

**Submission
No 38**

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

Organisation: Civil Liberties Australia

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Inquiry into Reparations for the Stolen Generation in NSW

Civil Liberties Australia welcomes the opportunity to participate in the Inquiry into Reparations for the Stolen Generations in New South Wales.

In so doing, we are aware that we are contributing to examining one of the most glaring episodes of the violation of human rights in Australia's history.

When considering reparations, all Australians must strive to understand how and why Indigenous children were forcibly removed from their families and homes over many decades, with the resulting pain and suffering for themselves and family members, spread over generations.

At a time when most Australians were unaware of the ongoing plight of Aborigines, an overview of "Bringing Them Home", on page 37 of the official Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, contained the shocking revelation that between 1 in 3 and 1 in 10 Indigenous children were forcibly removed from their families and communities for more than half a century, between 1910 and 1970.

The Separation Inquiry was established in 1995 by then-Attorney-General Michael Lavarch, who appointed Sir Ronald Wilson and Indigenous leader Mick Dodson as Commissioners. With a small secretariat, they undertook a nationwide hearing that, orally and in writing, took evidence from 535 indigenous people.

Indigenous campaign

The inquiry followed a hard-fought campaign by Indigenous leaders throughout the nation, who confronted an ill-informed white population, many influenced by embedded "White Australia" policies peddled by vote-seeking politicians, media and people who failed to agree with the High Court's decision that Eddie Mabo's land on Mer (Murray) Island in the Torres Strait belonged to Eddie and his family, and was not "terra nullius" (nobody's land).

For Australians to understand the need for reparations for the Stolen Generations, they need to read the many heart-breaking stories told by the stolen children in "Bringing Them Home". Confidential Submission 314, on page 97 is typical:

"I wasn't allowed to go to the same school where my natural siblings were attending school. I knew my siblings' names but I didn't know what they looked like. I was told not to contact my natural family ... My foster family and the Welfare Officer said to me that I shouldn't get in touch with my natural family because they were not 'any good'."

There are many more sad accounts of personal experiences by Indigenous children who were taken away in the National Library publication 'Many Voices' by Doreen Mellor and Anna Haebich, published in November 2002.

An immediate forerunner to the "Bringing them home" inquiry was the Royal Commission into Aboriginal Deaths in Custody established in October 1987 in response to a growing public concern that deaths in custody of Aboriginal people were too common and public explanations were too evasive to discount the possibility that foul play was a factor in many of them. In its report to the federal parliament in 1991 after an intensive inquiry into the backgrounds of the 99 Aboriginal and

Torres Strait Islander people who died in custody, the Royal Commission revealed that 43 of them had experienced childhood separation from their natural families.

Six Commissioners were appointed for this mammoth inquiry, which was to take four years. Their comprehensive national report of 11 volumes examined the lives of the 99 who died in custody. Of relevance are the recommendations from the Aboriginal Deaths in Custody Inquiry, as well as an 'overview' by Commissioner Elliott Johnston QC that sheds light on the underlying cause of why so many Aboriginal people went to jail in the first place and why so many Aboriginal children were forcibly removed from their families and communities.

It is important when considering Reparations in 2016 for the Stolen Children – as recommended in "Bringing Them Home" – that we read what Commissioner Elliott Johnston wrote in 1991 under the heading; *'The Importance of History'*:

1.4.1 I include in this report a chapter on that history ("...legacies of the history of two centuries of European domination of Aboriginal people" 1.3.7).

I make no apology for doing so. I do so not because the chapter adds to what is known but because what is known is known to historians and Aboriginal people; it is little known to non-Aboriginal people and it is a principal thesis of this report that it must become more known.

1.4.2 That Aboriginal people were dispossessed of their land without benefit of treaty, agreement or compensation is generally known. But I think little known is the amount of brutality and bloodshed that was involved in enforcing on the ground what was pronounced by the law. Aboriginal people were deprived of their land and if they showed resistance they were summarily dealt with. The loss of land meant the destruction of the Aboriginal economy which everywhere was based upon hunting and foraging. And the land use adopted by the settlers drastically reduced the population of animals to be hunted and plants to be foraged. And the loss of the land threatened the Aboriginal culture which all over Australia was based upon land and relationship to the land. These were the most dramatic effects of European colonisation supplemented by the decimating effects of introduced disease to which the Aboriginal people had no resistance. These matters are understood to a very imperfect degree by non-Aboriginal society.

