

**Submission  
No 13**

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

**Organisation:** Reconciliation Australia

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1 October 2015

Ms Jan Barham MLC  
Committee Chair  
General Purpose Standing Committee No. 3  
By email: [GPSC3@parliament.nsw.gov.au](mailto:GPSC3@parliament.nsw.gov.au)

Dear Ms Barham,

**Re: Inquiry into reparations for the Stolen Generations in New South Wales**

Thank you for your invitation, dated 24 August 2015, to provide a written submission to the New South Wales (NSW) Legislative Council's General Standing Committee No. 3, regarding its Inquiry into reparations for the Stolen Generations in NSW (the Inquiry).

As the national organisation promoting reconciliation between the broader community and Aboriginal and Torres Strait Islander people, Reconciliation Australia seeks to help build an Australia that is reconciled, just and equitable for all. A key step in achieving this vision is recognising and making amends for wrongs done in the past.

Reconciliation Australia commends the significant steps towards reconciliation that have been made over the past 15 years. The Commonwealth Government has committed to addressing Aboriginal and Torres Strait Islander disadvantage through the Closing the Gap framework, and supporting the Council of Australian Governments Steering Committee to produce the Overcoming Indigenous Disadvantage reports. In 2008, Prime Minister Kevin Rudd put forward a long overdue Apology to the Stolen Generations, which was crucial to begin healing by acknowledging the truth of past policies. However, much remains to be done if we are to truly reach our goal of reconciliation.

The assimilation policies of Australia's past have left a legacy of trauma and loss that continues to affect Aboriginal and Torres Strait Islander communities, families and individuals today. We believe that the failure of Australians to deeply engage with our past is a genuine roadblock to reconciliation. Our nation must have the courage to own the truth; to heal the wounds of its past so that we can move forward together in the strong spirit of reconciliation. This Inquiry is a step towards achieving this goal.

Reconciliation Australia believes this Inquiry has the potential to significantly progress reconciliation for Aboriginal and Torres Strait Islander people in NSW, and if done well, could provide a blueprint for other State reparation and reconciliation processes.

In order for the Inquiry to have the greatest impact, Reconciliation Australia advocates for:

- 1) the *Bringing Them Home* report reparation recommendations to be fully enacted within NSW, and
- 2) generous and meaningful reparations processes to be adopted by the State which includes compensation, truth and healing.

### **1. Implementing the recommendations from the *Bringing Them Home* report**

The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (*Bringing Them Home* report) in 1997 made 54 recommendations for recognition and reparations to the Stolen Generations. The recommendations were aimed at helping members of the Stolen Generations begin the healing process, and to ensure that the past policies and practices of the forced removal of Aboriginal and Torres Strait Islander children from their families would not be repeated in the future. Reconciliation Australia maintains that all recommendations made in the report are just as relevant today as they were in 1997.

With regards to reparations, the *Bringing Them Home* report recommended:

“That, for the purposes of responding to the effects of forcible removals ‘compensation’ be widely defined to mean ‘reparation’; that reparation be made in recognition of the history of gross violations of human rights; and that the van Boven principles guide the reparation measures. Reparation should consist of,

1. acknowledgment and apology
2. guarantees against repetition
3. measures of restitution,
4. measures of rehabilitation, and
5. monetary compensation.”<sup>1</sup>

Reconciliation Australia submits that progress toward righting the wrongs of the past experienced by the Stolen Generations has so far fallen short of the recommendations made in the *Bringing Them Home* report. The failure to adequately compensate Aboriginal and Torres Strait people who were removed from their families and communities means that Australia is unable to fully acknowledge, make amends for, and move on together from the past. At a national level, none of the nine recommendations made to the Commonwealth Government relating to compensation and financial reparations, including the establishment of a National Compensation Fund, have been implemented.

