

21 August 2008

The Chairperson  
The Hon Ian West MLC  
Standing Committee on Social Issues  
Legislative Council  
Parliament House, Macquarie Street  
SYDNEY NSW 2000

Dear Mr West,

### **Supplementary Submission to the Inquiry into Overcoming Indigenous Disadvantage**

We refer to your letter dated 3 July 2008 acknowledging the Public Interest Advocacy Centre's (PIAC) initial submission to the Standing Committee on Social Issues Inquiry into Overcoming Indigenous Disadvantage ('the Inquiry'). We thank the Committee for this acknowledgment and the opportunity to further contribute to the Inquiry by way of a supplementary submission.

#### **Responses to the Inquiry's Terms of Reference**

The discriminatory policies and practices of past NSW Governments that were administered by the Aborigines Protection and Aborigines Welfare Boards continue to have an ongoing impact upon Indigenous families and communities throughout New South Wales; particularly the forcible removal of children and the withholding of the wages of people employed under the *Aborigines Protection Act 1901* (NSW). For Indigenous communities:

... the loss of the children to the community through their removal ... has, over the last 200 years, resulted in an inestimable loss to the communities of their most valuable resource in economic, as well as personal, cultural and social terms.<sup>1</sup>

The National Report of the Royal Commission into Aboriginal Deaths in Custody ('the Royal Commission') and the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families', *Bringing Them Home*, PIAC's own work and that of others demonstrates the significant and ongoing disadvantage caused by these policies and practices.

PIAC is concerned that the Terms of Reference of the present Inquiry do not make reference to the policies and practices of child removal and the withholding of wages, both of which are significant contributors to the disadvantage in Indigenous communities today.

These issues are considered below, PIAC also has some comments on the issues for further consideration set out in Chapter 10 of the Interim Report.

## **Measuring Outcomes**

Bullet Points 1 & 2 — The development of ‘meaningful measurable outcomes’ needs to be appropriately supported with effective training, development and resourcing of the Indigenous Community.

The same is true for ‘reporting and accountability processes for community organisations’.

Importantly, the Government’s approach needs to build on the benefits gained from the development of Aboriginal-specific community programs and solutions rather than seek to replicate non-Indigenous models.

Bullet Point 4 — PIAC fully endorses this approach and urges the Committee to support a co-ordinated National Indigenous Health Strategy as proposed in the ‘Closing the Gap’ campaign, which seeks to establish and achieve health equality for Indigenous Australians.

Bullet Points 5 & 6 — PIAC supports this view of the Committee. In 2006, the NSW Legal Assistance Forum provided summary comments on the Draft State Plan. A key concern raised in those comments was the absence of reference to the specific needs of Aboriginal people within the criminal justice system. The continuing absence in the State Plan remains a serious concern to PIAC.

It is vital that this gap be redressed and the relationship between the Aboriginal Justice Plan and the NSW State Plan be made explicit.

## **Co-ordinated service delivery**

Bullet Point 1 — PIAC urges the Committee to give a high priority to the issue of ‘effective provision of essential service including water, sewerage and waste collection’. Through its Indigenous Justice Program and Energy & Water Consumers’ Advocacy Program, PIAC has identified and worked on the issue of clean water supply in rural and remote Indigenous communities in NSW. The continuing failure of government to ensure Indigenous people in these communities have this basic human right fulfilled is a matter of both national concern and a serious indictment on all levels of government.

Bullet Point 9 — PIAC congratulates the Committee on identifying ‘the lack of support services for Aboriginal offenders’ as matter of concern. The absence of such program increases the risk of re-offending. PIAC urges the Committee to consider not only direct support services but also those that assist offenders and those at high risk of offending to develop life skills and improve their mental health and well-being and their capacity to deal with conflict and challenging circumstances without resorting to offending.

## **Specific strategies**

Bullet Points 8 & 9 — PIAC supports the Committee’s concern about the ‘accessibility of community based sentencing option’ and access to diversionary programs for young Aboriginal offenders. It is vital to breaking the cycle of recidivism and poverty in Aboriginal communities that diversionary and community-based sentencing options become a high priority for the NSW Government action.

Particular consideration needs to be given to ensuring appropriate and locally available community sentencing and diversionary options to ensure the greatest chance of successful engagement in such options within the offender’s supportive family and community environment.

Bullet Point 10 — PIAC’s work in the area of mental illness and prisons support this finding of the Committee. It is vital that urgent attention be given to greatly improving community-based mental health care—both crisis and maintenance—for Aboriginal people across NSW.

## Stolen generations

Broad and meaningful reparations are required for members of the stolen generations, their descendants and communities to redress the long-term and intergenerational impacts of child removal. PIAC acknowledges the apologies delivered by the NSW Government in March 2004, and the Commonwealth Government in February 2008. However, acknowledging past wrongs is just the first step in doing what is necessary to address this very important issue.

