The Stolen Generations and Individual Criminal Victimisation: Valerie Linow and the New South Wales Victims Compensation Tribunal

In 1997, the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families reported on the effects of the forced removals of Indigenous children. This inquiry recommended compensation through a tribunal process: compensation both for the policy itself (which was racist) and for the range of harms (including criminal harms) that arose from the implementation of the policy.

The Federal Government has consistently refused compensation and generally denied the validity of the findings of the National Inquiry. Given the inability of Prime Minister John Howard to apologise on behalf of the nation for the effects of Government policy on removing Indigenous children, the immediate likelihood of Government compensation is remote. As a result the Stolen Generations have been forced to seek remedies through the courts. In virtually all cases the results have been unsuccessful for the litigants.

In this context, Valerie Linow's successful claim (on appeal) before the New South Wales Victims Compensation Tribunal is a limited but important victory for the Stolen Generations.

> Valerie Linow was taken from her mother at the age of two and placed in the Bombaderry Children's home. In 1958, at age 16 she was placed by the Aborigines Welfare Board with a family of four children as a domestic worker. During her six months in this placement she was sexually assaulted and thrashed with barbed wire 'by a white man who ran the station' and who was a member of the household in which she now lived. The applicant ran away from the house and informed the authorities of the assaults. The police investigated the allegations but found insufficient evidence to pursue the matter. The matron of Cootamundra Girls Home, where she was residing prior to the placement and to where she returned after the assaults, wrote to the Welfare Board saying she had not made Linow return to the placement 'for fear' that her allegations were true (Forster 2002:185–6).

In February 2001 Valerie Linow lodged an application in the New South Wales Compensation Tribunal for compensation in relation to the sexual assaults between May and October 1958. These events were well outside of the two-year limitation period provided under s26(1) of the *Victims Support and Rehabilitation Act* 1996 (NSW). Leave was granted on 5 April 2001 for the matter to be determined by the Tribunal. The Assessor noted the fact that Ms Linow 'was only able to revisit the incidents in 1994 and the substantial and ongoing emotional and psychological difficulties which are in evidence.' However, the Assessor also noted that the application 'faces significant hurdles in establishing that the applicant was the victim of an act of violence on the balance of probabilities, or that a compensable injury was sustained as a direct result of that act, pursuant to sections 5 and 7 of the legislation.' Indeed, with this in mind, the Assessor emphasised the fact that the 'onus rest squarely on the applicant or her legal representative to establish her eligibility for statutory compensation' (New South Wales Victims Compensation Tribunal 2001).

Ms Linow's claim was determined by an Assessor on the documentary evidence provided.[1] On 15 February 2002, her application for compensation was dismissed by the Tribunal.

Whilst the Assessor accepted, on the balance of probabilities, that Ms Linow had been subjected to a series of indecent and sexual assaults, the Assessor was not satisfied, on the balance of probabilities, that her injuries were caused as a result of these incidents. This decision would appear to have been based on the apparent failure of a report by a Consultant Psychiatrist to distinguish whether her psychiatric disorder was 'caused by the sexual assaults or by prior or later life events' (New South Wales Victims Compensation Tribunal 2002a). The Assessor noted that had Ms Linow 'had the opportunity to be reared in a loving family, she would have been a capable parent and would not have suffered from Dysthymic Disorder, Alcoholism or Mixed Anxiety Disorder' (2002a). As Alexis Goodstone, a solicitor with the Public Interest Advocacy Centre who represented Ms Linow, noted, 'in other words the claim failed because the effects of the removal from her family had caused such extreme psychological harm that the subsequent sexual assaults did not, in the view of the Assessor, cause Mrs Linow harm'(Goodstone 2002:1).

This initial decision by the Assessor was thus a cruel irony on the effects of Government policy. If Government policies of removal caused such great psychological harm, then later criminal victimisation was apparently inconsequential and unlikely to be compensated.

Following the dismissal of Ms Linow's claim, her lawyers lodged an appeal on 13 August 2002 with the Victims Compensation Tribunal. The appeal was allowed and the determination of the compensation assessor was set aside accordingly. In a written determination on 30 September 2002, the Chairperson of the VCT stated that he was satisfied that Ms Linow had suffered an injury as required by s5(1)(c) of the *Victims Support and Rehabilitation Act* 1996 (NSW) (2002b). Further, the Chairperson was satisfied that this injury, which included the diagnosed disorders referred to above, was caused either as a direct result of the sexual assaults or as a result of the sexual assaults in combination with 'other stressors' (2002b). It is clear from the facts set out in the determination that the 'other stressors' include Ms Linow's removal prior to the sexual assaults and/or subsequent life events.

