

**Submission
No 35**

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

Organisation: Link-Up NSW Aboriginal Corporation (Link-Up)

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LINK-UP [NSW]

*Standing in the Present, Acknowledging
the Past and Looking Forward*

Link-Up NSW Aboriginal Corporation (Link-Up)

Submission to the NSW Legislative Council Inquiry into the Reparations for the Stolen Generations in NSW.

***Link-Up NSW Aboriginal Corporation acknowledges and pays its respects to members of
the Stolen Generations and their families.***

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Purpose

To provide a response to the General Purpose Standing Committee No. 3 Inquiry into the Reparations into the Stolen Generations in NSW.

Terms of Reference

That General Purpose Standing Committee No. 3 inquire into and report on reparations for the Stolen Generations in New South Wales, and in particular:

(a) the New South Wales Government's response to the report of the 1996 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children and Their Families entitled 'Bringing them Home' and the recommendations made in the report regarding reparation;

(b) potential legislation and policies to make reparations to members of the Stolen Generations and their descendants, including approaches in other jurisdictions, and

(c) any other related matter.

That for the purposes of paragraph 1, the committee adopt the definition of 'reparations' contained in recommendation no. 3 of the 'Bringing Them Home' report, which states that reparation should consist of:

(a) acknowledgment and apology

(b) guarantees against repetition

(c) measures of restitution

(d) measures of rehabilitation, and

(e) monetary compensation.

Background

For over a century, Aboriginal children throughout Australia have been removed from their families by missionaries and Government authorities. A range of Government motivations and policies were used to justify the institutionalisation, adoption and fostering of Aboriginal children to non-Aboriginal institutions and families. The most recent of such justifications is found in assimilation policies adopted by many governments in Australia during the 1960's and early 1970's. The policy of assimilating Aboriginal people into 'Australian' life was pursued by encouraging the fostering or adoption of Aboriginal children into non-Aboriginal homes and families.

It is widely recognised that the fostering or adoption of the children commonly led to pronounced identity problems for those children when they became teenagers and ultimately to the breakdown of their placement. This led to the children becoming alienated from their own people and culture, families being dispersed and broken down which in turn resulted in cycles of alcoholism, loss of identity and culture, over representation in the judicial system and the further disintegration of family units and community support.

Recent studies indicate that these policies proved to be both a cultural and human disaster. Statistics show that 90% of Aboriginal children placed in non-Aboriginal foster care and adoption were ultimately returned to the care of the State and institutionalised.

The tragedy of this period was captured in the report of the Inquiry into the Death of Malcolm Charles Smith by Commissioner J.H.Wootten Q.C. as part of the *Royal Commission into Aboriginal*

Deaths in Custody, 1989. Commissioner Wootten discussed Australia's adoption of the Genocide Convention in the *Genocide Convention Act 1949*. Genocide was defined as acts committed to destroy, in whole or in part a national, ethnic, racial or religious group. Conduct which constituted genocide included causing serious mental harm to members of a group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent birth within the group, or forcibly transferring children of the group to another group. The Royal Commissioner concluded that;

"In its crudest forms, the policy of assimilation fell within this modern definition of genocide, and in particular the attempt to 'solve the Aboriginal problem' by the taking away of children and merging them into white society fell within that definition"

Over time governments recognised the need to address the events of the past. One of these was the *Bringing Them Home* inquiry established by the Australian Government in May 1995 in response to efforts made by key Indigenous agencies and communities concerned that the general public's ignorance of the history of forcible removal was hindering the recognition of the needs of its victims and their families and the provision of services.

Bringing Them Home is the title of the Australian Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. The report marked a pivotal moment in the controversy that has come to be known as the Stolen Generations.

The 680-page report was tabled in Federal Parliament on 26 May 1997.

The report made many recommendations, including that:

- Funding be made available to Indigenous agencies to allow Indigenous people affected by the forcible removal policies to record their history.
- Reparations be made to people forcibly removed from their families, and that the **Van Boven** principles guide reparation measures.
- Australian Parliaments offer official apologies and acknowledge the responsibility of their predecessors for the laws, policies, and practices of forcible removal.

On 16 December 2005, the United Nations General Assembly adopted the resolution 60/147, titled '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. These principles are largely inspired from the work of **Van Boven** and Cherif Bassiouni and are known as the **Van Boven/Bassiouni** Principles.

The Report concluded that "Indigenous families and communities have endured gross violations of their human rights. These violations continue to affect Indigenous people's daily lives. They were an act of genocide, aimed at wiping out Indigenous families, communities, and cultures, vital to the precious and inalienable heritage of Australia".

