWLEDGEMENT OF ISSUES

Making amends (see *Purpose* in previous part of this submission) requires action, but the action must be informed by acknowledgement of what was done - and how it has affected, and continues to affect, Aboriginal people in NSW.

Acknowledgement of Present Consequences of Past Actions

Former Prime Minister Keating's "Redfern Speech", quoted at the beginning of this document, provides a passionate, succinct explication of the history of the first two hundred years or so of Indigenous and non-Indigenous relations. However, these actions are not really history, in the sense that they are past, as the laws, policies and practices, and the attitudes, which informed them, continue to have profound negative effects on Indigenous lives and Indigenous life chances.

Part of the argument in this submission is that attempts to overcome Indigenous disadvantage need to be grounded in an understanding of the nature and extent of the historical repression of Indigenous peoples in Australia, including:

- the specific impacts of these laws, policies, practices and attitudes on individuals, families and communities
- the pervasiveness of these impacts across families and communities, and through generations
- the ways past laws, policies, practices and attitudes continue to influence present laws, policies, practices and attitudes.

Part 2 of this submission itemises some of the past NSW laws, policies, practices and attitudes that have contributed to contemporaneous levels of Indigenous disadvantage.

Part 3 of this submission illustrates one of the ways this occurs in the NT intervention.

Acknowledgement of Indigenous Rights

Any attempt to overcome Indigenous disadvantage must recognise and acknowledge the part played by past failures to recognise Indigenous rights. These matters are not dealt with in a separate section, as Indigenous rights is not a separate issue, but one that is inextricably linked to every aspect of Indigenous disadvantage.

Acknowledgement of Indigenous rights is therefore central to any attempt to overcome Indigenous disadvantage.

This document highlights some of the rights issues as they relate to the matters discussed. It also acknowledges the need for discussion of rights issues, including sovereignty and a treaty, with Indigenous peoples within a Commonwealth/State/Territory forum guided by Indigenous peoples.

Acknowledgement of Responsibility

This requires an understanding of matters such as the duty of care, the consequences of breaching that duty of care, and the nature of the actions required to make amends, to the extent that this is possible. These matters are covered in Part 4 of the submission.

In dealing with these matters, Part 4 also indicates the way Indigenous disadvantage has been deepened by the intersection of different types of discriminatory laws, policies, practices and attitudes. In its treatment of these issues it extends the account of historical repression to incorporate the health impacts of the separation of Indigenous children from their families and communities.

In this treatment, the submission acknowledges the holistic Aboriginal view of health (as defined at <<http://www.ahmrc.org.au/AboriginalHealthInformation.htm>>, viewed 19 February 2008) which:

Means not just the physical well being of an individual but refers to the social emotional and cultural well being of the whole community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well being of their Community. It is a whole of life view and includes the cyclical concept of life - death - life.

The submission also highlights the benefits that occur when governments accept responsibility for their duty of care. Part 4 provides an example of this, in the section called *Reflections on Mutual Responsibility*.

This submission also discusses the reparations required to ensure that Indigenous futures are not blighted by the consequences of historical repression. As indicated in the previous part of this submission (**Purpose and Scope of this Submission**), making reparation, although it includes monetary compensation, incorporates other

measures as well, including acknowledgement and apology, guarantees against repetition, measures of restitution, and measures of rehabilitation.

This broad definition provides the springboard for the discussion on reparations, which occurs in Part 5 of the submission.

PART 2: A History of Disadvantages – and their Consequences

Attempts to overcome Indigenous disadvantage need to be grounded in an understanding of the laws, policies and practices of past administrations to which Aboriginal people were subjected. This section of the submission highlights some key policies and practices in New South Wales under the administrations of the Aborigines Protection Board and the Aborigine Welfare Board 1883-1969, the bodies responsible for the withholding of Aboriginal wages and entitlements:¹

Restricted access to unemployment benefits

The New South Wales Department of Labour discriminated against Aboriginal people receiving the dole, forcing Aboriginal workers who lost their jobs in the Depression onto Aboriginal reserves and stations in order to access Board rations (Goodall, 1995). Moreover, the rations they received were not equivalent to those available to white unemployed.

Substandard living conditions on government controlled mission stations and reserves

Of the reserves and stations under the administration of the Aborigines Protection Board and Welfare Boards, a lack of funding for housing (both the provision and maintenance), health and rations took an unremitting toll on Aboriginal health. For example, Goodall (1997, pp 193-4) writes that in the early 1930s, poor nutrition and health resulted in major epidemics of respiratory and eye infections among the residents of the largest Aboriginal stations.

The records of the Boards indicate that the poor state of Aboriginal housing was also due to a policy of deliberate neglect intended to force Aboriginal people off their homes on the Aboriginal stations and reserves. For example, in 1960 the poor state of Aboriginal housing resulted in the hospitalisation and death from gastric illnesses of children living on Armidale and Cubawee reserves. At this time, Cubawee housed 110 people, including 69 children living in 12 houses with no bathroom or laundry and without electricity and water. The only water supply was a creek running through

¹ For comprehensive analyses of the laws, practices and policies of these administrations we refer the Committee to Fletcher, 1989; Goodall, 1996; Greer, 2006; Jackson Pulver, 2003.

the reserve that had been declared unfit for either consumption or domestic use (Fletcher, 1989 pp 257-8). While the Government directed the Board to 'fix' these reserves, no additional funding was provided to remedy the poor housing and conditions on the other reserves and stations (Greer, 2006, p 297)

Denial of ability to keep guns, dogs or livestock on reserves

These policies denied the residents opportunities to supplement their diets from hunting, and to gain an economic base from activities such as the agistment of livestock on reserve land (Read, 1981, Parbury and the NSW Ministry of Aboriginal Affairs, 1986 p 98-100).

The denial of Aboriginal culture

The policies and practices of the Boards sought to "shape, normalize and instrumentalize the conduct, thought, decisions and aspirations" (Miller and Rose, 1990: p 8) of the Aboriginal population according to those of the 'white community'. Specific policies included: the removal of Aboriginal girls from stations and reserves; expulsion of 'half-castes' from reserves and stations; banning of traditional languages; and the closing of reserves. The welfare mentality of government resulted in the loss of Aboriginal ways of operating as a family and traditional practices of child rearing (for instance, the encouragement of self-direction and independent action). Aboriginal children removed from their families and communities experienced a loss of role, of place and of family in their community.²

In *Bringing them home*, HREOC identified the impacts of the removal policies as follows:

- Pain and suffering of the victims and their families
- Loss of access to their families and their love and support
- Loss of access to and knowledge of their traditional lands
- Loss of their Native Title rights

² Royal Commission into Aboriginal Deaths in Custody (1998). National Report, Vol. 2 - 11.7 'The Child Welfare Legacy', s 11.7.4. Available at <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol2/36.html> (Accessed 2 February 2008).

