

DISCUSSION PAPER

First Anniversary of the National Apology – Time to Make Amends

"It is not sentiment that makes history; it is our actions that make history"
- Prime Minister Kevin Rudd February 13th 2008

A Time to Celebrate

In an historic and moving speech on the 13th February 2008, Prime Minister Kevin Rudd gave a heartfelt, thoughtful and unequivocal apology to the Stolen Generations. The apology was the result of eleven years of tireless campaigning by Stolen Generations groups, Reconciliation Groups and others who demanded the implementation of the *Bringing Them Home* Report (2007) recommendation that all Australian Governments, both State and Federal, make an official apology to the Stolen Generations.

The Federal Government was the last to deliver its official apology; all state governments have done so in some form over the past ten years. In NSW, an apology was delivered by Premier Bob Carr on 18th June 1997 on behalf of the Parliament and people of NSW (www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA19970618005).

The national apology impacted on Indigenous and non-Indigenous people on a personal level in different ways. However, on a national level, it was important as it:

- Specifically apologised to the Stolen Generations, their families, and communities, and recognised their loss and grief
- Acknowledged the injustices of all past government policies, in particular the forced removal of Indigenous children
- Validated the experiences of the Stolen Generations – an important step in the healing process
- Caused non-indigenous Australians to reflect on the pain and suffering endured by Indigenous Australians, and the continuing impact of those policies today
- Demonstrated the Australian Government's acceptance of responsibility for the actions of past governments.

A Time to Reflect

While it is important to celebrate the anniversary of the national apology, it is also an important opportunity to take stock and consider what the government has done since the apology to address the needs of the Stolen Generations. It is a time to consider what has

been recommended to Government; what has been promised by Government; and what has been delivered by Government.

What has been recommended to government?

The apology was one of 54 recommendations made by the *Bringing them Home* Report.

Many of the recommendations made by the national inquiry have yet to be implemented. The *Bringing Them Home* Report was the most comprehensive study of the impacts of the child removal policy on Indigenous people. The Human Rights and Equal Opportunity Commission (HREOC)¹ spent two years examining the separation of Aboriginal and Torres Strait Islander children from their families, and the report is regarded as the most authoritative source of information about the practices of past governments and the Stolen Generations. The recommendations of the Commission need to be revisited and used as the yardstick to measure the governments' progress in reconciling with the Stolen Generations.

A comprehensive process of reparations was a key recommendation of the *Bringing Them Home* Report.

Reparation means the making of *amends* for wrong or injury done - that is, reparation for an *injustice*. The various governments' policies causing the Stolen Generations have been widely accepted as grossly violating the human rights of Indigenous people. The policies constituted an undeniable *injustice*.

Under International Law, the principle that "every state has a duty to adopt special measures to permit expeditious and fully effective reparations, particularly where the violation of human rights includes systematic discrimination and the forcible transfer of populations" has been recognised. (Durbach 2008).

Under International Humanitarian Law, the making of *amends* requires five important steps (the *Van Boven Principles*)²:

1. Acknowledgement and apology
2. Guarantees against repetition
3. Measures of restitution
4. Measures of rehabilitation, and
5. Monetary compensation.

These measures should be regarded as complementary, and need to be implemented together as a whole (HREOC 2008).

If Australian Governments adopted all the recommendations of the *Bringing Them Home Report* and embarked on comprehensive reparations processes, they would make a significant and positive difference to the lives of the Stolen Generations and promote genuine social justice.

¹ Now the Australian Human Rights Commission

² *Van Boven Principles* means the Basic Principles and Guidelines 1 on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law (UN Doc E/CN.4/Sub.2/1996/17, 24 May 1996) drafted in 1996 by Professor Theo van Boven.

What has been promised by government?

Federal, State and Territory Governments have all promised various forms of redress at various times to the Stolen Generations.

In his apology speech, Prime Minister Kevin Rudd promised to expand 'Link-Up and other critical services to help the Stolen Generations to trace their families' and to 'close the gap' between Indigenous and non-Indigenous Australians in life expectancy, educational achievement and employment opportunities. While these are both welcome initiatives, they do not fully address the requirements of a comprehensive process of reparations specifically for the Stolen Generations.

