

**Submission
No 21**

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

Organisation: ANTaR NSW

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**Submission to the Inquiry into reparations for the Stolen
Generations in New South Wales**

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About ANTaR NSW

ANTaR NSW is a long-standing, specialist advocacy and campaigning body which works to support justice and self-determination for Aboriginal people in NSW.

ANTaR NSW listens to and supports the aspirations of Aboriginal and Torres Strait Islander peoples and works to educate the wider community, shape public opinion, speak up against injustice and influence public policy to advance our vision.

Our goal is to undertake informed, specialised campaigning and to mobilise support that achieves justice and self-determination for Aboriginal and Torres Strait Islander people in New South Wales.

ANTaR NSW is a long-term advocate of the need for reparations for the Stolen Generations, and campaigned strongly for national and state apologies to be the beginning of the process of reparation.

Introduction

1. ANTaR NSW acknowledges and pays respect to Stolen Generations survivors and their families and communities.
2. ANTaR NSW welcomes the opportunity to make a submission to the Inquiry into reparations for the Stolen Generations in New South Wales.
3. The *Bringing them Home* Report (The Report) was a landmark report into the past government policies and practices that saw tens of thousands of Aboriginal and Torres Strait Islander children forcibly removed from their families.
4. The Report exposed what is now a widely accepted position of government policies grossly violating the human rights of Aboriginal and Torres Strait Islander people and the need for all governments of Australia to make amends for the injustice.
5. ANTaR NSW believes strongly there is unfinished business that remains between the governments of Australia and Aboriginal and Torres Strait Islander people who were forcibly removed from their families.
6. ANTaR NSW notes that there has been no comprehensive response to the *Bringing them Home* Report and an inconsistent implementation of the recommendations of the report across the nation.
7. ANTaR NSW acknowledges that many Stolen Generations survivors, their children, families and communities continue to suffer as a result of their forced removal from family, community and country.
8. ANTaR NSW supports the view forcible removal was part of an overall strategy to control all aspects of Aboriginal people's lives including dispossession from country and segregation onto reserves and missions, freedom of movement and association, choice of employment, the right to dispose of assets including wages and the right to marry and raise families.¹
9. ANTaR NSW supports the view that there was a further economic rationale behind the Governments policy of forced removals that saw Aboriginal children put in institutions and exploited as cheap labour for missions, governments, pastoralists and industry.

(More detail is available in Appendix A².)
10. ANTaR NSW notes the psychological, physical and sexual abuse that took place whilst in care and the ongoing and intergenerational trauma that people continue to struggle with to this day.
11. ANTaR NSW notes the tragic loss of cultural links and language flowing from these events and recognises that not all Stolen Generations have been able to

¹ National Sorry Day Committee and National Stolen Generations Alliance, unpublished report, 2012.

² Appendix A - Submission 57 to NSW Legislative Council's Social Issues Committee Inquiry

reconnect with their families, nor feel part of cultural and language renewal. Many are left feeling at the margins of both societies.

12. ANTaR NSW recognises that despite a key justification of removal being better education, many Stolen Generations in institutions received little, if any, education.
13. ANTaR NSW notes the correlation between forcible removal and incarceration and the high proportion of cases examined by the Royal Commission Into Aboriginal Deaths in Custody who were forcibly removed.
14. ANTaR NSW recognises the generations of struggle by Aboriginal people to restore control over their own lives; and the efforts of Stolen Generations individuals and organisations to set up family tracing and reunion services and advocacy organisations and achieve self-determination and healing. It was ninety years ago in 1925 that the Australian Aboriginal Progressive Association under the presidency of Frederick Maynard called for self-determination and for an end to the forcible removal of Aboriginal children from their families.³
15. ANTaR NSW recognises the United Nations basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (the Van Boven Principles)⁴
 1. Acknowledgement and apology
 2. Guarantees against repetition
 3. Measures of restitution
 4. Measures of rehabilitation, and
 5. Monetary Compensation
16. ANTaR NSW believes that how Federal, State and Territory governments redress the injustices experienced by Stolen Generations, their families and descendents will determine how we as a nation progress towards reconciliation based on respect and equality.
17. ANTaR NSW supports appropriate legislation and/or policies necessary to implement effectively the recommendations from the *Bringing them Home* Report, however, notes that urgent implementation is required to ensure Stolen Generations survivors are beneficiaries of reparation during their lifetime.

Recommendation 1 – ANTaR NSW recommends that the NSW Government implement the recommendations from the *Bringing them Home* Report, through legislation, policies and budget allocations and ensure they are applied to Stolen Generations Survivors, their families and descendents as a matter of urgency.

³ National Sorry Day Committee and National Stolen Generations Alliance (2012) unpublished report.

