



Submission to the Inquiry into the Stolen Generation Compensation Bill 2008

We are here, where we are and who we are partly
because of terrible things that our forbears did.

Dr Rowan Williams, Archbishop of Canterbury, 2007

Personal and collective responsibility

As the peak body of the national network of care and social justice agencies of the Anglican Church, Anglicare Australia has a particular interest in the *Stolen Generation Compensation Bill 2008*. Since the publication of *Bringing Them Home* in 1997, the Church has taken various measures to respond to those of the report's 54 recommendations which directly pertain to its mission and history.¹ The General Synod in 1998, for instance, acknowledged 'the deep hurt and trauma suffered by our Indigenous brothers and sisters by the unjustified removal of children from their families' and 'apologise[d] unreservedly and [sought] forgiveness for any part played, knowingly or unwittingly, by the Anglican Church'. In 1999 Anglicare Australia and the Anglican Board of Mission also formed the Anglican Reconciliation Working Group to encourage parishes to consider the Draft Strategies for Reconciliation and address Indigenous issues, including policy towards the stolen generations.² And in 2003, Anglicare Australia published *For the Record*, a report providing background information on the Church's work with Indigenous children and a directory of Anglican agencies providing residential care to children from 1830 to 1980, the principal aim of which was to help Aboriginal Australians establish their family history and identity.³

¹ Most obviously recommendation 6: 'That churches and other non-government agencies which played a role in the administration of the laws and policies under which Indigenous children were forcibly removed acknowledge that role and in consultation with the Aboriginal and Torres Strait Islander Commission make such formal apologies and participate in such commemorations as may be determined.'

² See Attachment A.

³ James Boyce, *For the Record*, Anglicare Australia, Melbourne 2002. See attachment B.

The Church has long acknowledged its own involvement in the systematic policy of removing Aboriginal children from their families. As noted in *For the Record*, 'the boundaries between Church missionary/welfare/program work with Aborigines and Government policy and practice were indistinct. As in the community services area today, the Church largely undertook its work in the context of state policy, and in turn played a role in framing, implementing and interpreting such policy.'⁴

Such acknowledgement brings in its train a belief in the need to make appropriate amends. A resolution at the 2002 Brisbane General Synod committed the Church 'to support the establishment by the Council of Australian Governments of a national fund as recommended by the *Bringing Them Home* Report as part of the healing process and urge[d] all Australians to contribute to it'. Individual agencies have undertaken a range of activities in their local communities to effect restitution, meshing practical initiatives with cultural sensitivity.

Reconciliation, reparation, compensation

Anglicare Australia thus shares the conviction of the Bill's sponsor that it is now fitting to implement recommendation 3 of the *Bringing Them Home* report, that 'for the purposes of responding to the effects of forcible removals, "compensation" be widely defined to mean "reparation"; that reparation be made in recognition of the history of gross violations of human rights; and that the van Boven principles guide the reparation measures'. Equally we concur on the content of recommendations 14 (Heads of Damage) and 15 (the establishment of a National Compensation Fund).

We also stress, however, that for the Anglican Church the operative principles of reparation are as much moral as they are jurisprudential; and that the relevant moral imperative over-rides any purely legalistic considerations. As the Archbishop of Canterbury has noted, the 'powerful moral claim to reparation' consists in 'recognition that the only strength that matters and lasts is a shared strength'.⁵ This dovetails with a more general theological claim that reparation is as much about repairing the sins of others as it is about atoning for one's own wrong actions. There is, in other words, a broader state responsibility than that limited by the notion of strict liability or unhelpfully adumbrated by that of intergenerational guilt.

Put another way: the proposed Stolen Generations Funds would obviate the need for further individual claims for compensation at common law. This would have several benefits, not least removing the awkward prospect of government's being forced to defend the policies of its predecessors *after* it has issued a formal apology for those very policies. It would also, of course, save money that would otherwise be spent on legal process and lawyers' fees.

⁴ Boyce, p. 2.

⁵ In an address given in 2000 on the Middle Eastern conflict when Dr Williams was Archbishop of Wales (at www.anglicancommunion.org/acns/news.cfm/2000/9/27/ACNS2242)

In concrete terms, as *Bringing Them Home* makes clear, this means that reparation should consist of acknowledgment and apology, guarantees against repetition, measures of restitution, measures of rehabilitation and monetary compensation.

