

MONETARY COMPENSATION AND THE STOLEN GENERATIONS: A CRITIQUE OF THE FEDERAL LABOR GOVERNMENT'S POSITION

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I Introduction

More than two years on from the Federal Labor Government's parliamentary motion of apology to the Stolen Generations¹ – the Aboriginal and Torres Strait Islander people wrongfully separated by government action from their families as children throughout the 20th century – questions continue to be asked and evaluations made of the Government's performance in Indigenous affairs. Has the apology's noble sentiment, undoubtedly one of the high-water marks of reconciliation in Australia, been matched with meaningful progress and action? Much focus has been on the Government's commitment, made most prominently in Kevin Rudd's apology speech, to 'closing the gap' between Indigenous and non-Indigenous people in the areas of health, education and employment. In fact, this focus has been invited by the Federal Government itself: in February 2010, timed to commemorate the apology's two-year anniversary, the Government delivered its second annual progress report on the advances made towards 'closing the gap'. In light of the ongoing and dire problems of Indigenous disadvantage, such attention is certainly warranted. The focus of this paper, however, is different and much narrower: the Federal Government's action, or more precisely, inaction, in relation to the provision of compensation to the Stolen Generations. In the wake of the apology, some positive federal initiatives specifically for the Stolen Generations have either been implemented or continued, including: the establishment of a working group of Stolen Generations members to assist in the development of healing services;² the ongoing funding of the Bringing Them Home counselling program, Link-Up services and other programs; and, significantly, the establishment of a national Stolen Generations healing foundation.³ Yet the Government has ruled out the establishment of a national

compensation scheme for the Stolen Generations and their families.

I begin this paper by placing the Federal Labor Government's denial of compensation in its historical, social, ideological and policy contexts. I then proceed to an analysis of the main arguments advanced by the Government in rejecting compensation for the Stolen Generations. These have been put forward on a number of occasions by former Prime Minister Kevin Rudd and the Minister for Indigenous Affairs, Jenny Macklin. There is no indication from Prime Minister Gillard that the Labor Government under her leadership will take a different view. First, I offer a critique of the Government's 'closing the gap' policy as a response to the Stolen Generations issue. This is followed by a consideration of the Government's insistence that compensation can be sought through the courts. Analysed next is the argument that money can never sufficiently compensate the Stolen Generations for the harms they have endured. Lastly, I consider the possibility that negative and unintended social consequences may flow from the sudden influx of money into Indigenous communities resulting from the payment of compensation. None of these arguments put forward by the Federal Government, I suggest, offers a compelling case for refusing to compensate the Stolen Generations.

II The Denial of Compensation in Context

Over a decade ago, the widely publicised National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families ('*Bringing Them Home* Inquiry') handed down its *Bringing Them Home* Report, which made 54 recommendations, a number of which were directed at the provision of monetary compensation. The Inquiry found that, in light of the gross violations of human rights visited

upon the Stolen Generations, at the core of which was the systematic racial discrimination underlying the removal policies and practices,⁴ international law mandated a response of reparations within which monetary compensation was a key component. This was in accordance with the 'van Boven principles'.⁵ Accordingly, the Inquiry recommended the establishment of a National Compensation Fund.⁶

At the time, the Federal Labor Opposition was broadly supportive of the call for compensation.⁷ By contrast, and as is well known, the Howard Government's response to the *Bringing Them Home* Report, while containing some welcome funding and programs,⁸ was overly negative and antagonistic. Framed within the wider context of 'practical reconciliation', the Howard Government's position on compensation was one of outright rejection. There were numerous reasons proffered by the Government: financial cost; a belief that the finding that gross human rights violations occurred was inaccurate; the circumvention of judicial process for the assessment of legal liability would be 'inappropriate and improper'; the responsibility for child removals was primarily that of the States; and the provision of services to the Stolen Generations is the 'appropriate and compassionate' response.⁹ As will be seen, there are strong echoes of some, though not all, of the Howard Government's rhetoric in the Rudd Government's rejection of compensation.

Ideological undercurrents also need to be considered in relation to both the current Labor and former Coalition governments' refusals to compensate the Stolen Generations. These refusals have come amidst – and in relation to the Howard Government were often complicit in – intellectual and ideological battles over the historical narratives about Australia's past – commonly known as the 'history wars'.¹⁰ In light of pronouncements by a number of Coalition politicians and conservative commentators in the wake of the national apology to the Stolen Generations,¹¹ it is evident that the less triumphalist vision of history officially sanctioned by the apology¹² remains contested. Beyond their intersections with the history wars, government refusals to compensate have come at a time when neoliberal antipathy to the welfare state remains influential in Western liberal democracies such as Australia.¹³ Specifically in the area of Indigenous affairs, there have emerged in recent years prominent critiques of Aboriginal welfare, most notably those advanced by Noel Pearson, which have, not without reason, been hostile to what Pearson has referred to as

'passive welfare'.¹⁴ The reach of these critiques has extended not only into public debate and government policy on unemployment benefits for Aboriginal people but also into other areas of Indigenous affairs,¹⁵ including the provision of compensation to the Stolen Generations.¹⁶ While the Labor Government has not explicitly appealed to the discourses surrounding 'passive welfare' and 'mutual responsibility' in rejecting compensation for the Stolen Generations, it is clear from current government initiatives that reinforce hostility towards the unconditional provision of money to Aboriginal people (such as Government involvement in the Cape York welfare reform trial¹⁷ and the continuation of income management in the Northern Territory Emergency Response¹⁸) that such discourses form part of the Federal Government's calculus in Indigenous policy-making.