Through this it is clear that there are ongoing and long lasting traumas affecting those of the Stolen Generations. However, we also need to understand the definition of “stolen” as there are far more First Nations people suffering from these issues as a result of the government removal policy than just those directly forcibly removed from their families.

“Few records of stolen children were kept. Some were deliberately destroyed or just lost. Some administrations tried to tout their “successful assimilation” of Aboriginal people by deliberately understating Aboriginal numbers, thus distorting data. Hence numbers can only be roughly estimated. It is estimated that between 1883 and 1969 more than 6,200 children were stolen in NSW alone”. **(Korff 2015, Reid 1981, The Australian 1994)**

Those families who did not have children removed, still suffered the trauma of the government’s removal policy. There is a reoccurring narrative among Aboriginal people of that generation of “denying we were Aboriginal”. Many Aboriginal people have publically spoken about these traumas and how Aboriginal families “escaped” from communities due to the fear of their children being taken.

If we look at this in the light of human physical and psychological needs, this in itself is another form of theft perpetrated on Aboriginal people. The theft of culture, connection to country and community and the theft of identity, are recurring themes.

It is imperative that, in the journey of this inquiry into reparations for the Stolen Generations, the effects of removal policies are understood in this wider context. It needs to be taken into account that there is a wider group of people that have suffered and still suffer the trauma and devastating anguish that comes with separation, grief and loss.

The effects of intergenerational trauma on Aboriginal children and young people is devastating and has been a direct effector on the gap that Aboriginal people suffer in life expectancy rates across the nations. A very concise but effective report, “Growing Our Children Up Strong and Deadly – healing for children and young people”, has been produced by the Aboriginal and Torres Strait Islander Healing Foundation and can be found at:

http://healingfoundation.org.au/wordpress/wpcontent/files_mf/1369185755GrowingourChildrenupsinglesfeb2013.pdf

Once again, it is imperative that this submission lead its readers directly to the Growing Our Children Up Strong and Deadly report as it provides the most effective and efficient description of intergenerational trauma and its impacts on young Aboriginal and Torres Strait Islander people.

To say that reparations should consist of a set of “models” or “parts”, as listed in the Bringing Them Home report, is admirable however, the varied models of reparations all come with their own, challenges and difficulties.

Though, in some (undetermined amount) cases, monetary compensation may alleviate a small part of the dispossession that occurred through these policies, what needs to be considered first and

foremost are different models of healing, based on addressing the individual and collective trauma suffered by Aboriginal and Torres Strait Islander people who:

- Had children forcibly removed;
- Were forcibly removed;
- Are descendants of those forcibly removed;
- Suffered further effects due to the governments removal policies of the time of the Stolen Generations; and
- Are affected today through current removal policies.

Repetition

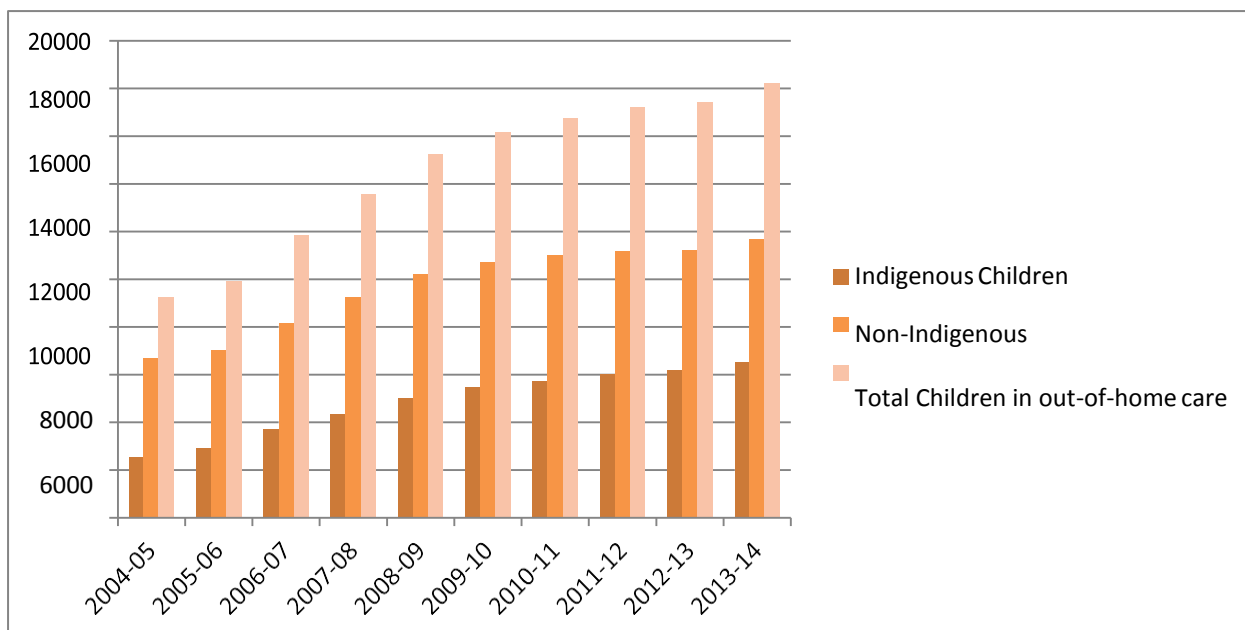
Link-Up NSW acknowledges that the following is an excerpt from the NSW Aboriginal Land Council (NSWALC) submission. Link-Up NSW supports the position of the NSWALC in its discussion on ensuring policies and legislation are never allowed to separate and segregate Aboriginal communities and children; and commentary on the Aboriginal Placement Principles.

