

**Submission
No 12**

INQUIRY INTO REPARATIONS FOR THE STOLEN GENERATIONS IN NEW SOUTH WALES

Organisation: Royal Australian and New Zealand College of Psychiatrists - NSW
Branch

Date received: 25/09/2015



The Royal
Australian &
New Zealand
College of
Psychiatrists

New South Wales Branch

25 September 2015

Ms Jan Barham MLC

Chair

NSW Upper House Inquiry into Reparations for the Stolen Generations in New South Wales
General Purpose Standing Committee No 3

By email to gpscno3@parliament.nsw.gov.au

Dear Ms Barham

Re: Submission to the NSW Upper House Inquiry into reparations for the Stolen Generations in NSW

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) NSW Branch is pleased to provide a submission to the above inquiry.

The RANZCP is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand and has responsibility for setting the training program, examining and providing access to Fellowship of the College to medical practitioners. The NSW Branch represents approximately 1100 Fellows of the College.

The RANZCP NSW Branch welcomes the opportunity to make a submission and believes it is timely to review progress against the recommendations of the *Bringing Them Home Report* given it is now 18 years since its release. We look forward to reviewing the outcomes of the Inquiry.

If you have any questions regarding the contents of the submission or on any other matter relating to the Inquiry to which we could add further input, please do not hesitate to contact Penelope Adams, NSW Branch Policy Officer on

Yours sincerely

Dr Gary Galambos

Chair

RANZCP NSW Branch Committee

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NSW Legislative Council

Inquiry into reparations for the Stolen Generations in New South Wales



The Royal
Australian &
New Zealand
College of
Psychiatrists

Background

This submission is made by the NSW Branch of the Royal Australian and New Zealand College of Psychiatrists (RANZCP) to the NSW Legislative Council inquiry into reparations for the Stolen Generations in NSW. The RANZCP NSW Branch welcomes the opportunity to make a submission and believes it is timely to review progress against the recommendations of the Bringing Them Home Report (*Bringing Them Home*) (HREOC, 1997), given it is now 18 years since its release.

The RANZCP is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand and has responsibility for setting the training program, examining and providing access to Fellowship of the College to medical practitioners. The NSW Branch represents approximately 1100 Fellows of the College.

Executive Summary

This submission supports the RANZCP position that past practices of state sanctioned abduction of children from parents and their culture in Australia were cruel and harmful and have significantly contributed to poorer mental health outcomes for many Aboriginal and Torres Strait Islander people.

The RANZCP supports the findings of *Bringing Them Home* that the forcible removal of children from their families and cultures constitutes a violation of international law. We acknowledge that no measures can fully compensate for the effects of these violations. However we believe that Australia, as a nation, needs to continue to take steps to put right what can be put right and to provide appropriate restitution or compensation to communities and individuals who have been injured by these policies.

The RANZCP also supports the recommendations of *Bringing Them Home* and believes that the progression of reparations as described in the report and included in the Terms of Reference for the inquiry is crucial for justice in NSW and for Australia's journey towards meaningful reconciliation.

This document is divided into the following sections:

- Introduction
- Steps to address the past harm
- Legal opinion to justify reparation
- Definition of 'reparation'
- Acknowledgement of collective grief
- National gestures towards reparation

- NSW gestures towards reparation
- Monetary compensation
- Conclusion

Introduction

This submission supports the RANZCP position that past practices of state sanctioned abduction of children from parents and their culture in Australia were cruel and harmful and have significantly contributed to poorer mental health outcomes for many Aboriginal and Torres Strait Islander people (RANZCP, 2015).

The RANZCP supports the recommendations of *Bringing Them Home* and believes that the progression of reparations as described in the report and included in the Terms of Reference for the inquiry is crucial for justice in NSW and for Australia's journey towards meaningful reconciliation.

RANZCP steps to address past harms

The RANZCP *Reconciliation Action Plan* represents our commitment to acknowledging the importance of reconciliation and holding the College accountable for helping to address contemporary harm caused by past injustices (RANZCP, 2014).

We acknowledge that in the past, many psychiatrists did not see and understand the destruction and suffering caused by the removal of Aboriginal and Torres Strait Islander children from their families and in some cases the medical profession was involved in the planning and implementation of these policies (HREOC, 1997). The RANZCP has committed to taking steps to address the harm done by the policy of forced removal of Aboriginal and Torres Strait Islander children from their families by supporting individual psychiatrists, trainees and other practitioners to develop a full understanding of the role of complex trauma in Aboriginal and Torres Strait Islander presentations.

Legal opinion to justify reparation

The RANZCP supports the finding in *Bringing Them Home* that the policy of forced removal of Aboriginal and Torres Strait Islander children from their families and culture constitutes a breach of international law, based on systematic racial discrimination and genocide (HREOC, 1997).

Further, we support the van Boven principles (AHRC, 2010) which recognise the right to a remedy for victims of gross violations of human rights and fundamental freedoms. The principles recognise that every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her rights have been violated.

The fact that these practices continued as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed, makes the case for reparation even stronger.

Definition of reparation

The RANZCP supports the use of the broad ranging definition of 'reparation' as described in the Terms of Reference for the inquiry, as per recommendation 3 of *Bringing Them Home* (HREOC, 1997) including;

- acknowledgement and apology
- guarantees against repetition
- measures of restitution
- measures of rehabilitation
- monetary compensation

Acknowledgement of collective grief

The RANZCP also supports recommendation 4 of *Bringing Them Home* (HREOC, 1997) that reparation be made to include the collective grief of all who suffered because of these past policies, including;

- individuals who were forcibly removed as children
- family members who suffered as a result of their removal
- communities which, as a result of the forcible removal of their children, suffered cultural and community disintegration
- descendants of those forcibly removed who, as a result, have been deprived of community ties, culture and language and links with an entitlements to their traditional land.

