

SUBMISSION

Stolen Generation Compensation Bill 2008

Inquiry of the Senate Legal and Constitutional Affairs Committee into:

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: and

The review of any relevant unimplemented recommendations of the 1997 Bringing Them Home report

Committee Secretary
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Darwin
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Executive Summary

Danila Dilba Biluru Butji Binnilutlum Health Service (Danila Dilba) welcomes this opportunity to make a submission on the terms of reference of the present Inquiry of the Senate Legal and Constitutional Affairs Committee into the Draft of the *Stolen Generations Compensation Bill 2008 (the Bill)* tabled on 12 March 2008 by Senator Bartlett. The Bill is amended from its initial reading and is based on Tasmanian legislation which provides ex gratia payments to members of the 'Stolen Generations'.

This paper deals with the issues affecting members of the Stolen Generation as clients and members of Danila Dilba. Danila Dilba provides an Emotional and Social Wellbeing program for members of the Stolen Generations and has a responsibility to provide adequate support services, which are multifaceted, to meet the needs of this group.

Danila Dilba recognises the symbolic significance of the Rudd Government apology to the Stolen Generations. However, the importance of compensation for those Aboriginal people subject to previous government policy for the removal of Aboriginal children remains an issue of national importance. The impacts of previous government policies on those removed and their families are permanent. Compensation is necessary to address the loss and damages experienced by survivors of the legislation and policy.

Aspects of legislative regimes bringing about the removal of Aboriginal people from their families varied between States and Territories of Australia, the comments in this submission are directed to legislation, policy and implementation undertaken in the Northern Territory.¹ Language in this discussion paper reflects the terms used as part of previous legislation and policies.²

The removal of children in the Northern Territory was administered by the Commonwealth Government. Therefore the responsible government is principally the Commonwealth in dealing with reparation for harm to those removed from their family under such policy or legislation.

Danila Dilba believes that monetary compensation is a necessary and significant step in the healing process. It was raised by Aboriginal people from the *Going Home* conference, held in 1994 in Darwin and a key recommendation of the *Bringing Them Home* report tabled in the Parliament in 1997.³

¹ See Appendix 1 Timeline of legislation in the Northern Territory

² While some terms are derogatory in today's parlance it reflects the underlying philosophy of eugenics applied to those of Aboriginal descent, and therefore the subject of specific provisions of legislation.

³ *Bringing Them Home* (1997) Report of the Human Rights and Equal Opportunity Commission.

Those subject to the legislation suffered significant loss and trauma due to the effect and operation of legislation, in relation to cultural knowledge, relationship to land, inability to claim land, loss of enjoyment of fulfilling family life, and impairment to access of economic opportunities. This loss experienced by Aboriginal children has fundamentally deteriorated not only their life chances, but also the life chances of their children and grandchildren.

It has been a common experience of the Stolen Generation that upon their removal either to institutions, foster families or carers, their cultural heritage was rejected. In many cases there was a persistent campaign undertaken on the part of staff in institutions, foster families and carers to sever any connection with the family of origin either through language, values and beliefs or physical proximity. Many members of the Stolen Generation were routinely told that their families had died, that they were not wanted and that they were of no value to the broader community if they did not accept an identity as a non-Aboriginal. This intent can be clearly seen in official reports which provided the foundation for legislation and policy, parliamentary debates and subsequent monitoring reports.

It was perceived that a process of "Christianising" would enhance the opportunity for members of the Stolen Generation to become citizens. This included the recruitment by governments of religious organisations to assist in policy outcomes. Failure of this program was believed to cause social unrest, domination of "the coloured races" within the labour force and moral danger to the broader non-Aboriginal community. These children were expected to meet their full human potential without family resources or emotional support beyond their term in the institution.

Danila Dilba believes that there is clear evidence that government legislation was founded in principles of eugenics which persist to the present day. It is believed that it was known to authorities in 1953 that legislation to remove Aboriginal children of Aboriginal descent from their families was outside Human Rights principles. It is believed that breach of fiduciary duty and malfeasance of office by government employees characterised the implementation of policy in relation to removal of Aboriginal children. It is also apparent that the motives of protection, care and a better life were not fulfilled. Members of the Stolen Generation upon leaving the care of the government were not adequately educated or skilled to provide for their families. In many cases the trauma they had experienced has continued to impair their quality of life.

Members of the Stolen Generation are presently provided no opportunity to have their claims for damages and loss heard unless they engage in a costly legal process through the courts. This Bill provides an opportunity for members of the Stolen Generation to gain material acknowledgement of their loss through compensation. This Bill offers the fulfilment of symbolism offered by the Rudd Government apology and is an opportunity to rebuild our nation.