In 1997, the National Inquiry tabled its report, *Bringing them home*, in the Federal Parliament presenting hundreds of stories of Indigenous people who had given evidence to the Inquiry. Grief and loss are the predominant themes of the report. It emphasises that the 'past is very much with us today, in the continuing devastation of the lives of Indigenous Australians'.<sup>2</sup> It describes the effect of removal from family and culture and in some cases, physical, psychological and sexual abuse. In some cases sexual abuse was pervasive and punishments were severe, leading to deep physical, spiritual and psychological harm.

*Bringing them home* describes trauma, loneliness and dislocation experienced by those removed and by their families. In many instances the children were brought up in conditions of chronic neglect, with poor levels of education and where Aboriginal languages and cultures were actively suppressed.

*Bringing them home* identified the effects of the removals on the children of people who had been removed. The lack of experience of home life meant that many of those who had been removed lacked basic parenting skills. The children often grew up caring for traumatised parents with unresolved grief and depression. They had a high risk of suffering mental illness themselves.<sup>3</sup>

The families who were left behind often suffered devastating emotional trauma. They were left to carry responsibility for cultural practices and learning and have had to find ways to welcome those removed back into the community.<sup>4</sup>

In 2001, PIAC's conducted a involved national community consultation in a project called *Moving forward* that sought the views of Aboriginal and Torres Strait Islander people about PIAC's model for a reparations tribunal for the stolen generations. The report of the project, *Restoring Identity*, was submitted with PIAC's initial submission to the Inquiry.

The *Moving Forward* consultations highlighted a significant feature of reparations: that *effective* redress of historical injustice deals with not only the actual harm of past practices but also the contemporary effects of these past wrongs.

We draw the Committee's attention to the comprehensive model for reparations recommended in *Restoring Identity*. The principal feature of this model is a tribunal to make full and just reparations for forcible removal policies founded on the following principles:

- **acknowledgment and apology** by the Federal and all state parliaments, and by state and territory police forces and churches;
- **guarantees against repetition** through community education and legislation for national Indigenous Child Placement Principles, and incorporation of the UN *Genocide Convention* into Australian law;
- **measures of restitution** through language and culture centres, family tracing and reunion services and protection of records;
- **measures of rehabilitation** by way of counselling services and providing opportunities for Indigenous communities to assume responsibility for the welfare of their children;
- **monetary compensation** to people directly affected by forcible removals.

More recently, PIAC drafted a Stolen Generations Reparations Tribunal Bill to implement the recommendations of *Restoring Identity* and a copy of this Bill was included in PIAC's submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Stolen Generations Bill.

### **Recommendation**

*That in the absence of any Commonwealth action to implement reparations, the Committee recommend to the NSW Government that it enact legislation modelled on the Stolen Generations Reparations Tribunal Bill.*

### **Stolen wages**

The diversion and non-payment of wages and government entitlements and other monies held in 'trust' for Aboriginal persons by the Aborigines Protection and Aborigines Welfare Boards is another government practice that has affected the economic wellbeing of Indigenous families and their communities.

The Aboriginal Trust Fund Repayment Scheme ('the Repayment Scheme') seeks to repay stolen wages and other financial entitlements to those to whom monies are owed and their descendants. However, the fact that over 60% of claimants are considered ineligible due to lack of documentary evidence, which it was the state's duty to preserve, raises questions as to the effectiveness of the current Repayment Scheme.

PIAC has made a written submission to The Hon John Watkins MP, the Minister responsible for the Repayment Scheme, pursuant to a review of its operation after three years. PIAC's submission is based on the experiences of its clients and the experiences of the lawyers at PIAC, Allens Arthur Robinson, Clayton Utz, Ebsworth and Ebsworth, Freehills and Gilbert + Tobin. Entitled *Settling accounts: the Effectiveness of the Aboriginal Trust Fund Repayment Scheme in Addressing Stolen Wages in NSW*, the submission made twenty-eight recommendations that would, if implemented, improve the effectiveness of the Repayment Scheme in addressing stolen wages in NSW.

In the opinion of the Repayment Scheme, the review of the scheme was limited in scope and not public or consultative. The Scheme did provide some assistance to PIAC in relation to the timing of the submission. However, in the opinion of the Office of Premier and Cabinet, because the submission was provided to the Minister, it is the subject of cabinet privilege. We regret that, for this reason, we are unable to provide a copy this Inquiry.

### **Recommendation**

*That the twenty-eight recommendations contained in Settling accounts: the Effectiveness of the Aboriginal Trust Fund Repayment Scheme in Addressing Stolen Wages in NSW be implemented.*

### **Other matters**

**Term of Reference 1(f) – Inquire into and report on opportunities for strengthening cultural resilience within Aboriginal communities in New South Wales and a focus on language, cultural identity, economic development and self-determination**

An increase in the financial and staffing resources of the Family History Unit of the Department of Aboriginal Affairs (DAA) and Link Up (NSW) could further opportunities to strengthen cultural resilience amongst Indigenous families and communities.

