

restoring identity

summary report



Reparations for the stolen generations

Australian governments and churches have failed to provide adequate reparations for the harm caused to Indigenous people by racist child removal policies. To address the shortfall between promises and action a proposal for a reparations tribunal for the stolen generations was developed by the Public Interest Advocacy Centre (PIAC).

Indigenous people expressed widespread support for the tribunal proposal during a national consultation project conducted by PIAC during 2001. The project, called *Moving forward: achieving reparations* gave the stolen generations and their communities the opportunity to talk about their feelings on reparations.

The project conducted group and individual interviews with over 150 people at 10 focus group meetings across the country between February and May 2001. Meetings were held with over 20 Indigenous organisations and over submissions were received. A national *Moving forward* conference in August 2001 considered an *Interim report* on the consultations and recommendations for action.

The project was conducted in partnership with the Aboriginal and Torres Strait Islander Commission, the National Sorry Day Committee, the Human Rights and Equal Opportunity Commission and Northern Territory stolen generations groups.

This report sets out the results of the consultation process and research conducted by PIAC during 2001 and 2002.

The tribunal proposal

The tribunal offers an alternative to legal claims by the stolen generations and addresses the failures of government and church programs. It would be based on governments and churches acknowledging the nature and magnitude of forcible removal policies and the harm caused.

The functions of the tribunal would be to:

- ◆ provide a forum for Indigenous people to tell their story of removal
- ◆ provide reparations packages to individuals and groups
- ◆ make recommendations about government and church practices on Indigenous child separation in the past and present.

The reparations packages would be designed to help people heal and move on with their lives. Compensation would be paid where there is evidence of legal wrongs, such as sexual and physical assault.

PIAC envisages that the tribunal could be implemented through initiatives by state and territory governments in partnership with Indigenous communities. The initial proposal for a national scheme is not possible while the Federal Government remains opposed to a reparations tribunal.

Indigenous people made it clear during the project that they want the structure of the tribunal to reflect local needs and traditions. They also want it to be able to influence state and territory governments as well as the Federal Government.

Background

Australia's Indigenous child removal policies are part of a racist past in which the state controlled almost every aspect of Indigenous people's lives. It is a history in which Indigenous parents were presumed unfit to care for their children by nature of their race. The policies caused destruction of family, culture and dignity, and in many cases caused deep emotional and psychological harm.

An estimated 10 per cent of Indigenous children - mainly those with some non-Aboriginal ancestry - were removed from their families and communities under the policies. Between 20,000 and 25,000 children were removed.

The Human Rights and Equal Opportunity Commission's *National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from their Families* provided important public insight into the policies. It investigated past laws, policies and practices that resulted in the removal of Indigenous children from their families by compulsion, duress and undue influence from 1910 to 1970. It referred to the policies as 'forcible removal policies'.

The report of the National Inquiry, *Bringing them home* concluded that the policies were racism of such magnitude as to amount to a gross violation of human rights.

A package of reparations was recommended based on international human rights principles:

- ◆ **acknowledgment and apology** by federal and state parliaments, and by state and territory police forces and churches
- ◆ **guarantees against repetition** through community education and legislation for national Indigenous Child Placement Principles, and incorporation of the UN Genocide Convention into Australian law
- ◆ **measures of restitution** through language and culture centres, family tracing and reunion services and protection of records
- ◆ **measures of rehabilitation** by way of counselling services and providing opportunities for Indigenous communities to assume responsibility for the welfare of their children
- ◆ **monetary compensation** to people directly affected by forcible removals

Government and church responses

In the five years since the *Bringing them home* report only limited progress has been made in implementing the recommendations.

All state and territory governments and all of the churches involved in administering forcible removal policies have offered acknowledgment and apologies. The Federal Government claims that the magnitude and effect of the policies has been exaggerated and has offered only a statement of regret.

Funding for specialised counselling programs have been administered as part of mainstream Indigenous programs and have largely failed to reach the stolen generations.

Federal Government funding for community based family reunion services (Link Up services) took many years to implement and there are few with in-house counselling.

Co-ordination of access to personal and family records held by government and churches through a 'one-stop shop' has not eventuated in most states. Few governments have acted on promises to train Indigenous archivists, historians and genealogists.

Little attention has been paid to restoring culture and language. A language and culture program for Indigenous people, with funding redirected from ATSIC's budget in 1997, did not meet the special and varied needs of the stolen generations.

Federal and state government funding for oral history programs do not provide the therapeutic benefits of public hearings that acknowledge personal experience and offer apology.

Indigenous children continue to be separated from their families at a much higher rate than children in the general population.

Indigenous priorities

- ◆ acknowledge the nature and magnitude of forcible removal policies and the harm caused
- ◆ acknowledge the distinct identity of the stolen generations within the Indigenous community
- ◆ effectively target and co-ordinate programs intended to benefit the stolen generations and consult with them about reparations programs

aboriginal children has created racial, social and political problems of great complexity, political leaders of the day to arrive at a social or political solution to these problems”.