- Loss of the right to grow up knowing their traditional culture and language
- Loss of the right to have private property
- Loss of inheritance rights
- Loss of freedom
- Loss of the right to determine their own lives and those of their children
- Suffering hardship and abuse whilst detained in institutions
- Suffering hardship and abuse whilst detained in institutions
- Suffering racism and discrimination whilst detained in these institutions (HREOC, 1997: p 303).

A substandard and race based education

From the introduction of compulsory education white communities pressured the Department of Education into excluding Aboriginal children from public schools. The segregation of Aboriginal children into Aboriginal schools located on Aboriginal stations condemned them to poor standards of race based education. These measures ensured that the children who attended these schools were unqualified for all but the most menial positions.

The limited educational opportunities and outcomes for Aboriginal children continued until the 1970s, including:

- Policy to allow Aboriginal people to enrol in public schools only made permanent in 1949 (Fletcher, 1989 p 192). Until 1972 authorities could ban Aboriginal children from state schools (Parbury and NSW Ministry of Aboriginal Affairs, 1986: p 138, Miller, 1985: p 179, 200).
- The number of Aboriginal children who progressed to high school in the 1940s was extremely small. According to Fletcher (1989 p 215), by 1950 no more than 30 to 40 Aboriginal pupils out of an Aboriginal school population of about 1,200 were attempting secondary studies.

- Exceedingly poor retention rates continued to be recorded for Aboriginal children. The Joint Committee Inquiry into Aborigines Welfare in 1965 reported that, of the 500 Aboriginal children enrolled in high schools at that date, only ‘1 [One] had reached 5th year and 48 or about 9 per cent had proceeded beyond 2nd year’.³
- In 1984, a New South Wales survey found that Aboriginal ‘heads-of-households’ averaged 6.5 years of education, 70 percent of households had no job training. The proportion of Aboriginal people in tertiary study was far less than the wider population and 96% of Aboriginal people had no qualifications (Parbury and NSW Ministry of Aboriginal Affairs, 1986: p 138).

Control of wages and entitlements

On 6th December 2006, the Australian Senate Standing Committee on Legal and Constitutional Affairs launched its report – *Unfinished business: Indigenous stolen wages*⁴ – on government policies and practices of control over Aboriginal wages and entitlements throughout Australia. The pervasive nature of these controls and their impacts on the lives of Aboriginal people in NSW are comprehensively documented in “*Eventually they get it all...*” – *Government Management of Aboriginal Trust Money in New South Wales: Research Report*. Sean Brennan and Zoe Craven, Indigenous Law Centre, University of New South Wales, 2006. URL: http://www.ilc.unsw.edu.au/research/documents/ILC_Stolen_Wages.pdf.

The above snapshot of historical episodes of disadvantage is intended to highlight the contribution of past policies and practices to contemporary levels of Aboriginal disadvantage. It is our view that if current efforts to ‘close the gap’ however well intentioned, do not take into account this painful legacy, they will fail to have a deep and lasting impact.

³ Report of the Joint Committee upon Aborigines Welfare Part 1 – Report and Minutes of Proceedings, 1967: p 10. A comparable outcome to that for white children would have meant about 250 out of 500 children completing 2nd year, and at least 24 completing 5th year (ibid).

⁴ In the context of the inquiry, the term ‘stolen wages’ referred to “all wages, savings, entitlements and other monies due to Indigenous people during the periods where governments sought to control the lives of Indigenous people” (Senate Standing Committee, 2006, paragraph 1.13, p.3).

PART 3: Northern Territory Intervention: Income Management Scheme – a Cautionary Example

This part of the submission deals with the Northern Territory (NT) intervention, specifically the ‘income management scheme’. The section addresses some key consequences of income management on Aboriginal communities and individuals.

Briefly, the Northern Territory (NT) intervention ‘income management scheme’ authorises the quarantining of 50% of the social security payments of Aboriginal people in stipulated remote communities in the Northern Territory into a personal income management account. The controlled percentage of income can however be increased to 100% for families in circumstances where their children are deemed not to have satisfactory school attendance.

The present NT intervention is assimilationist to the degree that scant attention is being paid to maintaining and nurturing ‘Indigenous economies’ and cultural responsibilities (Sutton, 2001). The intention of the legislation is to force Aboriginal people to reshape their lives to fit into the Western market economy through changes not only to welfare entitlements, but also to land tenure, business management, asset ownership, CDEP etc.

For example, from a cultural perspective, there is anecdotal evidence that the reduction in discretionary income and the bureaucratic complexity of the store card system under the ‘income management scheme’ is interfering with people’s ability to fulfil their ceremonial obligations. Specifically, it has limited their ability to fulfil obligations to provide essential food to participants engaging in ceremonies. It has also, reportedly, forced changes to peoples’ migratory patterns and freedom of movement.

This aspect of the intervention policy alone contradicts emerging research that says the achievement of “sustainable social change for Aboriginal people” can only occur with the recognition of the legitimacy of Aboriginal culture and agency (Martin, 2006, p 12). Whilst but one thread in the broad fabric of intervention policy, it has the potential to undermine significantly the wellbeing of those affected, who reside both within and outside the nominated communities.

Another serious (albeit unintended) consequence of the policy has been a compounding of the levels of income stress experienced by many Aboriginal people resident in these areas. A form of stress that is already recognised as an important social determinant of Aboriginal health. A glimpse of the effects of the policy for those affected and their families is provided

below in the description of one of the authors' experience/feelings when called on to help a relative 'manage her income'⁵:

Nothing is more undignified than having to ask Centrelink to draw down money for you can spend from your Income Management Fund.

"I'm not a drinker," says my mum.

For an NT person visiting Sydney, Redfern Centrelink is the place to go to organise store cards.⁶ Rather than buying food from the myriad (and more conveniently located) shops available, the store card means purchases of food can be made from only two grocery chains, Coles and Woolworths, while Kmart or Target are stipulated for other essentials.

Confusingly my mother's payment looks like it is less than half the combined benefit due to her as a carer. I am told this is because the regular payments come out of the pension rather than the whole benefit (pension plus allowance).

We sit with the Community Service Officer – who is being incredibly helpful given the considerable gulf in comprehension and language. What we must decide is how much money to put on what my mum describes as 'the little red card' so that we can go and buy some food. As it turns out there is a different card for each retailer. We become very anxious. Do we take all the income out of the managed account or only some. Do we put it all on one card or a bit on several? All that is required of us is to divine the future, or as white fellas might say, budget!

For me, the final straw is the image of what this system may well mean for my mother – the image of her standing in the shop wanting to purchase something special for her family. She will have to ask that retail outlet for all the details of the purchase; and a phone number and contact person. Then she will have to ring Centrelink and give them these details or ask the store to do so. Then Centrelink will approve the purchase and organise to pay for it with the Centrelink credit card!

I am flushed with shame and humiliation at the thought of her being put through such a process - and I am a supposedly financially literate white fella! I walk away from the interview with my mind racing. What if it was me? As my mum keeps repeatedly asking, why are only Aboriginal people affected? What if I were to run around the supermarket and then get to the checkout and there is not enough credit on my little red card? What identification do I need? What happens if I travel? What if there is a delay processing the [paper-based] transactions I did last week at the community store? Who will help me

⁵ The name of the author has been withheld to protect the privacy of the person subjected to this system.