Crucially, the refusal to compensate must be seen in the context of the motion of apology passed by the Federal Parliament in 2008. As Melissa Nobles observes about official apologies generally, 'an apology says, now that you've apologized, what are you going to do next to rectify the matter?'¹⁹ Apologies are forward-looking,²⁰ if largely symbolic, measures that 'can play a distinct role in advancing political claims';²¹ they 'not only publicly ratify certain reinterpretations of history, but they also morally judge [and] assign responsibility'.²² An assignment – and acceptance – of responsibility was undeniably a key feature of the national apology, being necessarily implied by the act of repentance itself, but also expressly articulated in the apology's wording. In his speech, then Prime Minister Rudd explicitly acknowledged that 'the laws that our parliaments enacted made the stolen generations possible. We, the parliaments of the nation, are ultimately responsible'.²³

Though it is generally accepted that the apology does not make the Federal Government legally liable to compensate,²⁴ it has been pointed out by people from both sides of politics (with varying agendas) that the acceptance of responsibility signalled by the apology logically raises a *moral* imperative to back up the words with compensation. As Noel Pearson has stated: '[w]hich is more sincere: to say "we will not apologise to the Stolen Generations and we won't pay compensation", or "we will apologise but we won't pay compensation"?'²⁵ Richard Bilder observes that 'apology alone is rarely enough. ... [W]hile apology may often comprise a component of settlement, the eventual resolution of the matter will typically require more concrete forms of reparation'.²⁶ This is not to devalue in any way the hugely

important act of apologising; but it is to recognise that apology and monetary compensation are complementary elements of reparation. So much is made clear in international law under the van Boven principles, upon which the *Bringing Them Home* Report relied.²⁷ Consequently, there remains a fundamental asymmetry in the Rudd Government's position on the Stolen Generations.

Finally, in the absence of a national scheme to compensate the Stolen Generations, a number of developments have occurred at the state government level and in the courts as alternatives to concerted national action. The courts were the first avenue to be explored, and recent reports suggest that the litigation path continues to be travelled.²⁸ However, though litigation has played an important role in keeping the issue of compensation in the public spotlight, it has been a largely unsuccessful strategy, with only one decision, the South Australian case concerning the late Bruce Trevorrow,²⁹ finding in a claimant's favour.³⁰

In addition to legal action taken by individuals, State governments have implemented a number of initiatives through which compensation has been made available to Stolen Generations members. The most significant of these is the \$5 million Tasmanian legislative scheme (established in 2006 and concluded in 2008) aimed specifically at compensating members of the Stolen Generations through the provision of *ex gratia* payments.³¹ In 2003, Tasmania also established an *ex gratia* redress scheme, still in operation now, for people who were abused as children while in State care, including Stolen Generations members.³² Similar schemes have been introduced in Queensland³³ and Western Australia³⁴ (both of which have had very high numbers of Indigenous applicants),³⁵ and now in South Australia,³⁶ with the possibility of a scheme being introduced at the federal level.³⁷ There have also been New South Wales and Queensland schemes directed at redressing the issue of Indigenous 'stolen wages' in those States, which is related to, though discrete from, the Stolen Generations issue.³⁸ Lastly, there have recently been efforts by the minor parties at the federal level – so far unsuccessful – at establishing national compensation schemes.³⁹ Thus, the Federal Government's refusal to compensate the Stolen Generations needs to be considered against an ongoing procession of civil claims and what seems to be an increasing recognition by Australian governments that harms committed by their predecessors, particularly those committed against children, many of whom were Indigenous, are deserving of redress.

III Analysis of the Government's Position

A Reconciliation, Practically?: The Commitment to 'Closing the Gap'

In rejecting the possibility of a national compensation scheme for the Stolen Generations, the Federal Labor Government has advanced as one of the main reasons its efforts to make 'restitution' through its 'very strong focus on closing the 17 year gap in life expectancy between Indigenous and non-Indigenous Australians within a generation.'⁴⁰ This commitment, notably enunciated by Kevin Rudd in his apology speech and reiterated since, includes halving within a decade the gaps in the Indigenous infant mortality rate, Indigenous employment outcomes, and Indigenous children's literacy, numeracy and reading achievements.⁴¹ The Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, has stated that the 'closing the gap' initiative is the Government's priority in Indigenous affairs:

We have to decide where we will put the necessary Federal Government money and we think the place has to be in addressing the terrible levels of disadvantage in housing, in health, in education, in making sure that people are participating in the economy.⁴²

