

The Director
General Purpose Standing Committee No. 3
Parliament House Macquarie St
Sydney NSW 2000

16 October, 2015

Dear Director,

We thank you for this opportunity to submit the attached submission. Please contact us if you have any questions or concerns.

Sincerely,



Gilly Dempsey

Director | NSW Reconciliation Council |
Email: gilly.dempsey@nswreconciliation.org.au |
Suite 213, 3 Gladstone St, Newtown 2042 |
Tel: [\(02\) 8095 9600](tel:(02)80959600) | M: 0406738267

Submission to the General Purpose Standing Committee No. 3 on the Inquiry into Reparations for the Stolen Generations in New South Wales

TABLE OF CONTENTS

1. About the NSW Reconciliation Council
 - 1a. Who we are
 - 1b. What we do
2. Position taken by the NSW Reconciliation Council
3. Issues to consider
 - 3a. How the NSW Government has responded to the *Bringing Them Home* report
 - 3b. Approaches in other jurisdictions:
 - i. Tasmania
 - ii. Canada
4. What can be taken from these approaches
5. What are potential problems that must be considered and addressed
6. Conclusion

➤ **About the NSW Reconciliation Council**

Who we are

The New South Wales Reconciliation Council (NSWRC) is the peak representative body for Reconciliation in New South Wales. We work with reconciliation councils in other states, government agencies and other organisations to continue the work started by the Reconciliation Committee. We are an independent, not-for-profit and non-partisan organisation. Our membership is made up of Reconciliation Groups and individuals across NSW – Indigenous and non-Indigenous people working together to advance Reconciliation in their communities.

What we do

The NSW Reconciliation Council leads, informs and promotes reconciliation at a grassroots level in NSW.

We believe true reconciliation, the bringing together of Aboriginal and Torres Strait Islander peoples and other Australians, will bring about a more just, harmonious and equitable society. We work with communities to promote knowledge of, and respect for, Aboriginal and Torres Strait Islander peoples, cultures and values.

The NSWRC works towards recognition of our nation's cultural heritage, respect for Australia's First Peoples and opportunities for self-determination. Supporting reconciliation means working to overcome the division and inequality between Indigenous and non-Indigenous people. Differences in health, income, living standards and life expectancy, educational attainment can be improved by addressing cultural dominance, prejudice and racism.

➤ **Position taken by the NSW Reconciliation Council**

The NSW Reconciliation Council thanks the Committee for the opportunity to contribute a submission to the Inquiry into reparations for the Stolen Generations in New South Wales. This inquiry is an important first step in the process of healing and key to the NSW Government fulfilling the recommendations made by the *Bringing Them Home* report. The NSWRC urges the NSW Government to act on these recommendations as a matter of urgency given that many members of the Stolen Generations are in the later years of their lives.

The NSW Reconciliation Council supports the need for self-determination and emphasises a need for extensive consultation with key Indigenous groups and bodies throughout the process. This consultation should take place both within major cities as well as regional areas. The priority of the government should be to engage with peak Indigenous bodies in order to develop a response that takes into consideration the varied perspectives of Indigenous communities throughout NSW.

➤ **Issues to consider**

How the NSW Government has responded to the *Bringing Them Home* report

Since the release of the *Bringing Them Home* report there have been a number of federal and state responses. There has been significant investment in the *Bringing Them Home* programs, the Link-Up program, the Social and Emotional Wellbeing Regional Centre Program and the Mental Health Program as well as State and Commonwealth government apologies. These responses have been significant, however many of the other recommended actions in the *Bringing Them Home* report have not been addressed. As such, the 54 recommendations of the *Bringing Them Home* report remain as relevant today as they were in 1997.

As highlighted by Dr Tom Calma in his address at the 'Ten Years Later: *Bringing Them Home* and the Forced Removal of Children' Conference, the responses of Australian governments need to be ongoing and capable of meeting the needs of the growing Indigenous population¹. The policies of removal by successive Australian governments have left an ongoing legacy for many Aboriginal peoples and their descendants is an ongoing issue. It is important that the NSW government is active in its attempt to address this legacy of trauma and begin the process of healing and reconciliation for the members of the Stolen Generations in NSW.