⁶ At the time of writing one of only 4 Centrelink offices in Sydney set up to handle the new system.

understand my Income Management Fund statement? How can I access it? Who do I turn to if there is a dispute over the balance? How will I know if I have enough left in the managed account to cover rent? How will I manage with what are effectively two sets of budgeting figures each fortnight.

Your money, your life and the little red card!

In providing this section, we want to stress to the Committee that the ‘income management scheme’ does not represent a major conceptual shift in policy; rather, the philosophical underpinnings are demonstrably similar to those of the ‘protectionist’ and ‘assimilationist’ interventions of the last century that are well documented in “Unfinished Business”, the 2006 Report of the Senate Inquiry into Aboriginal stolen wages.

The current policy of enforced dependency without the provision of services to enhance Aboriginal agency, such as financial literacy, is simply replicating the psychosocial devastation of past policies and practices.

Recommendation 1

That no racially discriminatory policies be implemented in NSW to ‘close the gap’.

That in particular:

- the NSW Government develop and implement its policies to ‘close the gap’ in genuine partnership with Aboriginal people and communities.
- the Inquiry seek the advice of relevant groups in the NT to identify the current, and likely future, impacts of the intervention, including any unintended consequences.

Recommendation 2

That, where money management and budgeting skills are identified by Aboriginal people as an issue for them, the NSW Government work in partnership with them to develop and implement relevant programs and services.

PART 4: RESPONSIBILITY FOR ISSUES

This part of the submission deals with:

- the duty of care
- breaches of the duty of care
- consequences of these breaches.

It also provides a brief reflection of the meaning and operation of mutual responsibility.

The Duty of Care

While the Crown in Australia has parental rights over all her born subjects, through court actions and legislations previous Protection and Welfare Boards bypassed the State's fiduciary *duty of care*, i.e. where one party is dependent or vulnerable, and the other has discretionary powers over the first (HREOC, 1997, p 259). The Aborigines Protection Board, for example, argued that legislation was necessary because it had an obligation to 'save' the children [that is, a duty of care] and 'to not do so would deprive the children of the opportunity to rectify their imperfections and to become part of the general community' (Greer, 2006, p 253). The legislative framework not only removed Aboriginal parents' common-law rights over their children (Reynolds, 2001, p 163) but placed many children in harm's way, as documented by the stories from the Stolen Generations (HREOC, 1997).

The next section of this submission provides a brief account of the history of the removal of Indigenous children from their families and communities. The section that follows it outlines the consequences of the removals.

Breaches of the Duty of Care

Child removals: the Stolen Generations⁷

In New South Wales, the period of forced removals of Aboriginal children from their families and communities extended from the mid 1800s until 1970. While the exact number of children removed can never be known because of the incomplete nature of the records, Read (1981 in HREOC, 1997: p 36) estimates that 5,625 children were

⁷ The term 'Stolen Generations' refers only to children removed on the basis of their race alone.

separated from their families. Of this total, estimates place the number of children removed by the Aborigines Welfare Board at 57%. The pervasiveness of this policy was borne out by a survey of 370 adults conducted in Bourke in 1972. Of those surveyed, one in three had been separated from their families in childhood for five or more years (Hunter, 1995: p 378 cited in HREOC, 1997: p 36, 225).

The breach of care extends beyond the social disadvantage arising from the separation of children from their family and culture, to include the levels of sexual and physical abuse. *Bringing them home* reports that sexual exploitation and abuse were common in evidence received. Nationally, at least one in every six (17.5%) witnesses reported such victimisation (HREOC, 1997 p 194). According to former Aboriginal and Islander Social Justice Commissioner, Mick Dodson, the perpetrators of this abuse included the government officials who ostensibly had a duty of care to the children they removed.⁸

It is impossible to convey the extent of the exploitation and disadvantage suffered by Aboriginal people under these policies. In an attempt to convey for the Committee a sense of this we reproduce the words of Pearl Gibbs in her broadcast appeal she made on behalf of her people:

Our girls and boys are exploited ruthlessly. They are apprenticed out by the Aborigines Welfare Board at the shocking wage of a shilling to three and six per week pocket money and from two and six to six shillings per week is paid into a trust fund at the end of four years. This is done from fourteen years to the age of eighteen. At the end of four years a girl would, with pocket money and money from the trust, have earned £60 and a boy £90. Many girls have great difficulty in getting their trust money. Others say they have never been paid. Girls often arrive home with white babies. I do not know of one case where the Aborigines Welfare Board has taken steps to compel the white father to support his child. The child has to grow up as an unwanted member of an apparently unwanted race. Aboriginal girls are no less human than my white sisters. The pitiful small wage encourages immorality. Women living on the stations do not handle endowment money, but the managers write out orders. The orders are made payable to one store in the nearest town – in most cases a mixed drapery and grocery store. So you will see that in most cases the mother cannot buy extra meat, fruit or

⁸ “Stolen Generations speak of cycle violence” ABC PM 28 September 2007. URL: <http://www.abc.net.au/pm/content/2007/s2046662.htm>

vegetables. When rations and blankets are issued to the children the value is taken from the endowment money. The men work sixteen hours per week for rations worth five and sixpence. The bad housing, poor water supply, appalling sanitary conditions and the lack of right food; together with unsympathetic managers, make life not worth living for my unfortunate people (Gibbs, 8 June 1941, Radio Station 2GB cited in Gilbert, 1973: p 13).

The consequences of child removals

The longer people live in stressful economic and social circumstances, the greater the physiological wear and tear they suffer (Wilkinson and Marmot, 2003, p 10).

The past practices of governments have played a central role in the social determinants of Aboriginal health (Carson, *et al*, 2007, p xxiii). The harm caused by these policies is not however limited to those generations removed. The 2002 National Aboriginal and Torres Strait Islander Social Survey reported that 38% of respondents had either been removed themselves (8%) and/or had relatives (e.g., grandparents 15%, aunts or uncles 11% and parents 9%) who, as a child, had been forcibly or otherwise removed from their natural family (Australian Bureau of Statistics, 2004, pp 5-6)⁹.

Research into the public health crisis in many communities across Australia repeatedly points to the intergenerational effects of the removal of the children and identifies myriad disadvantages (social, health and economic), including but not limited to:

1. Childhood effects of trauma

Separation and institutionalisation can amount to traumas (HREOC, 1997, 196). Childhood removal is noted as a very significant cause of some of the emotional issues by which Indigenous people are now troubled; in its distinctive horror and in its capacity to break down resilience and render its victims perpetually vulnerable (HREOC, 1997 p 193).

There can be a range of responses:

⁹ Forty three (43) of the 99 Aboriginal deaths in custody investigated by the Royal Commission into Aboriginal Deaths in Custody, 'experienced childhood separation from their natural families through intervention by the State, mission organisations or other institution'. In NSW over half of the cases had been separated from their families (RCIADIC, National Report, Vol. 1 (1998) Childhood Separation. URL: <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/38.html> (accessed 1 February 2008).

