

Submission
No 42

INQUIRY INTO REPARATIONS FOR THE STOLEN GENERATIONS IN NEW SOUTH WALES

Organisation: Shoalcoast Community Legal Centre

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Shoalcoast Community Legal Centre Inc

Legal Advice & Advocacy

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25 February 2016

The Director
General Purpose Standing Committee No. 3
Parliament House
Macquarie St
Sydney NSW 2000

Dear Director

Reparations for the Stolen Generations in New South Wales (Inquiry) 2015

Shoalcoast Community Legal Centre is pleased to provide the following submissions for the consideration of General Purpose Standing Committee No. 3 in the above inquiry.

Please contact our centre on (02) 44229529 if you would like further information to assist with the inquiry.

Yours faithfully
Shoalcoast Community Legal Centre Inc.

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**Shoalcoast Community Legal Centre Submission to the New
South Wales Senate inquiry Reparations for the Stolen
Generations in New South Wales (Inquiry) 2015**

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Inquiry into reparations for the Stolen Generations in New South Wales

General Standing Committee No 3

Shoalcoast Community Legal Centre Submissions

1. SHOALCOAST BACKGROUND

1. Shoalcoast Community Legal Centre (Shoalcoast) has been operating since 1999. Over these years we have assisted many disadvantaged people, including members of the stolen generation, their descendants and communities to access both Shoalcoast and other legal services.
2. Shoalcoast is a generalist legal service and member of Community Legal Centres New South Wales as part of the National Association of Community Legal Centres. In addition to our generalist service we provide access to justice to the Aboriginal communities throughout our catchment from Berry in the north and south to Eden through the Aboriginal Legal Access Program. Significantly we deliver outreach legal advice and assistance services to the communities of Wreck Bay on Jervis Bay, and Jerringa at Orient Point with regular outreach advice clinics held on these communities each month. We provide services to Wallaga Lake Village on community as needed and through our outreach clinics conducted at nearby Narooma. Additionally in 2012 we commenced a partnership with Murra Mia Aboriginal Tenants Advice & Advocacy Service (Murra Mia) that enables us to provide support to that service and access to legal assistance to the community within the Eurobodalla region by locating our

Aboriginal Legal Access Program Solicitor at the Murra Mia office in Batemans Bay on a weekly basis.

3. We deliver free and accessible legal services to residents of the South Coast and South East NSW communities within the Shoalhaven, Eurobodalla, Bega Valley, Bodalla, Cooma-Monaro, Snowy River, Palerang and Queanbeyan local government areas (Gilmore and Eden-Monaro Federal Electorates).
4. Our mission is to provide an accessible professional legal service, responsive to the needs of those most disadvantaged and which promotes just and lasting solutions to legal and social issues in our community.
5. Shoalcoast is committed to equal access to justice and in particular in using our limited resources to reach out to communities to ensure people are aware of when they might have a legal issue encouraging early intervention by providing direct legal advice or information on how best to access assistance to address their specific issue.
6. We deliver our services through a range of options including telephone legal advice, and face to face appointments at our Nowra office in addition to our various outreach locations including the Aboriginal communities as detailed above. We also deliver a range of community legal education opportunities throughout our region each year.
7. In the 2014/15 year Shoalcoast assisted 1,284 individual clients. Our statistics demonstrate our access strategies are assisting us to reach the most disadvantaged residents with the following groups represented by a percentage of our total clients in this period:
 - Indigenous – 11%
 - Sole Parents – 26%
 - People Living on a Low or No Income– 86%
 - People with a Disability – 22%

8. In previous years we directly assisted with twenty five (25) applications from members of the Aboriginal community for Stolen Wages from the Aboriginal Trust Fund Repayment Scheme. Relevantly we have assisted a number of the Aboriginal community in Victim's Compensation claims for institutional child abuse perpetrated against them in the past.
9. Shoalcoast welcomes the opportunity to contribute to the inquiry assisting to inform the committee of the views of members of the Stolen Generations and their descendants within these communities with respect to the direct impact of these racially discriminatory oppressive policies of the past, and how these wrongs may be in some small way repaired. We say "*small way*" as it is clear that these wrongs can never be fully repaired for the Stolen Generations or their descendants, communities and the Aboriginal people of Australia.
10. Shoalcoast provides the following submissions drawing on our experience interacting with the Aboriginal communities of the South Coast of New South Wales through the delivery of legal services in particular our relationship with community members that includes informal discussions on topics of interest to community and reconciliation generally.

2. INTRODUCTION

11. The following submissions will focus on reparations in the form of healing for those individuals directly affected by these forced removal policies in addition to reparation for the Aboriginal people as a collective including the intergeneration damage suffered. Our recommendations will significantly include methods for perpetual acknowledgement and remembrance of the Stolen Generations recognising the widespread intergeneration damage suffered as a result of the implementation of these racially based despotic policies. We will submit that perpetual remembrance and acknowledgment will significantly ensure these wrongs are not forgotten and thereby provide an ostensible guarantee against repetition. Whilst we will discuss individual and collective damage and healing in detail we avoid in depth discussion with

regard to the issue of direct contemporary Care and Protection policies, however we will acknowledge such policies will provide practical guarantees against repetition. We understand these direct guarantees have been ostensibly addressed in previous direct inquiries into this issue.

12. We will submit that fundamental to reparation and intrinsically linked to perpetual remembrance and healing is the acceptance of the NSW Government for their role in the implementation of these racially based policies and assurance that this acceptance will transpire into a commitment to provide monetary compensation to those individuals suffering damage from the mere fact and circumstances of their forced removal. Additionally we will submit the acceptance of proportionate liability for the wrongs suffered to many of the Stolen Generations while in institutional care that is the subject of the current "*Royal Commission into Institutional Responses to Child Sexual Abuse*" (Royal Commission) will not only provide real reparation for individuals and their families but additionally serve to avoid the uncertainty for future governments of New South Wales with respect to the quantum of compensatory damage that may eventually flow through civil court actions. Our recommendation for this compensation solution will leave open the possibility of civil claims by victims against institutions inter alia that perpetrated this abuse while satisfying the liability of the NSW Government and providing healing for those Stolen Generation affected.

13. Our submissions and recommendations will further focus on the damage suffered not only to the individuals and their families but the damage to the very foundation of the Aboriginal Community and culture. We will submit reparation of this damage requires both individual and broad community based measures through mechanisms that will serve to assist entire communities, current and future generations to re-establish connection with the land, community, kin and culture in recognition that the implementation of these removal policies has caused ostensibly irreversible damage to the entire Aboriginal culture. We will submit these forms of reparations will not only serve to repair the damage that is the subject of this inquiry but go some way toward national closing the gap goals in many aspects of Aboriginal contemporary life

in Australian society. (*Please note any reference to the Aboriginal people or communities is also a reference to Torres Strait Islander people and communities*)

3. ACKNOWLEDGEMENT & APOLOGIES

14. The 'NSW Government Response' ('the Response') to the 'Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families' (the Bringing them Home Report) significantly included:

Apologies from Premier Bob Carr, NSW Police and chief Executive Officers of NSW Justice agencies, The Director General and Executive Committee of the NSW Department of Juvenile Justice, The Director General and Senior Executive Committee of NSW Department of Community Services, The Director General of NSW Health, The Director General of NSW Aging and Disability Department all "*expressed sincere regret*" and "*acknowledge[d] the pain and anguish experienced by Aboriginal people*" as a result of these removal policies.¹