To consider first the 'closing the gap' policy itself, we might say that it is more an exercise in rhetoric than a substantive change in policy or funding commitments.⁴³ As was noted in the Australian Parliamentary Library's Budget Papers 2008–09, notwithstanding some ideological differences between the current Labor and former Coalition governments, most notably in relation to the apology, 'the programs and level of funding supported in the recent [2008–09] budget are not very different from those of the previous government.'⁴⁴ While subsequent developments, such as the National Partnership Agreement on Remote Indigenous Housing, have involved substantial additional investment in social and welfare initiatives, the commitment to 'closing the gap' can nevertheless be seen as a broad continuation of the Howard Government's 'practical reconciliation' agenda. The latter, while committed to essentially the same target of overcoming Indigenous disadvantage, had become stigmatised for what it had *not* committed to: an admittedly symbolic, though undeniably meaningful and important, act of apology to the Stolen Generations. Thus, the terminological shift was, in a post-apology world, a politically necessary measure that was aimed at distancing the Labor Government from

its predecessor while still continuing many of the same projects and following a similar agenda. Kevin Rudd alluded to as much in his apology speech when he appealed to the need for 'practical' measures and for 'the great symbolism of reconciliation [to be] accompanied by an even greater substance'.⁴⁵ Overcoming Indigenous disadvantage was in fact not only pursued by the Howard Government but has 'been central to Indigenous policy in all governments since the 1970s'.⁴⁶

Though it is worth noting that the general failure of Australian governments to significantly curb Indigenous disadvantage in recent decades has never been unsuccessful for want of rhetoric, it is not the purpose of this paper to debate the prospects of success for, or the arguably worthy goal of, the Rudd Government's 'closing the gap' commitment. What is necessary, in this context, is to consider the appropriateness of that commitment as a response to the Stolen Generations issue. According to Alexander Segovia, there is a tendency internationally for governments responding to gross violations of human rights to privilege social programs, such as those that are part of the 'closing the gap' initiative, over reparations.⁴⁷ This, says Segovia, is based on political considerations – particularly the greater electoral appeal of social programs – but also on a misunderstanding of the nature of reparations programs, the objectives of which are wrongly conflated with those of policies aimed at overcoming disadvantage.⁴⁸ On this issue Pablo de Greiff, who expresses scepticism about 'the effort to turn a program of reparations into the means of solving structural problems of poverty and inequality',⁴⁹ is particularly incisive. He states:

[social programs] do not target victims specifically, and what they normally try to achieve is to satisfy basic and urgent needs, which makes their beneficiaries perceive such programs, correctly, as ones that distribute goods to which they have rights as citizens, and not necessarily as victims.⁵⁰

It is evident that the 'closing the gap' policy, however laudable, cannot be seen as an adequate response to the demands of justice and reconciliation the Stolen Generations issue requires.

The substitution of a reparations approach – which is aimed at addressing the specific and unique harms suffered by those Aboriginal and Torres Strait Islander people wrongfully separated from their families as children – with a general policy aimed at overcoming disadvantage for all Indigenous

Australians is premised on a fundamental confusion about what justice requires in the circumstances. This much has been acknowledged by Mick Dodson in relation to reconciliation generally and Lowitja O'Donoghue in respect of the Stolen Generations specifically. As Antonio Buti has observed, in the context of the Stolen Generations, a commitment to overcoming disadvantage erroneously privileges distributive justice at the expense of specific reparative measures grounded in a restorative justice model.⁵¹ While there is clearly an urgent need to address Indigenous poverty and structural inequality simply in recognition and fulfilment of Aboriginal peoples' citizenship rights, there is an equally urgent and *separate* need to compensate, as a matter of restorative justice, the distinct harm suffered by the Stolen Generations and their families. These facts are recognised by the *Bringing Them Home* Report and by international law.⁵²

Of course, the 'closing the gap' commitment must also be considered against the Government's mandate, asserted above by Jenny Macklin, to prioritise where funding goes.⁵³ De Greiff notes that 'questions about what can and cannot be afforded at public expense are always questions about priorities. ... The question is about what is deemed urgent, and this is always a matter of politics.'⁵⁴ Despite the significant amount of goodwill shown towards Aboriginal people by the Labor Government's apology, clearly there are political considerations that, in the Government's mind, militate against the provision of compensation. Working against compensating the Stolen Generations are some hard economic realities: not only those inherent in the formidable challenge of combating deep and structural Indigenous disadvantage, but also the broader context of a government working to stave off recession. In addition, and as has been noted earlier, there are still a considerable number of people (with predominantly conservative political affiliations, but probably also within the general populace) who are uncomfortable with many of the narratives surrounding the Stolen Generations (particularly regarding the wrongful nature of the removals) that have emerged since *Bringing Them Home* and become more dominant since the apology. There is also the taint of a 'handout' that virtually any form of compensation to Aboriginal people erroneously attracts.⁵⁵ Segovia observes that, 'when ... a balance of political forces favorable to reparations ... does not exist, governments will wield technical and economic arguments as an excuse to obstruct the provision of resources for reparations.'⁵⁶ In order to overcome these political encumbrances to the provision of compensation to the Stolen Generations, it may

be necessary for further awareness-raising and truth-telling strategies, such as a truth and reconciliation commission, to be implemented,⁵⁷ though the apparent post-apology reversion to 'practical' measures of reconciliation makes this an unlikely possibility.