National gestures towards reparation

The RANZCP notes that since the release of *Bringing Them Home*, there have been gestures towards reparation across Australia, including;

- recognition by governments that past legislation, policy and practices have adversely affected Aboriginal people, impacting successive generations.
- recognition by many government agencies, non-government organisations and churches that forcible removal policies and practices resulted in serious consequences, with an acknowledgement of their role in the deployment of these policies.
- establishment of a national 'Sorry Day' each year to commemorate the history of forcible removal and to acknowledge its impacts.

NSW gestures towards reparation

The RANZCP acknowledges that the NSW government took steps to address the recommendations of *Bringing Them Home* report following its release in 1997. The following list of actions / proposed actions was included in the NSW Government Response document (1999).

- State-wide consultation with Aboriginal and Torres Strait Islander people in preparing its response to the report.
- Apology by the then Premier of NSW, the Hon Bob Carr for practices and policies that were responsible for the Stolen Generations on behalf of the people of NSW.
- Apology for past practices by government agencies involved in the implementation of past practices, including the police service, NSW Justice Agencies, NSW Department of Community Services, NSW Ageing and Disability and NSW Health.
- The establishment of the Aboriginal Communities Development Program, a seven year funded initiative to deliver infrastructure and environmental health services to Aboriginal communities across NSW.
- National Parks and Wildlife (Aboriginal Ownership) Amendment Act 1996.
- Partnering with the NSW Aboriginal Health Resource Cooperative to develop new strategic directions for Aboriginal and Torres Strait Islander health in NSW.
- Various projects and initiatives to support Aboriginal and Torres Strait Islander culture, on the understanding that the establishment of cultural and language centres is a Commonwealth responsibility.
- Establishment of the Yiribana Gallery, a permanent centre for Aboriginal and Torres Strait Islander art at the Art Gallery of NSW.
- Incorporation of aspects of *Bringing Them Home* into educational syllabuses and resources.
- Vocational and education and training strategy for Aboriginal and Torres Strait Islander people.
- Various Training and Community Awareness Programs across NSW government agencies.
- A strategy to improve access to records to enable Aboriginal and Torres Strait Islander people to trace their families and document family and community histories. Importantly, this included a project to preserve the files of the Aboriginal Welfare Board.
- Allocation of further funding to Link-Up (NSW), the primary provider of family reunification services for Aboriginal and Torres Strait Islander people in NSW.
- Focused recruitment of Aboriginal and Torres Strait Islander people into the public health system in partnership with Aboriginal community controlled organisations.
- The establishment of the Aboriginal Family Health Strategy including strategies to address violence and substance abuse.
- Consideration of the proposed national standards in the Children and Young Persons Care and Protection Act 1998.
- An increased focus on Aboriginal and Torres Strait Islander families under the Families First program, which supports parents in NSW who have a child under eight.
- Establishment of the Aboriginal Housing Office to direct and manage housing for Aboriginal and Torres Strait Islander people in NSW.
- Review of NSW programs for Aboriginal People, to provide a basis for ongoing performance review and improvement.
- The establishment of the Cabinet Committee on Aboriginal Affairs and the Chief Executive Officers Group on Aboriginal Affairs.
- The establishment of an annual 'Black Parliament' involving members of the NSW Parliament and elected representatives of Aboriginal and Torres Strait Islander communities.

We assume that the inquiry will examine the status of each of these actions and determine if more appropriate strategies are now required, given several years have passed and successive governments have managed the NSW response.

Monetary compensation

The RANZCP is aware of a range of compensation payment schemes that have operated in various parts of Australia following *Bringing Them Home* including:

- Stolen Wages Scheme (QLD)/ Aboriginal Trust Fund Repayment Scheme (NSW) which are reparation payments made to individuals whose wages and savings were controlled by the authorities under government 'Protection Acts'.
- Redress Scheme (QLD, WA and Tas) to provide redress for harm suffered by children in State care.

The NSW government response document (1999) suggests that monetary compensation is a Commonwealth responsibility. We assume that because 'monetary compensation' is included in the definition of 'reparation' to be used in the inquiry, a state-based approach to monetary compensation for Aboriginal and Torres Strait Islander people affected by policies implemented in NSW will be considered. The Tasmanian approach under the Stolen Generations Compensation Scheme (Tas) is a fully developed and implemented model which could be considered for NSW.

Conclusion

Despite the significant program of work undertaken or intended to be undertaken in NSW to address the recommendations of the report, the Australian Human Rights Commission (2010)¹ has advised that compared to nations with a similar colonial history, such as New Zealand, Canada and the United States, Australia has been slow in the movement towards protecting equality in law and developing and implementing policies to address historical wrongs.

We commend this inquiry as an important part of the process to continue to address the impacts of forcibly removing Aboriginal and Torres Strait children from their families and cultures. We believe that a meaningful approach towards the elements of reparation underpinning the inquiry are crucial for justice in NSW and for Australia's journey towards reconciliation.

¹ The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has also concurred with this recommendation (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, The Situation of Indigenous Peoples in Australia, UN Doc A/HRC/15 (2010), para 19).

References

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