



5 May 2008

Mr Peter Hallahan  
Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Mr Hallahan

Through you we would like to thank the Committee for the opportunity to provide evidence, by teleconference, to the Inquiry's Public hearing of 15 April 2008, in support of the National Sorry Day Committee (NSDC) submission (Submission No 43).

We would also like to express our appreciation of the opportunity to provide supplementary information in relation to the evidence presented. This supplementary information is now provided, in the comments in this letter and in an attachment outlining some of the views of Link-Up (NSW).

In summary:

- our comments reinforce and extend several points we made on 15 April 2008 in relation to:
  - reparations
  - the *Bringing them home* (BTH) report
  - functions of family reunion services and healing services
  - implementation of "Additional supports" (Clause 22 of Bill).
- the Link-Up (NSW) attachment makes points relating to:
  - the name of the Bill
  - the establishment of a compensation fund
  - the *ex gratia* payment provisions
  - eligibility criteria for payments
  - the nature of the evidence
  - the support services.

## **1. NSDC SUPPLEMENTARY COMMENTS**

### **Reparations**

Compensation, although vital, is only part of reparations. Reparations are defined in the BTH report (see Recommendation 3 on p 282) as:

- acknowledgement and apology
- guarantees against repetition
- measures of restitution
- measures of rehabilitation
- monetary compensation.

All these components of reparations are inextricably linked, and all are required if there is to be an effective model of healing for all the individuals, families and communities affected by the forcible separation of their children from them.

### ***Bringing them home (BTH) report***

All BTH recommendations need to be implemented, fully and holistically and with attention to additional needs identified over the past decade. This issue overlaps with the issue above, but also requires separate attention.

What is needed is:

- a review of implementation so far by all levels of government, with the review including a process that allows Stolen Generations members to name their unmet needs
- the development of a national plan for future implementation, which:
  - responds specifically to unimplemented, partially implemented or poorly implemented BTH recommendations
  - incorporates any additional needs identified through the review process
  - includes a requirement that where agencies, at any level of government, claim to be implementing the recommendations and/or meeting the additional needs through existing services, they must specify the particular ways those services respond to the BTH recommendations, and/or the additional needs concerned
  - meaningful, transparent and publicly available reporting against the plan
  - regular, formal review of the reports against the plan, with the review process including at least peak stolen generations organisations, Link Ups and other Indigenous healing and support services.

### **Functions of family reunion services and healing services**

There is a need for clarity in relation to the differences between family reunion services and healing and other support services, and a need for increased funding for both.

While these different types of services obviously intersect, we are concerned that there be recognition of the specific functions of each of them, especially as Link-Up services across Australia have specific skills in tracing and reuniting families, a critical aspect of healing for most Aboriginal and Torres Strait Islander people. Even where a family reunion is not possible, Link-Ups, with adequate resources, can play a

significant part in connecting or re-connecting stolen generations members with their culture and with the wider Aboriginal and Torres Strait Islander community. The current level of unmet need in the area of family reunion services alone can be gauged from current statistics from Link-Up (NSW), which indicate that there are 5,670 clients in NSW trying to find their way home to their families. Without a significant injection of funds, including funds for additional caseworkers, most clients of the Link-Up services across Australia will never be reunited with their families.

Additional funds are also required to allow family reunions to be sustainable. At present, the extraordinarily high level of unmet need makes adequate support to former clients, whether they have found family or not, almost impossible.

Ways of addressing unmet needs and allocating funding for services to meet them, whether they are primarily for family reunion or for healing and support, need to be developed in partnership with all relevant Aboriginal and Torres Strait Islander organisations and groups. These issues are addressed more fully in the next section of this letter.

#### **Implementation of “Additional supports” (Clause 22 of Bill).**

In this clause, the Bill deals with:

- the additional supports required, including “healing centres and services of assistance”
- the need for “healing centres and related services” to be established in consultation with relevant Aboriginal and Torres Strait Islander people.

As the Link-Up (NSW) attachment to this letter indicates, there are issues to be addressed around the limitations of the Bill’s eligibility criteria, including their application to clause 22. However, the points we wish to make here relate to the consultation provisions of this clause, including:

- their relationship to improved outcomes for all Aboriginal and Torres Strait Islander people, including members of the Stolen Generations
- the need for them to be adopted across governments, whether or not this particular Bill is adopted.

We also wish to point out that this clause of the Bill highlights significant service development and provision issues for Indigenous peoples across Australia, whether those services are provided through enabling legislation or, as in most cases, through non-legislative policy and administrative decisions, or through Aboriginal community control of the service concept, design and delivery.

