

Australian Government responses to the *Bringing them home* Report

Speech

By Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, presented at the conference: *Ten Years Later: Bringing them home and the forced removal of children*, Indigenous Law Centre and (then) HREOC Conference, Sydney, 28 September 2007.

Thank you Eddie Cubillo for your introduction, and thank you Allen Madden for your warm welcome to country.

I too would like to begin by acknowledging the traditional owners of the land where we meet today, the Gadigal people of the Eora Nation, and I pay my respects to their elders.

Hello also to all my Indigenous brothers and sisters and other friends who are here today. Thank you for joining with us to mark the ten year anniversary of the release of the landmark *Bringing them home* report.

On behalf of the Human Rights and Equal Opportunity Commission I would like to thank the Indigenous Law Centre and the Crime and Justice Research Network at UNSW for inviting HREOC to co-host this conference. It is yet another instance of the legal centres of learning at UNSW demonstrating through their action, the strength of their commitment to fostering and advancing social justice in this country.

Rather than just looking back and taking stock, I hope that today's discussions will encourage all of us to breathe new life into the recommendations of the BTH report. Their currency has not faded with the course of a decade.

The recommendations continue to set the minimum acceptable benchmark that governments, the Churches, and others who had a hand in taking the children away, must measure up to.

As today's conference demonstrates, Australians have not forgotten the gravity of the findings of the BTH report. We remain mindful that the gross violations of human rights that were visited on generations of Aboriginal children still (by and large) need redress and reparation. Australia can still do much more, and do it better, when it comes to righting the wrongs that gave rise to generations of Stolen Children.

I also want to draw attention to the important research work, particularly in relation to Indigenous mental health and wellbeing, that the BTH report has triggered.

As a result of the groundbreaking work of experts like Associate Professor Helen Milroy, we are becoming aware of the very contemporary and indeed the *future* legacies of pain and loss that will be borne by the Stolen Generations, their children, and their grandchildren.

Research like the Western Australian Aboriginal Child Health Survey has shown that it is a legacy that is not monopolised by those who were removed.

It is a legacy that continues to grow and multiply as our Indigenous population increases at a rapid rate.

It is a legacy that journeys from one generation to the next, evolving and wreaking havoc on people's lives as it goes. It is this insidious cycle that has to be broken. The pain has to stop – and as the BTH recommendations intended – the healing must begin.

In the time available, I also want to outline what the responses of various levels of government around Australia have been to the BTH – concentrating on where I think we more concerted work and investment needs to be directed in the coming years by governments, Indigenous people, and the broader community.

Government responses

We are all familiar with the state and territory government apologies to the Stolen Generations – and the dogged silence of the federal government on this most fundamental of elements in a national process of healing and reparation.

We all recall the federal government's decision to promote a 'practical reconciliation' agenda and down-play or completely rule out the role of symbolic gestures, compensation or reparation as appropriate responses to the findings of the BTH report. And I do note and acknowledge that the government has invested many millions of dollars to BTH programs and they did proceed with a national memorial to the Stolen Generations in the federal capital – contentious though it was in terms of its conceptualisation and delivery.

And I'm sure the words in 2000 of the then Minister for Indigenous Affairs, Senator John Herron, that there 'never was a stolen generation', still resurrect great passion in your hearts.

But the response of the broader Australian community – and their demonstrable support for a reconciliation process that will settle the unfinished business of our nation's history that was so evident in the bridge walks – sits in stark contrast to the comparatively dispassionate responses of the political leadership of this country.

State and territory government law reform responses

It is also important to acknowledge that state and territory governments have responded to a range of BTH recommendations by undertaking important legislative reforms. For example, child protection, adoption and juvenile justice regimes in most states now incorporate the Aboriginal Child Placement Principles.

This shows that governments recognise that the wellbeing and safety of our kids is improved if they are able to maintain contact with their family, community and culture – regardless of what they have done or what has been done to them.

These legislative amendments are a critical means by which Australia can give effect to some of our obligations under the *International Convention on the Rights of the Child*, and in particular, the distinct cultural rights that our children should enjoy as First Nation peoples.

Nonetheless, I am the first to acknowledge that Aboriginal children are still over-represented in substantiated child protection notifications, care and protection orders, and out-of-home care.

I also acknowledge that contemporary removals of our children are unacceptably high and show no sign of subsiding anytime soon. This is a concern that other speakers will address later today.

Tasmanian compensation scheme

Perhaps one of the most encouraging developments at the state level was the decision of the Tasmanian Parliament last year to unanimously pass into law a compensation scheme for Stolen Generation members and their children.