It should be noted that the committee has adopted the definition of reparations contained in Recommendation no. 3 of the *Bringing Them Home* report that states that reparations should consist of:

- a) Acknowledgement and apology
- b) Guarantees against repetition
- c) Measures of restitutions
- d) Measures of rehabilitation, and
- e) Monetary compensation

This submission shall primarily focus on potential avenues for measures of restitution and monetary compensation however it is important to also address section (b) *guarantees against repetition*. The NSW Reconciliation Council is aware of the significant overrepresentation of Aboriginal children and young people within Child Protection and Out of Home Care in NSW and believes it is imperative that the NSW Government takes measures to reduce these numbers or else risk repeating the experience of the Stolen Generations. The NSW Reconciliation Council urges the Committee and the NSW Government to refer to expert bodies on this issue such as the NSW Aboriginal Child, Family and Community Care State Secretariat (AbSec).

¹ Calma, T. 'Australian Government Responses to the Bringing Them Home Report', *Australian Indigenous Law Review*, vol. 12 (SE), 2008, p. 11.

Approaches in other jurisdictions:

Tasmania

If the NSW Government were to introduce a comprehensive reparations program it would be leading the way in mainland Australian State responses to the recommendations of the *Bringing Them Home* Report. The NSW Government could consider following the Tasmanian model of a state based reparations scheme with a number of adjustments based on the feedback received.

The *Stolen Generations of Aboriginal Children Act, 2006 (Tas)* involved provisions for a \$5 million fund to be paid to claimants whose eligibility was assessed by an independent Assessor. There were a total of 151 claims and 106 were found to be eligible for payment. Of those found to be eligible 84 were victims of the Stolen Generations and 22 were the children of victims of the Stolen Generations. The 22 children of the victims shared \$100,000 between them and the 84 living applicants who were removed shared \$4.9 million evenly which equalled approximately \$58,000 each².

Following the implementation of this Act, a number of problems were identified. These problems were predominantly with the eligibility criteria and access to records. If the NSW government were to follow a similar model it would be important to address these key issues with eligibility and as well as allowing for oral evidence to be given.

The *Stolen Generations of Aboriginal Children Act, 2006 (Tas)* was an important step in addressing the recommendations for reparations in the *Bringing Them Home* report, however its focus was solely on monetary compensation. If the NSW Government were to implement a similar Act, we believe it would be important to also consider the other forms of reparations recommended by the *Bringing Them Home* report.

Canada:

Another model the NSW Government could consider following is the *Indian Residential Schools Settlement Agreement*, which was introduced by the Canadian federal government in 2005. This agreement had five key components.

- The Common Experience Payment, which was a lump sum payment of \$10,000 plus \$3,000 for every year, spent in home thereafter. A total of CAN\$1.9 billion was set-aside for this.
- The Independent Assessment Process, which was additional compensation of up to \$275,000 for sexual abuses that caused serious psychological effects.
- A Truth and Reconciliation Commission was established and \$60 million was allocated for work over five years to provide a forum to reveal the experiences of the survivors and educate the public about the conditions and legacy of the schools.

² S Winter, 'Australia's Ex Gratia Redress', *Australian Indigenous Law Review*, vol. 13(1), 2009, p. 51.

- There was a \$125 million endowment for the Aboriginal Healing Foundation to programs related to memory and spiritual renewal.
- Finally there was a fund of \$20 million for events and memorials to acknowledge the legacy of the residential schools.³

The Indian Residential Schools Settlement Agreement was a comprehensive attempt to address the issue of reparations and in many ways highlighted the strength of a federal level response. However this model also had its weaknesses and received criticism around the onus placed on the victims to prove their attendance at residential schools.

