

CHAPTER 1

INTRODUCTION

Referral of the Inquiry

1.1 On 24th November, 1999 the Australian Democrats and the Australian Labor Party jointly moved a motion to establish a Senate inquiry into the implementation by the Commonwealth Government of the recommendations of the Human Rights and Equal Opportunity Commission Report entitled *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (hereafter the BTH Report).

Terms of Reference

1.2 The Terms of Reference set out what issues the Senate Committee was able to consider, report on and make recommendations in relation to.

1.3 In summary, the Committee was instructed to answer two broad questions:

a) The adequacy and effectiveness of the Government's response to the recommendations of the BTH Report; and

b) In light of the hopes, aspirations and needs of the stolen generations, what measures are needed to achieve the full implementation of the recommendations of the BTH Report, especially in relation to the delivery of reparations.

1.4 The Committee was not instructed to critically evaluate the methodology used by HREOC in its Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. Nor was the Committee instructed to critically evaluate or revise the recommendations contained in the BTH Report.

1.5 As the Majority Report notes:¹

The objective of the Senate reference was not primarily to assess the validity or accuracy of the *Bringing Them Home* report, but to determine if the recommendations of that report had been implemented; if they were effective; if there were reasons why some recommendations had not been implemented; and if there were other ways in which the expected outcome of those recommendations could be met, or, indeed, had been met.

1 Senate Legal and Constitutional Committee on Stolen Generations Inquiry, paragraph 1.49.

Political Context in Which the Inquiry Occurred

1.6 The period following the establishment of the Senate Committee Inquiry, was one of heightened politicisation of the issue of the stolen generations across Australia.

The Government's Submission to the Inquiry

1.7 Whilst the establishment of the Inquiry was itself a factor in initiating the national debate about the stolen generations, the initial submission from the Minister for Aboriginal and Torres Strait Islander Affairs, Senator John Herron, triggered a national outcry.

1.8 In that submission, the Minister made the controversial remark that:²

At most it might be inferred that up to 10 percent of [Indigenous] children were separated for a variety of reasons, both protective and otherwise, some forcibly, some not. This does not constitute a 'generation' of 'stolen' children. The phrase 'stolen generation' is rhetorical.

1.9 The Minister's submission also heavily criticised the methodology which underpinned the findings of the BTH Report, finding fault with "significant elements of the report" including:³

.... questions about the number of children affected, whether the practice of separation was an indiscriminate one with genocidal intent, and whether a statutory compensation scheme is appropriate or feasible.

1.10 These criticisms have been eloquently and effectively challenged elsewhere, and will not be repeated here.⁴

1.11 However, it is important to note that the range of critics of the BTH report who were "involved in the administration of the policies and practices at issue" and whose opinions the Minister believes should have been included in the BTH Report to make it "balanced and historically accurate," were all involved in the implementation and administration of child removal policies in the Northern Territory.

1.12 The Australian Democrats do not believe that the policies and practices of child removal which occurred in the Northern Territory in the period between the 1910 and 1970 can be extrapolated across all other States and Territories.

1.13 It is therefore inappropriate that the Government has based many of its reasons for discrediting the BTH Report on the remarks of a handful of individuals

2 *Submission 36*, Minister for Aboriginal and Torres Strait Islander Affairs, p.18.

3 *Submission 36*, p. 21.

4 Refer to the HREOC Submission Executive Summary (*Submission 93*) and the oral evidence to the Committee from Sir Ronald Wilson (Canberra, 4 September, 2000).

who were involved in the administration of the child removal policies and practices in the Northern Territory.

The Gunner and Cubillo Decision

1.14 The announcement of the Federal Court's decision in the *Gunner and Cubillo* case occurred during the Committee's hearings in Darwin on 11th August, 2000.

1.15 This decision breathed new life into the national debate about the stolen generations and triggered a lively exchange of public opinions in the media.

1.16 Both the Government and commentators renowned as outspoken critics of the BTH Report portrayed the Gunner and Cubillo decision as a further vindication of their positions. However, for many members of the stolen generations and their families who had hoped the court would find in favour of Mr Peter Gunner and Mrs Lorna Cubillo, the court's decision was another blow.