At the same time, the urgency of the need to compensate the Stolen Generations should not be allowed to be obscured by *realpolitik* but should, rather, form a central part of the political equation for a government who says it is committed to reconciliation. If, despite its to-date clear rejection of Stolen Generations compensation, the Labor Government has in fact left some room to reverse its position – and Jenny Macklin's positioning of 'closing the gap' as simply a higher priority than compensation, combined with several other factors,⁵⁸ indicates that this may be the case – the Government should reconsider its priorities. As the 2008 Senate Inquiry into then Senator Andrew Bartlett's Stolen Generation Compensation Bill 2008 (Cth) ('2008 Senate Inquiry') concluded:

the issue of reparations for the stolen generation needs to be addressed as a matter of urgency. ... [M]any members of the stolen generation are now elderly – to put it bluntly, time is running out to recompense them. The committee considers that governments are under an obligation to resolve this issue as a priority.⁵⁹

These facts were brought into sharp relief with the untimely death of Stolen Generations member Bruce Trevorrow only months after his success in the Supreme Court of South Australia.⁶⁰ The need to compensate the Stolen Generations is made more acute by the tragic health conditions, succinctly captured in woefully low life expectancy rates, which are a statistical reality for Indigenous Australians⁶¹ – conditions that, ironically, the Federal Labor Government is trying to improve.

The truth is that 'closing the gap' is a long-term project, a fact acknowledged by the intergenerational nature of the Government's commitments. (Indeed, recent research suggests that the Government may have underestimated just *how* long-term the 'closing the gap' project is.)⁶² Implicit in the Government's commitments, many of which are targeted at Indigenous children, is the hard fact that significant improvements are unlikely to be made in the lives of the current generation of Aboriginal and Torres Strait Islander people. Thus, those Stolen Generations members still alive today will essentially see little of the benefit from the 'closing

the gap' campaign. Clearly, this even further undermines the adequacy of 'closing the gap' as a response to the Stolen Generations issue. But it also means that the Government cannot afford to wait until the 'gaps are closed' before turning to what may be a lower-prioritised (if unannounced) intention to eventually compensate the Stolen Generations. If the Government waits too long, the option of rectifying the injustices inflicted upon the Stolen Generations will be closed forever.

B The Litigation Path

A fortnight after the apology, Kevin Rudd made it clear that, if members of the Stolen Generations wanted compensation for the harms visited upon them by governments, they would have to seek it through litigation. He stated: 'since the [*Bringing Them Home*] report came out years and years ago, it has been open for any individual, Aboriginal person affected by that to engage their own legal actions through the courts'.⁶³ In its submission to the 2008 Senate Inquiry, the Department of Families, Housing, Community Services and Indigenous Affairs ('FaHCSIA') quoted that statement as an accurate reflection of the Government's position.⁶⁴

In insisting that the court system is a sufficient option for Stolen Generations members seeking compensation, the Federal Government has aligned itself with the position of the former Howard Government, which, as noted above, considered it 'inappropriate and improper' for legal liability to be assessed outside the courts.⁶⁵ This kind of logic represents a reversion to a decidedly minimalist conception of the role of the state, which guarantees the protection of rights through a supposedly fair and impartial legal system. In a modern liberal democracy such as Australia, however, the invocation of this minimalist logic is ad hoc, and often seems to emerge as a fallback position when it is politically convenient to do so.⁶⁶ In the context of compensation for the Stolen Generations, the sole reliance on the courts by the Federal Labor Government displays a lack of sensitivity that is incongruent with the sincerity and compassion shown to the Stolen Generations in the apology. It should be noted here, before moving into a substantive critique of this position, that compensation and redress schemes throughout Australia have often been implemented with a view to obviating the difficulties of litigation.⁶⁷

There are a number of negative symbolic implications that follow from the Government's insistence on resolving issues

of compensation in the courts. The first is touched upon by the language of Kevin Rudd in his assertion that any *individual* may pursue claims through the legal system. As de Greiff notes, the disaggregation of victims that results from 'leaving it to the courts' can have effects that run counter to the objectives of healing. One element of this disaggregation is the necessary privileging of the claims of those victims fortunate enough to have access to the court system⁶⁸ (though, in light of the general economic, health and educational position of Aboriginal people, the number may not necessarily be great). Another facet to the legal system's individualisation of victims is its necessary reliance on case-by-case analyses and consequent production of different outcomes and awards (if any). These factors undermine 'an important egalitarian concern' in the context of gross human rights violations and result in a 'hierarchy of victims'.⁶⁹ Furthermore, the emphasis on the individual relates back to a fundamental assumption of legal systems themselves: 'that norm-breaking behavior is more or less exceptional'.⁷⁰ Yet such an assumption does not hold in situations such as that of the Stolen Generations where gross violations of human rights have occurred.

Conceptually, there is another reason that the courts are an unsuitable avenue for the resolution of Stolen Generations claims, particularly for a Government that has apologised for the removal practices and ostensibly remains committed to reconciliation. That reason is the adversarial nature of the Australian judicial process. In failing to provide a non-combative alternative through which the Stolen Generations can seek compensation, the Federal Government is implicitly pitting the Australian state against Stolen Generations members – a move that is diametrically at odds with the spirit and practice of reconciliation that the Government flagged its commitment to in the apology. Indeed, it may be argued that the Government's insistence on litigation as the only means of resolving Stolen Generations claims results in a re-enactment of the dynamics inherent in the original practices of separation: the might of the state versus vulnerable individuals and their families. Moving from the theoretical to the concrete, government tactics in the *Cubillo and Gunner* case,⁷¹ which it has been suggested ran counter to the principle of the Federal Government as a 'model litigant',⁷² demonstrate just how combative and brutal Stolen Generations litigation can be for claimants.⁷³ Not only are claimants required to relive the trauma of separation and often also of abuse; they may be subject to 'humiliating and harrowing'⁷⁴ processes of cross-examination, which are aimed at discrediting witness testimony and character and