15. In 'the Response' the NSW Parliament passed a resolution that included what purported to be an '*unreserved apology*':

'On 18 June 1997 the then Premier, the Hon. Bob Carr MP, became the first Government Head in Australia to offer a formal apology to Aboriginal people for practices and policies that were responsible for the stolen generations...apologis[ing] unreservedly to the Aboriginal people of Australia for the systemic separation of generations of Aboriginal children from their parents, families and communities;' acknowledging that the NSW government "*regret and recogni[se] parliaments role in enacting and endorsing policies of successive*

¹ See, New South Wales Government, "*NSW Government Response (1997); Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* at p7

governments whereby profound grief and loss have been inflicted upon Aboriginal Australians;”.²

16. In our discussions with community members it is evident that many were unaware of the above apologies and as such the anecdotal evidence suggests they did little in the way of reparations. During an interview with one member of the Stolen Generations that was a victim of the now infamous Kinchella boy's home after being forcibly taken with his two younger sisters at nine (9) years of age, we asked if he was aware of the above apologies; “*No I didn't know*” was his reply. When asked how it made him feel now that he knew of these apologies he stated;

“I couldn't care less (sic) these people weren't there they don't even know, no apology can make up for what ruined my life”.

This young man was forcibly removed at the age of nine (9) along with his two younger sisters forced into a truck, taken to a train station and ‘*he was taken one way with his sisters taken another*’. He had no knowledge of what fate his sisters met until many years later as an adult.

‘I finally found my sisters a few years ago but we don't have any real connections like sister and brother we just talk, it's not like your sister.’

This single act of implementing these racially based policies severed his primal connection to his siblings. The damage suffered from the fact and circumstances of this and that of all members of the Stolen Generations must be acknowledged as *Res ipsa loquitur*.

17. In our submission to assert that any government historic or contemporary could not turn their mind to the realisation of the damage the mere fact and circumstances of removal under these racially based policies and circumstances would cause to these individuals is untenable.

² Ibid

18. In addition to extinguishing any sibling connection the above example demonstrates the impact of removal from all kinship relations that play such a large part in traditional Aboriginal culture, from family to storytelling, art and other traditional knowledge and skills. This single act of forced removal subsequently ended any chance that the knowledge of his forefathers could be passed down to him through traditional storytelling, tribal ceremonies or other traditional methods used to pass such knowledge through to different generations for tens of thousands of years.

19. Of course no individual can speak for the views of the collective Stolen Generations and the Aboriginal communities affected with respect to the effect of these apologies in terms of reparations. The benefit of these apologies is obviously subjective for each individual.

20. It is our submission that such apologies purporting to be “*unreserved*” are further undermined when the ‘unreserved apology’ is closely followed by a position reserving any liability for monetary compensation to the Commonwealth.³

21. A member of a local Aboriginal Medical Service when asked if they were aware of these apologies but told us;

‘Yes because I read it years later, for some people I am sure the apologies have helped they did not seem to get the media attention for state apologies that I am aware personally.’

When asked how these apologies benefited in terms of reparations they stated;

“Aboriginal people still experience higher rates of incarceration, child removal, higher unemployment, lower home ownership rates, poorer mental health etc and continue to experience racism on a daily basis.”

22. The above demonstrates that while formal apologies may help healing for some of those affected by removal, this is entirely individual, however becomes

³ See, above 1 at p8

redundant in the absence of the knowledge of the apology by those affected as stated above.

23. It is clear that reparations need to address both the damage suffered directly by individuals and the wider damage suffered by the entire Aboriginal people, past, present and future through damage to communities, culture and connections. However we submit the damage goes deeper to include the perpetuation of racism in our social society through the creation of racially based government policies that ostensibly created a foundation of racism to be modeled in society. We further submit the many significant gaps in social and health outcomes between Aboriginal and non-Aboriginals members of our society have been exacerbated by the policies and ideals they portrayed. This must be recognised and acknowledged as the fundamental foundation or starting point for any strategy of reparations.

24. “*Whilst an apology is important...*”⁴ There needs to be more than words to go towards reparation and more important any words need to be widely disseminated to those affected using multiple forms of media and social media to ensure it is heard. The historic mistrust by the Aboriginal people of the government has been exacerbated or for some even founded on experiences of forced removal. The NSW Government must provide trust and confidence within the Aboriginal communities and apologies without actions, that purport to be ‘*unreserved*’ while failing to accept liability for the damage suffered can only serve to undermine the effectiveness and acceptance of any strategies for reparations as being simply the rhetoric of the government of the day aspiring to be ‘*seen*’ to be taking action.

3.1 Recommendation 1

The NSW government reaffirms its apology to the Stolen Generations and all Aboriginal people past, present and future ensuring it is well publicised through

⁴ See, 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*’ (Sterling Press Pty Ltd 1997); ‘*Confidential evidence 139, Victoria: woman removed at 12 months in 1967*’ at p277

wide media exposure in an attempt to reach all of the Aboriginal community, but to additionally expose the history of the Stolen Generations to members of the wider community ignorant to the damage suffered to the Aboriginal people through the implementation of these racially based policies.

3.2 Recommendation 1.1

As part of the above apology the NSW Government release a position statement that acknowledges their liability for the damage suffered by the individuals and their families that were removed under these policies making no reservations for monetary compensation other than those recommended at section 7.0 below. In doing so the NSW Government will create a foundation of trust that the NSW government is sincere and committed to reparations.

4. GUARANTEES AGAINST REPETITION

4.1 Child Protection

25. Clearly the most obvious and important practical guarantee against repetition is the implementation of state Child Protection policies that recognise the cultural importance and value the difference of the Aboriginal family structure of kinship connection that is at the heart of the Aboriginal culture itself. This guarantee must come in the form of Child Protection legislation and policies constructed through direct involvement of a wide range of Aboriginal Communities, individuals and organisations.

4.1.1 Recommendation 2

The NSW Government continues to work in consultation with Aboriginal people and communities in the structure and implementation of child protection

policies. Such involvement must extend to the practical application of these policies to provide concrete reassurance and practical guarantees that no Aboriginal child will be removed from families, kin and culture arbitrarily and where removal is unavoidable as a last resort the children will never the less remain within extended family, kin and culture. We acknowledge the implementation of the Aboriginal Placement Principles inter alia and the implementation of programs such as the Care Circle that appears to be of benefit in this guarantee. These principles and programs are seen to be a move in the right direction on this issue.

4.2 Public Awareness & Education

26. It is our submission that fundamental to a guarantee against repetition is perpetual recognition, awareness and remembrance of the failure of the responsible government in the implementation of these racially based policies and an unqualified acknowledgment that these policies could not be justified “*through the prism of contemporary values.*”⁵ Such an attempt at justification can only serve to undermine any sincerity in the NSW Government’s approach to reparation, particularly when considering that during the time of the implementation of these policies international contemporary values were adopted by the Governments of Australia (*see below*) as elected by the Australian people with these ‘*contemporary values*’ making this justification untenable.