A total of \$5 million has been set aside, and the assessment of applications is expected to be completed by January next year.

It just goes to show that suggestions by other politicians that compensation is not appropriate, or legally problematic, or impossible are nothing more than obfuscation.

On the issue of compensation, I also want to acknowledge and thank Senator Andrew Bartlett for his ongoing work to progress the Parliament's full response to the BTH recommendations. Earlier this month he tabled a private members' bill – the *Stolen Generation Compensation Bill 2007*.

The national compensation scheme that is proposed in this Bill is modeled on the Tasmania scheme, but Senator Bartlett has also incorporated feedback from the Stolen Generations, Indigenous people and their representative organisations, as well as other Australians. As a result, the scheme proposed in his Bill has more inclusive and flexible eligibility criteria, and it allows the Stolen Generations Assessor to accept oral evidence about a person's removal.

Senator Bartlett's compensation proposal also takes on board community suggestions about the need for:

- healing centres to be established;
- services to be provided to assist people to manage their compensation payments; and
- for a Funeral Trust Fund to be set up to help families meet the costs of burial.

This initiative is one element of a growing momentum towards addressing major areas of unfinished business in our nation's history.

Another source of this momentum is our courts.

Trevorrow v State of South Australia

The recent success of Mr Bruce Trevorrow's Stolen Generation case in South Australia, and a compensation payment in excess of \$500,000 for the injury and loss he suffered, should prompt Australia governments (with the exception of Tasmania) to rethink their staunch opposition to a compensation scheme.

I don't want to go into the details of Mr Trevorrow's case, as his legal counsel and others are better placed to do that later today.

But I do want to acknowledge the role that the Aboriginal Legal Rights Movement in SA has played in terms of backing Mr Trevorrow over the last ten years or so, while his case was doing the rounds of the SA courts.

The ALRM's preparedness to provide the legal aid funding for Mr Trevorrow to run his landmark test case – which I might add – was funding sourced from ATSIC and the current the Commonwealth Attorney-General's Department – was critical to his ultimate success.

I also want to pose the question: given that by the 1950s, the SA Government was getting legal advice warning that it did *not* have the legal authority to remove any Aboriginal child, unless it had *actual proof* of neglect or abuse – isn't it fair to assume that other state governments might have received similar advice – or at least have been in a position to judge that it was reasonably foreseeable that removing Aboriginal children would risk serious harm and potentially breach the government's duty of care?

Regardless of how governments answer that question – they have consistently been warned by HREOC, Senate Committees of Inquiry, PIAC and representatives of the Stolen Generations themselves, *against* leaving the resolution of Stolen Generations cases to our adversarial court system.

This system pits the finances and personal courage of individuals against the vast resources and considerable authority of the State. It is a system that erects a host of barriers in the form of evidentiary requirements and limits of statute to name only a few. It operates to keep out all but the most tenacious and determined of litigants.

But the courts can't deliver healing or pass laws to guarantee similar human rights breaches won't occur again. They can't treat a person's mental illness but where they have said "sorry", it has been appreciated

In short, the courts can't deal with the totality of the fall-out of almost a century of forcible child removals. They are at best a social justice lottery – where each Stolen Generations plaintiff takes a huge gamble, with the odds stacked against them.

But a national reparations scheme, if set up appropriately and adequately resourced, has the potential to deliver real social justice outcomes.

Further, international law provides that the *only* appropriate response to victims of gross violations of human rights is one of reparation.

If NSW can provide reparation to those whose wages were stolen, why can't it do the same for the children who were stolen?

And if the Australian Government can provide \$3.5 billion to assist farmers to survive the current drought, why can't it conceive of a reparations package to heal the scars of what must be one of our country's worst social injustices?

Ubris Keys Young evaluation report

The final aspect of government responses to the BTH report that I want to mention are the reports that have been commissioned by government to evaluate their implementation of the recommendations.

Some of these, like the Ubris Keys Young report that came out in May this year, are independent.² Others, like those done by the Ministerial Council of Aboriginal and Torres Strait Islander Affairs (MCATSIA) are undertaken by government at the most senior level.

The Ubris Keys Young report is an important tool for the Stolen Generations and its recommendations deserve the close attention of anyone working in Indigenous policy development. It provides a comprehensive evaluation of the effectiveness of the core elements of Australian governments' responses to the BTH recommendations, namely:

1. *The Link Up Program* – which provides family tracing and reunion services;
2. *The Bringing Them Home Program* – which provides counselling to individuals, families and communities affected by past forced removal policies;
3. *The Social and Emotional Wellbeing Regional Centre Program* – which funds these centres around Australia to provide professional support to staff working in Link-Ups and the BTH Program; and
4. *The Mental Health Program* – which funds Aboriginal Community Controlled Health Services to develop and evaluate culturally appropriate approaches to mental health service delivery for the Stolen Generations.