which can actively work to re-traumatise already vulnerable claimants.⁷⁵

Leading on from this are some of the substantial practical difficulties experienced by claimants charged with proving in court that their removal and/or treatment in state care was unlawful. As mentioned earlier, there are perennial issues of cost, which are especially relevant in light of the layers of disadvantage generally experienced by Aboriginal people. Additionally, given the generally long periods of time between when a person was removed and when they institute legal proceedings, statutes of limitations work against Stolen Generations claimants. This is despite the fact that the commencement of legal proceedings at any earlier stage may not have been feasible – as Chris Cunneen and Julia Grix note, '[h]istorically, [Aboriginal people] have not been in a position to enforce their legal rights'.⁷⁶ Even where the special circumstances of a case warrant a court exercising its discretion to extend the limitation period, the court may nevertheless refuse to do so (as was the case in the *Cubillo and Gunner* and *Williams*⁷⁷ cases) on the basis that 'overwhelming prejudice' to the defendant would result from such an extension.⁷⁸

The typical elapse of time since the impugned events in Stolen Generations cases also poses immense evidentiary obstacles for claimants. Witnesses may be dead, difficult to locate or perceived by the court as fallible; claimants' own evidence may be viewed as unreliable due to the temporally distant nature of the events in question; and records of the events will have often been lost or destroyed.⁷⁹ The latter becomes especially problematic in light of the courts' privileging of documentary evidence, which is alien to the oral tradition in Indigenous cultures.⁸⁰ It has been noted that Bruce Trevorrow's success in South Australia can largely be attributed to the (unusually) intact archive of legal and policy documents pertaining to Trevorrow's removal.⁸¹ Yet as Ann Curthoys, Ann Genovese and Alexander Reilly point out, 'Australian legal history, as far as cases involving Indigenous parties are concerned, is about absence, about what is *not* available.'⁸² It is not just that documentary evidence in relation to specific removals of Indigenous children has vanished with the effluxion of time; often the evidence simply never existed in the first place. Moreover, where evidence does exist, its content may not accurately reflect the realities and power relations surrounding acts of Indigenous child removal. Cunneen and Grix rightly note that 'record keeping is integral to the project of colonisation: it is the tool

for describing, itemising and controlling the colonised.⁸³ Claimants are therefore put 'in a position whereby they must counteract the official version of history.'⁸⁴ The consequence of this is that the weight of evidence is generally stacked heavily against claimants, and the balance of probabilities does not often tip in their favour.

Lastly, there is the judicial insistence on judging removal laws, policies and practices by the 'standards of the time'.⁸⁵ This approach was articulated by the High Court in *Kruger*,⁸⁶ and followed in *Cubillo and Gunner*,⁸⁷ *Williams*⁸⁸ and *Trevorrow*.⁸⁹ The logic underpinning such an approach is that it would be unfair to assess the actions of people and governments in the past against different contemporary standards, no matter how reprehensible those past practices appear today. Claimants are therefore charged with what may be an impossible task: proving that the clearly discriminatory removal policies and practices were unlawful, despite the ostensible 'beneficial' intent of the applicable protection laws.⁹⁰ While the courts' approach is arguably defensible in a narrow legal sense, it throws into sharp relief the inability of the legal system to adequately deal with the issues at hand. As Cunneen and Grix correctly observe, '[t]he reality of entrenched racial discrimination which these [protection] laws embodied has been obscured. Legal responsibilities and obligations are narrowly defined and do not coincide with broader questions of responsibility for historical injustices.'⁹¹

It is a conception of responsibility in this broader sense which led to and underpinned the Federal Government's apology. Inconsistently, however, this wider notion of responsibility remains absent from the Government's position on compensation, in which it has reverted to strict legal definitions of liability. Yet the imperative to offer reparative compensation to the Stolen Generations need not be based on evidence that the removals were unlawful; compensation ought to emerge from the recognition that the removal policies and practices, even those authorised by law, were systematically discriminatory and enormously detrimental to the individuals and families concerned, to Aboriginal society generally, and to the social fabric of the nation as a whole.⁹²

One final note: these criticisms of the court process are not aimed at undermining the right of Stolen Generations members to engage in their own legal actions, or at discounting a claimant's decision to pursue litigation. Rather, the intention is to show that the Federal Government's failure

to avail the Stolen Generations of other compensation options is wholly inappropriate and contrary to reconciliation.