Basic citizenship rights are not the same as reparations for past injustices.

In the apology speech and in all Federal Government rhetoric since, the language used when addressing issues concerning the Stolen Generations has served to combine 'closing the gap' between Indigenous and non-Indigenous people in general, with the need for reparations for the Stolen Generations (Stolen Generations Victoria, 2008b). While the two issues are obviously linked, reparations for the Stolen Generations specifically address the injustice of the forcible removal of Indigenous children from their families. Reparations will enable individuals and communities to heal, reconnect with their cultures and families and move forward in a sustainable and self-determined way. Reparations are a matter of making amends and bringing about justice for the Stolen Generations (Stolen Generations Victoria, 2008a). The provision of basic citizenship rights must not be confused with the unresolved issue of reparations.

What has been delivered by government?

Australian Governments have engaged with parts of the reparations process and delivered some forms of redress.

At a Federal Level, the Department of Health and Ageing has funded programs in response to the *Bringing Them Home* Report. In December 1997 the Government announced a \$63 million package to be spent over four years. Since then it reports to spend \$25 million per annum on four main programs (DHA 2009). These are the:

- Link-Up Program
- Bringing Them Home Program
- Social and Emotional Well-being Regional Centres
- Mental Health Service Deliver Projects

Through these programs, funding has been provided to important organisations such as Link-Up, and for services including mental health counselling; family reunion services; parenting support; programs to preserve Indigenous languages and culture; oral history recordings; and the archiving of State records. State and Territory Governments have also contributed funding to these programs (DHA 2009). The NSW State Government has funded a Family Records Unit through the Department of Aboriginal Affairs which is largely for members of the Stolen Generations. It provides practical assistance to people seeking access to records and oversees an ongoing program of indexing records.

Evidence shows that measures implemented by government have had major limitations and been inadequate.

An evaluation of the *Bringing Them Home Report* and Indigenous Mental Health Programs undertaken in 2007 for the Office of Aboriginal and Torres Strait Islander Health (OATSIH) revealed some major limitations. The programs were found to be significantly under-resourced for the high workload that they experience; there was little consistency in how the programs were delivered; there were major variations in the skills and qualifications of staff delivering the programs; and the programs had limited geographical coverage (Wilczynski et al 2007).

State Government responses have been varied. TAS, QLD & WA have provided avenues for monetary compensation while SA and NSW have fought unsuccessful legal battles to try and deny compensation. The NT, ACT and VIC have no monetary compensation schemes.

At a State and Territory level, the responses to the *Bringing Them Home Report* have also been varied and inconsistent. Three States have provided mechanisms for monetary compensation. The Tasmanian Government has established the only official compensation scheme which allows those affected by the policies of forcible removal to make monetary claims. It has allocated \$5 million to be provided to members of the Stolen Generations through this mechanism; over 100 claims have already been successful. The Queensland and Western Australian Governments have established monetary redress schemes open to those suffering harm while in State care. Members of the Stolen Generations are allowed to make claims through these schemes.

The South Australian (SA) and NSW Governments have also provided monetary compensation to members of the Stolen Generations. Both Governments were legally bound to do so after protracted court battles. The SA Government was required to monetarily compensate for a personal injury claim which arose from the trauma, abuse and detrimental effects of an individual's removal. It provided \$525,000 to Bruce Trevorrow (TvS 2007). This is indicative of the amount of compensation members of the Stolen Generation may be entitled to and could be receiving if they had the appropriate documentation and evidence to prove what they had been through. Most Stolen Generations members cannot produce the documentation or evidence required to enter into a legal battle with the State. Even for those that may be able to, the financial and emotional costs of the court proceedings may be too great.

The NSW, SA and Victorian State Governments' have not yet developed avenues for Stolen Generations members to obtain monetary compensation outside of the legal system. The Northern Territory and Australian Capital Territory also have no scheme for monetary compensation.