‘The United Nations Charter of 1945, the Universal Declaration of Human Rights of 1948 and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 all imposed obligations on Australia relating to the elimination of racial discrimination. Genocide was declared to be a crime against humanity by the United Nations Resolution of 1946, followed by the adoption of a convention in 1948. The Australian practice of Indigenous child

⁵ Ibid, ‘*Bringing them Home Report*’ at p249

*removal involved both systematic racial discrimination and genocide as defined by international law. Yet it continued to be practices as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed.*⁶

27. While the implementation of *Recommendation 1* above would serve to achieve this contemporary recognition, in order to guarantee against repetition future society must never forget the damage suffered to the Aboriginal Communities, culture and traditions, in addition to the individual suffering by generations of Aboriginal people. If we are to truly guarantee against repetition; recognition and remembrance must form an integral part of reparations. This recognition and remembrance should be more than intermittent or annual. It must be accompanied by other forms of reparation assisting current and future generations to repair opportunities and cultural traditions lost through the widespread intergenerational trauma and damage suffered including, loss of kinship connection, identity and traditional culture that have arguably manifested into lower health outcomes, lower education outcomes, higher incarceration rates, poor housing and continued racial discrimination.

28. The history of these forced removal policies and the damage suffered by the Aboriginal people must form an essential component of our education system. Future generations must be taught an understanding of the danger to society of policies based on racial discrimination and the far reaching effects that the implementation of such policies can have on future generations and society generally.

29. Discussions with members of the South Coast Aboriginal community revealed inadequate education in our schooling system regarding the above. Several members with children in public schools identified that their children had not been taught about the Stolen Generations in school. They expressed that it was only through stories within their family that they gained such awareness. Without this broad curriculum based education reparations for the Stolen Generations are stifled by the implication that their history is not important and

⁶ Ibid, 'Bringing them Home Report' at p266

undermining the seriousness of the damage suffered that will continue through the generations. Further it creates a society in which only members of the Aboriginal communities remain perpetually aware of these wrongs creating division in the outlook of Aboriginal youth and the wider community that lacks this knowledge and understanding. With this division and lack of knowledge come the risk of racial segregation, disparity of treatment or social outcomes and the risk of repetition of these wrongs.

30. It is our submission that any guarantee against repetition requires widespread knowledge of the wrongs committed and the damage suffered through the implementation of these wrongs. In particular the youth of our society must be made abundantly aware of the aforementioned to ensure any guarantee against repetition by our future leaders and their constituents.

4.2.1 Recommendation 3

The NSW Government adopts as an essential component of the education curriculum an extensive unit of learning that unreservedly provides knowledge and understanding of the Stolen Generations. That such learning includes unedited understanding of the implementation of these policies by the NSW Government, including acknowledgment of wrongdoing by the government in its role with specific reference to the international standards of the time reflected in the United Nations Charter and Conventions expounded above. Such a subject should propose no justification that would imply that such actions can in anyway be justified in the past, present now or in the future.

4.2.2 Recommendation 3.2

That where possible the subject course recommended above include an address by a member or members of the Stolen Generations or their

descendants to ensure a personal understanding for future generations of the impact these policies and practices have had on the lives of real people.

4.2.3 Recommendation 4

That the NSW Government establish and fully fund public commemorative sites in popular accessible public areas in addition to providing continuing funding for established commemorative sites such as the “*Stolen Generation Memorial Gardens*” constructed at the “*Bomaderry Aboriginal Children’s Homes*”, formally the “*United Aboriginal Mission Home*.”

5. MEASURES OF RESTITUTION

5.1 Education, Employment

31. In the response to the ‘*Bringing them Home Report*’ the NSW Government in November 1997 “*launched its’ Statement of Commitment to Aboriginal People, developed in partnership with the Aboriginal Reference Group.*”

“In May 1998 the NSW Government announced the new \$20 million Aboriginal Communities Development Program [to] deliver infrastructure and environmental health services to Aboriginal Communities throughout NSW...Under the program, housing, sewerage connections, water supplies and other essential infrastructure services [were to] be delivered with the cooperation and participation of Aboriginal communities...Employment and training opportunities within Aboriginal Communities [were] the focus of the Aboriginal Community Development program.”⁷

⁷ See above, ‘*NSW Government Response*’ at pp 8-9

32. Discussions with one member of the Aboriginal Community; a member of the Stolen Generations who resided at the Wallaga Lake Koori Village until about the year 2000, stated that he:

“knew of the Aboriginal Communities Development Program from about 1998.”

He further stated that;

‘it was a good program and some of the houses out at Wallaga got some new upgrades. It doesn’t mean anything much to me personally but it helped fix up the young people employing Koori workers and improving things in the community for them as well as giving them some skills and learning. I learn’t how to use a chainsaw then too and that helped me find work later.’

He further endorsed the program advising that the opportunities and infrastructure upgrades *“made a big difference for the generation growing up now.”* He was not aware of any continuation of the program after about 2005. He went on to imply that the ‘Community Development Employment Project’, like the ‘Aboriginal Communities Development Program’ was of great benefit to repairing the intergeneration damage suffered as a result of the Stolen Generations stating;

“it was good, it got our young blokes doing something, learning, keeping out of trouble and getting better skills, it gave them something to do and a bit of a future.”

33. It is our submission that the implication of the above statements is the generations following the stolen generations were left disconnected from their community with poor infrastructure resulting in poor outlook and little opportunity to gain skills.

34. Another member of the Aboriginal community of the South Coast explained that the loss for future generations was inevitable;

'They lost their tradition, their mentors, role models, their guardians, the stories, skills and lifestyle they would of otherwise have learnt from and been inspired by...'

35. The views of the Aboriginal community members above suggests that programs of infrastructure improvement and community development, that are driven by the Aboriginal communities, and engage community members particularly youth, go some way toward restitution for the younger generations affected by the impact of the forced removal policies of the past.

36. The 'Community Development Employment Project' was implemented in 1977 by the Fraser government well before the 'Bringing them Home Report' it was expanded in 1987 but then terminated in 2013. This scheme has received widespread praise from diverse groups for the benefit to Aboriginal youth and the wider community.⁸

37. Manager of Murra Mia Aboriginal Tenants Advisory Service and Chairperson of the Batemans Bay Local Aboriginal Land Council, Mr James Allen stated in 2015 that;

*"conditions are appalling on missions near Deniliquin, Moama, Wentworth and Cowra...many of the houses were built decades ago but never managed and they are now in disrepair...a lot of Aboriginal people would prefer to be in gaol where they can get three meals a day, clean sheets and a roof over their head. That's an indication of how absolutely poverty stricken and third world their situation is out there in this first world country."*⁹

⁸See, Gray M, Hunter B, Howlett M, 'Indigenous employment: A story of continuing growth' (Australian National University), <http://caepr.anu.edu.au/Publications/topical/2013TI2.php> at 24 February 2016

⁹ See, News ABC, Hayter M, 'Aboriginal housing in southern New South Wales described as "third world"' <http://www.abc.net.au> at 12 March 2015

38. Reparations in the form of the above programs will not only provide benefit to communities like those above but additionally provide an opportunity for the individual advancement of Aboriginal youth contributing to a reduction in the social costs of intergenerational damage associated with the implementation of forced removal policies. In this way such programs may contribute to a reduction in the over representation of Aboriginal incarceration in custody by providing a more positive outlook. Below demonstrates the disparity in representation of Aboriginals incarcerated;

*'...just over a quarter (27%) of the total Australian prisoner population...[despite] [t]he total Aboriginal and Torres Strait Islander population aged 18 years and over in 2015 [being] approximately 2% of the Australian population aged 18 years and over...[In NSW], The adult imprisonment rate was 200 prisoners per 100,000 adult population, an increase from 182 prisoners per 100,000 adult population in 2014... New South Wales had the largest adult prisoner population, accounting for 33% of the total Australian adult population.'*¹⁰

5.1.1 Recommendation 5

That the NSW Government make a commitment to fully fund the reintroduction of the 'Aboriginal Communities Development Program' (ACDP) in a show of recommitment to reparations to Aboriginal communities expounded in their response to the 'Bringing them Home Report'. In this way honouring the commitment made to work in partnership with the Aboriginal people to improve Health, Housing, Education and Employment outcomes inter alia for the Aboriginal people of NSW.