C Money Can Never Compensate

It has been a feature of the Federal Labor Government's rejection of establishing a compensation scheme for the Stolen Generations to proclaim that money can never compensate for the trauma, grief and loss sustained by the individuals and families subject to the removal policies. On the day the apology was made, and in justifying the Government's position on compensation, Jenny Macklin stated that many Stolen Generations members 'say no amount of money will bring back my mother, that what they want to do is make sure that the next generation, the children being born today, have the chances that they didn't have.'⁹³ In the FaHCSIA submission to the 2008 Senate Inquiry, the Government reiterated its position: 'monetary compensation [can] never make up for the loss, grief and trauma experienced by Aboriginal people as a result of past removal policies, laws and practices.'⁹⁴

That harms such as those sustained by the Stolen Generations can never be undone or fully redressed by any form of action is a correct, though ultimately commonplace, assertion. Crucially, it is an assertion that is regularly made by governments when they are *taking* (as opposed to *refusing* to take) some form of action to redress the harms in question. Indeed, Kevin Rudd's apology carried the following caveat:

I know that, in offering this apology on behalf of the government and the parliament, there is nothing I can say today that can take away the pain you have suffered personally. Whatever words I speak today, I cannot undo that.⁹⁵

That same essential fact – the impossibility of ever making up for certain kinds of loss and suffering – has been almost universally acknowledged by Australian governments when introducing schemes aimed at compensating victims. Government statements to that effect were made in relation to the Tasmanian Stolen Generations scheme,⁹⁶ the Queensland⁹⁷ and Western Australian⁹⁸ redress schemes; the Queensland 'stolen wages' scheme,⁹⁹ and the 2001 Commonwealth prisoner-of-war scheme.¹⁰⁰

In light of the reparative actions taken by state governments and the Federal Labor Government itself in relation to, inter

alia, the Stolen Generations issue, what then to make of the Government's refusal to compensate the Stolen Generations, partly on the basis of money's inadequacy to redress the harm? Fundamentally, the Government's approach to compensating the Stolen Generations misconceives of the purpose of compensation in the circumstances. Unlike in situations that involve losses of a purely financial character, in instances where the harms and losses are emotional, psychological, cultural and physical, restitution is not possible by any means – victims cannot be restored to the *status quo ante*.¹⁰¹ However, an acknowledgment of this fact does not justify an abandonment of compensation, for compensation has other important objectives and functions.

Perhaps most powerfully, monetary compensation – in particular, that given in the spirit of reconciliation, as opposed to in compliance with coercive judicial decree – provides victims with a concrete form of recognition of their suffering. Governments implementing compensation schemes frequently identify recognition of suffering as a rationale for the provision of such compensation.¹⁰² In apologising to the Stolen Generations, Kevin Rudd demonstrated an awareness of the importance that recognition can have, when he made clear that the apology was intended to 'recognise the injustices of the past'.¹⁰³ Yet the Government's recognition remains incomplete: the symbolic act of recognition that was the apology has not been complemented by the provision of tangible recognition in the form of compensation. As noted earlier, the absence of tangible forms of recognition may work to diminish and cast doubt upon the sincerity of symbolic acts of recognition, which may come to be viewed as 'cheap talk' requiring the Government to sacrifice nothing.¹⁰⁴

A second important function of compensation is its capacity to, in some small way, improve the lives of survivors. Again, existing Australian compensation schemes, including those that have benefited the Stolen Generations, have acknowledged this fact.¹⁰⁵ It is not about putting 'a price on the life of victims or on the experiences of horror' but rather about 'making a contribution to the quality of life of survivors'.¹⁰⁶ Of course, the Federal Government has committed to several measures which may also be viewed as improving Stolen Generations members' lives, including continued funding for Link-Up and counselling services,¹⁰⁷ and the 'closing the gap' initiative (but see the discussion in Part II(A) above). The benefit of monetary compensation, however, is that it allows recipients control over the specific

nature of improvements to their quality of life.¹⁰⁸ This is particularly significant and meaningful in light of the coercive nature of the separation of the Stolen Generations from their families, which visited profound disempowerment and lack of control upon the individuals and families concerned. Consequently, the value of the freedom that compensation would afford to Stolen Generations members in improving their own lives should not be underestimated.

It is therefore clear that, in mobilising an argument about the inadequacy of money to redress the harms suffered by the Stolen Generations, the Federal Government has failed to truly appreciate the proper aims of compensation. Money can never undo the deep and abiding hurt and loss experienced by a person wrongfully removed from their family; nor can it attempt to approximate – even imperfectly – that hurt and loss. What compensation can do, however, is to accomplish two very worthy tasks: the provision of an important and tangible form of governmental recognition to victims; and the improvement of the lives of Stolen Generations members. Both of these tasks are conducive to, and prerequisites for, healing and reconciliation.

D More Harm Than Good: The Negative Social Effects of Compensation

What if, contrary to what was argued above, compensation payments to the Stolen Generations would lead not to improvements in recipients' quality of life but to the infliction of additional social harms? This was a concern raised by the Rudd Government, based on the experiences of compensation in Canada following the 2006 Indian Residential Schools Settlement, which is in the process of delivering compensation payments to survivors of the Canadian Indian residential schools system.¹⁰⁹ While the Government acknowledged that the Canadian payments have positively impacted on many recipients and their families, it also referred to negative consequences: 'increases in drug and alcohol abuse, pressure from family for money and encroachment by financial predators'.¹¹⁰ The Government emphasised that compensation in the Canadian context was at best a mixed blessing whose beneficial impacts were limited, and that such facts 'may inform consideration about compensation in Australia'.¹¹¹ It should be noted here that this argument does nothing to impeach the inherent value compensation retains in relation to recognising the suffering of victims and advancing the cause of reconciliation.