Uprooted children who are able to create stable and supportive relationships with adults and peer groups are ... more likely to adjust. Those from economically and socially stressed families where social disintegration pushes parents beyond endurance, and those who are uprooted before the age of five, are least able to form meaningful relationships with adults or peers and are the most likely to develop acute symptoms approximating post-traumatic stress disorder:

Depression, psychic numbing, feelings of helplessness, anxiety, fear, instability, agitation, low self-esteem, paranoia, confusion, inflexibility and suicidal feelings ... the child may also experience sleep disturbances, hyper vigilance, loss of concentration, loss of memory and psychosomatic disorders. (Cited in Cairns, 1996 in Haebich, 2000 p 378-9).

2. *Fractured sense of self*

Stolen Generations talk about being brainwashed into acting and thinking like white people. Cultural and spiritual genocide occurs when oppressors believe that the 'oppressed are non-persons' (Harre, 1993 p 106 in Atkinson, 2002), 'with no culture or identity as human beings, or with a culture or identity that is inferior' (Atkinson, 2002 p 69). Atkinson comments on the effects of the forcible removal policies (2002 p 70-72):

The results are a group of profoundly hurt people living with multiple layers of traumatic distress, chronic anxiety, physical ill-health, mental distress, fears, depressions, substance abuse, and high imprisonment rates. For many, alcohol and other drugs have become (sic) the treatment of choice, because there is no other treatment available. ... For others, acting out the alienation and violence they had experienced meant a cycle of offending and re-entering other institutions of containment, juvenile detention centres and prisons. ...

Anger is a normal human response to a violation of the self. For some, however, the anger becomes disabling. They cannot express it safely to others or themselves because the places in which they live are unsafe. ...

Identity becomes fractured and fragmented. The sense of self appears to be become lost. ...

Rowe (1987) has described the greatest human fear as the experience that our identity, our self, is being annihilated ... Cultural genocide not only works to

destroy the cultures of oppressed peoples, it also eradicates the sense of self, of self-worth, and of well-being in individuals and groups so that they are unable to function from either their own cultural relatedness, or from the culture of the oppressors. The feel in a world between, devalued, and devaluing who they are...
... Consequently they may “build their own prison and become simultaneously prisoner and warden” (Baker 1983: 40), and even executioner.

3. *Learned behaviour of child sexual abuse and poor parenting skills*

Research shows that a small proportion of children who have been abused will go on to become abusers and that those abused may not be able to properly care for or protect their own children. Moreover, that this outcome flows not only from the history of the Stolen Generations but from colonial history, and is:

not [emphasis added] just a part of Aboriginal culture, it's not a part of culture at all. It does flow from colonisation and it does flow from the fact that so many of our children, as part of the history of the Stolen Generations were abused in so many ways, including sexually abused and the resulting trauma of that, you know, is still having ramifications and being played out today.¹⁰

4. *Increased potential for crime and violence, including family violence and sexual assault*

Research indicates damaged communities become self-perpetuating (Garbarino, 1995; Stanley, Tomison & Peacock, 2003 cited in ACSAT, 2006 p 60). The damage caused by unresolved grief and trauma of the past, combined with factors such as poverty, unemployment, poor housing and an under-resourced education system has led to an increased potential for crime and violence, including family violence and sexual assault in many Aboriginal communities.

The relationship between historical practices of child removal (and other factors of dispossession) and disproportionate rates of incarceration for Aboriginal people is documented by the Winnunga Nimmityjah Aboriginal Health Service who have for eight years provided health services to two NSW prisons and the ACT Remand Centres:

¹⁰ Hannah McGlade interviewed in “Stolen Generations speak of cycle violence” ABC PM 28 September 2007. URL: <http://www.abc.net.au/pm/content/2007/s2046662.htm>

...the 'causes of the causes' for Aboriginal Australians' incarceration are manifold. They commenced with colonization and dispossession, stolen wages and stolen generations (sic). These events led to disempowerment, loss of self determination, marginalization, racism and loss of culture and identity. This has impacted on the lived social determinants associated with poor health. For example, at the individual level intense sadness, depression and remorse can be experienced as well as loss of sense of self. Compounding over generations and growing more complex over time, this pain can become internalized into abusive and self-abusive behaviours within families and communities. Human trauma and anger, mental health problems, drug and alcohol misuse, and domestic violence are some of the lived repercussions of these past government policies. Good parenting models were lost with the institutionalisation of the stolen generations [as evidenced by the research; and is] reflected [in] experiences of poor parenting, examples of trauma and anger in committing crime and lack of resilience in stepping out of the cycle of incarceration. (Winnunga Nimmityjah Aboriginal Health Service, 2007).¹¹

The following vignette is based on the lived experiences of Stolen Generations survivors known to the authors:

Mary was repeatedly raped by the household men when she was sent out to work by the Board. She was just 15. A child born of this assault was also removed at the time of her birth, perpetuating the cycle of grief and trauma. No one was ever brought to account for the rapes.

Now Mary is a grandmother. Recently it became possible for her to reclaim the wages she earned during her time as a ward, working as a domestic; wages which were withheld and held in trust by the Aborigines Welfare Board.

The evidentiary based nature of the repayment scheme set up to hear Mary's claim, and the fact that accounting records deemed necessary to establish the legitimacy her claim, put Mary's case in doubt.

Moreover, the repayment scheme established to redress this issue will not take into account the pain, suffering and lost opportunities she endured. Mary, now an Elder, also does not like the fact that the Panel which will hear her case is made up of young

¹¹ Winnunga Nimmityjah Aboriginal Health Service. The social determinants of Aboriginal prison health and the cycle of incarceration and their implications for policy: In Australian Capital Territory Case-Study. Case study presented at the Commission on Social Determinants of Health - International Symposium on Indigenous Health - Australia 2007, April. URL: <http://som.flinders.edu.au/FUSA/SACHRU/Symposium/>

Aboriginal people. Her dispute is not with her own people; it is with the NSW Government.

Mary worries daily for her own and her children's circumstances. She agonises over how her fractured upbringing impacted on her own mothering skills, and she constantly wonders about what might have been. While most of her children are doing well, some have found good employment and are even buying their own homes; she worries for the eldest two, especially one who has been in and out of gaol a number of times.

She worries because another is abusing his wife and kids and the family believe that sexual abuse is going on between the siblings.

Mary is told by her doctor she should try to come to the stress management classes that the local elders' group has started as all this worry could be behind her hypertension and the shortness of breath she feels most days.

