

## **Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Stolen Generation Compensation Bill 2008**

by

**Australians for Native Title and Reconciliation (ANTaR)**

### **Introduction**

When Prime Minister, Kevin Rudd apologised on behalf of the Parliament to the Stolen Generations he said he hoped his words would “build a bridge between Indigenous and non-Indigenous Australians ... based on a real respect.”<sup>1</sup>

He also hoped the apology would forge a new partnership between Indigenous and non-Indigenous Australians that would enable the nation to close the gap in life expectancy, educational achievement and employment opportunities.

This partnership was further strengthened at the National Indigenous Health Equality Summit a month later, when the Prime Minister signed an historic statement of intent with Indigenous health leaders setting clear deadlines to close the gap. This was accompanied by the announcement on new programs to combat smoking in Indigenous communities and boost the Indigenous health workforce.<sup>2</sup>

Importantly, both the apology and Indigenous health statement of intent were carried out with bi-partisan support.

The apology and commitment to close the gap renewed the faith of Indigenous people that a Government might seek to respond to their history and current circumstances with understanding and compassion. They showed a Prime Minister that he could do the right thing by the First Australians and take the rest of the nation with him. They gave all Australians something to be proud of.

However, ANTaR is aware that the apology and commitment to close the gap will not by themselves be sufficient to meet the specific needs of the Stolen Generations. This will only occur with the full implementation of the *Bringing Them Home* report recommendations.

Given the strong emphasis on compensation in *Bringing Them Home*, ANTaR urges the Committee to support Senator Andrew Bartlett’s *Stolen Generation Compensation Bill 2008*.

ANTaR is an Australia-wide, community-based organisation committed to the rights of Australian Indigenous people. It comprises member organisations in the States and Territories. Our mission is to generate in Australia both a moral and legal recognition of, and respect for, the distinctive status of Indigenous Australians as First Peoples and for the

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<sup>1</sup> The Hon Kevin Rudd, MP, Apology to Australia's Indigenous Peoples,  
[http://www.pm.gov.au/media/Speech/2008/speech\\_0073.cfm](http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm)

<sup>2</sup> [http://www.humanrights.gov.au/social\\_justice/health/index.html](http://www.humanrights.gov.au/social_justice/health/index.html)

protection of the rights of Indigenous Australians, including their relationships to land, the right to self-determination, and the maintenance and growth of their unique cultures.

More than 300,000 people have signed ANTaR's *Sea of Hands* in support of native title and reconciliation.

ANTaR has worked closely with Stolen Generations groups and assisted the National Sorry Day Committee in its negotiations with Government in the lead up to the National Apology.

ANTaR supports proposed model of compensation in the *Stolen Generation Bill* for the following reasons:

***The particular circumstances of Stolen Generations survivors warrant additional measures beyond the parliamentary apology.***

Research commissioned by the Ministerial Council for Aboriginal and Torres Strait Islander Affairs indicates that Aboriginal people removed from their families suffer from poorer outcomes across a range of socio-economic indicators.

These include:

- Higher rates of people with a disability or long-term health condition (68.8 per cent compared to 55.3 percent)
- Lower rates of completion of Year 10 – 12 schooling (28.5 per cent compared to 38.5 per cent)
- Lower rates of living in owner occupied housing (16.9 per cent compared to 28.3 percent)
- Higher rates of being a victim of physical or threatened violence (33.5 per cent compared to 18.1 per cent)
- Lower rates of retention to Year 10 (28.5 per cent compared to 38.5 per cent)
- Lower rates of participation in sport or physical recreation activities (35.4 per cent compared to 47.0 per cent)
- Higher rates of smoking (70.5 per cent compared to 51.2 per cent)
- Higher rates of being arrested more than once in a five year period (14.6 per cent compared to 8.8 per cent)
- Lower rates of full-time employment (17.8 per cent compared to 24.8 per cent).<sup>3</sup>

Although no amount of money could adequately make up for the suffering caused by being forcibly removed from your family, culture and country, financial compensation is an important component in overcoming the current disadvantage caused by child removal.

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<sup>3</sup> <http://www.mcatsia.gov.au/cproot/593/4318/Bringing%20Them%20Home%20Baseline%20Report.pdf>, p. 9.