1.4.3 But the facts of later policies and their effects are even less well known to the general population. Having reduced the original inhabitants to a condition, in many places, of abject dependency the colonial governments decided upon a policy of protection which had two main thrusts: Aboriginal people were swept up into reserves and missions where they were supervised as to every detail of their lives and there was a deliberate policy of undermining and destroying their spiritual and cultural beliefs. The other aspect of that policy as it developed was that Aboriginal children of mixed race descent--usually Aboriginal mother and non-Aboriginal father--were removed from their family and the land, placed in institutions and trained to grow up as good European labourers or domestics. Those outside the reserves were usually to be found camping on river banks or on the outskirts of country towns where they were under the eye of the non-Aboriginal police. Naturally, legislation varied from place to place and time to time but the effect was the same control over the lives of the people. A person could not live on a reserve without permission, or leave or return after leaving without

permission, or have a relative to live with them without permission, or work except under supervision. The extent of control seems incredible today. It was an offence to encourage or assist an Aboriginal person to leave a reserve. There were special laws about alcohol. On the reserves and the missions the supervisors and missionaries had all power.

1.4.4 The theory was that the 'full blood' Aboriginal people would die out and they should be provided with a little care while they did so; and that the 'mixed blood' would be bred out. When these expectations proved ill founded, another policy was tried, that of assimilation. But the old supervisor remained in place; in the Northern Territory Aboriginal people remained wards of the State, in the States the Protectorate and the Boards remained in place with all their powers, children continued to be removed but the whole aim was now to assimilate the Aboriginal people by encouraging them to accept the Western culture and lifestyle, give up their culture, become culturally absorbed and indistinguishable, other than physically, from the dominant group. For a short time, integration replaced assimilation as the policy option with little change in any practical way. And that was the practice in 1967 when the Referendum was carried which gave power to the Commonwealth to make laws relating to Aboriginal people.

1.4.5 From that history many things flow which are of central importance to the issue of Aboriginal over-representation in custody.

1.4.6 The first is the deliberate and systematic disempowerment of Aboriginal people starting with dispossession from their land and proceeding to almost every aspect of their life. They were made dependent upon government or non-Aboriginal pastoralists or other employers for rations, clothing, blankets, education, living place and living conditions. Decisions were made about them and for them and imposed upon them. It was thought to be bad for an Aboriginal woman to be living with a non-Aboriginal man so that was outlawed; and when Aboriginal women disguised the fact by dressing in male costume that too was outlawed. Aboriginal people were made dependent upon non-Aboriginal people. Gradually many of them lost their capacity for independent action, and their communities likewise. With loss of independence goes a loss of self esteem.

1.4.7 Of course, I speak in general terms; in the most remote communities the society went as before and in all areas there were and are strong people, many of them, men and women, who kept alive the culture and pride in the Aboriginal society. Some of them strove to organise a better deal, to call for rights but the battle was uphill and while some slight gains were made it was a slow and painful progress. People were still not counted in the population, they were not entitled to and did not get social security benefits, mothers still gathered their children about them and ran into the bush when they heard 'the welfare' was about. The damage to Aboriginal society was devastating. In some places, it totally destroyed population. In others, dependency, despair, alcohol, total loss of heart wrought decimation of culture. So it was on the Aboriginal side.

1.4.8 There is the other side of the coin, the effects of history upon the non-Aboriginal people. Every turn in the policy of government and the practice of the non-Aboriginal community was postulated on the inferiority of the Aboriginal people; the original expropriation of their land

was based on the idea that the land was not occupied and the people uncivilised; the protection policy was based on the view that Aboriginal people could not achieve a place in the non-Aboriginal society and that they must be protected against themselves while the race died out; the assimilationist policy assumed that their culture and way of life is without value and that we confer a favour on them by assimilating them into our ways; even to the point of taking their children and removing them from family.

1.4.9 Every step of the way is based upon an assumption of superiority and every new step is a further entrenchment of that assumption.