5. Potential for adverse health impacts

Most of you will also know of the dangers in making generalisations. However, there is a very tragic generalisation common amongst Aboriginal families, in my own Aboriginal family. "Funerals are happening all the time!" It has got so even today some people cannot grieve anymore. Their tears have dried up. (Sally Fitzpatrick, pers. comm., 2007)

Further evidence of the adverse health impacts of removals is provided by Wendy Hermeston, in her 2005 *Medical Journal of Australia* article: 'Telling you our story: How apology and action relate to health and social problems in Aboriginal and Torres Strait Islander communities.'¹²

However, before quoting Hermeston, it is worth reinforcing the holistic Indigenous view of health referred to in Part 1 of this submission. This holistic view:

Means not just the physical well being of an individual but refers to the social emotional and cultural well being of the whole community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well being of their Community. It is a whole of life view and includes the cyclical concept of life - death - life.¹³

To return to Hermeston, she states:

¹² http://www.mja.com.au/public/issues/183_09_071105/her10025_fm.html, viewed 19 February 2008.

¹³ <http://www.ahmrc.org.au/AboriginalHealthInformation.htm>, viewed 19 February 2008.

How could these removal policies have had such an effect on such a great number of individuals across Australia, and could that explain the **poor health** [emphasis added], educational and socioeconomic status and the social problems of Indigenous people so visible today? The effects of the policies are numerous and include:

- The grief of parents and family for the child or children removed;
- The interruption to family and community structure when children have been taken;
- The loss of identity, of rightful place in family, of ties with family, community and culture of the children removed;
- The anxiety of the search for family and identity;
- The turmoil, for all, of trying to fit each other back in each other's lives; and
- The pain and anger when this doesn't happen as it was hoped, or if it can't happen at all.

Each of these effects manifests itself in various ways, leaving its impact on relationships, **physical and mental health** [emphasis added], family structure, parenting skills and social and criminal behaviour.

Reflections on Mutual Responsibility

So far mutual responsibility in Australia seems to have been regarded as a trade: *if we (the government) provide this, you (Indigenous peoples) will do that*. Moreover, it has been a trade carried out between parties with, currently, unequal power.

The authors argue for a reframing of responsibility as it relates to mutual obligation. In particular, they believe that:

- the inspirational power of governments' acknowledging responsibility, and then acting responsibly, should be recognized in its own right
- it is not always right, necessary, or beneficial to insist on a trade.

For example, anecdotal evidence from a Central Australian community affected by petrol sniffing shows that the behaviour of community leadership changed following the roll out of Opal fuel. These changes were not only a product of the intervention of less harmful fuel, but also of a response from Elders. This response occurred because Elders saw governments and petrol companies taking responsibility for stemming the supply of a sniffable substance, that aspect of the dysfunctional behaviour for which

the government and the corporation were responsible. When the Elders saw the government and corporate agencies taking responsibility for those things over which they had control, their own efforts to regain authority and participate in community life were renewed (Name withheld, pers. comm. 2007)¹⁴.

Apart from the human tragedy, the authors note that there is a significant economic cost for governments in not dealing with, or taking responsibility for, the ongoing issues of people affected by removal – costs involved where people and families are not coping, e.g., imprisonment, mental illness, the associated costs of medication and the of people medicating themselves inappropriately, as well as behaviours that are not healthy. Ultimately, the cost of not taking responsibility is human life.

The authors note that this Inquiry is already in receipt of a number of submissions that make mention of post traumatic stress disorder (PTSD) in relation to current health disadvantage. This submission seeks to draw out the link between acknowledgment of past trauma and healing.

¹⁴ The informant is a long time remote area nurse in Central Australia, pers. comm. to Sally Fitzpatrick, 2007).

PART 5: Closing the 'Gap': What can be done

Closing the gap requires governments to commit themselves to:

- reparation, which involves five components, each of which is discussed below
- measures to ensure Indigenous people have access to services on the same basis as other members of the community.

Reparations – the process of making amends for harm and injustice suffered

There cannot be reconciliation without reparations (Jonas, 2001) and ensuring a comprehensive response to the 54 recommendations of the *Bringing them home* report is part of this ongoing reconciliation process. A significant proportion of the recommendations are related to compensation for the harm suffered by members of the Stolen Generation; compensation widely defined to mean reparation, which should consist of:

- acknowledgement and apology,
- guarantees against repetition,
- measures of restitution,
- measures of rehabilitation, and
- monetary compensation (HREOC, 1997, p.282).

The concept of reparations and compensation is a critical step in the healing of societies:

...victims have rights of compensation, and perhaps how individuals and their governments deal with reparations offers a lens into understanding the extent of remorse and regret...

Compensation is complicated. No compensation ever repairs the loss and betrayal, the suffering and endless nightmares, the lifetime spent without loved ones or trust in humanity. Mental and physical health cannot necessarily be restored. And yet, reparations offer a token of care and connection, of economic or psychological help, especially in the context of remorse and contrition, and with assurance that the violence will never be repeated. Compensation is not a payoff or a silencing, but rather one step among many in the long process of inter-communal healing...

Symbolic reparations also aid the restorative process. Museums, monuments, memorials, public literary and artworks, days of commemoration, new historical narratives, revised history books: all of these are examples of symbolic reparations, and all play a role in re-humanization and national healing... (Green, 2004).

Reparations should include policies and programs that

- support and enhance the attributes and resilience of survivors,
- allow people to get on with their lives, and
- have the same lived experience of opportunity expected by non-Aboriginal Australians.

Acknowledgement, Apology and Guarantees against Repetition

The NSW government is to be commended for leading the nation with its unreserved apology to the Stolen Generations. However, there is still “unfinished business” in the areas of *acknowledgement of past injustices in general* and *guarantees against their repetition*.

Across state, territory and federal governments there is a patchwork of decisions and actions that go part way to acknowledging the past and resolving “unfinished business”. There now needs to be a comprehensive national approach to identifying the outstanding items on that agenda. These items include:

- the need for an explicit commitment by all Parliaments in Australia that they will act to ensure past wrongs are not repeated
- issues of human rights, such as sovereignty and a treaty
- issues relating to the policies, programs and services required to overcome Indigenous disadvantage.

There are three preconditions for the success of this approach:

- The first is that both the identification of the outstanding items and the development of proposals to address them be undertaken in a genuine partnership with Indigenous people.
- The second is that all levels of government be involved in the process.

- The third is that appropriate funding is provided for the agreed proposals, so that guarantees against repetition of past injustices, whether through direct action or through failure to remedy the consequences of past injustices, have real meaning.

Measures of Restitution

This submission acknowledges the work done in NSW to make restitution for the loss of land and the loss of wages. However, it would also like to highlight some outstanding issues in relation to the Aboriginal Trust Fund Repayment Scheme established in 2004 to repay Aboriginal claimants for monies withheld by the Aborigines Protection and/or Welfare Boards.¹⁵

This system as it currently operates is built on an evidence-based model in which the narrow approach to what constitutes evidence has meant a narrow interpretation of the Guidelines, which has limited the ambit of the scheme. This approach is inherently unfair and unjust because it excuses the conduct of the State that failed to keep or maintain records. Moreover, it eschews any recognition of the exploitation and abuse of the children, and the loss and harm to Aboriginal families and communities.

One consequence of the narrow approach is that the scheme has so far failed to address the issue of oral evidence and the protocols needed to allow it to be accepted as primary evidence.

