

A NEW STOLEN GENERATION?

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I INTRODUCTION

Let me commence by recounting Paul's story:

For 18 years the State of Victoria referred to me as State Ward No 54321.

I was born in May 1964. My Mother and I lived together within an inner suburb of Melbourne. At the age of five and a half months, both my Mother and I became ill. My Mother took me to the Royal Children's Hospital, where I was admitted. Upon my recovery, the Social Welfare Department of the Royal Children's Hospital persuaded my Mother to board me into St Gabriel's Babies' Home in Balwyn ... just until Mum regained her health. If only Mum could've known the secret, deceitful agenda of the State welfare system that was about to be put into motion — 18 years of forced separation between a loving mother and her son.

Early in 1965, I was made a ward of the State. The reason given by the State was that, 'Mother is unable to provide adequate care for her son'.

Throughout all these years — from 5 and a half months old to 18 years of age, my Mother never gave up trying to locate me. She wrote many letters to the State Welfare Authorities, pleading with them to give her son back. Birthday and Christmas cards were sent care of the Welfare Department. All these letters were shelved. The State Welfare Department treated my Mother like dirt, and with utter contempt, as if she never existed. The Department rejected and scoffed at all my

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Mother's cries and pleas for help. They inflicted a terrible pain of Separation, Anguish and Grief upon a mother who only ever wanted her son back.

In May 1982, I was requested to attend at the Sunshine Welfare Offices, where they formerly discharged me from State wardship. It took the Senior Welfare Officer a mere twenty minutes to come clean, and tell me everything that my heart had always wanted to know. He conveyed to me in a matter-of-fact way that I was of 'Aboriginal descent', that I had a natural mother, father, three brothers and a sister, who were alive. He explained that his Department's position was only to protect me and, 'that is why you were not told these things before'. He placed in front of me 368 pages of my file, together with letters, photos and birthday cards. He informed me that my surname would change back to my Mother's maiden name of Angus.

The welfare officer scribbled on a piece of paper my Mother's current address in case, in his words, I'd 'ever want to meet her'. I cried tears of Relief, Guilt and Anger. The official conclusion, on the very last page of my file, reads: 'Paul is a very intelligent, likeable boy, who has made remarkable progress, given the unfortunate treatment of his Mother by the department during his childhood.'¹

In February 2008, Prime Minister Kevin Rudd addressed the national Parliament and the Australian people to apologise to Paul and every person and Indigenous family devastated by the forced removal of children. We know them as the Stolen Generation. Delivered more than 10 years after the tabling of the *Bringing Them Home* report, it was, symbolically at least, the culmination of a milestone event in Australia's national story.

The tone and language used by the Prime Minister was genuine and heartfelt. The apology was well received across the nation by Indigenous and non-Indigenous Australians alike. It would prove to be the most notable and well-regarded contribution of Kevin Rudd in his short and troubled term as Prime Minister.

¹ Commonwealth of Australia and Meredith Wilkie, *Bringing them Home: Report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander Children from their families* (Human Rights and Equal Opportunity Commission, 1997) 68-70 ('Bringing them Home Report').

The national apology was cathartic and a seminal national moment, but it portrayed a fundamental misconception. It assumed, and the Australian people also assumed, that the wholesale government sanctioned removal of Aboriginal children was our past and our future involved reconciling the consequences of this action and dealing with the harm it caused. We needed a roadmap and the Prime Minister's roadmap was the Closing the Gap strategy.

But the separation of Aboriginal children from their families is not only our past. The sobering and distressing truth is that, today, Indigenous children are being removed from their families at a rate which is far higher than at the time of the apology. In fact state intervention into Aboriginal families has accelerated child removal in the 20 years since the Bringing them Home Report.

