

Submission  
No 8

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

**Organisation:** Jumbunna Indigenous House of Learning, Research Unit  
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The Director  
General Purpose Standing Committee No. 3  
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Dear Director,

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

We refer to the terms of reference of the inquiry, and, in particular, term 2(b), 'guarantees against repetition' and make the following submission on behalf of Jumbunna Indigenous House of Learning (Research Unit) (**Jumbunna Research**).

Jumbunna Research is located at the University of Technology, Sydney and undertakes research and advocacy on Indigenous legal and policy issues of importance to Indigenous people, their families and their communities. Our current projects explore, inter alia, issues related to Indigenous peoples' contact with the Child Protection and Juvenile Justice systems. The staff at Jumbunna Research include experienced researchers, academics and practicing solicitors who have strong links to both the legal profession and Indigenous communities.

Jumbunna Research has played a central role in focussing public attention on the ongoing removal of Aboriginal children from their homes across Australia by child protection agencies. These removals are taking place in numbers unprecedented in Australian history and many Aboriginal families who have experienced such removals describe them as a continuation of the "Stolen Generations" of the 20th Century.

Jumbunna Research has been involved in a number of projects documenting the scale and dynamics of these removals, including the Indigenous Legal Needs Project with James Cook University and the internationally acclaimed documentary film 'Utopia' by John Pilger.

We have also provided legal research assistance to many families challenging the removal of their children through the courts. Jumbunna Research supports the work of the grass-roots advocacy organisation Grandmothers Against Removals (GMAR), formed in 2014 by families affected by child removal and with members across the country. GMAR is calling for Aboriginal control of Aboriginal child welfare and a rapid expansion of resources available for community-led solutions to the social problems often cited as a justification for child removal.

Through our research, Jumbunna Research staff have worked continuously and closely with Aboriginal and Torres Strait Islander people through New South Wales, and in that work, have met with and heard the stories of numerous families who have parents, aunties, uncles or grandparents who are members of the Stolen Generation, who have had some or all of their children removed by the contemporary child removal system (or had that threatened) and, in many cases, who have experienced both.

In our view, it is impossible to avoid the conclusion that the removal of Aboriginal children, both as part of the Stolen Generation, and under modern and contemporary child removal policies, are often predicated upon common, continuing assumptions of cultural superiority and an intolerance to culturally different parenting practices.

This submission will focus upon the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families commissioned by the Keating Government and tabled in May, 1997 (**Bringing Them Home**). Representing the most comprehensive and sophisticated attempt

Australia has ever made to grapple with its reprehensible policies of Aboriginal and Torres Strait Islander child removal, the observations, conclusions and recommendations of *Bringing Them Home* remain as relevant today as they did in 1997. *Bringing Them Home* represents, in our submission the most effective blueprint to improving child removal policy and addressing the extreme over-representation of Aboriginal and Torres Strait Islander children in the child protection and juvenile justice systems.

### **Bringing Them Home**

The publication of the *Bringing Them Home* report in 1997 was a watershed moment in Aboriginal politics. It was also a moment in which the nation was forced to observe the nature of a legal, political and social endorsement of racist policies designed to destroy a racial group. In that, it provides a salient signpost of the errors of the past, and remedies for providing redress for those suffering under that system. It contained many recommendations about how justice and healing could be brought about for the Stolen Generations.

However, it importantly also recognized that the past practices not only affected new generations of Aboriginal and Torres Strait Islander people, but that these new generations were confronted by a child protection regime that shared many of the same assumptions as those historical policies. So a third of *Bringing Them Home* is concerned not with the past but with the parallels of the historic to the contemporary. It demonstrates that the dynamics of the Stolen Generations continue to be present in contemporary child protection responses.

The report contained comprehensive testimony and analysis about the removal of Indigenous children throughout Australia's history, and argued that the systematic child removal seen throughout the Twentieth Century was a genocidal process paralleled in the processes examined around 1995. It acknowledged that any reparation scheme needed first to grapple with reform of the contemporary norms. To do otherwise would be to fail to recognize the moral wrong of a past system for which reparation was intended.