In 2008, HREOC noted the importance of a national consistent approach to monetary compensation:

At present, there are variations between States and Territories as to whether ex gratia payments are available, in what circumstances, and as to the level of payments. Some Stolen Generations members will be able to claim under existing schemes, but others can not. The limits of existing approaches mean that access to schemes can appear arbitrary for Stolen Generations members, with some aspects of their life experiences being recognised as compensable and other experiences not (HREOC 2008).

A Time to Make Amends

Federal, State and Territory Governments have not done nearly enough to make amends for past injustices. Members of the Stolen Generations and their families have suffered, and continue to experience loss, grief and trauma.

Past government practices deprived many of connected family lives, community ties, culture and language, and links with and entitlements to their traditional land (HREOC 2008). This has fundamentally affected their ability to access appropriate education, social networks and employment. In turn it has meant most have little human, social or financial capital to leverage to ensure they can provide for themselves and their own families. This has led many to social and emotional problems. Many also continue to suffer from disempowerment, loss of identity, feelings of profound grief and loss and abandonment, fear of authority and a lack of trust and security, resulting in mental health issues and a range of physical health issues (SGV 2008b).

HREOC recommend that monetary compensation be provided to people affected by forcible removal under the following heads of damage: Racial discrimination, Arbitrary deprivation of liberty, Pain and suffering, Abuse, including physical, sexual and emotional abuse, Disruption of family life, Loss of cultural rights and fulfilment, Loss of native title rights, Labour exploitation, Economic loss, and Loss of opportunities. These heads are indicative of what members of the Stolen Generations suffered and of what they need assistance in overcoming and rectifying. It is incumbent on the government to make amends and address the pain, suffering and trauma experienced by the Stolen Generations (HREOC 2008).

Reparations packages need to provide individuals and communities, with the means to heal and the means to move forward in a self-determined way that can sustainably improve social, cultural and economic well-being.

Packages which restore an economic base and provide avenues for sustainable and culturally appropriate employment will be more future orientated and may get those affected out of grieving mode and into self-determined development mode quicker (Williams in Durbach 2008).

According to extensive research and consultations with members of the Stolen Generations, a Tribunal Model has been identified as the most appropriate mechanism for the delivery of reparations.

For an effective reparations process to proceed and for a comprehensive response to the recommendations of the *Bringing Them Home* Report, a coordinated approach by all levels of government is required.

The Commonwealth government, through the Councils of Australian Governments (COAG), should engage with State and Territory governments to develop a nationally consistent approach with joint funding mechanisms in the provision of all reparation measures for the Stolen Generations. This would ensure compensation schemes and other programs are applied universally to all members of the Stolen Generations and can ensure consistency in outcomes so that some individuals, families and communities are not disadvantaged.

The model proposed by in the *Stolen Generations Reparations Tribunal Bill 2008* and developed by the Public Interest Advocacy Centre (PIAC) between 1997 and 2000 is arguably the most appropriate scheme.

The Greens introduced the *Stolen Generations Reparations Tribunal Bill 2008* on the 24th of September 2008. The Bill is much more comprehensive than the previously rejected *Stolen Generations Compensations Bill 2008* and makes provisions for "measures such as funding for healing centres, community education projects, community genealogy projects, and funding for access to counselling services, health services, language and culture training for the Stolen Generations" (SGRTB 2008).

The Bill proposes to establish a Stolen Generations Reparation Tribunal with half or more of its members being of Aboriginal or Torres Strait Islander descent. This six person tribunal would address the need for an effective process of reparation. The idea of setting up such a tribunal was born out of a three year consultative process which involved 150 members of the Stolen Generations and many other representatives of Indigenous communities. Those consulted believed the best way for Australia to conduct a process of reparation for the Stolen Generations was through a Tribunal Model which meets the key objectives of:

- Validating the specific experience and identity of the Stolen Generations;
- Ensuring that Indigenous people are involved in the design and delivery of reparations processes and outcomes;
- Developing reparations measures in accordance with international humanitarian law principles, and so serving the dual objectives of redressing past harm (via notional lump sum payments to address the act of forcible removal with provision for additional amounts for aggravated harm such as sexual abuse and assault) and creating measures of reparation that offer long-term social, cultural and economic benefits to those affected (perhaps via collective claims) (Durbach 2008).