For South Australians, the experience of Aboriginal children in the child protection system has just been documented in the Child Protection Systems Royal Commission. Like many Royal Commissions, it was triggered by a public scandal, but in dealing with one highly public set of events, much deeper and complex systemic issues were highlighted. The Report examines the recent South Australian experience of Aboriginal children in the child protection system and its findings reflect the position Australia wide. In South Australia, compared to non-Indigenous children, Aboriginal children are

- 6.6 times more likely to be subject to a notification of abuse or neglect;
- 9.8 times more likely to be the subject of a finalised child protection investigation;
- 9.9 times more likely to be the subject of a substantial finding of abuse or neglect; and

- 9.2 times more likely to enter out of home care.²

These figures would have been deeply distressing to Elliott Johnston. Elliott worked for much of his life to improve the lives of Aboriginal Australians. He was a founding chair of the Aboriginal legal rights movement, Justice of the South Australian Supreme Court and a Commissioner of the Royal Commission into Aboriginal deaths in custody. I had the good fortune to meet Elliott a few years after his work at the Royal Commission and he remained a passionate advocate for Aboriginal people throughout his life.

In my speech I will examine the separation of Indigenous children from their families from the time of the Bringing them Home Report to now. I will argue that the alarming growth in the number of Aboriginal children being placed in out-of-home must be urgently addressed. The Closing the Gap strategy is failing to highlight this problem and without action Australia runs a very real risk of reaching child separation rates at Stolen Generation levels.

II THE BRINGING THEM HOME REPORT

In May 1995, as the Attorney General in the Keating government, I commissioned the then Human Rights and Equal Opportunity Commission to inquire into the separation of Aboriginal and Torres Strait Islander children from their families. The Inquiry was an important part of the Keating government's Indigenous social justice agenda, which at the time included the response to the Mabo decision and the establishment of the National Native Title Tribunal and the development of the Indigenous Land Corporation. A prime motivation for the Inquiry was the need to bring into the collective

² South Australia, Child Protection Systems Royal Commission, *Child Protection Systems Royal Commission report: The life they deserve* (2016) vol 1, 450-451.

consciousness of Australia the practice and consequence of the forced removal of Aboriginal children.

The power of the Report is its first hand narratives of the impact of separation on individuals, families and the entire Aboriginal and Torres Strait Islander community. They are stories that demand attention and engage the reader in a way that cold numbers and clinical language can never do — stories of people like Paul.

Importantly, the Inquiry recognised that while formal policies of assimilation had been ended, the experience of child removal continued. That's why there was a specific term of reference to examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and a request to the Commission to advise on any changes required, taking into account the principle of self-determination by Indigenous peoples.

At the time the Inquiry's report was handed down, statistics showed that Indigenous children were six times more likely to be removed for welfare reasons and that in 1993, while indigenous children comprised only 2.7 per cent of Australian children, they were 20 per cent of children in care.³ It was noted that Indigenous children were more likely to be removed on the ground of 'neglect' rather than 'abuse' with substantiated cases of neglect constituting 40 per cent of all cases for Indigenous children, compared with 23 per cent for all children.⁴

The Report canvassed the laws and practices in each state and territory regarding child welfare and concluded:

Welfare legislation and the language of welfare policy have changed.
However, submissions to the Inquiry from Indigenous organisations

³ Commonwealth of Australia and Wilkie, above n 1, 429.

⁴ Ibid 430.

working with Indigenous families indicate little change in practice. Paternalistic attitudes persist in welfare departments. Indigenous children continue to be severely over-represented within all State and Territory welfare systems. Departmental attempts to provide culturally appropriate welfare services to Indigenous communities have not overcome the weight of Indigenous peoples' historical experience of 'The Welfare' or the attitudes and structures entrenched in welfare departments.

For many Indigenous communities the welfare of children is inextricably tied to the well-being of the community and its control of its destiny. Their experience of 'The Welfare' has been overwhelmingly one of cultural domination and inappropriate and ineffective servicing, despite attempts by departments to provide accessible services. Past and current legislative and administrative policies together with bureaucratic structures and mainstream cultural presumptions create a matrix of 'Welfare' which cannot be reformed by means of departmental policy alone. If welfare services are to address Indigenous children's needs they need to be completely overhauled. Welfare services must be provided in a manner which is accepted by communities.