This issue was highlighted recently by former Senator Fred Chaney, who is “a former Aboriginal Affairs Minister in the Fraser years, then co-chair of the Reconciliation Council for five years, former deputy chair of the Native Title Tribunal and now a director of Reconciliation Australia” (from www.abc.net.au/7.30/content/2007/s2160984.htm viewed 19 February 2008).

Mr Chaney’s comments were made in the context of the difficulty of assessing the veracity of the written record relating to child removals, if that record could not be challenged contemporaneously. As the same issues apply in relation to records relating to outstanding Indigenous wages in NSW, it is worth quoting Mr Chaney’s remarks on the records in full.

He said, on 12 February 2008 (see source given immediately above), that:

¹⁵ For more information on the ATFRS, go to: www.atfrs.nsw.gov.au/

The official record becomes very important when you're dealing with things that were 30, 20, 30, 40, years ago. If you deal with these things contemporaneously you may well find the official record is complete rubbish. As I found in the case of a drugged Aboriginal who signed a form, immediately demanded her child back but was totally ignored. A woman in a stable domestic relationship, a woman with other children, a woman who had the support of a missionary, there was no question of wellbeing involved. The official record, but for the fact that it was tackled contemporaneously would have been that mother had consented to the giving away of her child. In the Cubillo case, that was an important part of the evidence. Was it a thumb print or mark on a piece of paper? I'm afraid I'm a sceptic about **official records** which are self serving for officialdom and **do not reflect the reality of what was happening on the ground.** (Emphasis added.)

Recommendation 3

That the Inquiry urge the NSW Government to include, as part of its review of the ATFRS, an examination of issues related to oral evidence.

Justice however for the Stolen Generations requires that the actions of the government extend beyond measures to repay withheld wages and entitlements to encapsulate reparations, both symbolic and economic. International experience shows that for so-called 'victim communities', acknowledgement or apology without action and visible commitment beyond the repayment of legal entitlements can be seen as insufficient and relatively empty (Green, 2004).

Although Australia pursued an official policy of reconciliation beginning in 1991, research indicates that the achievement of reconciliation is inextricably bound to forgiveness and restorative justice (ibid). Restorative justice aims to restore the humanity of the offenders as well as to build bridges between victims and those who betrayed their trust. This process naturally extends beyond acknowledgement and contrition to include reparations, both symbolic and economic.

Measures of Rehabilitation

Rehabilitation has at least two components:

- policies, programs and services that address - specifically - the healing needs of Indigenous individuals, families and communities

- policies, programs and services that address other Indigenous needs created by historical repression, which now manifest themselves in areas such as health, housing, education and employment, to give only a few examples.

These two components do, of course, interact in helping to overcome Indigenous disadvantage; however it is important to ensure that both components are adequately funded if they are to have that effect.

It is also important to understand that:

- considerable “catch up” funding over a significant period of time may be needed for the above purposes before funding levels can stabilise at the level required to support socio-economic outcomes for Indigenous Australians that are as good as those enjoyed by the Australian community as a whole (hereafter referred to as equivalent outcomes)
- the “catch up” funding must be additional to the ongoing funding currently provided for services for Indigenous people
- the “catch up” funding should be clearly identified so that the level of ongoing funding can also be clearly identified, thus facilitating assessment of whether the level of ongoing funding is sufficient to enable Indigenous people to achieve equivalent outcomes on a continuing basis
- neither the “catch-up” funding, nor increases to the level of ongoing funding, should be regarded as compensation, which is a separate matter.

(Please note: the term “ongoing funding” is used here to include both capital and recurrent funding.)

To sum up, measures of rehabilitation focus on the action and funding necessary to ensure that resources allocated for infrastructure and services for Indigenous people achieve parity with those for the rest of the community and result in outcomes equivalent to those of the rest of the community.

Compensation, which includes consideration of at least the pain, suffering and economic loss suffered by individuals, families and communities, is a separate, and additional, matter.

Social Determinants

Aboriginal disadvantage is most frequently represented in terms of a ‘health crisis’ but the poor health outcomes for Aboriginal and Torres Strait Islanders are related to social and economic factors: diseases triggered by poverty; overcrowded housing; poor sanitation; lack of access to education; poor access to medical care for accurate diagnosis and treatment; and poor nutrition. Aboriginal disadvantages, especially for the members of the Stolen Generations began with and were institutionalised by the policies and practices of past governments.

If current efforts by the NSW government to redress Aboriginal disadvantages and to ‘close the gap’ between Aboriginal and non-Aboriginal rates of life expectancy are to succeed, the government must commit to a whole of government approach, which includes appropriate remedies to these past injustices, particularly to the shared experiences of grief and loss experienced by the Stolen Generations and their families. While governments ignore the contribution of past practices to the chronic conditions of disadvantage, Aboriginal concepts of self worth and social inclusion will continue to be eroded.

The authors of this submission commend the NSW Government’s commitment to overcoming the historical legacy of systemic discrimination, however we also recognise that health funding at the community and agency level to ‘close the gap’ merely represents that which Aboriginal people are entitled to as citizens of this State.

To this end, it is important that health initiatives are promoted to Treasury and the general public as necessary strategies to address disadvantages and are not promoted as targeting the individual and collective needs of the survivors of the Stolen Generations.

The enjoyment of health is a fundamental human right, and should be within the reach of all ‘without distinction for race, religion, political belief, economic or social condition’ (WHO, 1948). Yet a significant factor in the enjoyment of the right to health is ‘the social gradient in health and diseases’ which acknowledges ‘the relationship between social environment and health, especially the importance of early life experiences’. Put simply, ‘inequalities in health are the result of inequalities in society’ (Marmot, 2003, p 59).

Policies to address inequities in health must therefore adopt a multi-level response to 'close the gap', yet one that upholds the principle that 'in medical contexts we ought to focus only on need' (Kelly, Morgan, Bonnefoy *et al*, 2007: p 24).

Responses must not rest with the needs of the worst off but adopt a health gradient approach that recognises that the causes of health inequity are in 'the systematic differences in life chances, living standards and lifestyles associated with people's unequal positions in the socioeconomic hierarchy' (Graham and Kelly, 2004 in Kelly *et al*, 2007 p 24).

The need for public health policies to address the health gradient and to adopt a multi-level strategy is borne out by recent Canadian research into child development. The researchers found that healthy child development is predicated on 'a mix of policies dealing with income, education, health and the environment'. In addition to the primary role of parents and families, the roles of 'neighbourhoods, communities, governments, private industry and the voluntary sector' are salient to healthy child development (Public Health Agency of Canada, 2001).

Individual determinants themselves impact in complex ways. Saunders *et al* (2007, pp 79-80) argue that the interrelationship between poverty and deprivation significantly contributes to the very high levels of social exclusion from key areas experienced by Aboriginal people. A differential approach such as that noted above offers a policy framework with the potential to break this cycle.

Recommendation 4

That the Inquiry refer to the growing body of knowledge concerning the social determinants of Indigenous health and related evidence that separation and institutionalisation are linked to post traumatic stress, stress which is transferable across and between generations

Recommendation 5

That policies and strategies promoted by the Inquiry be empowering to Aboriginal people and recognise the protective effect of culture in Aboriginal health, well being and quality of life, taking into account developing literature on the social and cultural determinants of health.