#### Consultations

If these consultation provisions are enacted, there will be a pressing need to:

- include at least peak stolen generations organisations, Link-Ups and other Indigenous healing and support services in the consultations
- ensure these consultations deal seriously with what is needed for all these services to operate, and importantly, how they should work together in general, and



- plan and commit resources to what needs to be done to ensure that this can happen effectively, namely by who and by when, with appropriate measures and methods negotiated regarding review processes.

The emphasis in these consultations should be on how Aboriginal and Torres Strait Islander people want this program (to use the bureaucratic language) to work, and what the bureaucracy needs to do to adapt to any Indigenous program development, planning, implementation and review guidelines drawn up by the consultation group.

In other words, the consultation, development, implementation and review processes should respect both Indigenous rights and the evidence on improved outcomes for Indigenous peoples when Indigenous rights are integrated into service development and provision. (For some of the evidence, see Chandler and Lalonde's work on the youth suicide rates of First Nations groups in British Columbia.<sup>1</sup>)

An approach which integrates Indigenous rights in relation to decision-making, and the evidence on their role in achieving effective outcomes for Indigenous peoples, is essential if we are to both:

- make reparations (as defined in the BTH report) for the forcible separation of Aboriginal and Torres Strait Islander children from their families
- make significant headway on the critical issue of overcoming Indigenous disadvantage in general.

For all these reasons, as long as the issue of eligibility criteria is satisfactorily resolved, we strongly support the provisions of clause 22 and urge the Parliament to adopt them. By undertaking to address these issues, and confirming this approach through their contribution to the debate on this Bill, individual members of the Parliament will build on the Apology they made on 13 February 2008, and provide concrete evidence of their commitment to action consistent with the Apology.

This approach would also enhance Australia's international standing as it would be in accordance with the provisions of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), including (but not only):

#### Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

and

#### Article 19

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<sup>1</sup> Chandler MJ, Lalonde C. Cultural Continuity as a Hedge against Suicide in Canada's First Nations. *Transcultural Psychiatry*. 1998; 35(2): 191-219.



States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Action in accordance with these provisions of the UN Declaration is vital as, to quote Article 43:

The rights recognized herein constitute the **minimum standards** (emphasis added) for the survival, dignity and well-being of the indigenous peoples of the world.

#### Service development and provision issues

The very existence of this Bill, and its “Additional supports” clause, highlights significant service development and provision issues for Indigenous peoples across Australia. The resolution of these issues, in relation to “Additional supports”, does not require legislation, but policy development and administrative action undertaken with good will and in good faith. Both these are required whether the services aim to meet the specific needs of members of the Stolen Generations, their families and communities, or to respond to Indigenous disadvantage in general. Further, there is no need for Australian governments to wait for Australia’s endorsement of UNDRIP before acting in this way as, as far as NSDC can tell, there is nothing in the UNDRIP articles quoted above that would conflict with good governance for all members of the Australian community.

## **2. ATTACHMENT FROM LINK-UP (NSW)**

NSDC draws the committee’s attention to Attachment A, which presents the views of Link-Up (NSW) on the Bill and its provisions, particularly as this organisation did not



have the opportunity to present evidence to you at the Sydney Public Hearing of 16 April 2008.

### **3. RELATED SUBMISSIONS**

Once again, we draw the committee's attention to the submissions of NSDC members. These are Submissions 34, 46 and 58 and the NSDC's submissions is 43. Also there are a number of personal submissions that NSDC members, have made individually, these are Submissions 19, 20, 45 and 59. Helen Moran has also contributed to Submission 56. All ten of these submissions are partly or wholly contributions from Aboriginal people and Stolen Generations Survivors.

Yours faithfully

Ms Helen Moran  
**NSDC Indigenous Co-Chair**

Ms Sally Fitzpatrick  
**NSDC Non-Indigenous Co-Chair**

PS: Our proofing of the Darwin hansard will be forwarded under separate cover by fax.

*This is the text of the comments made by Link-Up (NSW) in its recent letter to the NSDC in relation to the Stolen Generations[s] Compensation Bill 2008.*

## **Stolen Generations[s] Compensation Bill 2008**

### **1. The name of the Bill**

#### **Comments:**

Although the provisions of the Bill refer in general to stolen generations, the title of the Bill implies that there is a single stolen generation.