Recommendations

Danila Dilba welcomes the recognition in the Bill of the need for compensation of members the Stolen Generation and their families, and urges the Standing Committee members to adopt the following recommendations:

Recommendation 1:

In light of the Commonwealth's direct responsibility for the removal of Aboriginal children from their families under previous government policies in the Northern Territory, it must be recognised that liability for damages and loss as a result of those removals is solely the responsibility of the Commonwealth.

The exgratia payment addresses the loss and damage suffered by those subject to the aforementioned policies which were discriminatory in operation and effect.

Recommendation 2:

Eligibility be extended to those Aboriginal children of mixed race descent who were subject to legislation for removal from their families regardless of the process of conferral of wardship by a court or any other official status being found to bring about their removal from their families. This ensures the recognition of the encompassing nature of the legislation which caused families to separate of their own volition to avoid confrontation with authorities. These families sustained separation due to the laws governing removal.

Recommendation 3:

As the Commonwealth legislation operating in the Northern Territory identified all Aboriginal children of mixed race descent as being subjects of the Aborigines Ordinance 1918, all those individuals subject to those policies, or their descendants, should remain eligible to apply for a compensation payment.

Recommendation 4:

The Stolen Generations Assessor accept oral and other forms of evidence in relation to the removal of Aboriginal children of mixed race descent, targeted by race-based policies, in relation to removal and/or duress applied to parents during that removal. Evidence must be accepted without financial disadvantage to applicants;

And further that, the Stolen Generation Assessor take into account that duress and undue influence manifested in relation to removal of Aboriginal children because of the terms of such controlling legislation having complete control over summary removal on the basis of race. The removal of mixed race children became common practice which created an atmosphere of duress and undue influence.

Recommendation 5:

Given the recent compensation decision in the case of Bruce Trevorror and Cornelia Rau - that payment of compensation to individual members of the Stolen Generation be set at a minimum of:

**\$400, 000 as common experience payment payable to each individual removed from their family; and an additional
\$ 50,000 payment for each year of institutionalisation or separation.**

This payment must be made upon the applicant meeting the requirements of eligibility

Further that the Tribunal be established to accept evidence and make decisions regarding compensation for loss and damages as a result of physical, emotional and sexual abuse of those members of the Stolen Generation while in the care of institutions, foster families or carers.

That the Tribunal also compensate for the discrimination experienced by the Stolen Generation in relation to rights to land and exclusion from financial entitlements which have arisen and may arise in relation to that land.

Recommendation 11:

The receipt of an ex gratia payment does not preclude Aboriginal persons removed under previous government policies or their families from taking action against the relevant State or Territory.

Recommendation 12:

An increase in funding to the Social and Emotional Wellbeing Unit in Danila Dilba Health Service to provide a program resource centre for the Stolen Generation community to

- promote projects depicting their histories and relevant programs of assistance;
- provide assistance to the Stolen Generation to undertake genealogical research; and
- arrange institutional reunions of former inmates and their families.

This must be funded as a matter of urgency to provide support to the Aboriginal people removed from their families under previous government policies in the Northern Territory;

Sufficient funds to Danila Dilba Health Service must be provided to ensure the availability of counsellors to Aboriginal people removed from their families under previous government policies in the Northern Territory, so as not to disadvantage the broader Aboriginal client group;

Funds be made available for the convening of a conference to provide the opportunity to the Stolen Generation to determine future policy in relation to the support required to address the effects of separation from their families for themselves and their children;

Both the Native Title and Aboriginal Land Rights Acts recognise and accommodate the rights to land for Aboriginal people removed from their families under previous government policies in the Northern Territory;

The Indigenous Land Corporation allocate funds as a priority to members of the Stolen Generation and their families to ensure access to economic participation and wealth creation

Any future Bill of Rights ensure the protection and safe custody of Aboriginal children and that cultural and spiritual obligations be enshrined within legislation and policy of the Northern Territory to ensure that removal of Aboriginal children from their families does not occur;

That the Territory Government establish a genuine partnership with the Aboriginal community regarding all programs affecting placement of Aboriginal children and family support; and

All governments implement and promote historical information about the Stolen Generations and the effects of previous government policies which removed Aboriginal children from their families in schools and public institution to the benefit of a national identity in spirit of true reconciliation.