¹⁰ See, Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2015~Main%20Features~New%20South%20Wales~20> at 23 February 2016

5.1.2 Recommendation 5.1

That in addition to implementing the above development program the NSW Government commit to reestablish successful employment and development programs such as the '*Community Development Employment Project*' (CDEP) actively seeking the collaboration of the Commonwealth Government in a wholistic attempt to improve the living standards and future outlook for the generations of the Aboriginal Communities damaged by the disconnection created or contributed to by the implementation of the forced removal policies of the past.

5.1.3 Recommendation 6

That the NSW Government establish a 'Stolen Generation Scholarship Scheme' to provide opportunity and access to advancement for young Aboriginals, while at the same time serving as a remembrance of the Stolen Generations through its title and existence. Such a scheme should be used to provide real opportunities lost to these younger generations through disconnection, while continuing to acknowledge and create perpetual; awareness of the Stolen Generations. The positive benefits to youth providing some restitution for the members of the Stolen Generation in the knowledge that some of the opportunities that have been lost are being provided in their name.

5.1.4 Recommendation 6.1

The Name and scope of the scholarship scheme be developed by members of the Stolen Generations to ensure remembrance and recognition that is culturally and otherwise appropriate.

5.1.5 Recommendation 6.2

This scholarship scheme be perpetual with ongoing with bi partisan support and commitment to fully fund the scheme in future budgets.

5.2 Health & Well Being

39. In the NSW Government's Response to the '*Bringing them Home Report*';

'The NSW Government entered into a partnership with the NSW Aboriginal Health Resource Co Operative...In October 1997 the Partnership released "Ensuring Progress in Aboriginal Health: A Framework for the NSW Health System," establishing principles and strategic directions for Aboriginal health in NSW.'

40. Closely following this commitment the Ministry of Health introduced positions for Aboriginal Health Education Officers with a number of these officers placed strategically working on communities to coordinate and deliver health education and services to those communities demonstrating commitment to improve the health outcomes of Aboriginal communities in some way remote or isolated. We understand that in larger centres these Aboriginal Health Education Officers conducted outreach services to members of the community assumedly in recognition that they had better access to services.

41. Discussions with members of the one local Aboriginal Community have indicated these services have now been reduced to outreach services despite them remaining ostensibly isolated from local health services. It is our submission that the withdrawal of such an important position readily accessible on community is essential to positive health outcomes for these communities. It is our submission that the withdrawal of health services and education providing on community access as needed ostensibly demonstrates a failure in the NSW Governments commitment to improved health outcomes for these disadvantages communities despite the Government's commitment in 1997.

5.2.1 Recommendation 7

That NSW Government re commit to improved health for remote or isolated communities by consulting with Aboriginal communities about the specific needs of their community, particularly in respect of the beneficial outcomes for both physical and psychological wellbeing that may result from having full time access to on community Health services, including programs for healing and reparations for the Stolen Generations and their families improving their psychological wellbeing.

5.3 Housing

42. The Manager of the Murra Mia Aboriginal Tenants Advisory Service and Chairperson of the Batemans Bay Local Aboriginal Land Council, Mr James Allen has in our view correctly stated that; “...*health and housing are all tied up in the one thing.*”¹¹ With this in mind we note that;

*“[t]he NSW Aboriginal Housing Act 1998 was proclaimed on 24 July 1998. The Act establishe[d] a new statutory authority, the Aboriginal Housing Office to direct and manage Aboriginal housing in NSW...”*¹²

43. Mr Allen has identified that Government housing policy has moved to

“reflect both a lack of confidence in Aboriginal providers, and a lack of understanding of the importance of a distinct Aboriginal community housing sector.”

Mr Allen identifies this through the disparity of treatment between policies aimed at outsourcing mainstream social housing management while employing policies that are having the real effect of centralising the control and management of Aboriginal housing providers back to the NSW Government under the guise of the Aboriginal Housing Office. Mr Allen says this is the real

¹¹ See above 8

¹² See above, ‘NSW Government Response’ at p9

effect of the moving from the 'Sector Sustainability Strategy' to the new 'Build and Grow Strategy.' Mr Allen states:

"The Commonwealth has refocused its resources on providing extra housing in remote communities, while devolving responsibility for housing in urban and regional areas to state and territory governments under the general framework of the National Affordable Housing Agreement. At the same time, it has driven a policy approach which involves substantially increased levels of government control over Aboriginal Community Housing."

44. Mr Allen describes the strategy as being one that is;

"aimed at better managing the risks involved in the operation of the Aboriginal Community Housing sector. However, flaws in the design of some of the key policies threaten to undermine this management of risk, including that following the 'Provider Assessment and Registration System' (PARS) threatens to exclude an unacceptable number of organisations from registration...[as] the proposed funding arrangements provide little incentive for well-managed organisations to opt in to the system, the proposed rent policy is widely seen as culturally inappropriate and financially unsustainable. The net result of these issues is that a large proportion of organisations are likely not to engage with the Build and Grow system and to manage their operations outside this system."

45. Based on the comments of Mr Allen it seems clear that new culturally appropriate strategies of managing Aboriginal housing are required to sustain and improve housing and subsequent health outcomes of the Aboriginal people of New South Wales. It appears that the current policy direction is in danger of having the effect of greater centralised government control over Aboriginal Housing. This is a move away from self-determination and seems hard to reconcile with reparations for Stolen Generations damaged by the very implementation of centralised Government assimilation policy.

“In 2013-14, there were 536 Aboriginal persons per 10,000 head of the population who use homelessness services, compared to a rate of 46 non-Aboriginal persons per 10,000 of the population. Aboriginal people are ‘overrepresented’ in the population of homeless people in NSW. In 2011, 7.8% of the homeless population were Aboriginal, whereas only 2.5% of the population identified as Aboriginal.”¹³

46. Whatever the views on the current Aboriginal Housing policy it is clear from the above statistics that it must be improved and that any improvements in Aboriginal housing will be inherently linked to improved social and health outcomes for Aboriginal people assisting in reparation of the adverse impact the forced removal policies have had in this area of Aboriginal wellbeing.

5.3.1 Recommendation 8

That the NSW Government re assess the current housing strategies that appear to be culturally inappropriate and undermine self-determination.

5.3.2 Recommendation 8.1

The NSW Government establish a board comprising a member of each local Aboriginal Land Council to ensure the views and unique requirements of the diverse locations and Community structures across NSW are heard and considered in developing housing policy.