This title is historically inaccurate, and also fails to recognise the Bill's potential to educate the public about the fact that the separation of Aboriginal people from their families has continued through many, many generations. As Link-Up (NSW)'s website (<http://www.linkupnsw.org.au/>) states:

The separation of Aboriginal children from their families and communities began in NSW as soon as Europeans set foot on our land. In 1788, an Aboriginal boy named Andrew was found in the bush and taken to live with the British colonists (Fletcher 1989). By April 1789, two Aboriginal children, Nanberry (a boy about 10 years) and Abaroo (a girl about 14) also lived with Whites (Kenny 1973 pp9-10).

An understanding of the long history of separations is essential if non-Aboriginal people are to be able to comprehend why these practices have had such a profound effect on Aboriginal individuals, families and communities, and how these effects have compounded through successive generations.

#### **Suggested Approach:**

Request the Inquiry to recommend that:

- the name of the Bill be changed so that it refers to the stolen generations – plural – rather than to the stolen generation.
- this change also be reflected in the headings and text of the current version of the Bill, and in any amendments to it.

### **2. The establishment of a compensation fund**

#### **Comments:**

Link-Up (NSW)'s views on specific aspects of the Bill are outlined in the other parts of this submission. The point it wishes to make here is that there are many issues that the Bill does not address.

The *Bringing Them Home* (BTH) report (see Recommendation 3 on p 282) promoted a broad concept of reparations comprising:

- acknowledgement and apology
- guarantees against repetition
- measures of restitution
- measures of rehabilitation
- monetary compensation.

This Bill deals with only one part of the reparations package, and thus highlights one of the issues the Committee is examining, ie reviewing “any relevant unimplemented recommendations of the 1997 *Bringing Them Home* report” (see Information about the Inquiry” at [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/stolen\\_generation\\_compensation/info.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/stolen_generation_compensation/info.htm)).

As it is now more than 10 years since the report was published, it is time for a fresh approach to implementing its recommendations. This could involve:

- a transparent, client-focussed evaluation of:
  - the responses of governments across the nation to the report’s recommendations
  - the effectiveness of those responses
- a consultative review of the results of the evaluation
- the development of a national action plan to implement – fully – all the BTH recommendations.

All these activities should be informed by the evidence that has been amassed, since the report’s publication, on social and emotional wellbeing among Aboriginal and Torres Strait Islander people, and on the links between forcible separations and a range of adverse outcomes for Aboriginal people.

(For one example of these links, see the paper by Wendy Hermeston, a former Link-Up caseworker, in the Medical Journal of Australia . This article, titled *Telling you our story: how apology and action relate to health and social problems in Aboriginal and Torres Strait Islander communities* is available at [http://www.mja.com.au/public/issues/183\\_09\\_071105/her10025\\_fm.html](http://www.mja.com.au/public/issues/183_09_071105/her10025_fm.html) .)

Finally, Link-Up (NSW) would like to reinforce that:

- payment of compensation is not a substitute for measures of restitution or measures of rehabilitation, both of which are still needed
- neither of these measures is a substitute for access to the everyday infrastructure and services that all members of the community require.

### **Suggested Approach:**

Request the Inquiry to recommend that the federal government seek the collaboration of the States and Territories in adopting a national approach to



implementing, in full, all the recommendations of the *Bringing Them Home* report.

### 3. Ex Gratia Payment Provisions

#### **Comments:**

The Bill proposes a flat rate for “common experience” payments and a flat yearly rate for “each year of institutionalisation”.

Link-Up (NSW) has several concerns in this area, including the lack of any provision for payments for individual harm, and the apparent lack of recognition of the years of separation of those children who were fostered, adopted or sent to work as domestic servants, farm labourers or apprentices (see Section 7.2 of Submission No 69 to the Inquiry, made jointly by the Public Interest Advocacy Centre and the Australian Human Rights Centre).

By comparison the Canadian reparations scheme, in its compensation component, also includes provision for Independent Assessment Process payments which are available for qualifying individuals “who suffered sexual or serious physical abuse, or other abuse that caused serious psychological effects” with “payments of up to \$275,000 or up to \$430,000 if they suffered loss of income” (see Section 5 of Submission No 69).

#### **Suggested Approach:**

Request the Inquiry to review the provisions of the Bill so that they correspond more closely with positive international precedents in this area.

### 4. Eligibility Criteria

#### **Comments:**

The separation of Aboriginal children from their families had serious negative impacts on the children who were removed, on their families and on their communities. The Senate needs to be satisfied that the eligibility criteria in the Bill are robust enough to ensure that all those affected by these impacts are eligible for *ex gratia* payments.

One approach would be to widen eligibility to include a community as a claimant, where that community suffered detriment as a result of circumstances that gave rise to eligibility of any member of that community for reparations - as proposed in clause 10 (5) of the alternative Bill which forms part of the joint submission from the Public Interest Advocacy Centre and the Australian Human Rights Centre (Submission No 69).