While broad schemes are administratively convenient, communities vary significantly in their aspirations, capacities and awareness of options. Child welfare models should be sufficiently flexible to accommodate these variations. Ultimately, child welfare appropriate to each community and region should be negotiated with those whose children, families and communities are the subjects of the system. Negotiation clearly implies empowerment of Indigenous parties and recognition of their true partnership in the reform process.⁵

The Report noted that while specific laws and practices have the goal of keeping Indigenous families together broad social, economic and cultural factors are combining to continue high rates of forced child removal. For this reason, the Inquiry dealt in some length with Aboriginal experience in matters such as:

- The different demographic profile of Indigenous peoples compared to non-Indigenous Australians with a far higher proportion of the Indigenous population being aged under 15.⁶

⁵ Ibid 458-459.

⁶ Ibid 544.

- Cultural and family structures being different and these differences potentially leading to assimilation as an ‘implicit result of the values of the dominant group being imposed on Indigenous people’.⁷ For example, extended familial responsibility interpreted as abandonment or travel to maintain familial and cultural relationships interpreted as instability.⁸
- Greater levels of domestic violence and alcohol or substance abuse in Indigenous communities leading to perverse outcomes such as a ‘mother may be in a refuge as a result of domestic violence and be assessed as having unsuitable accommodation’.⁹
- The chronic disparity in outcomes and experiences between Indigenous and non-Indigenous Australians in health, housing, employment and income, and education.¹⁰

To address the continuing high levels of the separation of children from their families, the Commission made a comprehensive suite of recommendations to empower Indigenous self-determination for the well-being of children. It was envisaged that negotiations would occur at community and regional level and result in customised models to meet local needs. The negotiations could have included the possible transfer of police, judicial and child welfare agency responsibility to local communities.¹¹

In conjunction with self-determination, the Commission believed that national minimum standards for child welfare would ‘address the rights and needs of Indigenous children, prevent unjustified removals and provide an open framework in which Indigenous control over child welfare and juvenile justice can develop where

⁷ Ibid 545.

⁸ Ibid 546.

⁹ Ibid 547.

¹⁰ Ibid 548-555.

¹¹ See recommendations 43(a) to 43(e): ibid 580.

this is desired'.¹² The content of the standards was dealt with in recommendations 46(a) to 51(e). In summary, the standards framework recommended key points, including:¹³

- An initial presumption that the best interest of the child is to remain within their Indigenous family, community and culture.
- The involvement of Indigenous organisations in all decision making concerning Indigenous children.
- The separate representation of Indigenous children in judicial decision making processes.
- That decisions to remove an Indigenous child from their family be made in accordance with the Indigenous Child Placement Principle.
- If placement of a child is required, this follows in a particular order of preference, starting with a member of the child's family, and followed by a member of the child's community in a relationship of responsibility for the child, another member of the child's community and another Indigenous carer.
- When determining the choice of a non-Indigenous carer, family reunion is a primary objective; there must be continuing contact with the child's Indigenous family, community and culture; and the carer must live in proximity to the child's Indigenous family and community.

III GOVERNMENT RESPONSES TO THE BRINGING THEM HOME REPORT

While commissioned by the Keating government, the Bringing them Home Report was presented to the Howard government in April

¹² Ibid 582.

¹³ Ibid 585-589.

1997. The Howard government's broad agenda on Indigenous issues was to 'address directly the effects of severe socio economic disadvantage suffered by Indigenous people through improved outcomes in health, housing, education and employment'.¹⁴

Aboriginal Affairs Minister, John Herron, delivered the Commonwealth's response in December 1997. The response grouped the report's recommendations into three categories, with the recommendations going to contemporary separation of children concluded to be matters properly for the states and territories and not the Commonwealth. The Commonwealth government did not support national legislation to facilitate self-determination or to enshrine national standards for child welfare.¹⁵ Rather, the Commonwealth announced a range of funding initiatives to support family reunions which was described as the fundamental concern arising from family separation and its consequences.