⁴ Van Boven, T (2010) The United Nations Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, United Nations Audiovisual Library of International Law, accessed via http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf

A NSW Response to the *Bringing them Home* Report

Acknowledgement and Apology

18. ANTaR NSW acknowledges that Premier Bob Carr delivered an apology in NSW on 18th June 1997 on behalf of the Parliament and people of NSW.⁵
19. ANTaR NSW notes that the national apology that took place later on the 13th February 2008 was a day of healing, sending a message to Aboriginal and Torres Strait Islander people that this nation acknowledges the past injustices experienced as a result of forced removals.
20. ANTaR NSW believes that the apology ought to have been the beginning of a co-ordinated process of reparation and consecutive governments at state and federal level have failed to realise this objective.
21. ANTaR NSW notes that their remains misconceptions within the wider community about what the apology related to and believes further mainstream education is needed about the apology to increase awareness of the specific actions of government that damaged Aboriginal and Torres Strait Islander people and tore families and communities apart.⁶

Recommendation 2 – ANTaR NSW recommends further investment in education resources for the wider Australian population regarding government policies that led to the Stolen Generations, as well as processes towards reparations for the Stolen Generations.

Guarantees against repetition

22. ANTaR NSW notes that the *Bringing them Home* Report recommends education packages for school curricula and for professionals working with Aboriginal and Torres Strait Islander people to prevent repetition.
23. ANTaR NSW recognises that to some degree this recommendation has been implemented in the NSW History and English Syllabus; however, notes that further teacher training and resourcing is required for best practice implementation.⁷
24. ANTaR NSW notes that the legislation and policies that resulted in the forced removals of Aboriginal children from their families encapsulated a socio cultural model of assimilation.⁸

⁵ NSW Reconciliation Council (2009) *Discussion Paper, First Anniversary of the National Apology – Time to make amends*

⁶ ANTaR (2008), *Fact Sheet – Sorry: the national apology*

⁷ Board of Studies Teaching and Educational Standards, Stolen Generations search 22/9/2015 <http://syllabus.bos.nsw.edu.au/search/?q=Stolen+Generations>

⁸ Human Rights and Equal Opportunity Commission (1997). *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their*

25. ANTaR NSW is concerned that current mainstream approaches and a lack of respect for self-determination, continue the practice of assimilation and ignore the distinct need of Stolen Generations survivors to restore cultural integrity.
26. ANTaR NSW is gravely concerned that current child protection practices are resulting in a repetition of forced removals and recognises that the nation is at risk of repetition, creating a new generation of stolen children.⁹
27. ANTaR NSW notes one in six Aboriginal children are in state care and that the number of Aboriginal children in out of home care is nine times higher than the rate for non-Aboriginal children.¹⁰
28. ANTaR NSW is gravely concerned that removal of Aboriginal children in NSW is increasing and that Aboriginal children are being taken away from their families at a rate faster than at any time during the Stolen Generations.¹¹
29. ANTaR NSW notes that culturally appropriate principles are not being adhered to, such as Aboriginal child placement principles and systems like the Kinship Care Program are not being adequately resourced.¹²
30. ANTaR NSW notes the Heads of Damage detailed in the *Bringing them Home* Report and acknowledges that the ongoing and intergenerational impact of damages places Stolen Generations survivors, their families and descendants at greater risk of child removal.
31. ANTaR NSW notes the high correlation between Aboriginal children in out of home care and those who proceed to the justice system.
32. ANTaR NSW is gravely concerned about the excessive rate of incarceration of Aboriginal and Torres Strait Islander young people in the Juvenile Justice System, noting that this is 28 times greater than non-Indigenous young people.

Recommendation 3 – ANTaR NSW recommends that the Government of NSW adopt mechanisms to ensure the right to self-determination is realised by Aboriginal Stolen Generations survivors.

Families. Canberra, Sterling Press. Accessed 22/9/15
https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

⁹ Grandmothers against removals (2015) National Statement marking the anniversary of the National Apology. Accessed 22/9/15 <http://stopstolengenerations.com.au/13-feb-2015-national-statement-marking-the-anniversary-of-the-national-apology>

¹⁰ Aboriginal Legal Service NSW/ACT (ND) *Facts about child protection today*. Accessed 22/9/2015 <http://www.alsnswact.org.au/pages/care-protection-law>

¹¹ Aboriginal Legal Service NSW/ACT (ND) *Facts about child protection today*. Accessed 22/9/2015 <http://www.alsnswact.org.au/pages/care-protection-law>

¹² Tilbury, C (2013) *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*, SNAICC. Accessed 22/9/2015 http://www.snaicc.org.au/_uploads/rsfil/03167.pdf

Recommendation 4 – ANTaR NSW recommends further investment in teacher training and support to enable best practice delivery of the Stolen Generations Education syllabus.