#### **Suggested Approach:**

Request the Inquiry to review whether the provisions of the Bill are robust enough to include all Aboriginal and Torres Strait Islander people adversely affected by separation from family, and the communities of these people.

## 5. Nature of Evidence

### Comments:

Link-Up (NSW) supports the proposal that an application may be presented through oral evidence.

However, Link-Up (NSW) would like to draw the Inquiry's attention to the fact that oral evidence may need to be evaluated even where there is also a written record. Just procedures will need to be developed for evaluating oral evidence where it conflicts with the written record.

The words of former Senator Fed Chaney, spoken on 13 February this year, the day of the national Apology, illustrate this point forcefully. Mr Chaney, who is "a former Aboriginal Affairs Minister in the Fraser years, then co-chair of the Reconciliation Council for five years, former deputy chair of the Native Title Tribunal and now a director of Reconciliation Australia" stated:

The official record becomes very important when you're dealing with things that were 30, 20, 40, years ago. If you deal with these things contemporaneously you may find the official record is complete rubbish. As I found in the case of a drugged Aboriginal who signed a form, immediately demanded her child back but was totally ignored. A woman in a stable domestic relationship a woman with other children, a woman [w]ho had the support of missionary, there was no question of wellbeing involved. The official record, but for the fact that it was tackled contemporaneously would have been that mother consented to the giving away of her child. In the [inaudible] Case, that was an important part of the evidence, was that a thumb print or mark on a piece of paper. I'm afraid I'm a sceptic about **official records** which are self serving for officialdom and **do not reflect the reality of what was happening on the ground.** (Emphasis added.)

(Source: <http://www.abc.net.au/7.30/content/2007/s2160984.htm> viewed 19 February 2008.)

### Suggested Approach:

Request the Inquiry to review the adequacy of the provisions relating to oral evidence.

## 6. Support

### Comments:

Link-Up (NSW) welcomes the Bill's proposal for healing centres and services of assistance in a variety of locations across Australia, to be set up in consultation with Aboriginal and Torres Strait Islander people. It also supports the establishment of a Funeral Trust Fund, as this provision recognises the way that separations and their consequences have limited the financial capacity of many Aboriginal and Torres Strait Islander people to be buried in a manner consistent with culture, including the return to country.

However, Link-Up (NSW) has a number of concerns about:

- some of the provisions of the Bill itself in these areas
- the way in which the Bill's provisions, if enacted, might be implemented.

In relation to the Bill itself, Link-Up (NSW) believes that it is too restrictive to limit eligibility for these services to "people in receipt of compensation" as:

- there may well be Aboriginal and Torres Strait Islander people who, for a range of reasons, will not apply for compensation
- these reasons could include the pain involved in revisiting the original separation and/or its consequences, or past negative experiences with government sponsored schemes
- there may also be people whose claims are rejected
- some of these people will also need healing centres and services of assistance
- if these people were to be denied access to those services this would discriminate on an unreasonable basis between categories of people who were separated from their families.

Also, while it is critical that healing centres and services of assistance be set up "in consultation with Aboriginal and Torres Strait Islander persons of the Stolen Generation[s]", the Bill, through its definition of "stolen generations" combined with the eligibility criteria for *ex gratia* payments, may be excluding those Aboriginal and Torres Strait Islander people referred to in the paragraph above. In addition, unless the eligibility criteria in the Bill are robust enough to ensure that all those affected by these impacts are eligible for *ex gratia* payments (see Section 3 above), this consultation may not adequately include all those people who were affected by removals, even where they themselves were not removed.

In relation to the way the Bill, if enacted, might be implemented, Link-Up (NSW) would like to draw attention to the need for:

- these healing centres and other services to be in addition to, not instead of, existing services which support the social and emotional wellbeing of Aboriginal and Torres Strait Islander people
- the funding criteria for these services to be broad enough to encompass the holistic Aboriginal concept of health and wellbeing.

This concept, as expressed by the Aboriginal Health and Medical Research Council of NSW:

Means not just the physical well being of an individual but refers to the social emotional and cultural well being of the whole community in which each individual is able to achieve their full potential as a human being thereby bringing about the total well being of their Community. It is a whole of life view and includes the cyclical concept of life - death - life.

(Source: <http://www.ahmrc.org.au/AboriginalHealthInformation.htm>, viewed 26 February 2008)

**Suggested Approach:**

Request the Inquiry to review the provisions of the Bill with a view to addressing the issues raised above.