The compensable injury of sexual assault category 3 was established and Ms Linow was awarded $35 000 accordingly. She stated:

> I have got my justice after 45 years. I'm free because it was tormenting me all the time. I feel like I am reborn. I can go forward and leave this dreadful past behind ... It's not the money that's important to me. It is the knowledge and recognition that this happened to Aboriginal people. No one could pay any amount for what happened to us because we lost a lot (Jopson 2002).

Valerie Linow's case was an important personal victory and may provide some avenue of redress for other Aboriginal people who suffered criminal harms after their removal. However, we should also recognise the inherent limitations of this approach. Ultimately, it does not deal with the issues arising from forced removals of Indigenous children or provide widespread compensation or reparation. The failings of this approach include the following:

- The act of removal and the effects of removal were not addressed. Rather, what were compensated were injuries from criminal acts subsequent to removal. The broader issue of reparations for racist and, arguably, genocidal policies remain unresolved.
- The use of victim compensation tribunals requires a narrow definition of how 'harm' is defined, and the establishment of a causal nexus between the harm and injury. For example, the New South Wales *Victims Support and Rehabilitation Act* 1996 defines

---

1 The VCT makes decisions on the basis of documentary evidence and does not normally provide the opportunity for the applicant to make oral submissions.

eligibility for compensation on the basis that, on the balance of probabilities, an act of violence occurred. The act or conduct must be of a violent nature. There is a Schedule of Compensable Injuries that is used to determine what injuries can be compensated. These narrow definitions operate to limit the eligibility of many of the Stolen Generations, and further obscure the nature of removals as part of Government policy and practice.

- Under the New South Wales legislation, applications for compensation must be lodged within two years after the act of violence. However, as in Linow, the tribunal can exercise its discretion to accept late applications. Sexual assault, child abuse and domestic violence are matters where the tribunal would normally grant an extension, unless there is no good reason for the delay.

- Applications for compensation are initially determined by an 'assessor'. The assessor relies on supporting documentation (such as police and hospital reports, counsellor's reports and statutory declarations) in reaching a decision. The victim does not appear in person to 'tell their story', although application can be made for oral testimony. In Linow's case an application for a hearing was refused. Two further issues flow from this in relation to dealing with Stolen Generations cases. Firstly, documentary evidence of specific violent conduct will be difficult to obtain where Indigenous people were likely to be under the direct control of the individuals committing the offences, where records have been lost, and where a significant period of time has lapsed since the events in question. Secondly, it has been consistently stated by Indigenous people who were forcibly removed that they should have the choice in whether they present oral testimony or whether their matters should be dealt with on the basis of written documentation. The need for this choice was reflected in the recommendations of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.

The National Inquiry found that one in six people who gave evidence to the Inquiry had been sexually exploited or abused, while more than one in four suffered physical brutality 'much more severe, in the Inquiry's estimation, than the typically severe punishments of the day' (1997:194). It will be a much smaller subset of this group who might be able to provide documentary evidence of the sexual and physical assaults as a basis for victim compensation. While victim compensation is one avenue for dealing with the aftermath of forced removal, it will not provide widespread satisfaction for those who survived Government policies of breeding out and later 'assimilating' Aboriginality.

Chris Cunneen and Julia Grix

Institute of Criminology, University of Sydney.
Postal address: Institute of Criminology, Faculty of Law, University of Sydney, 173–5 Phillip St , Sydney, NSW 2000. Email: chriscu@law.usyd.edu.au, juliag@usyd.edu.au.

REFERENCES

Forster, C (2002) 'The stolen generation and the Victims Compensation Tribunal: The "writing in" of Aboriginality to "write out" a right to compensatory redress for sexual assault', *University of the New South Wales Law Journal*, vol 25, no 1, pp 185–193.

Goodstone, A (2002) 'Stolen Generations Victory', *PIAC Bulletin*, no 16, December, p 1.

Jopson, D (2002) 'First compensation win for the stolen generation', *The Age*: <http://www.theage.com.au/articles/2002/10/17/1034561266360.html> (18 October 2002).

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997), *Bringing Them Home*, HREOC, Sydney.

New South Wales Victims Compensation Tribunal (2001) Leave Determination: VCT Ref W73125, 5 April.

New South Wales Victims Compensation Tribunal (2002a), Reasons for Dismissal: File Ref 73123, 15 February.

New South Wales Victims Compensation Tribunal (2002b), Appeal Determination: Application No 73125, 30 September.