1.4.10 Non-Aboriginal Australia has developed on the racist assumption of an ingrained sense of superiority that it knows best what is good for Aboriginal people. With many people associated directly or indirectly with land settlement, the assumption was underpinned by economic interest; while with many others it was underpinned by an absolute certainty that it was essential to religious enlightenment that Aboriginal religious belief be obliterated where possible. That feeling of superiority towards Aboriginal people, which is a racist view, was very strong.

1.4.11 It was strengthened by another circumstance. For reasons not relevant to the report, Australia came to adopt as national policy, immediately after Federation, a policy of white Australia. That policy clearly strengthened concepts of white superiority in relation to Aboriginal people.

1.4.12 So that for a complex of reasons the non-Aboriginal population has, in the mass, been nurtured on active and passive ideas of racial superiority in relation to Aboriginal people and which sits well with the policies of domination and control that have been applied.

1.4.13 I do not suggest, of course, that many non-Aboriginal people have not been guided by the best of motives; and in point of fact some missions and probably some reserves offered an opportunity for some Aboriginal people to maintain their unity and a measure of cohesion at a time when this might have been threatened in the larger society. But all this was done in the sure knowledge that the people needed our superior skills and ideas.

1.4.14 The relations between Aboriginal and non-Aboriginal people were historically influenced by racism, often of the overt, outspoken and sanctimonious kind; but more often, particularly in later times, of the quiet assumption that scarcely recognises itself. What Aboriginal people have largely experienced is policies nakedly racially-based and in their everyday lives the constant irritation of racist attitudes. Aboriginal people were never treated as equals and certainly relations between the two groups were conducted on the basis of inequality and control.

1.4.15 But there was one aspect of the relations between Aboriginal people and non-Aboriginal people which was very important for all the others and where the relationship was at its worst; that is, the relations between Aboriginal people and the police forces of the dominant society.

1.4.16 Police officers naturally shared all the characteristics of the society from which they were recruited, including the idea of racial superiority in relation to Aboriginal people and the idea of white superiority in general; and being members of a highly disciplined centralist organisation their ideas may have been more fixed than most; but above and beyond that was the fact that police executed on the ground the policies of government and this brought them into continuous and hostile conflict with Aboriginal people. The policeman was the right hand man of the authorities, the enforcer of the policies of control and supervision, often the taker of the children, the rounder up of those accused of violating the rights of the settlers. Much police work was done on the fringes of non-Aboriginal settlement where the traditions of violence and rough practices were strongest.

1.4.17 I do not add to this here since the matter is discussed in the history chapter (Chapter 10) of the Report. It is sufficient to say that a deep animosity and often hatred developed between Aboriginal people and police.

1.4.18 What is most remarkable and what must command the respect and admiration of fair minded people is that Aboriginal society survived all of these assaults. Outstanding people amongst them campaigned for rights, for equality. Gradually, their calls were heard with more sympathy; in 1967 the Referendum was carried with the support of a majority of voters in every State. The Referendum was a watershed. The people who died in custody between 1980 and 1989 were, overwhelmingly, born before the Referendum; their parents universally so.

1.4.19 The consequence of this history is the partial destruction of Aboriginal culture and a large part of the Aboriginal population and also disadvantage and inequality of Aboriginal people in all the areas of social life where comparison is possible between Aboriginal and non-Aboriginal people. The other consequence is the considerable degree of breakdown of many Aboriginal communities and a consequence of that and of many other factors, the losing of their way by many Aboriginal people and with it the resort to excessive drinking, and with that violence and other evidence of the breakdown of society. As this report shows, this legacy of history goes far to explain the over-representation of Aboriginal people in custody, and thereby the death of some of them.

1.4.20 Since 1967, governments have moved in the direction of changing this position and in particular in the direction of an assault on inequality. Laws have been passed outlawing discriminatory behaviour in various fields on the basis of colour and race. Such laws reflect international conventions, to which Australia is a party, but they also reflect a genuine movement against discrimination on the ground of colour, creed, religion, race, etc. Efforts have been made by government--in many cases very strenuous efforts--but what is absolutely outstanding is the efforts which have been made by Aboriginal people, organisations and communities to grasp the opportunities which have become available and to assert their rights in the new situation. I speak of this later.

