

FORUM**THE STOLEN GENERATION: FROM REMOVAL TO RECONCILIATION****AUTHORS OF OUR OWN HISTORY:**

The Challenge for All Australians Presented by the Final Report of The Human Rights Commission National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families

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The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families closes a chapter in the history of Australia. Some may say was that it told of the ending of innocence, and others, the exposure of the biggest lie. In that chapter we also read about the falsehood of terra nullius which itself was wiped away by the High Court in *Mabo*.¹ In much the same way that the *Mabo* decision on Native Title meant that governments could no longer delay a resolution (to the advantage or disadvantage of

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¹ *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

Aboriginal people) of the conflict over land rights between Aboriginal people and the colonisers; governments can no longer pretend that the removal of Aboriginal children did not occur. The closing of one chapter signals the opening of another - one that we, as Australian citizens, have the power to write and upon which we shall be judged by our descendants and the world community.

The final report of the National Inquiry is the culmination of many years of lobbying and campaigning on the part of many Aboriginal people and their representative organisations. The Secretariat of the National Aboriginal and Islander Child Care (SNAICC) resolved at its Brisbane conference in 1990 to demand this Inquiry. Indeed, SNAICC called for a Human Rights Commission (HREOC) Inquiry because it was evident that, three years into the Royal Commission into Aboriginal Deaths in Custody, a Royal Commission was not a suitable form of inquiry. It was far too formal and did not permit significant participation by Aboriginal people. Furthermore, the experience of the Human Rights Commission Inquiry into Homeless Children suggested that such an inquiry would be preferable, and with a Federal Human Rights Commissioner like Brian Burdekin, the Commission could act as a powerful monitoring body.

It took another five years before the Federal Labor Government issued Terms of Reference to HREOC. In 1991, with the help of Archie Roach and Ruby Hunter, we publicly launched a demand for the Inquiry on National Aboriginal and Islander Children's Day, 4th August. The media release, issued that day, said:

This issue is a 'blank spot' in the history of Australia. The damage and trauma these policies caused are felt everyday by Aboriginal people. They internalise their grief, guilt and confusion, inflicting further pain on themselves and others around them. It is about time the Australian Government openly accepted responsibility for their actions and compensate those affected.

Mr Butler [the Chairman of SNAICC] called for a Human Rights Commission Enquiry into the removal of Aboriginal children.

We want an enquiry to determine how many of our children were taken away and how this occurred. We want the enquiry to hear from Aboriginal people about how they have been affected and what must be done to compensate.

We also want to consider whether these policies fall within the definition of genocide in Article II(e) of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

SNAICC reiterated this demand for a national inquiry on National Aboriginal and Islander Children's Day in 1992, and on many other occasions thereafter. However, it must be said that there were other significant voices. Link-Up (NSW) and the Aboriginal Legal Service of Western Australia to name just two. Others prepared litigation, notably the people of the homes in Darwin who organised the landmark 'going home' conference in 1994, which sent out a powerful message to the Government that this was not an issue that would disappear; on the contrary, it just kept gaining momentum.

It is important to record the history before the Inquiry as well as endorsing the findings of that Inquiry. The opposition to the removal of Aboriginal children goes back a long way, to the moment the practise began. The campaign for the

Inquiry and for the just resolution of the genocidal policies of social engineering upon which that Inquiry was based will depend on the determination of Aboriginal people whose families still live with this history. However, because this issue has become a matter of national importance, there is every danger that once again the people who raised the concern and about whom this Inquiry was undertaken, will be disempowered by the very process they set in motion.

Already we know that the State and Territory Governments are working on responses which will be minimal. The recommendations about child welfare and juvenile justice in particular, especially those calling for national standards in relation to the principle of self-determination and the right of Aboriginal people to control child welfare and juvenile justice systems will be discarded. At the Commonwealth level, recommendations about compensation have been entirely left out of the process that will result in the Commonwealth Government's response to the recommendations. Given the Howard Government's approach to federalism,² indicated by their ten point plan approach to the Wik High Court decision,² the recommendations about national standards legislation will not likely be pursued by the Attorney-General.

Meanwhile the problems that prompted the establishment of the Inquiry continue unabated, particularly the inclusion of the fourth term of reference (d):

... examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and advise on any changes required taking into account the principle of self-determination by Aboriginal and Torres Strait Islander Peoples.³

There is over representation of Aboriginal and Torres Strait Islander children in custody and care, and over representation of Aboriginal and Torres Strait Islander children in the juvenile justice and child welfare system. On the other hand, the provision of services to stem this problem is still predominantly in government hands. Child welfare services provided by Aboriginal communities have remained static in number and have made only marginal gains in terms of decision making power. Self-determination is still a long way off and on the basis of the kinds of government responses to the National Inquiry Report that are being prepared by State, Territory and the Federal Governments, self-determination will not be a reality for some time to come.

This is a pessimistic scenario. However, governments aside, the Australian public has overwhelmingly taken this issue to heart. The churches are responding positively and numerous other non-government agencies are examining their roles in the framework of the recommendations.

Sadly, the role of HREOC in monitoring the implementation of the Inquiry recommendations will be severely curtailed given government funding cutbacks. Its ability to disseminate information to Aboriginal people throughout the country has also been reduced. Informing Aboriginal and Torres Strait Islander

² *Wik Peoples v State of Queensland* (1996) 141 ALR 129

³ See Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997. (Hereafter the National Inquiry Report).

people about the outcomes of the National Inquiry must be a priority at the present time.

The problems of HREOC are compounded by the fact that most Aboriginal organisations that had been involved in bringing about the Inquiry, like SNAICC, Link-Up (NSW), the Stolen Generation Litigation Unit (NT) and the Aboriginal Legal Service of Western Australia (ALSWA) have not been consulted on any matters related to the National Inquiry by the Federal Government.

One wonders also whether the Howard Government will provide funding to peak national Aboriginal organisations to monitor the implementation of the Inquiry as recommended.

On a positive note, the establishment of a national Stolen Generations Group involving all organisations who have been active in the Inquiry is a major development. This in itself must be regarded as a reassertion of the principle of the right of self-determination by Aboriginal people and their organisations over a process that will have great bearing on their future.

Since the release of the National Inquiry Report there has been an increase in those seeking support for difficulties and trauma associated with their experiences of removal which are not restricted to those removed alone. Siblings, parents and other family members have all been affected. Neither is the experience of removal restricted to Aboriginal people living in urban areas alone, highlighting yet again that the common experience of being Aboriginal can never be placed on some sort of hierarchy going from 'traditional' to 'urban'.

The National Inquiry recommendations are a package that addresses important aspects of Aboriginal and Torres Strait Islander family life. They are a response to a social and human problem with deep roots in history that are still having an impact today, with yet another generation of Aboriginal children being removed.

Australian society's response to such an event, justifiably called genocidal, will itself be quite traumatic, though nowhere near as painful an experience as that felt by those directly affected. It is time for the new chapter to be opened with acknowledgment and expiation and the way cleared for a more open and honest relationship between Aboriginal and Torres Strait Islander people and other Australians.