Measuring the 'gap'

The United Nations Permanent Forum on Indigenous Issues (PFII) notes that to address the social determinants of Aboriginal disadvantage, targets and indicators must be developed that are culturally-specific, measure exclusion and reflect the aspirations of indigenous peoples:¹⁶

Indicators must place significant emphasis on indigenous peoples' inherent values, traditions, languages, and traditional orders/systems, including laws, governance, lands, economies etc. Collection of data and development of indicators should, therefore, also represent indigenous peoples' perceptions and understanding of well-being (HREOC, 2007).

The PFII recommends that:

- indicators should focus on the interplay between indigenous and non-indigenous systems (social, political and economic, colonization, industrialization) that result in a series of impacts, such as racism and discrimination, migration to urban centres, youth suicide and disconnection to land and culture;
- indicators that demonstrate inequities and inadequacies in government funding for indigenous peoples' programming and services should also be developed. This data can be illuminating by linking funding levels to mandated areas of government responsibility, assessing their accountability and projecting demand and other impacts into the future; and
- there should be a balance of comparative indicators to assess well-being among non-indigenous and indigenous peoples, and indigenous-specific indicators based on indigenous peoples' visions and understandings of well-being.¹⁷

Finally, these indicators must be capable of reflecting the diversity of Aboriginal peoples, including the experiences of the Stolen Generations. According to a 2006 baseline report by MCATSIA, there is 'evidence to suggest that those people who

¹⁶ See further: www.un.org/esa/socdev/unpfii/en/workshops.html

¹⁷ See further: Permanent Forum on Indigenous Issues, Report of the meeting on Indigenous peoples and indicators of well-being. UN Doc: E/C. 19/2006/CRP.3, 20 April 2006, paras 9-20.

were removed suffered poorer outcomes across a range of discrete, albeit disparate, socioeconomic indicators' (MCATSIA, 2006).

The authors refer the Inquiry to MCATSIA's 'Bringing Them Home Reporting Framework' (Appendix 1).¹⁸

The work of the *National Advisory Group on Aboriginal and Torres Strait Islander Health Information and Data* provides insights into appropriate indicators for social determinants Aboriginal health. Their work in the development of appropriate indicators is ongoing, particularly their work on culturally specific issues such as connection to country and issues of trauma and social exclusion.

Monitoring the implementation of Bringing them home recommendations

While each jurisdiction continues to report on the implementation of the recommendations of *Bringing them home*, data reporting the social and economic status of people forcibly removed is now aggregated within the Productivity Commission's report on *Overcoming Indigenous Disadvantage* (MCATSIA, 2006).

In order to provide transparency in reporting to NSW Stolen Generations, their families and their advocates, we recommend that both quantitative and qualitative data mechanisms be refined to achieve transparent monitoring of the implementation of the recommendations of *Bringing them home* and the impact of those measures implemented.

Recommendation 6

That the Inquiry invite expert groups, such as the National Advisory Group on Aboriginal and Torres Strait Islander Health Information and Data to participate in this Inquiry.

Recommendation 7

That the Inquiry urge the NSW Government to commit to the publication of an annual report which provides comprehensive, up to date information on the ongoing implementation of the 54 Recommendations of the *Bringing them home* Report.

¹⁸ Ministerial Council for Aboriginal and Torres Strait Islander Affairs (2006). Agenda Item 6, 'Bringing Them Home Reporting Framework', Recommendation 3.

Monetary Compensation

Debate on the question of the monetary compensation component of reparations dominated the media early in 2008. During this debate, NSW asserted it would not compensate survivors of the removals policies because the removals, although immoral had been legal:

After a national apology that calls past policies immoral, claimants will still have to prove that they were not removed legally according to the immoral, but nevertheless legal, policies of the time (Wilkins, former director-general of NSW Cabinet Office and advisor to Carr government on its 1997 apology) ¹⁹

The authors draw the Inquiry's attention to four factors [and there may be more] which render legal remedies unsatisfactory to many Stolen Generations survivors and their families:

- The parlous state of NSW government records, and where they do exist the selective and biased nature of what has been recorded
- The nature of the legal process, particularly its multiple interruptions and interrogations, in achieving what many survivors see as an essential step; namely being heard and for the truth of their account to be honoured
- The fact that several claims have commenced but due to their length and complexity, claimants have died before they matters were brought to court
- The cost, particularly as it relates to the relative poverty of Stolen Generations survivors due to factors directly related to the policies, such as the loss of an asset base, poor education, etc.

Compensation is needed despite other measures of reparation which attempt to address the 'void' remaining in the lives of individuals and families torn apart by the policies of previous government. While there are programs and processes to assist people to integrate this multi-layered trauma, accessibility to them is patchy, and the breadth of the effects of the policies that generated them is difficult to measure. Moreover, no matter how far people go to heal themselves, the effects of these past policies can never be fully erased.

¹⁹ "The word that makes life go on" by Joel Gibson, *SMH*, 2 February 2008. URL: <http://www.smh.com.au/text/articles/2008/02/01/1201801034953.html>

Compensation as part of a comprehensive reparations process is about addressing the fact that '*These things happened to me and the effects of these experiences live with me forever*'. The amount involved should demonstrate to those affected that governments have reflected deeply on and wrestled with the consequences of their predecessor's actions (Green, 2004). While money itself can never repay the loss that has occurred, financial compensation offers a proxy, towards a healing, towards closure, and is a step towards assuaging trans-generational and inter-generational effects both in the survivor and perpetrator communities.

The authors commend the Tasmanian government, as the first jurisdiction to deal with this issue, on their achievement of multiparty support for a compensation package for Stolen Generations members. We recommend that the Government investigate the Tasmanian scheme with a view to implementing a similar scheme in NSW. The Committee is also referred to the existence of a number of other compensation schemes that it may wish to review, for example Redress WA, as well as various models available overseas. These include payments to the families of Holocaust victims by the German Government and the Canadian system of compensation for the victims of the Native School policy (Summers, *Sydney Morning Herald*, 12-13 January, 2008, p 29).

Recommendation 8

That the Inquiry recommend to the NSW Government that it has a moral responsibility to make reparations as defined in *Bringing them home* to survivors of the Stolen Generations and their families.

That the Inquiry urge the NSW Government to consider, as part of its approach to reparations, a tribunal process such as that recommended in PIAC's *Restoring Identity* Report.

That the Inquiry investigate the Stolen Generations reparations package instigated by the Tasmanian government with a view to recommending such a scheme in NSW.