APPENDIX

Northern Territory

| Decade | Laws applying specifically to Aboriginal children | General child welfare laws/adoption laws |
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| 1890s-1910 | Northern Territory Aboriginals Act 1910 (SA) | State Children's Act 1895 (SA) |
| | Established the Northern Territory Aboriginals Department with responsibility for the control and welfare of Aborigines and 'to provide where possible for the custody, maintenance and education of the children of aboriginals'. | State Children's Council established with responsibility for the care of State children. |
| | Definitions | Definitions |
| | <p><i>aboriginal institution</i> – includes a mission station, reformatory, orphanage school, home reserve, or other institution 'for the benefit, care and protection of aboriginals or half-castes of the Northern Territory'.</p> <p><i>half-caste</i> – the offspring 'of an aboriginal mother and other than an aboriginal father' except those people deemed to be 'aboriginal'.</p> <p><i>aboriginal</i> – 'an aboriginal native of Australia or any of the islands adjacent or belonging thereto, or a half-caste who is living with an aboriginal as wife, husband or child, or a half-caste who is living with an aboriginal as wife, husband of child, habitually lives or associates with aboriginals or half-caste whose age does not exceed 16 years'.</p> | <p>State child – includes a destitute child, neglected child and convicted child or any child received into an institution to be apprenticed or placed out.</p> <p>For definitions of 'destitute child' and 'neglected child' see <i>Destitute Persons Act 1881 (SA)</i></p> |
| | Key provisions | Key provisions |
| | <p>Provides for the removal, detention and re-location of Aboriginal people on reserves. Chief Protector made the legal guardian of every 'aboriginal child' notwithstanding that any such child has a parent or living relative, until such child attains the age of 18 except while the child is a State Child (under the <i>State Children's Act 1895 (SA)</i>).</p> <p>Regulations may be made for the 'care, custody and education of the children of aboriginals'; providing for the transfer of any 'aboriginal' or 'half-caste' child to an</p> | <p>State Children's Council responsible for the care, management and control of State Children and their property, including their apprenticeship, placement and attendance at school until 13 years.</p> <p>Repealed by Child Welfare Ordinance 1958 (Cth)</p> <p>Children's Protection</p> |

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| | <p>'aboriginal institution' or industrial school; for the control, care and education of 'aboriginal' or 'half-caste' children in 'aboriginal institutions'; for the supervision of such institutions and for the terms of apprenticeship of service for 'aboriginal children'. Repealed by <i>Aboriginals Act 1918</i>.</p> | <p>Act 1899 (SA) Any near relative, guardian or other person who neglects, ill-treats or abandons or fails to provide food, clothing and lodgings for a child liable to imprisonment. A child who has been so treated may be removed to an institution. Repealed by <i>Child Welfare Ordinance 1958 (Cth)</i></p> |
| 1910s | Aboriginals Ordinance 1911 (Cth) | |
| | <p>To be read with <i>Aborigines Act 1910</i>. After the Northern Territory became a territory of the Commonwealth on 1.1.1911 all South Australian laws remained in force until altered by a Commonwealth law.</p> | |
| | Key provisions | |
| | <p>Chief Protector may undertake the care, custody or control of any 'aboriginal or half-caste' if in his opinion it is necessary or desirable. A protector or police officer may take 'any aboriginal or half-caste' into custody if he believes that person is not being properly treated. An 'aboriginal or half-caste' remaining within a prohibited area is guilty of an offence and may be removed. Repealed by <i>Aboriginals Ordinance 1918</i>.</p> | |
| | Aboriginals Ordinance 1918 | |
| | <p>Combined the 1910 Act (SA) and the 1911 Ordinance (Cth), giving the Chief Protector wide-ranging powers over Aboriginal people. Amended by <i>Aboriginals Ordinance 1924 (No 2)</i> – amends the definition of <i>aboriginal</i> – a half-caste male under 18 deemed to be an 'aboriginal until the age of 21'. <i>Aboriginals Ordinance (North Australia) 1927</i> and <i>Aboriginal Ordinance (Central Australia) 1927</i> – amends the definition of <i>aboriginal</i> – 'a male half-caste who</p> | |

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| | age exceed 21 years who in the opinion of the Chief Protector is incapable of managing his own affairs and is declared by the Chief Protector to be subject to this Ordinance’. | |
| 1930s | <p><i>Aboriginals Ordinance 1933</i> – an offence for any males, other than an ‘aboriginal or half-caste’ to consort with a ‘female aboriginal’ unless lawfully married (ie with permission of Chief Protector).</p> <p><i>Aboriginal Ordinance 1936</i> – Chief Protector may declare that a ‘half-caste shall be deemed not to be a ‘half-caste’ (revocable).</p> <p><i>Aboriginals Ordinance 1939</i> – Director of Native Affairs replaces Chief Protector.</p> <p><i>Repealed by Welfare Ordinance 1952.</i></p> | <p>Adoption of Children Ordinance 1935 (Cth) Provided for legal adoption of children in the NT for the first time. Court will not recognise consents signed before or within seven days of birth.</p> <p><i>Adoption of Children Amendment Act 1984</i> – recognition of traditional Aboriginal marriages.</p> <p><i>Repealed by Adoption of Children Act 1994.</i></p> |
| 1950s | <p><i>Aboriginal Ordinance 1953 (No 2)</i> Amended definition of ‘aboriginal’ to remove references to ‘half-castes’.</p> | <p>Child Welfare Ordinance 1958 Replaced <i>State Children’s Act 1895 (SA)</i>. Similar definitions of ‘destitute’ and ‘neglected’ as in the 1895 Act.</p> |
| | Key provisions | Key provisions |
| | <p>Director made the legal guardian of all ‘aboriginals’. Director may declare a person with an ‘aboriginal ancestor to be an ‘aboriginal’ if it is that person’s ‘best interests’ and that person requests the Director to do so. Director to keep a register of persons declared to be ‘aboriginals’.</p> <p><i>Repealed by Welfare Ordinance 1953.</i></p> | <p>Director is the legal guardian of every State child to the exclusion of the child’s parent or other guardian. A court may declare a child to be destitute, neglected, incorrigible or uncontrollable and commit the child to the care of the Director or another person, to be sent to an institution for the purposes of the Ordinance. A State child may be sent to a place within the Commonwealth to be placed under control, trained, education, cared for and</p> |