5.3.3 Recommendation 8.2

That the NSW Government commit to taking the proposals of the above Aboriginal Housing committee to the Commonwealth Government in negotiation

¹³ See, Shelter New South Wales, [<http://www.sheltersnsw.org.au/publications-new/factsheets-new/227-nsw-housing-factsheet/file>] <http://www.sheltersnsw.org.au/publications-new/factsheets-new/227-nsw-housing-factsheet/file> at 23 February 2016

of a more culturally appropriate and beneficial Commonwealth, State Housing Agreement that maintains self-determination and equity in Aboriginal Housing organisations throughout the state of NSW and recognises the disenfranchising of Aboriginal communities that have ostensibly caused subsequent housing deficiencies.

5.4 Additional Collective Remedy

47. The 'Bringing them Home Report' expressly recognised;

*"[t]he importance of making reparation to all that suffered as a result of these practices...Compensation needs to be seen not only in direct relation to the children who were removed, but also the parents, families and communities from which the children were taken. Whole communities were severely affected and collective grief is a continuing reality in the communities affected."*¹⁴

48. We submit the implementation of the forced removal policies and the intergenerational impact can be seen as attributing to the continuing disproportionate health, housing and social outcomes of Aboriginal people as outlined above.

*'Survivor Aunty Lorraine Peters says children are still being affected by the older generation's loss of culture, family and community. "If you grow up in a household where you've got traumatised people that have all these issues, they are being transferred down to the next one,"'*¹⁵

49. The effect of this intergenerational damage was explained by one personal account of realisation how the trauma suffered by his mother's forced removal

¹⁴ See above 4 at pp 282-3, (Link –Up NSW Aboriginal Corporation Submission 186; supported by Aboriginal Legal Service of WA submission 127 recommendation 11)

¹⁵ See, Najim G, Seven News, 'Trauma of Stolen Generations "passed down" 11 February 2016, <https://au.news.yahoo.com/nsw/a/30797309/trauma-of-stolen-generations-passed-down/?cmp=st> at 23 February 2016

transferred to her child, his younger siblings, his father and then on to his own children:

“My mother was taken when my grandmother had to have an operation to remove her leg. She was taken and trained as a domestic maid servant.

Sometime later she met my father and had me and my younger sister and brother. Both my mother and father worked hard and we lived what I thought was a pretty normal life.

My mother never drank alcohol until one day when she was in her early 40's out of the blue she started drinking every day. She never talked about it but would drink a cask of wine every day and became very angry at everything. When she would drink she would get very abusive and violent toward my father. Luckily my father was a big man so her attacks did not cause him serious injury and he would just shrug it off, but this affected him too and he began to lose the enjoyment of life. This pattern went on until she passed away about 10 years later at around 52 years old.

After she passed my father and I would often talk about what caused that change. One day he looked at me and told me it was all to do with her being taken and I realised this was the cause, it destroyed our family, my relationship with my mother, caused my father to lose interest in life, prevented my brother from being able to have any relationships or any normal life aspirations, I think it contributed to my sister's early death at the age of just 21 years and ultimately caused my mother's early passing. In effect it ruined the happiness of my mother, father, my sister, brother and me.

As a young man this unexplained anger and violence transferred to me. I was always fighting and getting in trouble with the law for

assaulting people. I became very angry and would not just assault people 'I wanted to hurt them and I did'. (emphasis added)

It was only many years later when I reflected on this anger and violence that I realised this was the result of witnessing the anger and violence of my mother caused by her being taken from her family.

I have two young daughters and one of them also engaged in angry violent behaviour throughout her younger years, now I realise that while it may have been contributed to by my own violent behaviour, ultimately it was the transference of anger that was transferred from my mother's anger, caused by her being taken from her family."

50. We submit for consideration that based on the above story some responsibility for the disproportionate incarceration rates of Aboriginal people must be accepted by the NSW Government as a result of the trauma experienced by the Aboriginal people by forced removal policies. In doing so we note the above account of transferred anger; *'I became very angry and would not just assault people 'I wanted to hurt them and I did'*. We relate this particular trait to the following statistic noting the disproportionate number of Aboriginal offenders that contribute to this statistic:

'The most common offence/charge was acts intended to cause injury (21% or 2,495 prisoners)¹⁶ (emphasis added)

51. In our submission reparations must include mechanisms to assist reducing this intergenerational damage for current and future generations. Healing can be assisted by providing opportunities for improving the health, wellbeing, and outlook for young Aboriginals of today and in the future. Seeing these opportunities created for the younger generation will no doubt assist with healing for their Elders and mentors helping to prevent transference of this trauma to future generations.

¹⁶ See above 9

52. The need for collective reparation is internationally recognised through the acceptance of the Von Boven Principles.

“6. Reparation may be claimed individually and where appropriate collectively, by direct victims, the immediate family, descendants or other persons or groups of persons connected to the victims.”

5.4.1 Recommendation 9

In accordance with the Von Boven Principles the NSW Government ensure that reparations extend to the Aboriginal people as a collective recognising the trauma and effect of the implementation of these forced removal policies is long lasting, causing intergeneration damage that is wide ranging.

In accordance with the above, the Government contribute to collective reparation through the establishment of a “*Stolen Generation Trust Fund Scheme*” under which both Aboriginal Communities and individuals can apply for grants to assist overcome some of the hurt, disconnection and loss of opportunity experienced by developing community projects or initiatives to improve life for future generations.

5.4.2 Recommendation 9.1

We recommend the above Trust Fund is established as a perpetual trust with a bi partisan commitment that sufficient funds will be allocated in future budgets. The establishment of a specific perpetual Trust Fund in the name of the Stolen Generations will also serve as an express perpetual reminder of the damage suffered. However, it will importantly provide some restitution for the wide ranging and intergeneration damage suffered by the Aboriginal people of NSW.

5.4.3 Recommendation 9.2

We recommend that any such trust scheme have broad and flexible guidelines proposed by an established group of representatives from a range of Aboriginal communities.

5.5 Cultural Rights and Traditions

*'On 5 September 1998, the NSW Government returned the Mootwingee National Park to its traditional owners...This landmark event was made possible by the National Parks and Wildlife (Aboriginal Ownership) Amendment Act 1996. Other parks will also be handed back to Aboriginal owners in the future.'*¹⁷

53. The writer is unaware of the progress of this reparation strategy of National park hand back to traditional owners however we acknowledge these policies as an effective form of reparation in recognition of the loss of connection, culture and tradition associated with racially bases assimilation policies including the implementation of the forced removal policies.

54. We submit that further recognition of losses of traditional cultural practices and rights would assist with reparations for the collective Aboriginal communities.

55. One area that these losses could be restored particularly for the Aboriginal Communities of the South Coast of NSW is the removal of arbitrary fishing regulations that restrict tradition fishing practices that have been a continual connection to the land for the South Coast Aboriginal communities since time immemorial.

56. We note that NSW regulative provisions apply to;

¹⁷ See above 1, 'NSW Government Response'

'size limits of fish as prescribed in the Fisheries Management (General) Regulation 2010 will apply to cultural fishing as well as other sectors.'

"Aboriginal cultural fishing is defined in the [Fisheries Management Act 1994] as 'fishing activities and practices carried out by Aboriginal persons for the purpose of satisfying their personal, domestic or communal needs, or for educational, ceremonial or other traditional purposes, and which do not have a commercial purpose.'"