While the concept of reparations in the *Bringing them Home* report includes financial compensation, it also identifies a need for guarantees against repetition of past wrongs. In light of this, Reconciliation Australia believes that appropriate measures must be implemented to ensure that Aboriginal and Torres Strait Islander families and communities do not have their children forcibly removed because of their race ever again. Currently, there are very concerning signs that the past is being repeated as the rate of Aboriginal and Torres Strait Islander children in out of home care has

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<sup>1</sup> Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the national Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (2007) Recommendation 3.

significantly increased since the release of the *Bringing them Home* report.<sup>2</sup> While there is recognition that Aboriginal and Torres Strait Islander children should be placed within their own culture or community where possible, in practice children still face unacceptably high levels of being totally removed from their communities. Therefore, Reconciliation Australia advocates for the commitment of all levels of government in Australia to ensuring the rights-based safety of the current generation of Aboriginal and Torres Strait Islander children. Additionally, while Reconciliation Australia firmly believes all children must be protected, if the current rates of child removal occur, without addressing underlying causes of concern, we are in danger of creating another generation of displaced children.

Therefore, we believe a fully coordinated and comprehensive response by all levels of government is urgently needed, and we urge the NSW State Government to ensure any proposed reparation scheme includes the five measures of reparations outlined in the *Bringing Them Home* report (as stated above). Such a response would require:

- committing to a partnership with Stolen Generations groups, as well as Link Ups and other service providers, with ongoing consultation and participation;
- committing to a comprehensive government response to the needs of the Stolen Generations, as identified in the *Bringing them home* report; and
- adopting a whole-of-government approach – across departments and across governments – to achieve this.<sup>3</sup>

## **2. Developing a meaningful reparations process**

A reparations process for members of the Stolen Generations will be most successful when it is meaningful, culturally appropriate, and thorough. Claimants in any reparation scheme must feel valued and safe, and Reconciliation Australia urges the Inquiry to ensure the reparation process for members of the Stolen Generation follows these principles. Reparation schemes have been developed in other Australian states and overseas jurisdictions, which may be beneficial in guiding this Inquiry.

### **2.1 Tasmania's reparations scheme**

The Tasmanian Government implemented a \$5 million scheme in 2006 under the *Stolen Generations of Aboriginal Children Act 2006* (Tas), which provided for compensation to be distributed between living members of the Stolen Generations but also the children of those who had died, and was the first Australian state to implement a Stolen Generations reparations program. Of the 151 applications received, 106 were found to be eligible for payment. Of those, 84 people were victims and 22 were the children of victims who had died. Forty-five claims were rejected. On the whole, many of the affected Aboriginal and Torres Strait Islander groups were

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<sup>2</sup> The Secretariat of National Aboriginal and Islander Child Care (SNAICC), Family Matters – kids safe in culture, not in care initiative: <http://www.familymatters.org.au/announcements/bringing-them-home-scorecard-report-2015-again-highlights-startling-inaction>

<sup>3</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Let the healing begin: Response to government to the national apology to the Stolen Generations' (Speech delivered at the Members Hall, Parliament House, Canberra, 13 February 2008).

satisfied with the process.<sup>4</sup> In particular, under the Tasmanian scheme, the onus was on the state to show it had done everything possible to return Aboriginal children to their families if they were removed. This position had the effect of placing burden on the state to prove their case which lessened the hardship experienced by the aggrieved in justifying and retelling their stories. We urge the Inquiry to consider developing a response which encompasses financial compensation, similar to the measure adopted in Tasmania, for members of the Stolen Generations in NSW.

## 2.2 Canada's reparations scheme

The Indian Residential Schools Settlement Agreement adopted in Canada in 2006 represents a reparation scheme that was thorough, well-resourced and truthful. Relevantly, the Indian Residential Schooling system strikes strong parallels with the experience of the Stolen Generations. The scheme allocated \$2 billion dollars in the following ways:

- \$1.9 billion, plus interest, was made available through the Common Experience Payment Fund for lump sum payments to every eligible individual including all former First Nations, Inuit, Inuvialuit, and Métis residential school students;
- An Independent Assessment Process was established which could potentially compensate students who suffered sexual abuse, serious physical abuse or other abuses that caused psychological effects. The victims could receive between \$5,000 and \$275,000;
- \$125 million was given to the Aboriginal Health Foundation for a five year period to fund healing programmes for former students and their families;
- \$60 million was provided to the Truth and Reconciliation Commission to conduct research, documents and preserves the experiences of survivors; and
- \$20 million was allocated to national and community commemorative projects.<sup>5</sup>

## 2.3 Meaningful compensation

It is difficult to place a monetary value on the grief and suffering experienced by Aboriginal and Torres Strait Islander people who were forcibly removed. However, for many victims, compensation can make a practical difference and improve the lives of communities and individuals. In light of this, Reconciliation Australia believes it is incumbent upon state and federal governments to address the physical and psychological experiences of the Stolen Generations in a way that recognises and validates trauma. Therefore, we urge the Inquiry to recognise the importance of compensation in achieving just outcomes for Aboriginal and Torres Strait Islander people who, because of past government practices, have been deprived of community ties, culture and language, and links with their traditional lands.