– ends Johnston comment

A study of Australia's history since 1788 reveals Indigenous conflict with the new settlers as Indigenous land was seized for farming and grazing of cattle and livestock. Ignoring directions from London urging the establishment of mutually beneficial relations with Indigenous people, the colonists/invasers upheld the notion of terra nullius although Indigenous nations had existed in Australia for tens of thousands of years, ironically pre-dating the English Empire by many millennia.

In 1816, martial law proclaimed in NSW allowed the shooting of Aboriginal people if they were armed or sought access to their drinking-water ponds, or speared any cattle newly introduced on to their hunting grounds. More than 18,000 years earlier, Aboriginal people in Australia had organised agreements with their neighbours, recorded in story and song, over access to resources and animals that prevented such conflicts.

'Protection' or 'Welfare'

In 1890, the Aboriginal Protection Board in NSW could forcibly take Aboriginal children to reserves and settlements to re-socialise them under the guise of "Aboriginal Protection" or "Aboriginal Welfare" thus reducing them to wards of the State, deprived of any citizens rights. More than 18,000 years earlier, when the Angles and Picts were themselves subjugated under the Romans, Aborigines had a robust and comprehensive system of rights of adults and children, verbally recorded by the use of images and stories.

Even into the 1900s, "Protectors" directed assimilation measures at Aborigines based on the belief that Indigenous people were an inferior species to the Whites/British. A century later, the Whites/British and other Europeans are learning that Aboriginal care for the land and the environment was the more enlightened approach, and Aborigines were far superior in their understanding and concepts of resource management.

Australia introduced what became known as the White Australia Policy (WAP) to actively repatriate Chinese immigrants who came to Australia during the gold rushes of the 1850s. The policy was very effective in denying non-whites from Asia and Africa entry into Australia. By the late 1940s, 97% of the Australian population was Australian or British born.

The WAP, which was not officially abandoned until 1973, encouraged the assimilation policy of removing Aboriginal children as young as possible from their families to "make them white...for their own good"!

Following the near-obliteration of the Indigenous people as they were driven off of their lands and suffered from introduced diseases, a widespread view that Aboriginal people were a "dying race" was fostered by white settlers and encouraged by governments to enhance assimilation.

As the ideology of assimilation developed and spread from the 1850s for nigh on a century Aboriginal people driven into reserves and missions were forbidden from speaking their own language or engaging in their traditional cultural pursuits. To understand the depth of the infringement of Aboriginality, it is necessary to appreciate that language was the glue that bound together their verbally assured rights, which were expressed and ensured in their cultural activities.

Forced off their traditional lands, many Aboriginal families sought make-shift shelter on the river banks in country towns, suffering unemployment, starvation and discrimination.

Under the NSW Aboriginal Protection Act 1909, the Aboriginal Protection Board removed Aboriginal children from their families without parental consent or a court order. The board's name

was changed to the Aboriginal Welfare Board in 1940...but its powers and operations still focused on removing Aboriginal children from their families.

In the Cootamundra Domestic Training Home for Aboriginal Girls, which operated from 1911 to 1986, girls forcibly taken from their families weren't allowed contact with their parents – letters from family members written to the girls were often not passed on, so many girls wrongly believed they were unwanted, abandoned or forgotten. Evidence given at later inquiries revealed the girls were harshly punished and beaten. Aboriginal boys at the Kinchela Aboriginal Boys Training Home, established in 1924, suffered a similar fate. Finally closed in 1970, it housed about 600 boys, most who remain haunted by their experiences.

The loss devastated most parents who had children taken from them. Some parents died of heart-break or succumbed to alcohol to numb their pain; others appealed consistently to authorities to have their children returned, usually to no avail. Siblings removed were deliberately isolated from each other: they grew up apart, unaware that they had brothers and sisters.

In 1980, Link-Up was established by members of the Indigenous community in NSW to support Aboriginal families suffering the loss of their children, by helping them trace family members separated by the State.