1.17 Whilst it is outside the Terms of Reference of this Inquiry to engage in debate on Justice O'Loughlin's decision in the Gunner and Cubillo case, it is important to note that this decision relates only to the specific experiences of two individuals – Peter Gunner and Lorna Cubillo - and what evidence they were able to submit to the court to substantiate their case against the Commonwealth.

1.18 The findings of Justice O'Loughlin that Gunner and Cubillo “failed to produce evidence that would substantiate a finding that there was a sweeping general policy of removal and detention” cannot be projected on to all other members of the stolen generations who may bring their own actions against the Commonwealth. Each of the estimated 1,000 to 1,500 cases that are lodged in the Australian courts will be judged on their own merits.

Judging Child Removal Policies by Contemporary Standards

1.19 The Government has acknowledged in its submission⁵ that some children did suffer as a result of the policies of removal. However, it has gone on to conclude that because of the “benign intentions of the policy and of the people involved and the benefits and opportunities which many of the children received,” there are no grounds for compensation or reparations to those affected by those policies.

1.20 Furthermore, the Government provides the following explanation for its limited response to the recommendations of the BTH Report:⁶

5 “Those involved in child separation practices (governments, churches and welfare workers) have acknowledged that however well-intentioned, the policies were flawed and that children may have suffered as a result.Of course some individuals abused their power over children but this does not demonstrate that the policies and practices were intended to destroy children on the basis of race or otherwise, nor that the practices and policies were out of step with the attitudes applied to the community more generally.” *Submission 36*, p. 12.

6 *Submission 36*, p. 38.

.... The possibility that, on today's standards, these practices could constitute breaches of human rights is not necessarily an indication that they would have been considered as such at the time they occurred.

1.21 However there is evidence that both the Commonwealth and Northern Territory Governments were concerned that the policies of child removal in the Northern Territory in the post war period were in contravention of the human rights standards of the day. The HREOC submission to the inquiry argues that the prohibition of racial discrimination was an accepted standard of the day.⁷

The [Commonwealth] government's approach also disregards evidence that those responsible for implementing forcible removal policies were aware that human rights violations were being committed. In a letter of 6 July 1949, A R Driver, Administrator of the Northern Territory, wrote to the Commonwealth Department of the Interior:

"There are certain restrictions which must remain imposed on Aborigines even though they are at variance with the complete ideals of the Universal Declaration of Human Rights."

Similarly, on 4 November 1950, the Government Secretary wrote to the Administrator of the Northern Territory of the child removal policy:

"I cannot imagine any practice which is more likely to involve the Government in criticism for violation of the present day conception of 'human rights'."

1.22 There is also evidence that a public debate on the moral legitimacy of the child removal policies was occurring in the Northern Territory in the post war period, and that particular incidents did act as a catalyst for policy review and modification.⁸ For example, Mr Colin Macleod, a patrol officer in the Northern Territory during the 1950s wrote:⁹

Back in Darwin, some of my friends and occasionally the press were critical of the Welfare Branch taking away the children. Our Department was instrumental, before my time in the Territory, in ending the taking away of children purely for ideological reasons.

1.23 Regardless of one's view of the morality (or lack thereof) of the laws of the day, such arguments do nothing to answer the allegation that these laws were at best, in contravention of recognised and internationally accepted fundamental human rights.

7 *Submission 93*, paragraph 3.105

8 In particular, Mr Macleod referred to the removal of a number of part-Aboriginal children from Wave Hill Station in 1949 which was extremely distressing to the parents who saw their children disappear into the body of the aircraft. This incident led the Administrator, Mick Driver, to discourage all sudden and uncounselled separations, particularly by air. Colin Macleod (1997) *Patrol in the Dreamtime*, Mandarin Press, p. 167.

9 Colin Macleod (1997) *Patrol in the Dreamtime*, Mandarin Press, p. 167.

1.24 Even if ordinary people involved in these practices did not understand these concepts, those in positions of authority were, at the very least, aware of their human rights implications. Ignorance should not become a reason or an excuse for the failure to observe human rights standards.

Conclusions

1.25 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.

1.26 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.

1.27 We accept the finding of 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.

1.28 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.

1.29 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.

1.30 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.

Recommendation

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.