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<sup>4</sup> Gibson, J. (January 23 2008). Tasmania Pays \$5m to stolen generations. *Sydney Morning Herald*. Retrieved from <http://www.smh.com.au/news/national/tasmania-pays-5m-to-stolen-generations/2008/01/22/1200764264522.html>

<sup>5</sup> The official Court website for the settlement of the *Residential Schools Class Action Litigation*: [http://www.residentialschoolsettlement.ca/detailed\\_notice.pdf](http://www.residentialschoolsettlement.ca/detailed_notice.pdf)

## 2.4 Seeking truth

The Canadian Truth and Reconciliation Commission (ceased operating in June 2015) aimed to inform all Canadians about the truth of Indian Residential Schools. In doing so, the Commission engaged Aboriginal people and Canadians in a process of reconciliation and renewed relationships, based on mutual understanding and respect. In addition, the scheme allocated funding to national and community commemorative projects which supported the Truth and Reconciliation Commission's mission to educate the Canadian public, share the experiences of former students and their families and the ongoing legacies of the Indian Residential School system within Canadian communities. This funding was also intended to provide opportunities to celebrate regional diversity and honour those touched by residential schools.

Reconciliation Australia considers that a reparations scheme in Australia should include the allocation of funding to programs and projects that educate all Australians about the Stolen Generations. If the NSW government does not pursue a formal truth and reconciliation scheme, elements of such a truth-highlighting process should be incorporated and allocated appropriate funding. In particular, funding should be allocated to an extensive public education campaign, to build respect and knowledge throughout the education, health, corporate and government systems. Further, funding is necessary for the education of professionals working with Aboriginal and Torres Strait Islander families so that they are able develop a complete understanding of the history and effects of forcible removals. Educating the public in this way ensures that the values of human rights are instilled and ensures Australians do not allow history to repeat itself.

Of particular significance to NSW, the former Cootamundra Aboriginal Girls' Training Home and the Kinchela Aboriginal Boys Training Home provides tangible evidence of past policies and practices of taking Aboriginal children away from their families and communities, severing all ties with their culture in order to assimilate them into mainstream Australian society. Placement of Aboriginal children in these institutions has caused cultural dislocation for the former residents and ongoing associated problems within the Aboriginal community. Reconciliation Australia urges the Inquiry to recognise and support initiatives which assist affected individuals and communities to heal from events that occurred in these Homes as well as those that serve to educate the public about the past.<sup>6</sup>

## 2.5 Healing

Reconciliation Australia urges the Inquiry to build a coordinated and comprehensive response which also encompasses meaningful reparations for members of the Stolen Generations through community-based Aboriginal directed healing initiatives. These initiatives address the legacy and impacts of the past government practices. In this respect, we acknowledge the work of the Healing Foundation in building culturally strong, community led healing solutions. We agree with the view of the Healing

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<sup>6</sup> For example, the Kinchela Boys Home Aboriginal Corporation, serves to assist Kinchela men, their families and communities recover their identity, dignity and well-being. The Corporation also aims to educate the public about the grievances of the Stolen Generations: <http://www.kinchelaboyshome.org.au/about-us/our-creed/>

Foundation that healing works when solutions are culturally strong, developed and driven at the local level, and led by Aboriginal and Torres Strait Islander people. We ask that any outcomes of the Inquiry support the Healing Foundation's goals and initiatives within Aboriginal and Torres Strait Islander communities. Reconciliation Australia believes that a response which encompasses this outcome would be a step toward truly seeking justice for members of the Stolen Generations of NSW and could provide a best practice model on a domestic and international scale.

Yours sincerely

Justin Mohamed  
Chief Executive Officer  
Reconciliation Australia