Expert witnesses to the Bringing Them Home Inquiry testified that an apology accompanied by compensation could be vital in overcoming the psychological problems that are the cause of much of this disadvantage.

Psychiatrist, Dr Jane McKendrick of the Victorian Aboriginal Mental Health Network told the Inquiry that:

*The people who come to see me with depression and other psychological problems and start talking about the things that have happened to them in their childhood - it is as if they are coping with that on their own and no-one else recognises it. Often they are things that they feel they cannot tell anyone else, even the people closest to them.*

*They also feel that this has been done to them and no-one cares because there has been no official recognition. And people say, well, nothing is going to compensate me for what I have lost and it can never be completely replaced. But I think some acknowledgement and some form of compensation would assist people to feel that their pain and their suffering has been recognised and it has been recognised that something has been done to them. Because families and individuals who have been removed often feel guilty themselves about the removal ...*

*I think it is a central part of the healing process because you have to have the recognition and to have proper recognition you have to have some form of compensation, because a wrong has been done to these people. And for it to be a proper recognition, there has to be compensation. Unless there is proper recognition of what has been done, people really cannot begin to heal properly.<sup>4</sup>*

### ***Compensation is consistent with the recommendations of the Bringing Them Home Report.***

Not surprisingly, given this evidence, the question of financial compensation was crucial to the findings of the *Bringing Them Home* Inquiry.

Recommendations three, four and fourteen through to twenty of *Bringing Them Home* all deal with monetary compensation for members of the Stolen Generations.

So central was the issue of financial compensation to *Bringing Them Home*, that its authors considered on page 13 that: “Our principal conclusion is that an appropriate and adequate response to the history and effects of forcible removals requires reparations which include, as one form of reparations, monetary compensation for defined victims.”

Financial compensation was one of the four terms of reference referred to the Inquiry by former Labor Attorney General, Michael Lavarch, and the report was unambiguous in its view that financial compensation should be a necessary element of the government response.

It is therefore impossible to provide the comprehensive response to *Bringing Them Home* that the Rudd Government promised when in Opposition without carefully considering the issue of financial compensation.

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<sup>4</sup> Human Rights and Equal Opportunity Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, pp 278-9, [http://www.humanrights.gov.au/social\\_justice/bth\\_report/report/ch14.html](http://www.humanrights.gov.au/social_justice/bth_report/report/ch14.html)

ANTaR considers that the *Stolen Generation Compensation Bill 2008* should be part of the comprehensive response to *Bringing Them Home* promised by the Rudd Government.

***Compensation is consistent with international best practice in responding to gross violations of human rights.***

Australia is not the only country that has had to deal with the consequences of forcibly removing children from their families on the basis of race.

For more than a century from 1874, First Nations, Inuit and Métis children were placed in a system of 130 residential schools established by the Canadian Government and a number of Christian churches. From 1920, attendance at these schools by Indigenous children was compulsory and children were forcibly removed from their families to ensure compliance.

The children were forbidden to speak their own languages and practice Indigenous customs in the schools. They were denied contact with their families. Many suffered physical and sexual abuse.

Following a Royal Commission, the Canadian Government introduced the Indian Residential Schools Settlement Agreement. Under the agreement \$1.9 billion has been allocated to “Common Experience” compensation payment; \$960 million for claims of serious physical or sexual abuse; \$60 million for a five-year truth and reconciliation commission, community events and research centre; \$20 million for memorials and commemorative events; and \$125 million for a Healing Foundation.

Former residents are entitled to \$10,000 for their first year spent at a residential school and \$3000 for each additional year. They do not have to prove harm in order to qualify for payment. Former residents are also able to make additional compensation claims for serious physical and sexual abuse before an Independent Assessment Process.<sup>5</sup>

In Switzerland, an organization called Kinder der Landstrasse or Children of the Road sought to “protect” the children of traveling Jenisch people with Swiss Government approval. Many children were forcibly settled and 619 were separated from their families between 1926 and 1972. Following a public campaign to end the practice, “Children of the Road” was dissolved in 1973. In 1986 the Swiss President apologized for the government’s support for the practice. A total of SF 11 million has since been allocated by the parent organization of Children of the Road to compensate almost 1,900 victims.<sup>6</sup>

The ex gratia payments proposed in the *Stolen Generation Compensation Bill 2008* are modest when compared to international responses to the forced separation of Indigenous children, particularly that of Canada.