Although Government policies and legislation are no longer designed to separate and segregate Aboriginal communities and children (like the forced removal of policies leading to the Stolen Generations), there remains enduring intergenerational and trans-generational issues as a result of forced removals.

The Secretariat of National Aboriginal and Islander Child Care (SNAICC) states that while Aboriginal children under the age of 17 make up 4.6 per cent of the overall child population in Australia, Aboriginal children under the age of 17 make up 35.8 per cent of all children in out of home care. The SNAICC notes that this is an increase of 65 per cent since the Stolen Generation Apology in 2008.

The Bringing Them Home report concluded that the underlying causes for the over-representation of children in child protection and out-of-home care was due to the legacy of past policies of forced removal and cultural assimilation and intergenerational effects of forced removals.

The Productivity Commission notes that NSW has a total of 6,520 Aboriginal children in out-of-home (35.8 per cent of all children). 2,967 children had spent more than five years in out-of-home-care (35 per cent) and 1,948 had spent from two to less than five years in out-of-home-care (37 per cent). In NSW 43 per cent of all Aboriginal and Torres Strait Islander children are in out-of-home-care. This is quite a contrast to other states which have a lower portion of children in out-of-home-care – Victoria 8.7 per cent, Queensland 22.3 per cent, Western Australia 12.5 per cent and South Australia 5.2 per cent.



Number of children in out-of-home care in NSW

The Aboriginal Child Placement Principle, developed by the Department of Human Services in Victoria, is designed to enhance and preserve Aboriginal children’s sense of identity as Aboriginal by ensuring that Aboriginal children and young people are maintained within their own biological family, extended family, local Aboriginal community, wider Aboriginal community and their Aboriginal culture. The SNAICC has endorsed this principle which includes:

1. Prioritising placement of Aboriginal and Torres Strait Islander children in with their Aboriginal and Torres Strait Islander family, community, or other Aboriginal and Torres Strait Islander families, where such placement is safe for the child.
2. Requiring consultation with Aboriginal and Torres Strait Islander families, communities and organisations about child protection intervention, and child placement and care.
3. Ensuring that Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connection to their family, community and culture, especially children placed with non- Indigenous carers.

This principle has been enacted into law in all Australian states and territories (*NSW Children and Young Person (Care and Protection) Act 1998, ss11-14*). The presumption is that removal of an Aboriginal or Torres Strait Islander child from their family should be an intervention of last resort.

The Queensland Department of Communities, Child Safety and Disability Services, provides data which demonstrates that over 50 per cent of all Aboriginal children have been placed in out-of-home care in accordance with the Aboriginal Placement Principle from between 2010 and 2014.

As of 30 June 2014 1,839 (55 per cent) were placed with a relative, non-Indigenous relative, other Indigenous caregiver, or placed within an Indigenous residential care service.

The NSW Government does not provide similar statistics to demonstrate whether the NSW Government is adhering to the principles. The Government does, however, refer to the principles in the Aboriginal Consultation Guide published by the Department of Family and Community Services.

It is understood that the NSW Government is working to develop initiatives to ensure that children are not taken out of their home and resettled unless it is the last resort. However, statistics of Aboriginal children in out of home care in NSW do not present a bright picture. The NSW Government must ensure that its policies do not decline back into repetition of old practices and in particular wide scale policies and practices relating to the removal of Aboriginal children from their families.

Additionally, it is noted that information on the NSW Government adherence to the Aboriginal Placement Principle needs to be publicly available and its continued implementation needs to be monitored.