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Appendix 1: Bringing Them Home Reporting Framework

MINISTERIAL COUNCIL FOR ABORIGINAL AND TORRES STRAIT

ISLANDER AFFAIRS

16 June 2006

AGENDA ITEM No 6

ORIGINATOR: MCATSIA CHAIR

TITLE: Bringing Them Home Reporting Framework

RECOMMENDATION

That MCATSIA:

1. **Note** the findings of the baseline report based on the OID framework and selected NATSISS and NATSIHS data.
2. **Confirms** its ongoing commitment to address the needs of Indigenous people impacted upon by the policies of forcible removal of children from their families.
3. **Agree** that future reporting against the social and economic status of Indigenous people forcibly removed be integrated within reporting on the OID framework.
4. **Note** that jurisdictions will continue to report on the implementation of the recommendations of the *Bringing Them Home* report.
5. **Agree** to inform COAG and HREOC of the above recommendations and negotiate the integration of future reporting within the OID indicator framework with the Steering Committee for the Review of Government Services.

BACKGROUND

MCATSIA is responsible for providing regular evaluation reports of the implementation of the recommendations of the *Bringing Them Home* (BTH) report.

After the completion of the last MCATSIA evaluation report in 2003, a more strategic and useful way was sought to report the outcomes for Indigenous Australians of the implementation of the BTH recommendations. It was decided that the logical way to do this was through the creation of a direct link to the COAG reconciliation agenda and thereby to the OID framework.

At the September 2005 MCATSIA meeting an alternative approach was accepted that sought to align the reporting on the BTH recommendations with reporting

against the *Overcoming Indigenous Disadvantage* (OID) indicator framework, which has become a priority policy setting mechanism for MCATSIA.

The MCATSIA Secretariat was instructed to complete a baseline report, including a jurisdictional breakdown of data, based on the framework endorsed by MCATSIA in September 2005. However, efforts to complete this report within the framework specified by MCATSIA raised a number of issues and concerns about the utility of that framework and the report that would result from its use.

These concerns were communicated to members at the April 2006 SCATSIA meeting, and a compromise framework proposed by the Secretariat was endorsed as the basis for the attached baseline report.

OVERVIEW

The baseline report presented uses data from the National Aboriginal and Torres Strait Islander Social Survey (NATSISS) and the National Aboriginal and Torres Strait Islander Health Survey (NATSISH) where it aligns with the OID indicator framework headline indicators and strategic change indicators to demonstrate the differences in socio-economic outcomes between Indigenous people that were removed from their families and those that were not. There is evidence to suggest that those people who were removed suffered poorer outcomes across a range of discrete, albeit disparate, socioeconomic indicators.

The report was able to make twenty-two direct comparisons between the NATSISS and NATSISH data. Of these, nine of the comparisons showed the removed population to have worse outcomes than the non-removed population. None of the comparisons showed the non-removed population to have worse outcomes than the removed population. The remaining thirteen comparisons could not find any significant difference in outcomes between the two populations.

The indicators of disadvantage for those people removed were not concentrated around any particular field and covered a broad spectrum of indicators. These were:

- Higher rates of people with a disability or long-term health condition
- Lower rates of completion of Year 10 – 12 schooling
- Lower rates of living in owner occupied housing
- Higher rates of being a victim of physical or threatened violence

- Lower rates of retention to Year 10
- Lower rates of participation in sport or physical recreation activities
- Higher rates of being arrested more than once in a five year period
- Higher rates of smoking, and
- Lower rates of full-time employment.

It should also be noted that the report states that high measurement error in the removed population indicator statistics was the main cause for the failure of the remaining thirteen comparisons to report any difference between the removed and the non-removed populations. In other words, the small number of persons within the removed population estimates directly caused the high measurement error. Larger sample sizes would be needed to increase the sensitivity of the surveys to the degree required to report differences for the majority of the remaining indicators.

It is suggested, however, that the information in the report provides sufficient grounds for jurisdictions to further investigate its findings across the various indicators, and assist in monitoring and evaluating the implementation of the BTH recommendations.

DISCUSSION

Since the BTH report was written there has been a shift in the focus of the national reconciliation agenda. The report and its recommendations reflected a socio-political context of 'symbolic reconciliation'. In 2000, the Council of Australian Governments (COAG) agreed on a reconciliation framework which signalled a move towards a more practical approach. This new approach was consolidated by the development of the *Overcoming Indigenous Disadvantage* (OID) indicator framework, which was subsequently endorsed by COAG. This indicator framework, and the emphasis upon evidence-based approaches to Indigenous policy and program development, continues to be a major driver of 'practical reconciliation'.

In addition to this, the nature of the issues that shaped the experiences of the 'stolen generation' meant that the BTH recommendations concentrated on achieving social justice, strengthening cultural identity and raising community awareness. More specifically, the recommendations sought to increase government and community acknowledgment and understanding of the impact of

removalist policies, reunite separated families and increase culturally appropriate support resources for those who had been affected.

The recommendations did not explicitly aim to improve the socio-economic conditions of Indigenous people who had experienced the impact of removal policies.

This context partly explains why MCATSIA has had some difficulties in realigning its evaluation of the BTH report from recording actions against the recommendations to analysing results based on evidence relating to socioeconomic status.

Initially, the Secretariat sought to produce a report by linking the themes applied in the recent MCATSIA reports with the OID indicator framework through the analysis of correlating data from the NATSISS. However, the lack of any clear alignment between the BTH recommendations and either the OID framework or the NATSISS data, necessitated a different approach.

In order to adhere to MCATSIA's direction to align the BTH reporting with the OID framework, the Secretariat has produced a report that works only with the available 2002 NATSISS data and elements of the 2005 NATSIHS data at a national level only, and which correlate directly with OID headline indicators and strategic change indicators. The Secretariat concedes that this modified format does not provide the jurisdictional breakdown preferred by MCATSIA.

It has, however, enabled the production of a baseline report that uses reliable data to highlight the socio-economic and health conditions of Indigenous people in relation to their status as people impacted upon by the policies of forcible removal.

It should be noted, however, a number of limitations remain in relation to the available data which need to be acknowledged. These include.

- The presentation of socio-economic and health comparisons does not provide any information about the impact of the implementation of any BTH recommendations;
- NATSISS is a survey of a limited number of Indigenous people making it indicative as opposed to representative;

- The ABS limits access to data for privacy and accuracy reasons and this has restricted the use of data from some jurisdictions; and
- There is potential for some cross over in data as search criteria may overlap;

Furthermore, as instructed by MCATSIA, the Secretariat has liaised with the Australian Bureau of Statistics (ABS) about the potential for the amendment of existing, or the introduction of new, questions into NATSISS. The ABS, whilst welcoming MCATSIA input into to the 2008 NATSISS, advised that this was not appropriate on the basis that with respect to NATSISS and questions relating to whether individuals were taken from their families, there was no additional value to be derived from further questions as the population of the removed is reducing. This would only lead to smaller data sets with greater standard error and thus reduced usability.

However, by enabling statistically valid analysis of the socio-economic status of removed against non-removed people, the report does provide an opportunity for jurisdictions to extrapolate data relevant to their needs and enhance their own reporting against the recommendations of the BTH. It is also suggested that the report demonstrates sufficient points of alignment with the OID framework, and by association the COAG reconciliation agenda, to warrant future reporting being integrated within reporting on the OID framework, a concept supported at the April 2006 SCATSIA meeting.

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