At the crux of the concern about the possible collateral harm that may flow from the payment of compensation to the Stolen Generations are particular notions about Indigenous people and their ability to manage money. These ideas have deep – and deeply paternalistic – roots, linked as they are with the ‘protection’ discourses and policies that emerged in the 19th century. Ideas about the inability of Indigenous people to manage their finances resulted in the ‘stolen wages’ policies that saw the wages, savings and welfare entitlements of Indigenous people held in trust funds throughout much of the 20th century.¹¹² Such ideas are not so distant from, and in fact form part of the policy matrix surrounding, the removal practices and policies, which were grounded in discriminatory beliefs about the capacity of Indigenous people to look after their children. Indeed, many workers whose wages were withheld faced the ‘double injustice’ of also being members of the Stolen Generations.¹¹³

Tragically, and ironically, these protection policies – which so heavily regulated the lives of Aboriginal people and on which Aboriginal people had in many ways become dependent – in some respects became self-fulfilling prophecies. As Peter Sutton observes, the demise of the protection regimes around the 1970s left a vacuum of social control, which was prematurely and inauspiciously filled with a formal government policy of self-determination that provided little in the way of resources and assistance for Indigenous people to become more self-reliant and overcome dependency on government.¹¹⁴ This, combined with a multitude of other factors, including the ongoing effects of dispossession and chronic underspending and government disengagement in Indigenous affairs,¹¹⁵ has seen the entrenchment of parlous levels of disadvantage in Aboriginal communities.

Included in the grim statistics on Indigenous disadvantage are high rates of drug and alcohol abuse, low levels of literacy, numeracy and education,¹¹⁶ and low levels of financial literacy.¹¹⁷ Recent research suggests that, by virtue of the removal policies, the Stolen Generations are even more marginalised than other Indigenous people, experiencing lower rates of economic wellbeing, poorer health, and higher incidences of alcohol abuse.¹¹⁸ Considering these statistics (particularly those related to financial literacy and drug and alcohol abuse), and notwithstanding the guaranteed benefits compensation would have in terms of recognition and reconciliation, there is clearly a need to take seriously the risk that compensating the Stolen Generations may have adverse social effects. The failure to do so, as Sutton

has noted, in relation to the introduction of the ‘self-determination’ policy is testament to the need to consider potential deleterious consequences flowing from otherwise admirable policies. Indeed, we might even draw an analogy with the child removal policies and practices themselves. In removing Indigenous children from their families, Australian governments, it might be conceded, more or less believed that what they were doing was in the best interests of the children concerned. Yet we know now that such a belief was discriminatory and profoundly misguided, to say the least. Turning to the issue of compensation for the Stolen Generations, there is a real risk that some recipients of compensation would spend their payment in harmful, or at least non-beneficial, ways. At the same time, it would represent a perverse turn of logic if the Stolen Generations were denied compensation on the basis that they had been rendered *too* disadvantaged by the very government policies in respect of which compensation is sought.

Critically, an appreciation of the possible negative ramifications of compensating the Stolen Generations does not mean that compensation should be refused; it simply means that there is a greater chance that the detrimental effects can be taken account of and avoided as far as possible.¹¹⁹ This was something that emerged in the Canadian context from the very research relied on by the Government. Conducted by the Aboriginal Healing Foundation, the research, titled *The Circle Rechecks Itself*,¹²⁰ found that the negative social outcomes that sometimes resulted from the payment of compensation did not stem from problems inherent in the provision of compensation itself, but from the way the compensation scheme was implemented. A number of recommendations were made so that future compensation payments to residential school survivors would not encounter the same problems. They included, inter alia: the launch of media campaigns aimed at promoting positive ways of spending payments; the provision of financial workshops, financial counselling and training services to support recipients to get the most out of their payments; and the laying out of banking and purchasing options for groups (such as elders and the infirm) vulnerable to scams.¹²¹

If, as the Government postulates, ‘the Canadian experience may inform consideration about compensation in Australia’, the lesson to be learned is that recipients of compensation payments require support so that they can maximise the benefits and minimise the harms associated with the payment of compensation. The Canadian research observes:

[a]s Aboriginal communities face an unprecedented influx of cash, having the necessary supports in place could prove to be the critical difference between constructive and destructive LSP [lump sum payment] outcomes.¹²²

supports are put in place, compensation can also improve the lives of Stolen Generations members – a moral imperative in light of the indelible legacies of the removal policies.

This much is recognised by Indigenous people themselves, many of whom with financial literacy issues identify their own need for better education.¹²³ It is also something that has been recognised by Australian governments. The Redress WA scheme, for example, offers financial counselling to recipients of payments under the scheme.¹²⁴ More generally, the Federal Government has committed, as part of its 'closing the gap' policy, to improve financial literacy and money management skills amongst Indigenous communities via a range of initiatives.¹²⁵ These and other Federal Government initiatives, including those aimed at curbing drug and alcohol abuse, are arguably one way that the 'closing the gap' policy, in concert with monetary compensation, could make a real and positive difference to the Stolen Generations.