The recommendations of *Bringing Them Home* have never properly been implemented, nor the lessons it taught properly learnt.

Since the release of *Bringing them Home*, the problem of Indigenous child removal has become much worse. At June 30, 1997 when the Report was tabled there were 2,785 Aboriginal children in out of home care across Australia. At June 30, 2013 there were 13,914 - a five-fold increase (Productivity Commission, 2014). This is a higher number of Aboriginal children than were removed during any year in the 20<sup>th</sup> Century considered by *Bringing Them Home*.

In our submission, the following key findings from the report are based upon evidence received by the Inquiry responsible for *Bringing Them Home*, accord with our experience as researchers and resonate within the dynamics of the contemporary removal systems:

**1. Discrimination and paternalism remain alive and well in child protection departments. In particular:**

- “A focus on child-saving facilitates blaming the family and viewing ‘the problem’ as a product of ‘pathology’ or ‘dysfunction’ among members rather than a product of structural circumstances which are part of a wider historical and social context.” (p. 376)
- “We have seen that Indigenous families were historically characterised by their Aboriginality as morally deficient. There is evidence that this attitude persists.” (p. 376)
- “Indigenous families face both race and class prejudice among many welfare officers.” (p. 376)
- “‘Normal’ Aboriginal practice signals a problem to many welfare workers... workers’ perception of Aboriginality as a cause of delinquency and problems. Behaviour in both periods was frequently

stereotyped in a racist way. Definitions of neglect are more subjective and culturally particular than definitions of abuse.” (p. 395)

- “Aboriginal families continue to be seen as the ‘problem’, and Aboriginal children continue to be seen as potentially ‘savable’ if they can be separated from the ‘dysfunctional’ or ‘culturally deprived’ environments of their families and communities. Non-Aboriginals continue to feel that Aboriginal adults are ‘hopeless’ and cannot be changed, but Aboriginal children ‘have a chance’” (p. 395)
- “Cultural difference, particularly different family structures, can lead to adverse decisions by juvenile justice, welfare and other agencies, particularly where cultural difference is not understood or does not inform policy development and implementation. At its worst, cultural difference can be treated as a type of abnormality or pathology” (p.478)
- “If Indigenous child-rearing is seen as pathological or abnormal, Indigenous families will be more liable to intervention by social workers, police and courts. Assimilation can become an implicit result as the values of the dominant group are imposed on Indigenous people.” (p. 479)
- Examples provided of cultural bias within the child protection system included (p.480);
  - The implicit or explicit interpretation of travel to maintain familial and cultural relationships and responsibilities as ‘instability’,
  - The implicit or explicit interpretation of extended familial responsibility as ‘abandonment’ or ‘inadequate supervision’; and
  - Differences in the level of freedom and responsibility accorded to Indigenous children interpreted as ‘lack of supervision’ or ‘lack of control’ over children.

These cultural biases then become incorporated in assessments and reports may be used to justify more interventionist decisions by child welfare and juvenile justice agencies as well as decisions in relation to matters such as child removal, adoption and custody.

**2. The main reason given for removal is alleged to be “Neglect”, but such neglect arises not as a result of personal agency or behavior, but from systemic poverty. Nonetheless, the child protection system rarely recognizes this fact, nor does it engage in alternative approaches:**

- “Indigenous children are more likely than non-Indigenous children to be removed on the ground of ‘neglect’ rather than ‘abuse’. (p. 373)”
- “The primary reason for welfare intervention in Indigenous communities is neglect. Social inequality is the most direct cause of neglect... problems which result in removals need to be addressed in terms of community development”.
- “Indigenous communities throughout Australia gave evidence to the Inquiry of their need for programs and assistance to ensure the well-being of their children. Not a single submission to the Inquiry from Indigenous organisations saw intervention from welfare departments as an effective way of dealing with Indigenous child protection needs.” (p. 513)