The findings of the report are generally positive in relation to client satisfaction and the quality of the outcomes in relation to three of the four programs. According to their research, the Link-Ups, the BTH Program and the Mental Health Program are all providing culturally appropriate services, and much needed services that many Aboriginal people would otherwise not be accessing.

But when it comes to the *Social and Emotional Wellbeing Regional Centre Program* – there are serious criticisms about the centres' capacity to fulfill their role, particularly in relation to providing professional supervision and support to the staff delivering programs to the Stolen Generations.

It is also very clear that there is considerable scope for improvement across all four programs, and I hope that the federal government is intent on giving effect to the many important recommendations that the consultant has made in this report.

For example, there are clear recommendations that there needs to be:

² Ubris Keys and Young, *Evaluation of the Bringing Them Home and Indigenous Mental Health Programs*, prepared for the Office for Aboriginal and Torres Strait Islander Health, Australian Government Department of Health and Ageing, Commonwealth of Australia, May 2007.

- A greater focus on proactively targeting support services so they are *primarily* accessed by *first* generation Stolen Generation members – rather than second and subsequent generation members;
- Secondly, governments have a responsibility to ensure that there is a consistently high standard in the skill level and qualifications of staff working in the Link-Ups and the BTH Programs. This means fixing up the identified problems in the *Social and Emotional Wellbeing Regional Centre Program*. Above all, more training and professional support needs to be provided to reduce staff burn-out and turnover, which is a significant problem across all of the Stolen Generations programs;
- Thirdly, there is a real need for national guidelines and a national evaluation framework to improve the consistency and quality of service delivery across all of the programs; and
- Finally, the programs need to be adequately resourced so that they have a better geographic spread and can provide proactive out-reach services to the Stolen Generations – wherever they live. There is a particular need to make programs more accessible for clients living in rural and remote areas. Importantly the report also recommends that all of the programs should be located in Aboriginal community-controlled organisations so they are more welcoming and user-friendly for Aboriginal people.

The Ubris Keys Young report also flags the need for more research on the trans-generational impacts of the Stolen Generations experiences, and how these are similar to or different from the impacts on first generation members.

This is a critical recommendation that I want to emphasise today.

Research is already showing that the future demand for Link-Ups and BTH Programs will be significant and is likely to keep growing as new generations of Aboriginal children are born.³

Australian Governments therefore need to be aware that their responses to the BTH report need to be ongoing *and* capable of meeting the *growing* needs of an ever larger Indigenous population.

If governments are serious about:

- addressing alcohol and gambling problems in Aboriginal communities,
- reducing the rates of criminal offending behaviour by Aboriginal people,
- reducing the experience of physical violence in communities, and
- generally improving the life chances of Aboriginal children,

then treating the negative impacts of forcible removal is critical for current and future generations.

Conclusion

This is not just my thinking – these are the findings of the MCATSIA report last year into the social and economic characteristics of Aboriginal people affected by forcible removals.⁴

This report from MCATSIA is another useful document for the Stolen Generations and anyone working in Indigenous policy development – because it provides the evidence base to demonstrate the link between forcible removals and contemporary Indigenous social and economic disadvantage.

3 Surveys conducted by the National Sorry Day Committee in 2002 found that several thousand people, particularly in country and rural areas, would make use of the Link-Up services if they could access them. Similarly the evaluation of the WA Link-Up service in 2005 concluded that there is considerable 'latent demand' for services from secondary and subsequent generations of the Stolen Generations. See Ubris Keys and Young, *Evaluation of the Bringing Them Home and Indigenous Mental Health Programs*, prepared for the Office for Aboriginal and Torres Strait Islander Health, Australian Government Department of Health and Ageing, Commonwealth of Australia, May 2007.

4 Available online at <http://www.mcatsia.gov.au/cproot/593/4318/Bringing%20Them%20Home%20Baseline%20Report.pdf>

These are facts that no government can afford to overlook – and information that everyone would hope shapes governments' responses to Indigenous child sex abuse and Indigenous family violence more generally.

These facts confirm that Indigenous health, education, employment and general life chances have all been reduced by forcible removal policies – and that the affects of these policies continue to hold back our kids from enjoying the opportunities that other Australians take for granted.

Ten years on – the time for government action and leadership is overdue.

Thank you