The tribunal is to consider each Stolen Generations case on its own merit and then decide what reparations should be provided. Each case is supposed to be decided on within a year. The scheme is designed to reduce the onerous legal process required for personal injury claims. All cases of reparations and monetary compensation are to be resolved within a decade (SGV 2008b).

Reparations under this scheme would include, but not be limited to, monetary compensation. Reparations may take the form of community development, education or health projects as the scheme would be open to individuals, family members and communities. The aim is to provide a more holistic approach to reparations rather than just simply monetary compensation (SGV 2008b).

The words of the Tribunal Chairperson and Chief Judge of the Maori Land Court, Joe Williams, are worthy of consideration:

In the end the resolution of indigenous grievances is about indigenous survival. That is about ensuring the survival of indigenous identity and difference. Linguistic, cultural, political economic and so forth. If reparations packages do not focus on this, they will fail in their primary purpose which is to settle the grievance. Thus they must be future looking and they must be organic. They must create a relationship between the tribe, first nation or community and the state which is positive, beneficial and perpetual (Williams in Durbach 2008).

The Federal Government can kick-start the reparations process and begin to genuinely make amends for the Stolen Generations and bring about a more reconciled Australia by passing the *Stolen Generations Reparations Tribunal Bill 2008*, enacting it into legislation and implementing its proposals.

The Bill has been commended to the Senate and is currently awaiting consideration.

A Time to Rebuild Australia's National Character

Reparations for the Stolen Generations are important to all Australians.

Doing what we can to right the wrongs of the past goes to the heart of our national character. It also sets an example to future generations... Moral values demand the payment of compensation to members of the stolen generation... as an acknowledgement of the grief and a gesture of support in the difficult journey of healing (Watson, 2008).

How Australian Governments address the issues of the Stolen Generations will have a profound influence on the values of our society for years to come.

It will determine whether we move towards acceptance, co-existence, diversity and cultural accommodation, respect and equality or whether we continue in a state of dismissal, discrimination, intolerance, suspicion and disparity. Once Australia embarks on a process of comprehensive reparation it will begin to create an honest and trusting relationship with its indigenous people and allow all Australians to embrace a positive national character (Behrendt 2008b).

Former Prime Minister Gough Whitlam said in 1971: "Australia's treatment of its Aboriginal people will be the thing upon which the rest of the world will judge Australia and Australians not just now, but in the greater perspective of history".

The time is right for the government to make *amends* and begin rebuilding a national character that all Australians can be proud of.

More Information

The *Bringing Them Home Report* and its recommendations are available at:

http://www.hreoc.gov.au/social_justice/bth_report/index.html

Stolen Generations Alliance

<http://www.sgalliance.org.au/>

National Sorry Day Committee

http://www.nsd.com.au/index.php?option=com_frontpage&Itemid=1

Stolen Generations Timeline

<http://www.creativespirits.info/aboriginalculture/politics/stolen-generations-timeline.html>

Dept Health & Ageing

<http://health.gov.au/internet/main/publishing.nsf/Content/bringing-them-home-lp>

Speech in Senate by Greens Senator SIEWERT:

http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/2008-09-24/0130/hansard_frag.pdf;fileType=application%2Fpdf

Stolen Generations Reparations Tribunal Bill 2008:

http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s654_first/toc_pdf/0820120.pdf;fileType=application%2Fpdf

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http://www.pm.gov.au/media/speech/2008/speech_0073.cfm

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http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s654_ems_1272c560-b230-4990-a316-99b693370220/upload_pdf/08201em.pdf;fileType%3Dapplication%2Fpdf

Stolen Generations Reparations Tribunal Bill 2008 (SGRTB) 2008b) available at:
http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s654_first/toc_pdf/0820120.pdf;fileType=application%2Fpdf

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