The importance of accessing information about family histories for Indigenous people and their families was highlighted by the recommendations of the *Bringing Them Home* report.<sup>5</sup> The positive outcomes of access to historical records, particularly concerning family histories were clearly stated by then Royal Commissioner, Patrick Dodson:

Access to knowledge can assist: to reinstate pride in family experiences; enhance a stronger sense of identity; re-establish contacts with family members; reaffirm interaction within broad

family networks; revive and maintain Aboriginal traditions ...; understand the historical background of contemporary personal issues ...; re-claim ownership of material pertaining to family life; develop resources ... and enhance research skills.<sup>6</sup>

PIAC's extensive experience in representing members of the Stolen Generations, as well as claimants to the Repayment Scheme has involved accessing historical records held by the DAA. The frequent delay in accessing records is of concern given the advanced age and frailty of many of those who seek to access these records, for example as part of their claim to the Repayment Scheme. The limitation upon accessing records by persons other than an oldest living relative has posed difficulties for members of the Stolen Generation who do not know or are not able to contact their oldest living relative.

### **Recommendation**

*That the relevant recommendations of the Royal Commission and those contained in the Bringing Them Home report be implemented.*

### **Recommendation**

*That the Family History Unit of the DAA be expanded to improve the extent and efficiency of access to historical records for Indigenous people.*

### **Partnership in Service Delivery**

The development of a model for a Stolen Generations Reparations Tribunal through the *Moving Forward* project involved an extensive national consultation with Indigenous communities and is a strong example of the development of possible solutions by and for Indigenous communities. The *Moving forward* project is discussed at page iv of *Restoring Identity*. An extract about the project below highlights the involvement of the Indigenous community, and a wide range of organisations:

[t]he *Moving forward* project was carried out with the advice of a reference group with representatives of the Aboriginal and Torres Strait Islander Commission (ATSIC), the National Sorry Day Committee, the Human Rights and Equal Opportunity Commission (HREOC) and Stolen Generations groups in the Northern Territory...

The project held group and individual interviews with over 150 people at 10 focus group meetings across the country between February and May 2001. It also held meetings with over 20 Indigenous organisations, including Stolen Generations groups, Indigenous health services and legal services. Submissions were received from over 30 people and organizations during the project.

It is this community consultation, as well as the involvement of the Indigenous community in the planning and implementation of relevant programs that are more likely to ensure meaningful, appropriate and successful strategies aimed reducing Indigenous disadvantage.

The necessity of Indigenous community involvement in service design and delivery has been highlighted by previous similar inquiries. These have included, for example, the Royal Commission Into Aboriginal Deaths in Custody ('RCIADIC') in the context of addressing the over-representation of Indigenous young people in the criminal justice system.

Recommendation 62 states

That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.

Recommendation 43 of the National Inquiry into The Separation of Aboriginal and Torres Strait Islander Children from Their Families referred to this involvement and negotiation as self-determination to ensure the wellbeing of Indigenous children and young people.

The frameworks envisaged by these inquiries, and demonstrated by the *Moving forward* project offer an important and successful framework for the Government and its agencies in working together with Indigenous communities to achieve more successful outcomes for those communities.

### **Recommendation**

*That the Government work in genuine partnership with Indigenous people, families and communities to identify, develop, implement and evaluate policies and programs aimed at addressing indigenous disadvantage.*

Thank you again for the opportunity to contribute to the Inquiry. PIAC looks forward to reading the Committee's final report.

Yours sincerely

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- <sup>1</sup> Royal Commission into Aboriginal Deaths in Custody, *National Report – Volume Two*, AGPS, 1991, Para 11.7.8, citing Christine Choo, author of a joint study on Aboriginal Child Poverty for the SNAICC and the Brotherhood of St Laurence.
  - <sup>2</sup> Human Rights and Equal Opportunity Commission, *Bringing them home* (1997) 3.
  - <sup>3</sup> Ibid 222-232.
  - <sup>4</sup> Ibid 212-221; *Healing: a legacy of generations*, 83-91; discussed at the PIAC *Moving forward* meetings and meetings of the *Moving forward* project manager with ATSIC officials in Hobart, Melbourne and Sydney.
  - <sup>5</sup> For example, Recommendation 53 of the Royal Commission and Recommendations 11, 12, 24, 25, 27, 28, 29, 30 in *Bringing Them Home*.
  - <sup>6</sup> Quoted in Royal Commission into Aboriginal Deaths in Custody, *National Report – Volume Two*, AGPS, 1991, Para 11.7.19.