The General Purpose Standing Committee No. 3 Inquiry into the Reparations into the Stolen Generations in NSW, is now looking at possible solutions and a way forward to redress the wrongs imposed on Aboriginal people, Aboriginal families and Aboriginal communities.

Recommendations

From the very outset of creating a direction for the healing to begin we need to recognise that true restitution, as it is defined under the “**Van Boven principles**”, is truly unachievable as so much time has passed and the barriers are too immense to overcome. However, we need to understand that this does not alleviate the government of the moral and, what could be determined as a legal, obligation to try to support this to be achieved as part of the journey of healing.

The true value of reparations is, like the effects, individual. Each person affected has a different story and a different value that they place on money, restitution, rehabilitation etc. It is imperative, that there is a continuum of care put in place that is able to provide support and healing. Further, what healing looks like, needs to be decided by Aboriginal people themselves. This isn't another paternalistic exercise where a few well known Aboriginal and Torres Strait Islander “leaders” are bought together to advise government. The reparation for Stolen Generations and what is meaningful needs to be decided on and administered by Aboriginal and Torres Strait Islander people affected by the government policies then and now.

In response to the Inquiry's **Terms of Reference** Link-Up NSW provides the following recommendations to the Inquiry for consideration:

Recommendation 1: Thorough and meaningful consultation informing reparation options

- ***Aboriginal and Torres Strait islander people alone need to decide what reparation looks like.***
The NSW government needs to establish a body made up of Aboriginal and Torres Strait Islander people, to undertake meaningful consultation with those, both directly and indirectly, affected

by the forcible removal of Aboriginal and Torres Strait islander children as directed by government policy from 1883 until today. These include (but are not limited to):

- Current living members of community that were removed from their families.
- Parents and siblings of those removed from their families and communities.
- Kin and community of those removed from their families and communities.
- Descendants of those removed from their families and communities.
- Aboriginal and Torres Strait Islander individuals and communities that have been affected in any way by the removal of other Aboriginal and Torres Strait Islander children from their families and communities and/or the government policy that led to these removals.

Further, these consultations need to be directly undertaken by experienced Aboriginal and Torres Strait Islander consultants, without interference or direction from non-Aboriginal entities, individuals or government.

- **Varying and diverse consultation mechanisms.** It is imperative that there are numerous and diverse consultation mechanisms to gather as much information from Aboriginal and Torres Strait Islander people as possible regarding reparations for those affected by NSW government removal policies. In addition to understanding that the demographic of those affected is extremely diverse in areas such as; age, location, socio-economic status, education, access to services and mainstream media etc, there also needs to be an appreciation that there are real and significant differences in how remote, regional and urban Aboriginal and Torres Strait Islander communities interact, engage and operate. All of these factors will have an effect on how successful any single consultation mechanism may be.

The raw data from these consultations need to be made available and proactively disseminated to all members of the NSW community as well as the overall findings. It is imperative that all of the raw de-identified consultation data from recommendation 1, in its purest form, is available to all members of the public. There are multiple reasons for this including:

- Creating a transparent and trustworthy process that Aboriginal and Torres Strait islander people can see being undertaken. Unfortunately, due to historical approaches to Indigenous policy in Australia, Aboriginal and Torres Strait Islander people feel disenfranchised and see no correlation between their feelings/needs/aspirations and the policies and legislation enacted by Australia's 3 tiers of government.
- Providing non-Indigenous Australians with an unchanged, first-hand perspective of those affected by paternalistic government policy in the hope that it creates a wider empathy and understanding of the effects of forcible removal.
- To provide those Aboriginal and Torres Strait islander people affected, an opportunity to see their words and feelings shared openly and honestly in the hope that they feel empowered and have some control over the process leading towards meaningful reparation.

It is also imperative that the findings derived from the information gathered through consultation mechanisms, are able to be clearly linked to the raw data and truly reflect the thoughts, feelings and aspirations of those who have been consulted.

Recommendation 2 – Indigenous determination and decision making in implementation

- *Establishment of urban, rural and remote panels of Indigenous people to implement findings and assess applications.* The number of panels and the makeup of the panels is flexible, however the need for the panels to be unique for the three different types of communities and the need for the panels to be completely made up of Indigenous members is imperative.
- *Indigenous oversight of panels, governance and recommendations made.* It is important that there is Indigenous oversight of the process. This needs to be undertaken by a committee of Indigenous people with the skills and understanding of proper governance to ensure that the process is fair and meets the highest standards.
- *A NSW Government Authority to establish a secretariat to support oversight committee and panels.* A dedicated secretariat for the reparation panels and oversight committee is a necessity to ensure that the committee and the unique panels don't get overwhelmed and left without support.