Much of the initial public debate about the report turned on whether the Commonwealth government should formally apologise to the Stolen Generation. The view of the then government was that 'while we do not believe that our generation should be asked to accept responsibility for the acts of earlier generations, sanctioned by the law of the times, we fully accept that we of this generation have an obligation to address the consequences of those actions and policies'.¹⁶

For their part, the states and territories have, in various ways and with various degrees of sustained commitment, sought to involve Indigenous organisations in processes and decisions about children. These efforts do not however amount to an embrace of the Report's recommendations.

¹⁴ John Herron, 'Bringing Them Home: Commonwealth initiatives' (Media Release, 16 December 1997).

¹⁵ Ibid.

¹⁶ Ibid.

In 2015, the National Sorry Day Committee produced a score card on the implementation of the Bringing them Home Report recommendations.¹⁷ The Committee gave a qualified pass mark to Australian governments on the incorporation of national standards for decisions on Indigenous child welfare, but otherwise a fail mark to recommendations going to self-determination and the practical application of each of the national standards. It was recognised that the Indigenous Child Placement Principle was adopted either in legislation or policy across Australian jurisdictions. However, the impact of the principle had been hampered by a lack of resources to legal services or other advocacy groups that endeavour to support to Aboriginal families, particularly women, when children are the subject of welfare department activities.

IV CLOSING THE GAP STRATEGY

Australia's current roadmap to tackle Aboriginal disadvantage is the Closing the Gap strategy. The strategy was announced as part of Prime Minister Rudd's apology to the Stolen Generations. The strategy is a bipartisan Commonwealth initiative and has been adopted by all governments through the Council of Australian Governments (COAG). The strategy is constructed on six targets which are in turn based upon multifaceted building blocks. The six targets are to

- close the gap in life expectancy;
- halve the gap in mortality rates for Indigenous children under five;
- ensure all Indigenous four-year-olds in remote communities have access to early childhood education;

¹⁷ John Rule and Elizabeth Rice, 2015, *Bringing Them Home: Scorecard Report* (National Sorry Day Committee, 2015). Full text available at: <<http://apo.org.au/node/54628>>.

- halve the gap for Indigenous students in reading, writing and numeracy;
- halve the gap for Indigenous students in year 12 attainment or equivalent attainment rates; and
- halve the gap in employment outcomes between Indigenous and non-Indigenous Australians.

Each target has a timeframe varying from 5 years to ‘a generation’.

The building blocks provide further detail as to how the targets can be achieved. The building blocks go to early childhood, schooling, health, healthy homes, safe communities, economic participation and governance and leadership.

COAG’s agreement on national Indigenous reform, which embodies the Closing the Gap commitment recognises that COAG needs to work in partnership with Aboriginal and Torres Strait Islander people to achieve the targets. COAG has stated that opportunities will be provided to reach collaborative partnerships with interested parties by incorporating advice in the development of options and the identifications of preferred solutions.¹⁸ Making this happen in practice was envisaged to occur through a range of Indigenous advisory groups or representative bodies both at the national and jurisdictional level.¹⁹

The six Closing the Gap targets do not directly go to the issue of the separation of Aboriginal children from their families. The building blocks also do not explicitly identify a goal that the ‘gap’ in the experience of Indigenous families and non-Indigenous families in child protection interventions be reduced. Rather, the building

¹⁸ Council of Australian Government, *National Integrated Strategy for Closing the Gap in Indigenous Disadvantage: Schedule to the National Indigenous Reform Agreement* (Commonwealth of Australia, 2008) 7.

¹⁹ Ibid.

block on safe communities references the National Framework for Protecting Australia's Children 2009-2020.

