

Select Committee on the Administration of Indigenous Affairs
Senate Submission

Addressing terms of reference;

(b) the proposed administration of Indigenous programs and services by mainstream departments and agencies; and
(c) related matters.

Submitted jointly by:

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The likely effect of ATSIC's closure on the Stolen Generations

1. The Submission

The unresolved issue of the stolen generations is of central importance to the future of Australia and all Australians. For a majority of Indigenous people there can be no national reconciliation until the suffering of the stolen generations and the ongoing intergenerational impacts on the well being of Indigenous families and communities are appropriately acknowledged and addressed. It is the responsibility of government to formally recognise the legacy of harm caused by the forcible child removal policies of previous Australian governments and to provide redress for that harm so that this issue can finally be resolved.

Above all, this means a wholehearted response to the *Bringing Them Home* report.

The report of the National Sorry Day Committee, 'Are we helping them home?' (see attached) pointed out the immense inadequacies of the Federal Government's response. These were outlined in a seminar in the Federal Parliament in November 2002. The then Minister, Philip Ruddock, said after listening to the seminar, 'Let us work together and get better outcomes.' So far the main outcome has been a series of workshops in most States aimed at improving co-ordination between Link-Up and the Bringing Them Home counsellors.

Nothing has been done, however, to address the greatest concern. There is a need to survey the Indigenous population, estimate the number of people still searching for family members separated as a result of the removal policies, and fund Link-Up and the counsellors adequately to meet this need. Link-Up services around the country have a total of about 30 case-workers, an utterly inadequate number to meet the need of their several thousand clients. Our research suggests that many more Indigenous people need these services, but are too far from a Link-Up office to obtain assistance.

The Federal Government has stated that Indigenous funding will not decrease as a result of the closure of ATSIC. However, the Government's ambivalence about the *Bringing Them Home* report suggests that the closure may well result in a decrease in funding for stolen generations concerns. Firm guarantees are needed, we believe, to prevent this, and we ask the Senate Committee to seek these guarantees.

We do not, however, seek only to maintain the status quo. We ask the Government to play its part in enabling the stolen generations to receive justice and find healing.

Any plan by the federal government to represent and deliver programs and services for Indigenous people must include the establishment of a tribunal for hearing and resolving the claims of Indigenous people and their families who have suffered harm as a result of the forcible child removal policies. For several years the National Sorry Day Committee, ATSIC and the Public Interest Advocacy Centre (PIAC) have been calling for the establishment of a **Stolen Generations Reparations Tribunal**. The demise of ATSIC has removed a national voice which has been advocating this approach. We therefore include in this submission our proposal for such a tribunal.

Stolen Generations Reparations Tribunal

The need for such a Tribunal has long been recognised and its establishment was a central recommendation of the *Bringing them Home* Report in 1997. Further, the 2000 Senate Committee Inquiry into the Federal Government's implementation of the Recommendations of *Bringing them Home* called for the establishment of a reparations tribunal based on the model proposed herein (recommendations 7 & 8).

This is a unique opportunity to include this important issue not as an add-on to existing structures but as an integral part of reshaping the relationship between Australian governments and Indigenous people.

Anticipated Outcomes

- Provide national acknowledgment and redress for the harm suffered by the stolen generations
- Provide an alternative to litigation that delivers a more humane, just and effective response to the ongoing suffering and intergenerational impacts resulting from the policies of child removal;
- Provide a framework for faster, more supportive and cost effective settlements of claims;
- Ensure all those affected can receive a reasonable and equitable share of limited funds;
- Include those affected by forcible removals in the government processes of determining entitlements;
- Implement key recommendations of *Bringing Them Home* and the 2000 Senate Inquiry, consistent with the requirements of international human rights law and principles;
- Build trust and recast relationships between Indigenous people and Australian governments;
- Promote national healing and reconciliation for the benefit of all Australians; and
- Finalise the issue of compensation/reparations and create certainty for governments, churches and those affected by the policies.