### **Reparations and Recommendations**

*Bringing Them Home* not only identified the causes that led to the Stolen Generations, and were still evident at the time of its tabling in 1997, but made recommendations for changes to the (then) contemporary child protection systems. As noted in *Bringing Them Home*:

*Appropriate measures must be implemented to ensure that Indigenous families and communities in Australia never again suffer the forcible*

*removal of their children simply because of their race. Governments and responsible agencies are encouraged to consider sympathetically and respond to proposals submitted by Indigenous organisations, communities and individuals with a view to the prevention of repetition.*

Unfortunately, that challenge has not been taken up by Australian governments. It is our submission that the recommendations from *Bringing Them Home* remain a relevant and effective blueprint for reform today, including that:

**1. Aboriginal people must be in control of child welfare**

- “Our principal finding is that self-determination for Indigenous peoples provides the key to reversing the over-representation of Indigenous children in the child welfare and juvenile justice systems of the States and Territories and to eliminating unjustified removals of Indigenous children from their families and communities” (p. 15)
- “Decision making about Indigenous children's well-being falls well short of accepted notions of self-determination” (p.378)
- “Existing systems have failed miserably. Nowhere is this failure more profoundly reflected than in the inability of States and Territories to reduce the number of Indigenous children placed in care, held in police cells and sentenced to detention centres.” (p.493)
- “The starting point for a new framework is the right to self-determination... The Inquiry supports the eventual transfer of responsibility for children’s well-being to Indigenous peoples and proposes a framework for negotiating autonomy measures (Recommendation 43). It would be inappropriate and untimely for the Inquiry to pre-empt the results of these negotiations by outlining in this report the features of a self-government scheme.” (p.493)
- “Evidence to the Inquiry and substantial research findings establish conclusively the need for a fundamentally different approach if the



objective of eliminating unjustified and unnecessary removal of Indigenous children from their families and communities is to be achieved. This goal is consistent with article 6 of the draft *Declaration on the Rights of Indigenous Peoples*:

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.” (p. 493)

**2. A “Social Justice” package is needed to lift communities out of poverty**

- “Unless these conditions are altered and living conditions improved, social and familial disruption will continue. Child welfare and juvenile justice law, policy and practice must recognise that structural disadvantage increases the likelihood of Indigenous children and young people having contact with welfare and justice agencies. They must address this situation.” (p. 490)
- “The denial of social justice violates the basic citizenship rights of Indigenous people in Australia. Citizenship rights include rights to standards of health, housing, education and equality before the law enjoyed by other Australians.” (p.490)
- “Earlier inquiries have made detailed recommendations relating to social justice. Commonwealth, State and Territory governments have committed themselves to implement the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* addressing social justice. The Inquiry commends those recommendations and draws attention to the link between the appalling living conditions in many Indigenous communities and the need for a social justice response

built on the right to self-determination.” (p.490)

- Amongst the many recommendations made by *Bringing Them Home*, the central concern relating to self-determination for Aboriginal and Torres Strait Islander communities led the inquiry to make Recommendation 42, which states:

“That to address the social and economic disadvantages that underlie the contemporary removal of Indigenous children and young people the Council of Australian Governments, in partnership with ATSIC, the Council for Aboriginal Reconciliation, the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner and Indigenous community organisations dealing with Indigenous family and children’s issues, develop and implement a social justice package for Indigenous families and children, and pursue the implementation of the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* which address underlying issues of social disadvantage.” (p.491)

It is our submission that any reparation scheme must address and adopt the recommendations of *Bringing Them Home* if the continuing wrong of Stolen Generations is to be realised and addressed.

We would be pleased to provide further information to the inquiry in the form of oral submissions if that would be of assistance.

Yours Sincerely,

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Snr. Researcher

Craig Longman  
Deputy Director

Prof. Larissa Behrendt  
Director