The Framework sets a specific outcome that 'Indigenous children are supported and safe in their families and communities'. This outcome has 'indicators of change' assigned to particular strategies and these indicators are salient to the separation of Aboriginal children from their families. The indicators are:

- rate per 1,000 Indigenous children with substantiated cases compared to other children;
- proportion of Indigenous children placed in accordance with the Indigenous Child Placement Principles;
- proportion of Indigenous 3 to 4 year olds participating in quality early childhood education, development and child care services;
- rate of hospitalisations for injury and poisoning for Indigenous children aged 0 to 4 years'; and
- ratio of Indigenous out-of-home care placement through mainstream or Indigenous services.²⁰

In December 2015, the Third Action Plan for the Framework was released covering the period 2015-18. This plan has a 'cross-cutting focus' on Indigenous children and families in recognition of the growth of Indigenous children in the child welfare system.²¹

²⁰ Department of Social Services, *National Framework for Protecting Australia's Children 2009–2020* (Commonwealth of Australia, 2009) 29.

²¹ Department of Social Services, *National Framework for Protecting Australia's Children 2009–2020 - Third three-year action plan 2015-18* (Commonwealth of Australia, 2015) 7-8.

V THE WIDENING GAP

The rationale of the Closing the Gap strategy is that it will improve the social, health, education and economic well-being of Aboriginal and Islander communities and as a result the position of children within families will be improved and this will lessen any need for child protection interventions into families. While the Closing the Gap strategy recognises the need for holistic responses to deep and difficult problems, the reality is that the gap is widening for Aboriginal children being removed from their families compared to other Australian children. As at 30 June 2015, there were 43, 000 Australian children living in out-of-home care as a result of the intervention of state welfare agencies. This represented 8.1 children per 1000.²²

In the same period, Aboriginal and Torres Strait Islander children comprised 15 000 of the 43 000 children removed from their families. This is 35 per cent of all children placed in out-of-home care, yet Indigenous children are only 5.5 per cent of all children aged 0-17.²³ The removal rate for Indigenous children is 52.5 per 1000.²⁴ Most disturbingly this disparity is rapidly rising. At the time of the apology, the rate of out of home care for Indigenous children was 24 per thousand. It has risen each year since then as follows:

- 29 per 1000 in 2007
- 33 per 1000 in 2008
- 37 per 1000 in 2009
- 40 per 1000 in 2010
- 43 per 1000 in 2011
- 46 per 1000 in 2012
- 48 per 1000 in 2013
- 51 per 1000 in 2014

²² Australian Institute of Health and Welfare, *Child protection Australia 2014–15* (Commonwealth of Australia, 2016), 48 (table 5.1).

²³ *Ibid.* 104.

²⁴ *Ibid.*

- 52.5 per 1000 in 2015.²⁵

At the time of the apology, Indigenous children were 7 times more likely to be in out of home care. This figure is now 10 times more likely.

The Human Rights and Equal Opportunity Commission found it difficult to quantify with precision the number of Aboriginal children taken from their families during the period of formal assimilation policies. Their estimate was between 10 and 30 per cent of all Indigenous children were taken. ABS surveys conducted in 1994 and 2002 provide support that the percentage of children taken was at least 10 per cent.²⁶ This means that the current rate of removal is now more than half the rate of the assimilation period and is continuing to rise. If the pattern of the last decade was to continue then by 2025 the rate of removal would again reach 10 per cent of the entire population of Indigenous children.

When Indigenous children are removed, state authorities by law and official policy are to operate in accordance with the Indigenous Child Placement Principle. The principle provides that a child removed from home should be placed in order of preference with:

- The child's extended family
- The child's Indigenous community
- Other Indigenous people
- Non-Indigenous people.

²⁵ Productivity Commission, Report on Government Services, *Child Protection Services* (Commonwealth of Australia, 2016) table 15A.18. Full text available at: <<http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/community-services/child-protection/rogs-2016-volume-f-chapter15.pdf>>.

²⁶ Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004-05* (Commonwealth of Australia, 2005) 2.

As at 30 June 2015, 67 per cent of Indigenous children in out of home care were placed with an Indigenous family member or community although this rate varied considerably between various jurisdictions.²⁷

VI A WAY FORWARD

Twenty years on from the Bringing them Home report and ten years after the National Apology and the announcement of the Closing the Gap strategy, I believe we are at a critical point in Aboriginal child welfare. Surely Australia cannot continue on a path that is trending towards child separation reaching the same proportion as those of the stolen generation.