In 1994, at the Going Home conference in Darwin, 600 Indigenous people from throughout Australia – all of whom had been removed from their families – called for an inquiry into the policy of forced child removal and its legacies. The result, in May 1995, was the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. This inquiry held hearings around Australia between December 1995 and October 1996, receiving 777 submissions, 69% from Indigenous people. The comprehensive report was tabled in Parliament on 26 May 1997.

The inquiry formally found the forcible removal policy breached fundamental human rights. Since 1998, the report's tabling day, 26 May, has been officially commemorated as National Sorry Day.

The Keating Government commissioned the "Bringing Them Home" report: it was received by a different government led by John Howard.

No saying sorry, no compensation

removal of Indigenous children amounted to a form of genocide. It said that the number of children taken away was only 1 in 10, and that many had been removed "for their own benefit". It also questioned whether people were "stolen", or if they could be considered a "generation". The Howard government played down the fact that several generations were affected by the assimilation practices.

The Howard government rejected two recommendations of the report: the need for a national apology, and establishing a compensation scheme for the victims of the policy. Prime Minister Howard personally believed strongly that the current generation should not be made to feel guilty or sorry about things done by previous generations especially if what had been done had been done with good intentions. Aboriginal Affairs Minister Senator John Herron said that stories of widespread removal of Indigenous children from their families were exaggerated.

Despite such bitter opposition by the Federal government, state and territory governments were generally quick to offer apologies to the stolen generations. Premier Bob Carr delivered the apology for NSW on 18 June 1997.

Even though Prime Minister John Howard remained steadfast in his belief that an apology from the federal government to the stolen generations wasn't necessary, on 26 August 1999, the federal government issued a statement of deep regret. Most Australians perceived "regret" as falling far short of an apology.

The attitude by many people towards an apology was demonstrated on 28 May 2000 when a crowd estimated to be close to 250,000 walked across the Sydney Harbour Bridge to call for an apology to the stolen generations by the federal government. Adding to widespread, ongoing support for the people of the stolen generations, on 26 May 2004 memorials to them were established at the purpose-named Reconciliation Place in Canberra.

A major change in the response of governments to a "sorry" call from the people occurred on 13 February 2008 when the then Prime Minister Kevin Rudd expressed the feelings of the mass of Australia people by saying "sorry" in a manner that was heartfelt and sincere.

In a guide to understanding the plight of Indigenous people over the decades, the section on "Underlying Issues" in Chapter 25 of the BTM report refers to demography, family and cultural relations, domestic violence, alcohol and substance abuse, health, housing, employment, income and education.

CLA supports the draft declaration which affirms that the Indigenous people have a right to some form of self-determination, and considers that such is of vital importance to all aspects of Indigenous life pending the signing of a treaty or an agreement as part of, or in conjunction with, the Australian constitution.

We note that while Britain engaged in treaties with the US, Canada and New Zealand, such was not the case in Australia. (John Batman's attempt for a Treaty or an Agreement with the Wurundjeri people of the Kulin nation in Victoria, in 1835, for grazing land along the Yarra River, was exposed as no more than an illegal act by an ambitious pastoralist).

CLA is of the opinion that recommendation 30 (page 657 of the BTM report) is of vital importance for ongoing family tracing and reunion services that help individual Aborigines establish or reinforce their identities and place of origin. In the long-term, such sensitive, complex, long-term operations require well-trained and adequately funded Indigenous people, possibly assisted by suitable mentors to manage the achieving of link-ups.

Removal should be a last resort

One of the most compelling recommendations in the BTM Report is no. 46, which lists standards relating to the best interests of the child along with recommendation 48, calling for removal of Indigenous children from their families to be a last resort (see p661). This recommendation is confluent with recommendation 92 of the findings of the Royal Commission into Aboriginal Deaths in Custody which states imprisonment of Indigenous people should be utilised only as a "sanction of last resort".

In the face of two mammoth Royal Commissions in past decades into Indigenous life, the social disadvantage of Indigenous people remains as glaring as ever. Present-day Indigenous Australians make up about 2.5% of the population, yet comprise 28% of the nation's prison inmates and 20% of the deaths in custody.

