

Stolen Generations Alliance

Australians for Healing
Truth and Justice

Patrons: Prof Lowitja O'Donoghue and the Rt Hon Malcolm Fraser

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SGA Submission to the Senate Inquiry into compensating the Stolen Generations

- 1) The moral argument for compensation for the Stolen Generations is strong.

The memorial to the Stolen Generations, unveiled by the then Minister for Indigenous Affairs, Senator Amanda Vanstone, in 2004, states:

'For 150 years until the 1970s, many thousands of Aboriginal and Torres Strait Islander children were removed from their families, with the authorisation of Australian governments, to be raised in institutions, or fostered or adopted by non-indigenous families. Some were given up by parents seeking a better life for their children. Many were forcibly removed and see themselves as 'the stolen generations'.

'Many of these children experienced overwhelming grief, and the loss of childhood and innocence, family and family relationships, identity, language and culture, country and spirituality. Their elders, parents and communities have experienced fear and trauma, emptiness, disempowerment, endless grieving, shame and failure.'

Speaking in the Federal Parliament in February, the Prime Minister, Kevin Rudd, said:

'There are thousands, tens of thousands of stories of forced separation of Aboriginal and Torres Strait Islander children from their mums and dads over the better part of a century. Some of these stories are graphically told in Bringing Them Home, the report commissioned in 1995 by Prime Minister Keating and received in 1997 by Prime Minister Howard. There is something terribly primal about these firsthand accounts. The pain is searing; it screams from the pages. The hurt, the humiliation, the degradation and the sheer brutality of the act of physically separating a mother from her children is a deep assault on our senses and on our most elemental humanity.'

Many of the Stolen Generations then were caught up in the 'stolen wages' issues which have come to national attention in recent years. Having lost so much as children, they then went into the workforce and lost a large proportion of their wages to Government ineptitude or corruption. In most States, there is little likelihood that adequate compensation will be finalised for several years, if then.

We are all aware that financial compensation can in no way restore for such immense losses. But what can be done should be done, and financial compensation is one way of making restoration.

- 2) Most of the Stolen Generations who are still alive are elderly. They would find immense benefit in receiving compensation. In Tasmania the Stolen Generations have received about \$40,000 each. A sum such as that would enable elderly people to receive better medical attention, to keep warmer in winter, to have more contact with their families through phone or visits. These would be tangible ways of making amends. Many would argue that the relevant state, territory and especially the national government can and should be at least as generous. It should also be noted that for many of those who have received compensation under the Tasmanian scheme the formal acknowledgement of harm and of a failure of a duty of care by the government and other authorities was as powerful and as healing as the money itself.
- 3) The Tasmanian Government has developed a model for a compensation scheme. From all accounts, it has worked well, and could be adapted for use in other States. Senator Bartlett has now put forward a proposal to the Senate for a national compensation scheme. The proposed Senate Bill offers well-thought-out ways in which the Stolen Generations could be compensated.
- 4) In most states and territories, Stolen Generations people are meeting with lawyers and planning compensation cases. There are 150 in South Australia alone. The South Australian Government is appealing the Trevorrow judgement in an attempt to prevent other Stolen Generations people receiving compensation. They may or may not succeed.

But whatever the outcome, the experience of legal process for Stolen Generations people has been harsh. Few would want to go through what Lorna Cubillo or Peter Gunner endured in the Northern Territory, or Joy Williams in NSW.

- 5) There is a clear obligation (morally, politically and we believe legally) for the Australian government to take the lead in making reparations as recommended in the 1997 Bringing Them Home report. The most sensible and equitable process could be via COAG with the Commonwealth taking responsibility for compensation for those removed in the Northern Territory and the ACT, and each state taking responsibility for those removed under their legislation and duty of care. Such a coordinated approach would offer considerable savings in drafting and implementing appropriate schemes and would offer a much more humane, efficient, and ultimately cost effective

strategy than decades of bitter, expensive and traumatic litigation in the various jurisdictions.

6) The practical and sensible nature of such a non-adversarial approach is shown by examining the situation in Canada. Canada's Residential School Survivors have a longer experience of legal proceedings. Dr Maggie Hodgson, herself a survivor who has helped many people work through their claims for compensation, writes that they concluded that only those survivors who had found a considerable measure of healing would have the strength to go through the court process. If they had not found healing, the process could well destroy them. So it is a very inadequate means of enabling a survivor to feel that he or she has been justly treated. In many cases it leaves them more scarred psychologically than they were before.

At present we in Australia seem to be treading a similar path. It looks as if pressure will mount through a series of court cases, and this will eventually persuade all parties to find a better solution. It would be sensible to learn from Canada's experience, and by-pass the dead-ends they found themselves in.

After the experience of the Residential School survivors came to national attention in about 1990, several hundred survivors sued the Government and the churches for abuse, sexual and physical, in the Schools. A number won their cases. The courts tended to determine that the Government carried 60% of the responsibility, and the relevant church 40%. Soon some churches were in deep financial trouble. In British Columbia, an Anglican diocese, two-thirds of whose parishioners were Indigenous, was driven into bankruptcy and had to sell its assets. The diocese's social support networks – much of which was directed towards Indigenous people – were unable to continue operating. This made the matter a political issue, and the Government became involved. The Anglican church reached an agreement with the Government that, once the Church had paid \$25 million, the Government would carry the rest.

But a large proportion of the available money was going into lawyers fees, to the anger of those seeking compensation. And the cases were taking so long to resolve that litigants were dying long before their case had reached a conclusion. It was obvious that a better way was needed.

An Alternative Dispute Resolution Process was developed, and this speeded up the process considerably. But such was the backlog that, even using this process, it would take years to resolve the cases.

At this stage the Assembly of First Nations intervened. They negotiated with the Government, and eventually reached agreement that the Government would compensate all who had attended a Residential School, according to the length of time spent at that school. The average payout would be about \$30,000. Those who claimed that they had been abused were free to take their claim through the courts, in which case they could receive larger compensation. But the basic compensation required no court proceedings.

This is the aim, as we understand it, of the bill introduced into the Senate last year by Senator Andrew Bartlett, and we warmly support it.

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