

MINORITY REPORT BY THE AUSTRALIAN DEMOCRATS

EXECUTIVE SUMMARY

CHAPTER 1

Conclusions

- The Australian Democrats do not consider this report as the appropriate context in which to take up issue with those who have cast themselves as critics of the stolen generations. This is not to suggest that this debate should not occur. On the contrary, it is vital to the process of national reconciliation between Indigenous and non-Indigenous Australians that an open, honest and inclusive debate on these matters does occur. The purpose of such a debate must be to bring about a proper resolution of the issues, rather than the polarisation of sections of the community; this latter outcome will simply perpetuate the suffering, misunderstandings and inaction.
- The objective of the Australian Democrats in supporting the motion for a Senate Inquiry into the Stolen Generations was and continues to be, the need to provide a human response to what we regard as one of the darkest and most tragic periods in this country's history.
- We accept the finding of the *Bringing Them Home Report* (hereafter the BTH Report) that every Indigenous family in Australia has been affected, either directly or indirectly, by the policies and practices of forcible child removal that occurred throughout Australia in the period from 1910 to 1970.
- We accept the findings of the Human Rights and Equal Opportunity Commission contained in the BTH Report that the forcible removal of Aboriginal and Torres Strait Islander children from their families and communities constitutes a violation of fundamental human rights. These human rights standards existed at the time and were understood by those in positions of authority.
- Regardless of whether a person subscribes to the view that the forcible removal of Indigenous children constitutes genocide (as defined in the United Nations Genocide Convention), or whether a person regards this as an element of the "black armband view" of Australian history, the reality of the stolen generations cannot be denied.
- The Australian Democrats believe that the evidence does *not* support the Government's conclusion that the practices and policies of child removal were in step with the attitudes held by the community at large, particularly during the postwar period. On the contrary, there is evidence to indicate that some Australians were voicing their concern and objection to the policies based on the moral and ethical values of the day, which were held by the community at large. These concerns escalated during the 1960s and 70s.

Chapter 1 Recommendations

1.1 The Australian Democrats recommend that all of the recommendations contained in the Majority Report on the Stolen Generations be implemented as a matter of urgency.

CHAPTER 2

Conclusions

- The Commonwealth Government's response to the recommendations of the BTH Report has been inadequate and ineffective in dealing with the enormity of the suffering which continues as a result of past child removal practices and policies.
- The recommendations of the BTH Report need to be implemented as a package of measures which complement and reinforce each other; they should not be selectively implemented according to political viewpoints.
- Funding needs to be significantly increased and members of the stolen generations and their representative organisations need to be consulted to ensure that funding is allocated where the needs are greatest, and to initiatives which the communities consider culturally appropriate and worthwhile.
- The Commonwealth Government's response to the recommendations contained in the BTH Report must be co-ordinated by Council of Australian Governments (COAG) to ensure that a co-ordinated, effective and truly 'national' healing process can be fostered. That response must also be subject to regular review by an independent audit, to ensure that the needs of the stolen generations are being met and continuing to drive the national response.
- The appropriate response to the effects of the policies and practices of child separation which occurred in Australia between 1910 and 1970 is the provision of full and just reparations to the stolen generations, their families and communities, as recommended in the BTH Report.
- Only a response of this nature would enable Australia to comply with our obligations under the international human rights treaties which we have ratified, as well as the obligations imposed on Australia by the norms of international customary law as contained in the van Boven principles.
- The Commonwealth Government must provide the leadership to bring together the State and Territory Governments, Churches and other bodies that were responsible for the administration and implementation of the child removal policies and practices, to ensure that full and just reparations are delivered to the stolen generations, their families and communities.
- In the Australian situation, the Australian Democrats believe that litigation in our adversarial court system is not a culturally appropriate or effective remedy for

the situation confronting the stolen generations, their families and communities. The Gunner and Cubillo case only showed how ill-equipped our courts are to provide a human response to the legacy of the stolen generations.

- The experiences of the stolen generations, their families and communities as a result of the policies and practices of child removal over successive generations from 1910 to 1970 do constitute “exceptional circumstances” that warrant at the very least, the provision of full and just reparations, including compensation.