➤ **What can be taken from these approaches**

If the NSW Government were to introduce a reparations scheme it would be important to improve upon the models that have been enacted elsewhere. This would enable the NSW Government to create a program that best addresses the needs of the victims and has the greatest contribution to the process of healing. It is highly recommended that the NSW Government introduce a scheme that not only includes monetary compensation but also non-monetary forms of reparations which could include resources for education about the forced history of removal in Australia as well as investments in community initiatives focused on truth and healing.

➤ **What are potential problems that must be considered and addressed**

There are a number of key issues and concerns the NSW Government should consider in relation to potential legislation or policies to make reparations to members of the Stolen Generations and their descendants.

It is vital that the process of claiming reparations does not disempower the claimants or cause any more trauma to the victims. The NSW Government should learn from experiences of models in other jurisdictions and create an eligibility criterion that is fair. This would include allowing for oral evidence to be presented, due to the prevalence of missing written records for the victims of the Stolen Generations and their descendants. It is the position of the NSW Reconciliation Council that the onus of proof should not be placed on the victims themselves but rather the state should be open to all claims and facilitate the process of evidence gathering. The process should be easily accessible and needs to be completed in a timely manner to reduce further suffering for claimants.

It is important for the NSW Government to consider the need for a variety of types of reparations in order to fully address the recommendations of the *Bringing Them Home* report. These could include a form of monetary compensation both on an individual basis and a community basis as well as a focus on healing beyond the limitations of monetary

³ International Centre for Transitional Justice, Submission to the *Universal Periodic Review of the UN Human Rights Council*, Fourth Session: February 2-13, 2009

compensation⁴. If lump sum payments are to be made, it is recommended that these be made as a part of a comprehensive package that is created based on consultation with peak Aboriginal bodies, groups and experts in the field.

Furthermore, the payment of reparations should also not prohibit the potential for further claims by victims or their descendants, as individuals should have the right to pursue additional action if they feel their specific needs have not be adequately met or recognised.

In Tasmania, issues of jurisdiction arose in those cases that occurred in multiple states. In order for all victims to receive fair compensation, cases that involve multiple jurisdictions should be carefully considered and a framework put in place to reach the fairest outcome for the victims.

The New South Wales Reconciliation Council's supports the Public Interest Advocacy Centre's assertions that the traditional legal process cannot fully accommodate the nature of the potential claims and redress required to address the needs of the victims of the Stolen Generations in NSW. Furthermore we support the need to provide redress in keeping with the Van Boven principles that go beyond monetary compensation. The PIAC's proposed tribunal model is a potential model that the NSW Government could follow which would ensure that Indigenous people and groups would be involved in both the design as well as the implementation of a comprehensive reparations program.⁵

➤ Conclusion

It is the NSW Reconciliation Councils position that it is vital for the NSW Government to continue to address the recommendations made by the *Bringing Them Home* report in order to further the movement towards reconciliation and healing in Australia. If it were to establish a comprehensive reparations program the NSW Government would be leading the way in mainland Australian responses to the report and taking a crucial step to help the victims of the Stolen Generations with the process of healing.

If potential legislation or policies are to be successful an extensive consultation with peak Aboriginal groups and bodies will be required throughout the process. The NSW Reconciliation Council supports the empowerment of Indigenous Peoples and advocates for policies that focus on self-determination and healing. The NSW Reconciliation Council supports this inquiry and emphasises the need for legislation or policies regarding reparations as a way to begin to address the extensive and continuing damage perpetrated against the victims of the Stolen Generations, their descendants and their communities. It is recommended that this response occur as a matter of urgency given that many victims of the Stolen Generations are now in the later years of their lives.

⁴ Durbach, A., Thomas, L., *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Stolen Generations Compensation Bill*, Public Interest Advocacy Centre (PIAC), Sydney, 2008.

⁵ A Cornwall, *Restoring Identity: Final Report*, Public Interest Advocacy Centre (PIAC), Sydney, 2009.