Recommendation 5 – ANTaR NSW recommends adequate resourcing of Kinship Care programs and the implementation of a systemic mechanism to ensure culturally appropriate principles are adhered to.

33. ANTaR NSW believes that the best guarantee against repetition is for governments to commence the negotiations recommended by the *Bringing them Home* Report that sought to have COAG negotiate with a range of Aboriginal and Torres Strait Islander organisations for “national legislation establishing a framework for negotiations at community and regional levels for the implementation of self-determination in relation to the well-being of Indigenous children and young people (national framework legislation)”. This framework would support “the eventual transfer of responsibility for children’s wellbeing to Indigenous peoples”; and accord with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

(More detail is available in Appendix B.¹³)

Recommendation 6 – ANTaR NSW recommends that the NSW Government commence negotiations in NSW with Stolen Generations survivors, organisations that work with them, and other relevant bodies, about how to progress the proposal for national framework legislation outlined in Recommendations 43a–53b of the *Bringing them Home* Report.

Recommendation 7 - ANTaR NSW recommends that state and federal legislation be implemented to give full domestic effect to the Genocide Convention and ensure that ongoing practices of forced removals are ceased.

Recommendation 8 – ANTaR NSW recommends increased funding of services, quarantined specifically for Stolen Generations survivors and their families to strengthen family functioning, including community controlled mental health, wellbeing, cultural re-connection and parenting programs.

Measures of Restitution

34. ANTaR NSW notes that the purpose of restitution is to re-establish, to the extent possible, the situation that existed prior to the perpetration of gross violations of human rights.
35. ANTaR NSW recognises that Stolen Generations share distinct experiences and have distinct needs. Stolen Generations survivors have typically lost the use of their languages, been denied cultural knowledge and inclusion, been deprived of

¹³ Appendix B - National Sorry Day Committee’s 2015 Scorecard

- opportunities to take on cultural responsibilities and are often unable to assert their native title rights.¹⁴
36. ANTaR NSW notes the lack of effective engagement and consultation between the NSW Government and Stolen Generations survivors whose forcible removal under the Government legislation and policies resulted in gross violations of international human rights law and serious violations of international humanitarian law.
37. ANTaR NSW notes that there has been no comprehensive investigation of experiences that took place in homes where Stolen Generations were held in NSW or the effects of those experiences.
38. ANTaR NSW acknowledges that, even though funding has not matched the levels required to implement the *Bringing them Home* Report, there has been some investment from governments in the:
- a. Expansion of Link-Up
 - b. Bringing Them Home program
 - c. Social and emotional wellbeing centres and Workforce Support Units, although not specifically quarantined for Stolen Generations survivors.
 - d. Mental health service delivery projects.¹⁵
39. ANTaR NSW specifically notes in NSW the investment through the Department of Aboriginal Affairs the Family Records Unit, providing practical assistance to people seeking access to records and oversees an ongoing system of indexing records, particularly of the Stolen Generations.
40. ANTaR NSW is concerned that these programs have been significantly under-resourced and that services experience chronic high workloads.
41. ANTaR NSW believes that Federal, State and Territory Governments have not done enough to make amends for past injustices and that this continues to fundamentally affect the ability of Stolen Generations survivors and their families to access education, health, social networks and employment opportunities.

Recommendation 9 - ANTaR NSW recommends that the NSW Government establish a systemic process to ensure effective engagement directly with Stolen Generations survivors to identify and address their specific and distinct needs.

¹⁴ Human Rights and Equal Opportunity Commission (1997). *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. Canberra, Sterling Press. Accessed 22/9/15
https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

¹⁵ Australian Indigenous Health Infonet (2015) *Link Up – Overview*. Accessed 22/9/2015
<http://www.healthinfonet.ecu.edu.au/key-resources/programs-projects?pid=92>

Recommendation 10 – ANTaR NSW recommends that the NSW Government significantly increase investment in services and programs that support rehabilitation and restitution for Stolen Generations survivors.

Measures of Rehabilitation

42. ANTaR NSW notes that reparation packages must enable Stolen Generations survivors to move forward in a self-determined way that can sustainably improve social, cultural and economic wellbeing.

43. ANTaR NSW believes that better systemic practices are required to ensure the realisation of the right to self-determination, in accordance with Australia's agreement to this in the UN Declaration on the Rights of Indigenous Peoples, and recognition of the specific needs of the Stolen Generations as a distinct group¹⁶

(More detail is available in Appendix C¹⁷.)