These anticipated outcomes stand in contrast to the high costs and inequities of attempting to resolve these issues through litigation.

2. The Tribunal Model

This tribunal model was proposed by PIAC in their submission to the 2000 Senate Committee Inquiry into the Federal Government's implementation of the Recommendations of *Bringing them Home*. The Senate Committee recommended the establishment of such a tribunal in their report, *Healing: a legacy of generations* (recommendations 7 & 8). After wide consultation with Indigenous groups and members of the stolen generations, PIAC presented the revised tribunal model in their report *Restoring Identity; Final report of the Moving Forward consultation project*, 2002 (see attached). This model should be built into any new arrangements in the administration of Indigenous Affairs.

2.1 Structure and membership of the Tribunal

The Tribunal would be established by a partnership of governments, churches, Indigenous organisations and members of the stolen generations. Tribunal members and staff would be Indigenous and non-Indigenous people, appointed by the above partners, according to set criteria for appropriate skills, expertise and cultural awareness.

2.2 Functions

The Tribunal would:

- provide a forum to hear and acknowledge the experiences and impacts of forcible removal policies;
- grant appropriate reparations measures for those who suffered harm; and
- make recommendations about government and church activities that affect contemporary Indigenous child separation and measures that might be taken to heal the past and prevent recurrence.

2.3 Who could apply to the Tribunal?

- Indigenous people who were removed from their families under forcible removal policies, up until 1970;
- family members who suffered as a result of their removal; and
- descendants of those forcibly removed.

2.4 Procedures

The Tribunal would provide a process for conducting hearings, acknowledging experiences, deciding facts and ordering appropriate reparations measures.

The Tribunal would have the flexibility to provide a full range of reparations measures which could include; provision of funding for memorials, resource and cultural centres, access to appropriate counselling services, access to language and culture training and financial subsidies for family reunions. There would be an emphasis on group resolution of claims and reparations measures based on group or community outcomes. Monetary compensation would be provided to those applicants who can establish that they suffered particular types of harm or loss resulting from forcible removal.

2.5 How would it be funded?

Federal, state and territory governments would be jointly responsible for establishing a national fund to be administered by the Tribunal, with voluntary contributions from churches that were involved in administering forcible removal policies. The federal government would take primary responsibility for financing the fund with states and territories making financial contributions proportionate to the prevalence of forcible removals in their state. It is anticipated that the proposed Tribunal could utilise existing Indigenous community infrastructure and resources in order to minimise administrative costs.

3. International perspective

- A number of countries (such as Canada, South Africa, New Zealand, Chile and Germany) have recognised the harm caused by past government policies and victim's rights to reparations;
- such a model is operating successfully in Canada, where over 1000 people have had their claims heard and resolved (see attached; Canadian Office of Indian Residential Schools Resolution, *National Resolution Framework Update*, May 2004);
- the important role of reparations in the process of reconciliation is recognised internationally; and
- Australia has traditionally been a prominent upholder of international human rights law and practice.

References

- Canadian Office of Indian Residential Schools Resolution, *National Resolution Framework Update*, May 2004
- Gardiner-Garden, John, 'From Dispossession to Reconciliation', Australian Parliament Social Policy Group, June 1999
- Haebich, Anna, *Broken Circles, fragmenting Indigenous families*, Fremantle Arts Centre Press, 2000
- 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, Commonwealth of Australia, 1997
- National Council of Churches Australia, National Forum report, *Continuing the journey*, July 2001
- Public Interest Advocacy Centre, *Submission to the Senate Inquiry into the Stolen Generations*, 2000
- Public Interest Advocacy Centre, *Restoring Identity; Final report of the Moving Forward consultation project*, PIAC, 2002
- Senate Legal and Constitutional References Committee, *Healing: a legacy of generations*, report of the Senate Committee Inquiry into the Federal Government's implementation of the Recommendations of *Bringing them Home*, 2000
- National Sorry Day Committee, *Are we helping them home?*, report of a seminar held in the Main Committee Room of the Federal Parliament, November 2002.