Chapter 2 Recommendations

2.1 The Australian Democrats recommend that the federal government, in consultation with the stolen generations and their representative organisations, significantly increase the funding package to implement the government’s response to the recommendations of the BTH Report to ensure that the needs of the stolen generations are fully addressed. These negotiations should be a key element of the National Summit on the Stolen Generations, as proposed in the Majority Report.

2.2 The Australian Democrats recommend that the federal government’s funding package to implement the recommendations of the BTH Report should be ongoing and subject to review in terms of its adequacy by the independent auditing body referred to in Recommendation 2.6 below.

2.3 The Australian Democrats recommend the establishment of a mediation process and/or series of conferences by ATSIC to resolve a range of outstanding issues between the stolen generations communities, their representative organisations and Indigenous community organisations in the Northern Territory. This should occur in advance of the Indigenous consultations referred to in Recommendation 10 of the Majority Report.

2.4 The Australian Democrats recommend that the Churches proceed with their plans to establish their own compensation fund to facilitate the delivery of reparations, including compensation, to the stolen generations, their families and communities, in accordance with the recommendations of the BTH Report.

2.5 The Australian Democrats recommend, in acknowledgment of the enormity of the problems faced by the stolen generations throughout Australia, that COAG take up the responsibility of ensuring the delivery of a co-ordinated, effective, whole-of-government response to the recommendations contained in the BTH Report.

2.6 The Australian Democrats support Recommendation 1 of the Majority Report, relating to the need for the federal government, in conjunction with state and territory governments, to commission an independent evaluation of the progress of initiatives implemented by governments in response to the BTH Report.

2.7 We further add that periodic *independent* audits of governments’ initiatives are required no less than every three years to ensure that the needs and aspirations of the stolen generations are being satisfactorily addressed.

2.8 The Australian Democrats recommend that Recommendations 44 – 54 of the BTH Report be actioned as a matter of urgency to ensure that adequate national legislation is implemented which establishes minimum standards of treatment and protection of all Indigenous children and other children as appropriate (national standards legislation).

2.9 The Australian Democrats recommend that the Commonwealth provide full and just reparations to the stolen generations, their families and communities as soon as is practicable. This recommendation should be carried out in conjunction with all other recommendations contained in this Minority Report. Collectively, these recommendations constitute the minimum acceptable response required to heal the legacy borne by the stolen generations, their families and communities.

CHAPTER 3

Conclusions

- Arguments that compensating members of the stolen generations would be too complicated, uncertain or costly need to be assessed against the considerable Australian experience to date in providing compensation and restitution where community priorities have required an equitable outcome.
- Statutory schemes, such as the victims of crimes compensation arrangements at the State and Territory level and the Commonwealth's veterans' legislation, reflect public policy decisions by governments to provide compensation schemes for people who have suffered loss but where there would be difficulties in obtaining compensation through normal court processes.
- Such experience, and the demonstrated potential of techniques such as mediation and alternative dispute resolution provide a basis for the development, by statute, of a tribunal or commission charged with the task of providing reparations, including acknowledgment, compensation, and rehabilitation, for the members of the stolen generations who have been the victims of forcible removal. This approach would avoid the considerable difficulties and unnecessary trauma associated with litigation through the courts.
- The Public Interest Advocacy Centre submission sets out the basis of one such proposal. There also appears to be the potential for the Administrative Review Council to play a constructive role in developing an appropriate tribunal mechanism.

Chapter 3 Recommendations

3.1 The Australian Democrats recommend that all parties involved in negotiations for the establishment of a Stolen Generations Tribunal examine the *Veterans' Entitlement*

Act 1986 as a successful legal precedent for the relaxation of the normal requirements for establishing liability.

3.2 The Australian Democrats recommend that all parties involved in negotiations for the establishment of a Stolen Generations Tribunal consider the inclusion of a mediation process in the operation of such a Tribunal.

3.3 The Australian Democrats recommend that all parties involved in negotiations for the establishment of a Stolen Generations Tribunal consider the inclusion of an alternative dispute resolution mechanism in the operation of such a Tribunal.

3.4 The Australian Democrats recommend that the Administrative Review Council (or an equivalent body) prepare a report for tabling in the Australian Parliament on the appropriate model for a Stolen Generations Reparations Tribunal. This report should draw extensively on the views of the stolen generations, their representative organisations, and the outcomes of the National Summit on the Stolen Generations.

