

**Submission
No 27**

**INQUIRY INTO REPARATIONS FOR THE STOLEN
GENERATIONS IN NEW SOUTH WALES**

Name: Ms Sandra Newham

Date received: 18/10/2015

The Director
General Purpose Standing Committee No. 3
Parliament House
Macquarie St
Sydney NSW 2000
18th October, 2015.

Dear Director,

**RE: INQUIRY INTO REPARATIONS FOR THE STOLEN GENERATIONS IN
NEW SOUTH WALES**

I write my submission to the current Inquiry into Reparations for the Stolen Generations and in support of Stolen Generations and their families. I am pleased the General Purpose Standing Committee No.3 is acting to consider the response of the NSW Government's response to the 1996 National Inquiry and the necessary legislation and policy which may be required to address fully the recommendations of the 1996 National Inquiry.

This submission mainly addresses Standing Committee's items from The Bringing Them Home Report, Recommendation 3 (c) Measures of Restitution and (e) Monetary compensation. I recommend the NSW Government urgently establish a reparations tribunal to speedily compensate members of the Stolen Generations, their descendants and communities.

To consider reparations for the Stolen Generations some historical facts need to be recognised and acknowledged by non-Aboriginal Australians. Paul Keating, the Prime Minister of Australia at the time, spoke with honesty and compassion in his speech in Redfern in 1992:

'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?' (Prime Minister Paul Keating, Redfern Speech, 1992).

Australian History

Historically Australia has tried to 'whitewash' the history of dispossession and colonisation and the atrocities that were committed on Aboriginal and Torres Strait Islander people under the lie of 'settlement'. But this is not the truth. The truth was colonisation and dispossession as recognised and acknowledged by Paul Keating in his Redfern speech.

Without recognition and acknowledgement of the true facts the coloniser continually denigrated Aboriginal and Torres Strait Islander people and their culture ie as Aboriginal and Torres Strait Islander people we were classified and hence treated as 'less than' the dominant culture to 'justify' the atrocities and

injustices inflicted on our people. Our land was stolen, our wages were stolen and then our children were stolen. For no other reason than we were Aboriginal or Torres Strait Islander people.

The Stolen Generations and the Governments failure in their Duty of Care.

The Bringing Them Home Report states:

Because the objective was to absorb the children into white society, Aboriginality was not positively affirmed. Many children experienced contempt and denigration of their Aboriginality and that of their parents or denial of their Aboriginality. In line with the common objective, many children were told either that their families had rejected them or that their families were dead. Most often family members were unable to keep in touch with the child. This cut the child off from his or her roots and meant the child was at the mercy of institution staff or foster parents. Many were exploited and abused. Few who gave evidence to the Inquiry had been happy and secure. Those few had become closely attached to institution staff or found loving and supportive adoptive families. (BTH Report, Chapter 11, **Part 3 Consequences of Removal**)

To think of a child removed from his/her parents or primary care giver, family, community, land and culture and the resulting grief and loss is really incomprehensible. To think that this occurred as a result of intentional Government policy to 'assimilate' Aboriginal and Torres Strait Islander children into the white mainstream culture is inexcusable. Then to place these little vulnerable children into institutions (often referred to as 'homes') where abuse and neglect was rampant in most institutions, brings to question the failure of the Government in their Duty of Care. ***Clearly there was a breach of Duty of Care and the Government is responsible for this breach. Children were left in situations where they were abused; verbally, emotionally, physically and sexually.***

How many more Inquiries before Stolen Generations receive justice?

1997 –The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, resulted in the report known as the 'Bringing Them Home Report'. In this report many Stolen Generations members spoke publicly for the first time of the grief, trauma and abuse they had suffered as the result of the removal policies put in place by the Government of the time of their removal. For most the telling of their stories was overwhelming, as was the need for their stories to be heard and validated.

2008 – Inquiry. I was present at the Public Hearings and spoke at that Inquiry. Many of the Stolen Generations who I attended with were hopeful but sceptical that any form of compensation would result from the Inquiry. Of course they were right, once again there was no monetary compensation. Some State apologies, or 'regret' from the then Prime Minister John Howard but no monetary compensation. The Inquiry heard from witnesses including:

Dr Ben Saul from the Sydney Centre for International Law was one of several legal representatives to give evidence.

He has told the inquiry there international precedent for compensation to be paid for human rights violations.

"An apology, although of course welcome, is not sufficient to discharge the obligation to make reparation under international law," he said.

"Sometimes an apology is enough, if for example the harm, the material harm done is very slight or insignificant and that's plainly not the case here". (ABC news April 16, 2008. **'Sorry not enough for Stolen Generations: law expert'**.)

2015 – another Inquiry. Almost 20 years after the Bringing Them Home Report we see another Inquiry. In that time many Stolen Generations members have died. So where is this one to go? The same way as the other 2 Inquiries? Is the Government waiting for the Stolen Generations members to die so they will not have to pay monetary compensation to them and only a tokenistic amount to their descendants? Wasn't there enough 'evidence' in the 1996 National Inquiry and the resulting Bringing Them Home Report of the trauma and injustice perpetrated on the removed children, their parents, families and communities? ***It is very hard to see how further evidence would be required for the Government for compensation to finally be given.***

Measures of Restitution

It would not be acceptable for the NSW Government to now add further grief and trauma in offering tokenistic monetary compensation. ***The monetary compensation should be representative of the harm and the resulting immense negative consequences and lifetime loss to each Stolen Generations member's life. The amount of monetary compensation should reflect the level of suffering and loss.***

My submission fully supports the University of NSW Law Society and the Public Interest Advocacy Centre (PIAC) in their submissions to this Inquiry, including financial reparations and litigation as stated:

'Undoubtedly, financial reparation can never restore a survivor for irreparable injustices suffered by them. Nevertheless, the dignity of a survivor should not be eroded further by their preclusion from their legitimate common law entitlements'.

'Litigation is a legitimate form of recourse that should be open to any individual holding a genuine claim against the State. Consistent with the spirit of the mode litigant rules, there necessarily should be a moral onus upon the State to invite potential litigants to initiate their common law rights, with a view to informal settlement. In no way should redress be pursued by the State with a view of diversionary tactic from the availability of litigation and its legal obligations'.

Yours sincerely

Sandra Newham