What should be the response? Firstly, there must be prominent visibility as to what is happening and a target to reduce the gap between Indigenous and non-Indigenous child welfare interventions. I believe that the Closing the Gap targets should be amended to include an express target that the rate of out of home placement of Indigenous and non-Indigenous children be halved by 2025. 2025 — because the current trend, if not reversed, will see 10 per cent of all Aboriginal children in care outside their families. For the gap to be halved would mean a reversal of the current trend and progressive movement to return the rate of separation to around the level experienced at the time of the Bringing them Home Report. Halving the rate is the minimum target and reaching an outcome that was considered inadequate 20 years would hardly be a matter of national pride. But it should be achievable, and anything less would be disastrous for Indigenous communities.

The benefit of making child separation rates a Closing the Gap target would be to give the issue prominence and would mean that the Prime Minister personally addressed progress in the annual

²⁷ Australian Institute of Health and Welfare, above n 22, 101 (table A33).

Closing the Gap report to Parliament. Given that Closing the Gap stems from the very issue of the separation of Aboriginal children from their families, it is only right that the national spotlight should be on this aspect of our nation's performance. The target would need to be supported by an express building block addressing the outcomes of child welfare interventions on Indigenous families. One way this could be done would be by evaluating the Indigenous children component of the National Framework for Protecting Australia's Children to the status of a Closing the Gap building block.

The reasons why the rate of child separation in Indigenous families is so high are of course complex. Economic disadvantage, dysfunctional communities with high levels of violence and substance abuse, and a mismatch between the normative models of how families work between Indigenous and non-Indigenous communities were identified in the Bringing them Home Report. These issues still persist. The holistic approach embodied in Closing the Gap is sound as is the emphasis in the Third Action Plan on the National Framework for protecting Australia's children on the first 1000 days of a child's life.

A second response goes to the Indigenous Child Placement Principle. The Principle seeks to keep Aboriginal children with their extended families and, failing this, the local Indigenous community. A specific measure to assess reunification of children with their families within the National Framework would highlight this critical objective.

Thirdly, it is important that Indigenous communities play a central role in supporting families and that local organisations are equipped to fulfil this task. The Bringing them Home Report expressed this in terms of self-determination, while sometimes government policy documents adopt the language of empowering communities to take responsibility. In many ways, both concepts are different sides of the same coin and reflect that solutions devised

locally will generally be superior to those developed in national and state capitals.

VII CONCLUSION

The separation of Aboriginal children from their families during the assimilation period of public policy caused enormous harm to Australia's Indigenous community. As graphically explained in the Bringing them Home Report, these policies have had inter-generational impact and its consequences are felt today in families and communities across the nation.

Successive Federal governments have endeavoured to respond to the consequences of the policies but it is a fundamental misconception to believe child separation on a wholesale basis is an experience of the past. Aboriginal children are today being separated from their families and placed into out-of-home care at 10 times the rate of other Australian children. Assimilation is not driving this rate of child removal and laws and policies mandate that it should only be occurring to protect the interests and welfare of children — but occurring it is.

The Closing the Gap strategy recognises that the life chances and life experience of Aboriginal Australians are profoundly different from other Australians. The strategy aims to target this national challenge in a holistic way. It is undoubtedly true that good outcomes in health, education, economic participation and employment are all keys for families and communities having an environment in which children can thrive. But to not specifically target child separation as a dedicated Closing the Gap objective is sadly ironic given the basis from which the Closing the Gap strategy arose.

The way forward begins with the action of acknowledgement that Australia has reached a critical point in Indigenous child welfare outcomes and our collective focus should be on this area or the history of generational level separation rates might well be repeated. Including child separation rates as a Closing the Gap target would give national and sustained prominence to the issue. Solutions should be based on the empowerment of local communities to develop responses. Economic disadvantage, poor health outcomes, dysfunctional communities experiencing high levels of violence and substance abuse are all contributing factors and the Closing the Gap strategy with its supporting framework of building blocks correctly recognise holistic responses are required. Such responses will work best if devised and implemented from a bottom up rather than top down basis.