



A Reparations Tribunal for the S T O L E N generation?



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The Public Interest Advocacy Centre's (PIAC) recent submission to the Senate Inquiry into the Stolen Generation calls on the Federal Government to establish a Tribunal to provide reparations to the Stolen Generations. The submission was made in April, a few weeks before this year's Journey of Healing/National Sorry Day events were held.

I caught up with Jason Field, Chair of the New South Wales Stolen Generation Memorial Foundation, at a press conference in Sydney in the week leading up to this year's Journey of Healing.

The following begins with an excerpt from an article I wrote following the Press Conference, titled "Sorry Not Enough". This may interest APLA members, as it reflects some of Field's thoughts on establishing a Stolen Generations Reparations Tribunal as a more practical means of saying "sorry". I have also extended the original article to include comments from PIAC for increased relevance to APLA members.

“Sorry” Not Enough

It is fair to question the current obsession with the Prime Minister's refusal to apologise in place of a more practical focus, said Jason Field, Chair of the New South Wales Stolen Generations Memorial Foundation, at a press conference at the University of Technology, Sydney.

“Obviously the apology issue does get a lot of attention and you can't underestimate the importance of its symbolism to the Aboriginal people. But at the same time there are other issues that aren't being given due consideration,” he said.

Field, who also worked on the Human Rights and Equal Opportunity Commission's (HREOC) Report, *Bringing Them Home: The Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (“Bringing Them Home”), said he supports the idea to establish a tribunal as a practical measure for making reparations.

“As far as the value of a reparations tribunal is concerned, it is a very good idea, depending on the model you decide to establish.

The likelihood of a reparations tribunal being established in the near future is pretty minimal,” he said. Although, if compensation is provided to members of the Stolen Generations through the courts, it could be a different story.

The outcome of the current litigation involving Peter Gunner and Lorna Cubillo, the first two Aborigines to sue the Commonwealth Government for compensation for forced removal from their families, could be the deciding factor.

“If the test case being run in the Northern Territory is successful - the Gunner case - you will find the Federal Government will act very quickly to establish a reparations tribunal, because it will open the gates for a great many people to make claims for compensation,” said Field.

The judgment in *Cubillo and Gunner v Commonwealth of Australia* [1999] FCA 518 is currently reserved. The case is being run by the Public Interest Advocacy Centre (PIAC), the body also

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responsible for a recent submission to the Senate inquiry into the Stolen Generation. The submission puts forward a proposal for the establishment of a Stolen Generations Reparations Tribunal 'as an essential response to the history and effects of forcible removal'.

The PIAC Proposal

PIAC's Senior Policy Officer, Amanda Cornwall, said that PIAC decided late last year to further develop its 1997 paper, *Providing Reparations: A Brief Options Paper*. A reference group was then established to provide information and expertise from people involved in working for the Stolen Generations. Among them was Jason Field.

PIAC is now planning to rework the submission into a discussion paper with the view to seeking national consultation. It is wary of undertaking these next steps in the current climate.

"There is a general concern that now, with the talk of a treaty, the Stolen Generations will be forgotten," said Cornwall.

"What we do next is twofold," she said. "One, we need to keep the issue [of the Stolen Generations] in the public eye; and two, we need to consult with the people most directly affected."

"We are planning at least five workshops in different Aboriginal communities, possibly culminating in a national conference early next year," she said.

The consultation will involve looking at PIAC's entire reparations 'package', from whether the community thinks the tribunal is a good idea, through to the types of reparations they believe to be most appropriate.

"People should not forget that compensation would only be one component of making reparations," said Field,

and Cornwall agrees: "Many Aboriginals say that it is not about the money," she said. "Other appropriate reparations could include services to the community, such as health and counselling services, monuments recognising what has happened historically, and cultural museums in the local area."

But when it comes to monetary compensation, PIAC's proposal is that it be structured according to different types of harm. "In this way, it will be similar to the crimes compensation or veterans affairs models," said Cornwall.

The HREOC Report, *Bringing Them Home* was tabled in Parliament on May 26, 1997. One of the recommendations of the Report was that a national "Sorry Day" be held. A year later over half a million people responded, signing sorry books and taking part in ceremonies on Sorry Day. And this year - three years later - we all saw the dramatic response of the Australian public, with some estimates of numbers crossing the Sydney Harbour Bridge for Corroboree 2000 reaching a quarter of a million.

Another recommendation of the Report was "the establishment of an alternative dispute resolution tribunal to assist members of the stolen generations by resolving claims for compensation through consultation, conciliation and negotiation, rather than adversarial litigation."

It is on this recommendation that PIAC based its submission to the Senate Legal and Constitutional References Committee. "It builds on what HREOC recommended and adds a few practical details," said Cornwall.

But it is also on this particular recommendation that the response from the Government, and from the Australian public, remains to be seen.

PIAC's Submission to the Senate Inquiry into the Stolen Generation

The following text has been extracted and reproduced, with permission, from PIAC's submission.

BACKGROUND

The submission draws on PIAC's experience acting in Stolen Generations cases, our consultations with indigenous organisations since 1996 and on the findings and recommendations of BRINGING THEM HOME. The forms of reparations that could be ordered or recommended by the Tribunal should include monetary compensation, acknowledgment and apology, guarantees against repetition, measures of restitution and measures of rehabilitation, as recommended by BRINGING THEM HOME.

STRUCTURE AND PROCESSES

The Tribunal's procedures should reflect its purpose and the needs of claimants. The Tribunal should:

- adopt informal procedures;
- adopt relaxed rules of evidence;
- offer hearings or applications on the papers;
- provide legal representation and support (eg counsellors);
- refer appropriate criminal matters to the Department of Public Prosecutions;
- make provision for representative or group claims and remedies;
- be culturally appropriate (eg interpreters); and
- have a limited life span of ten years.

MAINTAINING COMMON LAW RIGHTS

PIAC supports the maintenance of common law rights to seek damages through the courts so that claimants may choose whether to pursue their claim in the Tribunal or a court. This is consistent with the Bringing Them Home recommendation that the proposed monetary compensation mechanism not displace claimants' common law rights. However, a claimant successful in one forum should not be entitled to proceed in another.