***Compensation is an essential component of internationally accepted principles of reparation.***

In 1989 Dutch jurist and academic, Professor Theo van Boven was commissioned by the United Nations Sub-Commission on Prevention of Discrimination and Protection of

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<sup>5</sup> Linda Popic, Compensating Canada’s ‘Stolen Generations’, *Indigenous Law Bulletin*, December / January 2008, Volume 7, Issue 2, [http://www.ilc.unsw.edu.au/news\\_&\\_events/documents/Popic%20Article.pdf](http://www.ilc.unsw.edu.au/news_&_events/documents/Popic%20Article.pdf)

<sup>6</sup> Human Rights and Equal Opportunity Commission, *op cit*, p. 307.

Minorities to report on restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Contained in his report was a set of basic principles for governments to consider in making reparation to victims of gross human rights abuses.

In 2005 the United Nations General Assembly adopted the Van Boven principles of reparation and recommended that they be taken into account by states seeking to respond to gross violations of human rights.<sup>7</sup>

The *Bringing Them Home* report recommended that the van Boven principles guide the reparation measures made in response to the practice of forced removal.

These can be summarised as follows:

1. Acknowledgement and apology;
2. Guarantees against repetition;
3. Measures of restitution (in this case, this could mean assistance for Stolen Generations members to return to country and recover languages);
4. Measures of rehabilitation (this could include healing and counselling services to help overcome intergenerational trauma); and
5. Monetary compensation.<sup>8</sup>

By excluding the final component of the principles, monetary compensation, the integrity of the reparation process is destroyed. This can be overcome by the Parliament adopting the *Stolen Generation Compensation Bill 2008*.

### ***Compensation is consistent with the practice of Australian common law and parliamentary responses to human rights abuses***

As pointed out by Megan Davis and Andrea Durbach, the provision of ex gratia payments is not a radical idea. In 2000 the former Howard Government committed ex gratia payments of \$25,000 each to Australian Defence Force prisoners of war of the Japanese, civilian internees and detainees or their surviving spouse for their suffering at the hands of a foreign power.<sup>9</sup>

It seems incongruous that a similar payment not be made available to Australian citizens for their suffering as a result of policies introduced by the governments of this country.

If after writing this submission, I become the unfortunate victim of a road accident or assault, I would be entitled to compensation. It is illogical, for governments to deny similar

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<sup>7</sup> United Nations General Assembly resolution 60/147 of 16 December 2005, <http://www2.ohchr.org/english/law/remedy.htm>

<sup>8</sup> Human Rights and Equal Opportunity Commission, *op cit*, p. 282

<sup>9</sup> Andrea Durbach and Megan Davis, "Rudd must make amends", *The Canberra Times*, Monday, December 3, 2007, [http://www.ilc.unsw.edu.au/news\\_&\\_events/documents/ctaa00903c\\_small.pdf](http://www.ilc.unsw.edu.au/news_&_events/documents/ctaa00903c_small.pdf)

compensation to Australian people who as children were forcibly removed from their families, culture and country, many to suffer violence and abuse.

### ***Conclusion***

ANTaR is aware that the Prime Minister and Minister of Indigenous Affairs have previously ruled out compensation for members of the Stolen Generations. However, a government that has already shown compassion and a willingness to listen to and work with Indigenous people to overcome disadvantage should have nothing to fear by reconsidering its position after reviewing additional evidence.

As Megan Davis and Andrea Durbach have pointed out, “Justice requires both an acknowledgment of harm and measures aimed at repairing the damage.”<sup>10</sup>

The historic parliamentary apology acknowledged the harm done to the Stolen Generations in what will be seen as a transformative moment in the life of the nation.

Now begins the task of repairing the damage. The *Stolen Generation Compensation Bill 2008* can be a crucial element in achieving this.

ANTaR commends Senator Andrew Bartlett for introducing the Bill and urges the Committee to support it.

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<sup>10</sup> *Ibid.*