Proposed compensation model

Overall, Anglicare Australia endorses the proposed model. The following comments concern relatively minor points of clarification.

4. Entitlement to ex gratia payment

Subsection (c) states: 'A person who has already received a payment under State or Territory Stolen Generation compensation or like legislation is not eligible for an ex gratia payment under this Act'.

It might be help to spell out two related issues:

- whether or not liability at common law for such cases is to continue; and if it is,
- whether the ex gratia payment would be taken into account in any subsequent common law damages (as in workers' compensation cases).

5. Eligibility criteria for ex gratia payment

Subsection (2a) states that the proposed tribunal should be satisfied that an individual claimant 'was subject to duress by a state agency as a consequence, in whole or in part, of race-based policies operating at the time'.

The term 'duress' may in this context be ambiguous, at the very least inviting captious scrutiny of individual cases.

If the drafters are trying to distinguish between *forcible removal* (subsection 1b) and threats or other means used to coerce compliance with race-based policies, then the Tribunal will need to decide as a matter of fact that the eligibility criteria are fulfilled in each case.

More generally, it is the fact of removal itself — as part of a systematic and deliberate state policy — which is the salient consideration, no matter what the personal motives or disposition of those involved. This alone should be both necessary and sufficient to establish the pertinent criterion of eligibility.

Conclusion

Anglicare Australia welcomes this Bill as part of a long-overdue process of reconciliation between Indigenous and non-Indigenous Australians. The overwhelming case for reparation — of which ex gratia monetary compensation is an integral part — is grounded primarily in ethical rather than legal principles. On these terms, the Federal Government's apology leads inexorably to the compensatory proposals contained in the Bill. In short, this is unfinished business which it is our duty to undertake in good faith.

About Anglicare Australia

Anglicare Australia is a nationwide network of locally based Anglican organisations serving the needs of their communities.

From Groote Eylandt, NT to Kingston, Tasmania, from Bondi to Bunbury, Anglicare member agencies are committed to caring for people in need and seeking social justice for all.

Anglicare agencies work in close cooperation with other community organisations and some receive funding from Federal, State and Local Governments to provide a wide range of services including:

- residential and community aged care
- foster care, Out-of-Home Care, adoption and child care
- family relationship support programs
- support for people with disabilities
- financial counselling and low/no interest loans
- family support and relationship counselling
- treatment for drug and alcohol dependence
- family violence
- youth programs
- emergency relief
- employment services
- community housing and emergency accommodation for homeless people
- community development through building communities of hope
- working with Aboriginal and Islander Australians
- assistance to refugees and migrants
- social research and advocacy

9 April 2008

ATTACHMENT A: Resolution of the Brisbane General Synod 2002

This Synod notes that NATSIAC celebrates the positive response to Indigenous people by the wider community in many events since the General Synod in 1998 and:

- Re-affirms Resolution 27 of 1998 which included an apology from the Anglican Church of Australia to the Stolen Generations and a commitment to implement the *Bringing Them Home* Report recommendations.
- Shares the profound disappointment expressed by NATSIAC at the continuing denial of the Stolen Generations by the Federal Government and its failure to apologise or to implement fully the recommendations of the *Bringing Them Home* Report.
- Asserts that appropriate response to the Stolen Generations is a national responsibility and the Federal Government must accept and take the lead.
- Calls upon the Federal Government to establish and appropriately resource alternative dispute resolution processes of mediation and negotiation and supports the formation of a national process to fulfil this responsibility.
- Calls on the Federal Government to secure access to records to facilitate re-connection as recommended in the *Bringing Them Home* Report.
- Requests all dioceses and parishes to pray and work for the healing of the nation and in order to facilitate re-connections to collaborate with the Federal Government and Indigenous people to make all archives and other records accessible.
- Commits the Anglican Church of Australia to support the establishment by the Council of Australian Governments of a national fund as recommended by the *Bringing Them Home* Report as part of the healing process and urges all Australians to contribute to it.

ATTACHMENT B: [For the Record report \(2003\).](#)