Recommendation 3 – Educate wider community about Indigenous culture including ongoing effects and trauma.

- *Education about ongoing effects and their direct link to increase Out of Home Care (OOHC) placements and emphasise on importance of placement principles for Indigenous Children.* Unfortunately, there are a disproportionate number of children in OOHC placements in NSW and there are a large number of these children in non-Aboriginal care placements. There needs to be a clear understanding of placement principles by all staff who have a role in the OOHC system and they need to be aware that this legislation is for a reason. It is not negotiable. Further, Aboriginality needs to stop being a contributing factor for removal. "If two families have the same issues contributing to the need to remove a child, there is more chance of an Aboriginal child being removed as Aboriginality is considered a contributing factor to ROSH (Risk Of Significant Harm) assessments" (***Anonymous Benevolent Society staff member***). OOHC agencies need to clearly establish the difference between child-protection and removal.
- Understanding of current issues facing those affected descendants of those who were removed. There needs to be thorough and widely distributed media messages that allow people to know that Indigenous people are just as capable and just as competent as non-Indigenous people. There are ongoing traumas that create long term issues for Aboriginal people, but together as a community, with a bit of understanding, all of our Country can be better off. This also needs to be addressed through education which should start, age appropriately, at a preschool level through play and fun and move right through a continuum of, again, age-appropriate education at all ages.

Recommendation 4 – Support to internally address lateral violence.

- *Identify and assess current courses/programs on lateral violence.* There are numerous courses and programs that are being delivered on lateral violence. Some are quite in depth whilst some are simply short presentations. There needs to be an assessment of current delivery and effectiveness to identify which ones are working and which are not working as well. The hope of this is to create a suite of programs that have diverse delivery methods that will be able to be rolled out to as many Indigenous communities as possible in all settings.
- *Identify and train community champions and community accepted leaders to deliver lateral violence programs.* Any lateral violence programs need to be run by people that are identified by the community as people that they respect and identify with. Unfortunately, we have too many self-appointed “elders” throughout Indigenous communities and this in itself is a huge contributor to lateral violence. It is not these “elders” that will provide positive impact, as they often have very poor connection with community and utilise fear and control to achieve their means.

Recommendation 5 – Training and funding of Aboriginal and Torres Strait Islander researchers

- *A single centre for Indigenous research with outreach centres in rural and remote areas.* There is a need to combine the research muscle of Indigenous researchers under one single collaborative banner. The AIATSIS model of collecting and supporting research is a good one, however what we need to see is the removal of competition in this sphere and the creation of collaboration. Until we see Indigenous researchers working and publishing as part of their own centre, utilising the skills and knowledge of other Indigenous people, we will continue to fall short in this area. Additionally, a culturally safe centre, under a self-determination model, will attract Indigenous people and will be able to provide culturally appropriate input into social solutions in all spheres.

Recommendation 6

The NSW Government must ensure that its policies do not reflect practices of the past and in particular wide scale policies and practices relating to the removal of Aboriginal children from their families.

Recommendation 7

Link-Up NSW Aboriginal Corporation recommends that the NSW Government publicly provide data and report on the implementation of the Aboriginal Placement Principles.

Conclusion

Deciding how and what reparations are deemed appropriate to address the injustices of removal of Aboriginal people will be the single most important role of the Inquiry. This submission has concentrated more on the psychological healing and more defined participation of Aboriginal communities in the decision making processes of this issue. In the main, this submission highlights the need to:

- Conduct meaningful consultation with Aboriginal people and communities to identify and develop any reparation models;
- Implement through consultation, Aboriginal self-determination models and increased social participation to provide collective sharing of Australia's rich heritage and resources;
- Educate the wider community on the history and ongoing trauma of removal;
- Support the elimination of lateral violence within Aboriginal communities; and
- Support the development of a research centre whereby Aboriginal people can participate effectively in the research and provision of information effecting their lives.

Link-Up NSW Aboriginal Corporation provides support to members of the Stolen Generations through its **Link-Up NSW Reunification** program which assists Aboriginal and Torres Strait Islander people of the Stolen Generations: those who have been fostered, adopted or raised in institutions under Government policies of the time. Link-Up services aim to help members of the Stolen Generations trace their families and be reunited with them (or their gravesides, Country or Kin).

Additionally, **Link-Up NSW Family Link** program assists the children and youth of today who are at risk of removal or have already been removed, by finding other relatives for Family and Community Services (FACS) and out of Home Care agencies, who may be able to provide Kinship placement options.

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