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| | | <p>maintained.</p> <p>Amended by Child Welfare Ordinance 1969 – Ministers in the other States may send State children to the Northern Territory (reciprocal arrangements).</p> <p>Repealed by Community Welfare Act 1983.</p> |
| | Welfare Ordinance 1953-60 | |
| | <p>Director of Welfare given extensive powers over the lives of people declared to be 'wards'. Although the Ordinance made no reference to Aboriginality, the exception of people eligible to vote from the class of people that could be declared to be wards meant that it could only apply to Aboriginal people.</p> | |
| | Key provisions | |
| | <p>The Administrator may declare a person to be a 'ward' because that person 'stands in need of special care and assistance' owing to that person's 'manner of living'; 'inability, without assistance, adequately to manage his own affairs'; 'standard of social habit and behaviour'; or 'personal associations'. No person entitled to vote may be declared a ward. The Director of Welfare made the legal guardian of all wards. The Director to keep a Register of wards. The Wards Appeal Tribunal to hear appeals against a wardship declaration. If the Director considered it to be in the best interests of the ward, a ward may be taken into custody; detained on a reserve or in an institution; or removed from one reserve or institution to another. The Administrator's authorization required for the removal of a child under 14 years if it means removal from his/her parents. Director may make orders authorizing police to enter, search and</p> | |

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| | remove a child. A non-ward may not habitually live with a ward unless the non-ward is a relation. Director may order a ward not to live with another ward. A male non-ward may not live with or be in the company of a female ward after sunset. A ward may not marry without the consent of the Director. Director may manage property of wards. <i>Repealed by Social Welfare Ordinance 1964.</i> | |
| 1960s | Welfare Ordinance 1961 | |
| | Extends the definition of ward to include an Aboriginal person under the control of the Qld, WA or SA legislation entering the NT and allows for the removal of wards from the NT. | |
| | Key provisions | |
| | If the removal of a ward would mean the separation of a child under 14 years from his/her parents or the separation of a parent from a child under the age of 15 years, then the court must be satisfied that 'necessary and adequate arrangements have been made for the 'maintenance, education and care of the child'. <i>Repealed by Social Welfare Ordinance 1964.</i> | |
| | Social Welfare Ordinance 1964 | |
| | Restricted entry to reserves and assistance of the Department of Social Welfare to people who 'in the opinion of the Director a socially or economically in need of assistance'. A welfare officer can suspend the right of an 'aboriginal' to enter or remain on a reserve. <i>Repealed by Community Welfare Act 1983.</i> | |
| | After the Social Welfare Act 1964, Aboriginal children were removed under the Child Welfare Ordinance 1958 and subsequent child welfare legislation. | |
| 1980s | Community Welfare Act 1983 | |
| | Introduced the Aboriginal Child Placement Principle for the first time in legislation in Australia. | |

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| | Definitions | |
| | <p><i>child</i> – under 18 years</p> <p><i>child in need of care</i> – ‘child whose parents or guardian have abandoned the child and cannot be found; whose parents are unwilling to maintain the child; who has suffered maltreatment or has engage in conduct constituting a serious danger to his health and safety; who is excused from criminal responsibility but has persistently engaged in conduct which is harmful to the general welfare of the community measured by commonly accepted community standards as to warrant action’.</p> <p><i>maltreatment</i> – includes physical or emotional abuse, severe body malfunctioning and sexual abuse.</p> | |
| | Key provisions | |
| | The Minister may grant assistance to a person, family or group. The Minister is to act in accordance with the welfare of the child. In making orders in relation to a child in need of care the court must take account of the Aboriginal Child Placement Principle. | |
| 1990s | Adoption of Children Act 1994 | |
| | Included the Aboriginal Child placement Principle. Recognised traditional Aboriginal marriages for the purpose of adoption. | |
| | Regulations | |
| | <i>Adoption of Children Regulation 1994</i> – a parent may record wishes regarding the suitability of the adoptive parents and regarding access to the child or giving or receiving information about the child. | |
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