Justice O'Loughlin in *Cubillo v Commonwealth of Australia* (2000)

- ◆ provide access to family and personal records and training of Indigenous archivists, historians and genealogists
- ◆ provide appropriate forums for people to the story of forcible removals, to affirm identity and heal the pain
- ◆ reduce the number of Indigenous children separated from their families today through programs that empower Indigenous communities and families
- ◆ establish memorials and community education programs in partnership with the stolen generations and their families
- ◆ allocate funds and premises for stolen generation support groups to provide culture and healing centres
- ◆ provide travel subsidies for removed people to visit family

Legal claims

Members of the stolen generations have made legal claims against state and federal governments in an effort to obtain redress for past wrongs. The cases have not been able to establish that governments owed a duty of care or a duty of trust to children removed and detained under the policies. For the people making the claims the litigation process has been highly traumatic and disappointing.

The courts have made it clear that they are reluctant to find governments liable for individual acts that occurred so long ago. The Federal Government has spent over \$12 million on the claims so far.

The Governments of Canada and Ireland have recognised that the courts are not an appropriate forum to resolve such issues. They have used the restorative justice approach to resolve claims by children who have been victims of sexual assault in government institutions. The redress provided under these schemes includes financial compensation, an opportunity to establish a permanent record of personal experiences and an apology.

Compensation

Many of the children removed under forcible removal policies were the victims of sexual and physical assault and labour exploitation. *Bringing them home* recommended that compensation be paid to people who can prove these types of wrongs.

Voices of the stolen generations



‘We’re sick of telling each other our stories sitting here in the dust. We want to go to be heard by a proper tribunal.’



‘Its time to recognise the problems of our children. Their lives are so much harder than ours when we were growing up.’



‘For many of our members the [Moving forward] issues paper has brought their past to the fore, ... some have revisited their past for the first time ... many felt intimidated to tell their story in the open for fear of their disloyalty to that era. However, on the whole the members felt that it was time to let go of the hurt and sadness.’



‘We need to say we have a mental illness to get access to the counselling. We’re better off talking to members of our group, listening and supporting each other.’



‘Its hard sometimes. I have to remember to include them in social activities like going fishing so they feel part of the [Indigenous] community.’



To many of the stolen generations monetary compensation is important as symbolic recognition of harm. Others find it objectionable that life-changing trauma and grief should be quantified in monetary terms.

Members of the stolen generations at the national *Moving forward* conference said that compensation is not a priority and should not dominate public debate.

The proposed tribunal would provide compensation to Indigenous peoples affected by forcible removal policies who can prove that they suffered types of damage recognised under the law, such as sexual and physical assault.

International approaches

The right to reparations for gross violations of human rights has been recognised in many countries around the world. The experiences in Canada, New Zealand and South Africa are particularly pertinent. These examples reflect a growing international recognition of the role of reparations in the process of reconciliation.

In those countries governments have acknowledged the harm caused and have recognised victims' rights to reparations. Features of the reparations schemes are processes to hear the experiences of survivors, rehabilitation and restitution programs and some monetary compensation.

The also provide for local and regional diversity so that local needs and customs are reflected in the processes.

About the project

The *Moving forward* consultation project was conducted by PIAC with the advice of a reference group with representatives from:

- ◆ National Sorry Day Committee
- ◆ Aboriginal and Torres Strait Islander Commission
- ◆ Human Rights and Equal Opportunity Commission
- ◆ Public Interest Advocacy Centre
- ◆ Northern Territory stolen generations groups

The consultation project was based on an issues paper, entitled *Moving forward: achieving reparations*. It canvassed aspects of the proposed tribunal - what reparations mean to Indigenous people, the functions of the tribunal, who should be entitled to reparations from the tribunal, the issue of compensation and how the tribunal should be structured.

An *Interim report* detailing the outcomes of the meetings and submissions was prepared for a national *Moving forward* conference in Sydney in August 2001. The conference was attended by over 200 people, including members of the stolen generations, other Indigenous people, politicians, government and church officials, journalists, academics and lawyers.

The Myer Foundation, Rio Tinto Aboriginal Foundation and the Reichstein Foundation provided funding for the project.

What next?

The PIAC tribunal proposal was supported by the Australian Labor Party and Australian Democrats members of the Senate Inquiry into the Stolen Generations in 2000. The Federal Government did not support the PIAC proposal presented to the Inquiry. The Australian Council of Churches has expressed interest in the proposal. Some of the churches have already offered to contribute to a national compensation fund.

The *Interim Report* was forwarded to state, territory and federal governments for comment in August 2001. A number of state and territory governments have expressed interest in implementing the recommendations of the *Restoring identity* report.

The project reference group will continue to meet to work for implementation of the tribunal proposal. Meetings with state and federal governments are planned.

The full report of *Restoring identity* is available on the PIAC website or contact PIAC for a printed copy.



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