44. ANTaR NSW notes that investment into social and emotional wellbeing and healing programs, mental health counselling, family reunion services and parenting support have contributed to the process of rehabilitation for some Stolen Generations survivors.¹⁸

45. ANTaR NSW notes that many services and programs are targeted to the broader Aboriginal and Torres Strait Islander population and do not effectively reach the first generation of Aboriginal people who were removed, nor address their specific and distinct needs. These Stolen Generations survivors are ageing and their needs are urgent.

46. ANTaR NSW is concerned that services supporting rehabilitation for Stolen Generations Survivors are limited by onerous funding cycles, multiple funding sources and significant under resourcing.

Recommendation 11 - ANTaR NSW recommends the NSW Government commit to the adequate resourcing of services quarantined specifically for Stolen Generations survivors as recommended in the *Bringing them Home* Report.

Monetary compensation

47. ANTaR NSW notes that government responses to monetary compensation for the Stolen Generations have been varied and that in NSW monetary compensation has only come about following protracted court battles.

¹⁶ NSW Council of Social Services (ND) Fairness Factsheets: Self-Determination-Autonomy-Representation. Accessed 22/9/2015 <http://www.ncoss.org.au/vote1/fairness/factsheets/01-Self-Determination-Autonomy-Representation.pdf>

¹⁷ Appendix C - National Sorry Day Committee's response to the Discussion Paper on the Development of a renewed Aboriginal & Torres Strait Islander Social and Emotional Wellbeing Framework

¹⁸ NSW Reconciliation Council (2009) *Discussion Paper, First Anniversary of the National Apology – Time to make amends?*

48. ANTaR NSW is concerned that the process to seek compensation, whether through litigation or through a state compensation scheme, is traumatic and that outcomes are hampered by missing records.¹⁹
49. ANTaR NSW notes that forcibly removed children who were apprenticed out received little or no payment for their labour, many only receiving rations. ANTaR NSW notes that despite efforts by the NSW Government to repay unpaid wages and entitlements, it was a repayment scheme, not a compensation scheme. Also, the onus of proof laid with claimants themselves, rather than the state. With the state and others in control of record keeping and its access, this meant it was often been beyond the means of claimants to assemble their claims and challenge related findings, and a considerable number feel they have been inadequately compensated. It is of concern that closure of the scheme has disenfranchised those families who were not able to assemble a claim at that time.²⁰
50. ANTaR NSW is concerned that existing approaches are limited and that access to schemes can appear arbitrary for Stolen Generations, between survivors and experiences.
51. ANTaR NSW believes that the inconsistent response to compensation lacks a genuine commitment to the holistic process of reparation and that a whole of government nationally consistent and co-ordinated approach is required.

Recommendation 12 - ANTaR NSW recommends that Stolen Generations survivors be consulted on the best mechanism for monetary compensation and that this could include a nationally consistent approach with joint funding mechanism being developed through the Council of Australian Governments (COAG).

Reparations Tribunal

52. ANTaR NSW notes that the Public Interest Advocacy Centre (PIAC) has undertaken an extensive three year consultative process with Stolen Generations survivors and peak bodies to develop an alternative model for reparation in order to:
- a. ensure Indigenous people were involved in the design and delivery of reparations processes and outcomes;
 - b. validate the specific experience and identity of the Stolen Generations; and
 - c. acknowledge, both symbolically and substantively, the magnitude of the moral wrong perpetuated against the victims of removal policies and the pain and enduring harm borne by the Stolen Generations.
53. ANTaR NSW notes that this process led to the development of a Stolen Generation Reparation Tribunal model that would
- a. recognise the distinct needs of the Stolen Generations;

¹⁹ Creative Spirits (ND) *Compensation for Stolen Generation members*, Accessed 22/9/2015 <http://www.creativespirits.info/aboriginalculture/politics/compensation-for-stolen-generation-members#axzz3mRsQ8hqm>

²⁰ National Sorry Day Committee and National Stolen Generations Alliance (2012) unpublished report.

- b. have a focus on healing beyond the limitations of monetary compensation;
- c. provide for an inclusive process of accessing and formulating reparations by those eligible for redress;
- d. permit group claims in recognition of the collective harm which whole communities continue to experience as a consequence of forced removal policies;
- e. encourage a 'whole of government' and community response to effecting and implementing reparations measures;
- f. promote a process of truth and reconciliation; and
- g. prevent repetition of past practices and ongoing harm by considering the effects of existing policies, laws and regulations.²¹

54. ANTaR NSW supports the Reparations Tribunal model being advocated for by PIAC.

Recommendation 13 – ANTaR NSW recommends the establishment of a Reparations Tribunal as proposed by the Public Interest Advisory Centre and that an ongoing evaluation mechanism be established to measure progress against the recommendations from the *Bringing them Home* Report.

²¹ PIAC (2008) *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Stolen Generations Compensation Bill*