"Interim Compliance Policy (ICP) was introduced to accommodate Aboriginal cultural fishing needs whilst regulations are being developed. When Aboriginal people are undertaking cultural fishing activities the current ICP allows for double the existing take/possession limits (except for abalone which has an extended limit of up to 10). The cultural fishing practice of shucking shellfish adjacent to waters is also provided for under the ICP. Special Provisions also exist to accommodate cultural fishing activities relating to larger family occasions and community events." ¹⁸

57. We understand that section 37 of the *Fisheries Management Act 1994* provides for Aboriginal community members to obtain a permit for specific cultural events to access these special provisions. However the cultural events of the Aboriginal people are wide ranging and do not necessarily all fall into what we may define as a 'cultural event'.

58. Further, we have been informed by a member of a local Aboriginal family that has continued connection to traditional fishing practices on the South Coast of NSW that many traditional fishing practices are not being passed to descendants in the fear that the practice may result in large fines or incarceration for breach of the fishing regulations.

59. We submit that these fishing regulations are contributing to the loss of culture and tradition creating a further disconnection for the Aboriginal people.

¹⁸ See, NSW Department of Primary Industries, 'Consultation Paper: Aboriginal Cultural Fishing Regulation Development' (June 2014), p2

60. We understand that the requirement for regulation of fishing and limits of the numbers of removed of marine life is based on environmental conservation and protection of the commercial industries.

61. We submit that any implication that the Aboriginal people require government regulation to preserve the marine life of New South Wales is untenable, bordering on insulting when considering the culture has maintained a balanced marine ecology for tens of thousands of years.

62. We accept that the government must regulate commercial fishery practices however the regulation of Aboriginal cultural fishing by the government fails to recognise and value Aboriginal traditional cultural practices and is stifling the passing down of traditional Aboriginal cultural knowledge to future generations in fear of government regulated repercussions as outlined above.

63. We submit that any Government policies that arbitrarily perpetuate a lack of value of Aboriginal traditional practices and through their implementation result in the loss of passing of traditional knowledge to younger generations only perpetuates the damage suffered by the Aboriginal people through the implementation of the forced removal policies include a similar impact of lost traditional culture and connection.

5.5.1 Recommendation 10

That the NSW Government issues a statement of respect for Aboriginal traditional marine conservation practices in recognition of the history of conservation of marine life through the application of traditional fishing practices throughout the tens of thousands of years the Aboriginal people have been the custodians of this land.

5.5.2 Recommendation 10.1

That in recognition of the damage suffered to the culture, tradition and way of life of the Aboriginal people and disconnection from the land that extends to the loss of cultural practices for future generations the NSW government immediately enact regulations that exclude Aboriginal traditional fishing from all regulation other than that required for protection of the commercial fishing industry.

6.0 MEASURES OF REHABILITATION

64. Measures of rehabilitation need to be focused on those individuals and their families directly affected by these removal policies with a specific focus on healing.

65. It is our submission that some of the continued intergeneration damage described above can be prevented through the healing of those directly suffering the trauma of removal.

“Survivor Aunty Lorraine Peeters says;

“(The trauma) will continue if it's not broken and ... collective healing is one way of getting through that,”

“An analysis of 31 projects involving 3676 Stolen Generations members has shown the western model of counselling doesn't help victims, The Healing Foundation says...They need trauma-informed services with knowledge of the Stolen Generations, says the foundation, which is a national organisation focused on supporting members of the Stolen Generations and their children.”¹⁹

66. We agree with the recommendations of the Healing Foundation that

¹⁹ See above 14, Seven News, ‘Trauma of Stolen Generations “passed down”

“the government includes greater access to “collective healing” opportunities, such as yarning circles, trips and family reunions.”²⁰

67. In line with the above findings and recommendations of the Healing Foundation a worker at a local Aboriginal Medical Service identified the need for the government

“to fund healing places and continue to support groups that support members of the stolen generations such as Bomaderry Homes.”

68. One of the South Coast community members, himself a victim of the Kinchella boy’s home abuses, stated that his healing was helped by the establishment of the “Kinchella Boys Home Office in Redfern”. He explained the benefit of Counsellors that are available on call in time of need on an outreach basis:

“I was able to access a counsellor by telephone but when I was so low I could not talk on the phone. The counsellor would drive the few hours to see me at home and this helped just knowing they were there and would come down.”

6.1 Recommendation 11

The NSW Government commit to establishing healing centres and funding those already established to facilitate group healing.

6.2 Recommendation 12

That the government commit to fund counsellors for individuals and their families directly affected by the forced removal policies, that include on call outreach services to facilitate culturally appropriate face to face counselling for those in regional and remote areas to access in times of crisis.

²⁰ Ibid

6.3 Recommendation 13

That the government commit to funding organised gatherings of members of the Stolen Generations, their families and kin to facilitate reconnection with family that has been lost through the forced removal policies and include group trips to places of cultural significance and other places of importance to the members of the Stolen Generations.

7.0 MONETARY COMPENSATION

69. Despite this purported unreserved apology and the rhetoric of the NSW Government being committed to "*work[ing] in partnership with Aboriginal people, communities and organisations to make reparation for past injustices...*" the NSW Government takes the position that it is not their responsibility to provide monetary compensation. "*Monetary compensation is a matter for the Commonwealth government.*"²¹

70. It must be understood that the intricacies of institutional government and the constitutional operation of our system of responsible government are not widely known or understood by the general population or most relevantly the Aboriginal people. As a result these positions are seen by many as simply a failure to accept responsibility and only serve to undermine the ideals or goals of apology, reparations and reconciliation.

71. The NSW Law Society Indigenous Issues Committee in their submission

*"noted that the NSW Government continues to have responsibility for the stolen generations in NSW, noting those child removal policies were implemented by state legislation."*²²

²¹ See above 1, *NSW Government Response* at p8

²² See, Law Society of NSW Journal, (ISSN 2203-8906), '*Law Society Advocacy and Law Reform: Latest News and Developments*' at p66

72. The NSW Government's position on compensation remains a solid rejection of liability that can only be counterproductive to reparation and reconciliation unless the recommendations of this inquiry are adopted to reverse this position.

“The State Government today in parliament voted down the immediate removal of the Statute of Limitations in damages claims for the survivors of child sexual abuse...Removing the limitation was recommended in a report by the Royal Commission into Institutional Responses to Child Sexual Abuse...The Royal Commission said that this restriction on claims for damages by survivors should be removed as soon as possible...The State Attorney General rejected this Royal Commission recommendation in Parliament today...As the Royal Commission argued, abolishing the Statute of Limitations is a matter of justice...By their actions today the State Government has denied justice to survivors...There is no justification for further delay.”²³

73. It is our submission that in rejecting the above recommendation of the Royal Commission the NSW Government has given the indication that they are more concerned for civil actions against the Government for its role implementing forced removal policies than a real commitment to reparations.

74. We submit it is fundamental to the healing of the Stolen Generations that the NSW Government accept the harm it caused by the mere fact and circumstances of the forced removal of children under these policies. We further submit that any failure to accept proportionate liability for its role in ostensibly facilitating the opportunity for the commission of institutional sexual abuses as a result of the forced removal policies will undermine any progress made through other forms of reparations.