In Canberra, while Aborigines make up less than 2% of the population, 27% of children in foster care are Indigenous. This is not some remote Indigenous community: the inequity is occurring now, today, in the nation's capital.

In seeking a "fair go" for the Indigenous people, most Australians expect a positive outcome from the proposals on Reparations for the Stolen Generations of NSW. In this latest attempt to right some of the wrongs of the past, we must not fail.

In response to the NSW Parliament's formal terms of reference, Civil Liberties Australia believes the NSW Government should:

- Publicly acknowledge the superior historical skills and knowledge of Aboriginal people in caring for the land and environmental resources of NSW, and
 - apologise for not recognising and utilising those superior historical skills over the past 230 years, and
 - commit to better use of such skills by appointing at least one Aboriginal person to any appropriate state land/resource management board, and the like, in future, with a mission to ensure there is no repetition of mistakes made by previous White/British settlers.
- Publicly acknowledge the mistreatment of Aborigines by a formal 'mea culpa' event, inside and outside Parliament House (called "The Acknowledgement"), along with a commitment in writing to promote Aborigines as the 'First Peoples' of NSW.
 - The formal statement by the Premier in the Parliament and in a special event outside the Parliament should be accompanied by a special one-off public holiday.
- Provide reparations in the form of \$50,000 for every Aboriginal family unit (to be defined) now living in separate accommodation within NSW:
 - with \$10,000 to be paid as a cash grant immediately, \$10,000 available over five years for house/home structure/infrastructure improvement and \$30,000 to be accessible over the next 20 years as specific funding to provide further education, beyond high school, with the educational choice of use of the funds at the discretion of each family (such funds not to count in relation to any other available educational scholarship or grant, public or private).
- Produce educational material for schools on the superiority of the historical Aboriginal approach to land and resource management.
- Produce a 10-part TV series (and pay for its showing in prime time, if necessary) on how Aboriginal knowledge has been lost, and what the land and resources in NSW would look like if first white settlers had abided by Aboriginal land and resource management principles. The first of the series should be shown on Acknowledgment Day.
- Commit to opening every debate in Parliament on land, land management, resources and resource use with a summary statement reflecting the flavor of the mea culpa statement and acknowledgement of 200 years of error.
- Create a new further education college, primarily for Indigenous people and primarily with a concentration on subjects and skills of their preference, in a rural, non-coastal town

in NSW, and co-locate a new prison in the vicinity, designed and built to be more suitable to non-violent Aboriginal prisoners than existing NSW prisons.

- Reduce the current sentences of Aboriginal prisoners jailed for non-violent crimes by 20% on Acknowledgement Day.
- Abolish mandatory sentences for Aborigines charged with non-violent crimes.
- Provide a 20% reduction, immediately on sentencing, for Aboriginal people convicted of a non-violent crime for the next 25 years, whereupon the reduction would cease.
- Build and run, for at least 25 years, a new Indigenous Academy of Sport in NSW, open to Indigenous people from throughout Australia but with a preference for attendees from NSW, and with a further preference for female attendees from NSW.
- Build and run, for at least 25 years, a new Indigenous Business Management Institute in NSW, open to Indigenous people from throughout Australia but with a preference for attendees from NSW, and with a further preference for female attendees from NSW.

NOTE: The above two bodies should not be located in Sydney.

- Provide new and separate funding for research, by Aboriginal scholars, into:
 - Aboriginal history in NSW;
 - the history of Aboriginal-British/white conflict on the moving 'frontiers' in NSW; and
 - successful capability-building schemes and initiatives within and without the NSW Aboriginal community and successful indigenous schemes and initiatives of major overseas indigenous groups, such as in Canada and New Zealand; and
 - creation of a proposed 75-year plan, to be delivered to the NSW Government by 2025, for how the NSW Government can continue to further the best interests of the state's Aboriginal people until 2100.

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BACKGROUND; Civil Liberties Australia is a not-for-profit association which reviews proposed legislation to help make it better, as well as monitoring the activities of parliaments, departments, agencies, forces and the corporate sector to ensure they match the high standards Australia has traditionally enjoyed, and continues to aspire to.

We work to help keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'. Australians' civil liberties are all about balancing rights and responsibilities, and ensuring a 'fair go' for all.