75. The Von Broven Principles recognise a right to a remedy for these victims:

²³ See, Lynch P, ‘Media Release, Paul Lynch MP Shadow Attorney General’, “*Government refuses Justice for Victims of Child Sexual Abuse*” at 12 November 2015

“4. 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...”²⁴

76. It is our submission that any attempt to avoid admission of liability may be seen again as the politics of a Government attempting to avoid the costs of civil remedies for their role in a practice,

“condoned by governments of the time, this practice [and] described by HREOC as constituting genocide”²⁵

77. It is time both levels of government recognise their contribution to this gross violation of human rights and shuffle off the bureaucratic and constitutional opportunities to avoid their proportion of monetary compensation. Maintaining this position can only serve to continue to undermine any good intentions of Parliament toward reparations, creating an impression of words over substance thereby diluting the integrity of such measures in the eyes of the Aboriginal people.

78. In our submission the foundation for any reparation and indeed reconciliation, must include our common law principles of compensation for losses incurred at the hands of others. Principles that apply to all other situations in the name of justice and equity. In any other matter justice will dictate that those inflicting a wrong upon others will be held accountable for their proportion of that wrong.

“What is, or is not, compensable at law is more a matter of political judgement and government policy than it is a matter of any inherent legal understanding of compensability.”²⁶

79. We submit accepting liability for the governments proportion of the damage suffered from this wrongdoing is simply a *“political choice...routinely made in deciding which and whose interests, we value in our community”*.²⁷

²⁴ See above 4 ‘*Bringing them Home Report*’ at 281

²⁵ See, Graycar R, “*Compensation and the Stolen Children: Political Judgments and Community Values*”, (University of Sydney Law School June 2007)

²⁶ Ibid

80. We further submit that making such a political choice will go a long way to achieving true reparation for the Aboriginal people sending a clear and unreserved message that the government is sorry for their role in this wrong and the damage suffered by those wronged.

81. In assessing damages it must be considered those directly affected have suffered extensive general damages by the mere fact and circumstances of their removal. We submit some of the losses suffered by those affected include but are not limited to the following:

Racial discrimination,
Arbitrary deprivation of liberty,
Disruption of family life,
Loss of cultural rights and fulfillment

82. The above damages are simply for the mere fact and circumstances of removal under these racially discriminatory practices, however as discussed the government must now accept proportionate liability for the damage suffered at the hands of institutions inter alia that are the subject of the current Royal Commission.

83. Removing generations of Aboriginal children from their kinship ties has caused generations to live without an identity as their connection to country and kin was lost, along with their language, totems, ceremonies, art, hunt and gather traditions and tribal secrets; in some cases lost forever. The passing down of knowledge for tens of thousands of years has been ripped away from generations to come as a result of this forced disconnection.

84. Brennan J historically and accurately recognised in *Mabo*:

“Whatever the justification advanced in earlier days for refusing to recognize the rights and interests in land of the indigenous inhabitants

²⁷ Ibid

*of settles colonies, an unjust and discriminatory doctrine of that kind can no longer be accepted. The expectations of the international community accord in this respect with the contemporary values of Australian people.*²⁸

85. We can draw a correlation between the above learned quote and the position of the NSW Government's failure to accept their liability for the implementation of these racially discriminatory policies. Whatever the justification advanced in earlier years, contemporary society recognises that there can be no justification for the implementation of such policies by our system of responsible government.

86. The implementation of these policies treated Aboriginal people as "*low on the scale of social organization*" with respect to assimilation and removal of children based on race just as was expounded in *Mabo* with respect to dispossession of land. It is our submission that contemporary society both domestically and internationally has long since recognised the falsity, misconception and racist foundation of such a position. This being the case it is untenable of the Government to take a position that in anyway appears to accept or justify these earlier notions as being reasonable. Nothing less than full acceptance of the NSW Governments role in the implementation of these policies and unreserved attempts to repair the damage suffered by the entire Aboriginal people including accepting liability for monetary compensation as described above can begin to give the Aboriginal people some reparation and assurance that these kind of racist policies will not be repeated.

87. The implementation of a scheme to compensate for the damage suffered by the mere fact and circumstances of removal, along with proportionate liability for associated damage while in institutional care would provide members of the stolen generation with access to some measure of monetary compensation for the impact of these forced removal policies and the abuses that followed removal.

²⁸ See, Brennan J, *Mabo v Queensland (No 2)* ("*Mabo Case*") [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992); at 42; <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1992/23.html?stem=0&synonyms=0&query=mabo> at 23 February 2016

88. A scheme of monetary compensation would provide timely benefit without prolonged traumatic civil litigation going some way toward healing in the knowledge that the NSW Government has recognised and compensated for the wrongs it committed.

89. We submit a scheme of monetary compensation as recommended below would additionally enable the government to measure the quantum of their monetary commitment allowing for budget forecasts while providing indemnity to the government against future civil claims in the process, thereby relieving the government of the uncertainty of the quantum of any future payments and the significant legal costs of defending such litigation.

90. We acknowledge the Bill to be introduced to the NSW Parliament and the Attorney General's commitment to this legislation to

*'...remove a significant barrier in the way of that justice" by "[removing] the time limit for civil claims by survivors of child sexual abuse against their abusers.'*²⁹

However we note that there are other barriers in the way of claims against the NSW Government for their proportion of responsibility on this issue and taking a position of denial and expending significant money on defence would only undermine any reparation efforts and create further trauma for the Stolen Generations and their families. described above.

7.1 Recommendation 14

The NSW Government recognise the damage suffered by the Aboriginal children and their families by the mere fact and circumstances of their removal as being distinct and separate from any additional suffering ancillary or as an indirect result of their removal such as ill treatment or sexual abuse that many

²⁹ See, Nicholls S, 'NSW to scrap time limits on civil action by survivors of child sexual abuse', Sydney Morning Herald, <http://www.smh.com.au/nsw/nsw-to-scrap-time-limits-on-civil-action-by-survivors-of-child-sexual-abuse-20160215-gmv209.html> at 19 February 2016

experienced following removal. However in accepting and recognising this fact, the NSW Government additionally accepts proportionate liability for the abuses that followed in the institutions that are the subject of the current Royal Commission.

In recognition of the above the NSW Government establish an ex gratia payment scheme to compensate the Stolen Generations for the damage as a result of this mere fact of removal under these past policies and the proportionate damage attributable to the NSW Government for other abuses suffered following removal.

The ex gratia scheme should expressly state that the payment is not only for the mere fact of removal but also the NSW Government proportionate liability for other associated damage suffered while in institutional care including sexual abuse. A condition of acceptance of the ex gratia payments may be settlement of the NSW governments proportionate liability for removal and associated institutional abuse while reserving the rights of those affected to peruse civil litigation against individuals or institutions under which they suffered abuse or mistreatment.

7.1.1 Recommendation 14.1

In recognition of the evidentiary difficulty associated with poor historic record keeping and loss or destroyed records we recommend the initial onus to identify those affected should be on the government. A unit should be established to administer the ex gratia scheme that should include sufficient resources for the scheme to investigate and determine all possible members of the Stolen Generations that can be ascertained from government records and locate these members. Once the members of the Stolen Generations have been located the established unit should be further tasked with contacting the identified members and invite them to apply for the ex gratia payment.

7.1.2 Recommendation 14.2

A panel should be created comprising of representatives from the Stolen Generations, as well as independent members from the general community and a government representative.

To establish trust and legitimacy and in recognition that the wrong doer should not be the decision maker in any respect, but particularly in the eyes of those suffering from the wrong, the panel should be made up of the majority non-government members.

It is recommended the panel comprise three (3) stolen generation members, three (3) independent members and one (1) government member with a majority decision required on the quantum of the payment.

7.1.3 Recommendation 14.3

It is recommended the application for the ex gratia payment simply require the proving of identity for eligibility in these circumstances. In these cases it would already be established that the applicants were members of the Stolen Generation through government records.

7.1.4 Recommendation 14.4

It is recommended the rules of evidence not apply and the primary evidence to be relied upon in these applications is the submissions of the applicants and other associated members of the Stolen Generations if applicable to the circumstances. These submissions should be restricted to their view of the effect this has had on their lives and include any associated abuse or mistreatment suffered in institutional care. In this regard evidence previously

given to the Royal Commission should be included for consideration. It should be from this evidence alone that the panel should determine the quantum of ex gratia payment.

7.1.5 Recommendation 14.5

Where the ex gratia unit determines that the records establish a member of the Stolen Generations is deceased, we recommend that the above process is applied to the immediate descendants of that person. In these cases the submissions of the descendant with regard to circumstances and damage should be submitted by the descendant and may include the hearsay of any recollections the descendants may have, including but not limited to stories told, or words spoken to the circumstances or effect of the removal during the lifetime of the deceased stolen generation member.

7.1.6 Recommendation 14.6

In recognition of the incomplete or lost records the ex gratia payment scheme unit and panel should remain encumbered following completion of the above payments to determine applications from members of the broader Aboriginal communities that were not contacted, possibly as a result of inadequate record keeping, but who identify as a member of the Stolen Generations. The unit should invite applications from those falling into this category through extensive advertising programs and on community information sessions to avoid a lack of awareness of the scheme that was experienced under the Aboriginal Trust Fund Repayment Scheme.

7.1.7 Recommendation 14.7

In hearing and determining these applications legal representation should be granted as a matter of right; statements from other stolen generation members identified by record should be accepted, with the panel not bound by the rules of evidence. The panel should function with as little formality as possible and beneficial interpretations or conclusions drawn from those making submissions in recognition of the trauma associated with such a process, and to avoid any unintended projection that the panel disbelieves their statements. Additionally the burden of proof should be on the balance of probabilities to a standard something less than the test of *Briginshaw v Briginshaw*, again in recognition of the traumatic nature of these claims and lack of material evidence. This will encourage those members affected by the lack of records to apply in the knowledge that they may have some hope of success, as well as project a commitment from the NSW Government to reparations in the form of monetary compensation, demonstrating a commitment to substance, not just words, while providing the best opportunity for justice to be done for all those forcibly removed.

7.2 Recommendation 15

That the NSW Government adopts the recommendations of the Commonwealth 'Royal Commission into Institutional Responses to Child Sexual Abuse' and removes the Statute of Limitations in damages claims for the survivors of sexual abuse. With the establishment of an ex gratia payment scheme in the terms recommended above the government will no longer risk uncertainty around civil damages claims. By removing the limitation for such actions the Government will rightly expose those institutions and individuals committing these wrongs to litigation that will no doubt see justice done in time for victims who wish to pursue these civil remedies. All of the above will see the government accord with the international position expounded by the Von Broven Principles.

CONCLUSION

The foundation of any measures of reparations must be based on healing for those individuals directly affected by the forced removal policies as members of the Stolen Generations. However the healing must extend deeper to the Aboriginal people and culture in order to go some way toward repairing the intergenerational damage caused to the Aboriginal people past, present and future that includes an entrenched loss of identity, custom, connection and tradition. Reparations must include apologies that leave no trace of justification in this way demonstrating unqualified contrition. Reparations must ensure measures are created to guard against future repetition and include measures that demonstrate value and respect for the Aboriginal culture with their constructed founded on of self-determination. As discussed, recognition and remembrance maintained through broad mainstream education and memorial tributes will significantly contribute to ensuring against repetition along with Trust Funds and Scholarship initiatives in the name of the Stolen Generations to provide perpetual remembrance and assist the reparation of the intergenerational damage that has contributed to the disparity in social and health outcomes for the Aboriginal people of NSW. In addition to the above measures it is imperative to both individual and collective healing that the NSW Government recognise and accept liability for the far reaching damage caused through the implementation of these racially discriminatory forced removal policies, including proportionate liability for the abuses suffered by many following removal. In doing so the Government must commit to providing monetary compensation demonstrating unreserved regret for their actions and unqualified commitment to reparation.

“...I have been a victim and I’ve suffered and I’ll suffer until the day I die for what I’ve never had and what I can never have. I just have to get on with my life but compensation would help. It doesn’t take the pain away. It doesn’t take the suffering away. It doesn’t take the memories away. It doesn’t bring my mother back. But it has to be recognized.”³⁰

³⁰ See above 4, ‘Bringing them Home’ at p277

8.0 SUMMARY OF RECOMMENDATIONS

Recommendation 1

The NSW Government reaffirms its apology ensuring it is well publicized with wide exposure to reach all of the Aboriginal community

Recommendation 2

The NSW Government continues to work in consultation with Aboriginal people and communities to implement policies such as the Aboriginal Placement Principles and Care Circle

Recommendation 3

The NSW Government adopts as an essential component of the education curriculum an extensive unit of education that unreservedly provides knowledge and understanding of the stolen generation

Recommendation 4

That NSW Government establishes and fund public commemorative sites in popular accessible public areas

Recommendation 5

That the NSW Government make a commitment to fully fund the reintroduction of the Aboriginal Communities Development Program

Recommendation 6

That the Government establishes a Stolen Generations scholarship scheme

Recommendation 7

That the NSW Government re commit to improved health consulting with Aboriginal communities providing permanent access to on community Health Education officers and health services

Recommendation 8

That the NSW Government reassesses the current housing strategies that appear to be culturally inappropriate and undermine self-determination.

Recommendation 9

In accordance with the Von Broven Principles the NSW Government ensures that reparations extend to the Aboriginal people as a collective

Recommendation 10

That the NSW Government issue a statement of respect for Aboriginal traditional conservation practices and exempt Aboriginal traditional cultural fishing practices from the application of fishing regulations.

Recommendation 11

The NSW Government commit to establishing healing centres and funding those already established to facilitate group healing.

Recommendation 12

That the NSW Government commit to fund counsellors for individuals and their families directly affected by the stolen generations that include on call outreach services

Recommendation 13

That the government commit to funding organized gatherings of members of the stolen generations, their families and kin to facilitate reconnection with family and kin

Recommendation 14

The NSW Government recognises the damage suffered by the Aboriginals and their families by the mere fact and circumstances of their removal and accepts proportionate liability for institutional and other abuse suffered following removal. In recognition of this the NSW government establish an ex gratia payment scheme to provide monetary compensation for the aforementioned damage.

Recommendation 15

That the NSW Government adopts the recommendations of the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse and remove the Statute of Limitations in damages claims for the survivors of sexual abuse

We appreciate this opportunity to input to this inquiry and can be contacted for further comment if required on 4422 9529 or info@shoalcoast.org.au

Yours sincerely

Shoalcoast Community Legal Centre

Les Farrell

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