IV Conclusion

Compensation for the Stolen Generations is not a dead issue, despite the Federal Government ruling it out as an option thus far. In the wake of the *Trevorrow* decision, and the recent unsuccessful appeal in that case by the South Australian Government,¹²⁶ there are strong indications that Stolen Generations members will continue to pursue compensation in the courts, suggesting that compensation is what many people need to move forward.¹²⁷ Furthermore, the Greens have tabled a revised version of Senator Bartlett's Stolen Generation Compensation Bill in the Senate, which should be debated in the near future.¹²⁸ If the Government is to persist in its opposition to establishing a compensation scheme for the Stolen Generations, the project of reconciliation, which had been revitalised by the Government's apology, will continue to be undermined. 'Closing the gap', though an admirable undertaking, does not relieve the Government of its responsibility to provide reparations to the Stolen Generations, nor does the availability of litigation circumvent the need for a more appropriate and expeditious avenue through which compensation might be sought. Moreover, while it is true that money can never restore Stolen Generations members to their former position or reverse the harm they have suffered, it *can* consolidate the progress made with the apology by offering a tangible form of recognition of their suffering. This is vital for the process of healing and conducive to the task of reconciliation. Provided that adequate safeguards and

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- * BA LLB (Hons) (UNSW). I gratefully acknowledge comments from Sean Brennan, Megan Davis, the AILR's editors, and the two anonymous referees on earlier versions of this paper. Any remaining errors are my own.
 - 1 While I acknowledge the contested nature of the term 'Stolen Generations', and accept that it belies the complexity and diversity of the removals, I think its use is justified for the reasons enunciated in Chris Cunneen and Julia Grix, 'The Limitations of Litigation in Stolen Generations Cases' (Research Discussion Paper No 15, AIATSIS 2004) 49 (note 2) <<http://www.aiatsis.gov.au/research/docs/dp/DP15.pdf>> at 5 July 2010. See also Robert Manne, 'In Denial: The Stolen Generations and the Right' (2001) 1 *Quarterly Essay*, 82–3.
 - 2 Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs ('FaHCSIA'), *Submission to the Inquiry into the Stolen Generation Compensation Bill 2008*, 2008, 2 <http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compensation/submissions/sub83.pdf> at 15 February 2009 ('*Submission*').
 - 3 Commonwealth Department of Health and Ageing, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Stolen Generation Compensation Bill 2008*, 2008. <http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compensation/submissions/sub84.pdf> at 15 February 2009; Australian Labor Party, 'Healing Foundation for Stolen Generations' (Press Release, 13 February 2009) <<http://www.alp.org.au/media/0209/msheagiapm130.php>> at 15 February 2009.
 - 4 Human Rights and Equal Opportunity Commission, *Bringing Them Home Inquiry, Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) <http://www.humanrights.gov.au/Social_Justice/bth_report/report/ch13_part4.html> at 15 February 2009.
 - 5 Following the van Boven principles, the recommendation that reparation be provided to the Stolen Generations contained five elements: acknowledgment and apology; guarantees against repetition; measures of restitution; measures of rehabilitation; and monetary compensation. See *ibid* (recommendation 3) <http://www.humanrights.gov.au/Social_Justice/bth_report/report/ch14.html> at 15 February 2009. I note here the

appropriateness of framing compensation within this more holistic call for reparation. For the sake of clarity, however, I use the term 'compensation' rather than 'reparations' so as to distinguish monetary compensation from the other forms of reparation.

- 6 See *ibid* (recommendations 14–20).
- 7 This is perhaps best evidenced in the recommendations and conclusions of the majority report of the 2000 Senate Inquiry into the Stolen Generations, the membership of which was dominated by Labor Senators. See Senate Legal and Constitutional References Committee, Parliament of Australia, *Healing: A Legacy of Generations* (2000) <http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/1999-02/stolen/report/contents.htm> at 15 February 2009.
- 8 The Government provided \$63m, which was aimed at funding, inter alia: additional counselling services, a national network of Link-Ups, and the preservation of records. See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 1998*, HREOC (1999) 56–7 <http://www.hreoc.gov.au/pdf/social_justice/sjreport_1998.pdf> at 15 February 2009.
- 9 Commonwealth Government, *Submission to the Senate Legal and Constitutional References Committee Inquiry into the Stolen Generation: Executive Summary* (2000) <<http://www.australianpolitics.com/issues/aborigines/>> at 15 February 2009; Commonwealth Government, *Submission to the Senate Legal and Constitutional References Committee Inquiry into the Stolen Generation* (2000) <<http://www.australianpolitics.com/issues/aborigines/>> at 15 February 2009; Senate Legal and Constitutional References Committee, *Healing: A Legacy of Generations*, above n 7, 227.
- 10 See Manne, 'In Denial', above n 1; Inga Clendinnen, 'The History Question: Who Owns the Past?' (2006) 23 *Quarterly Essay*; Keith Windschuttle, *The Fabrication of Aboriginal History: Vol 1, Van Diemen's Land 1803–1847* (Macleay Press, 2002); Robert Manne (ed), *Whitewash: On Keith Windschuttle's Fabrication of Aboriginal History* (Black Inc, 2003); Stuart Macintyre and Anna Clark, *The History Wars* (Melbourne University Press, 2003).
- 11 For example, see the 'Additional Comments by the Liberal Senators' that form part of the report of the Senate Inquiry into the Stolen Generations Compensation Bill 2008, which take issue with the term 'stolen generation' because of the various circumstances of removal of Aboriginal children: Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generation Compensation Bill 2008* (2008) 51. See also debate in both the House of Representatives and the Senate on 13–14 February 2008 following the parliamentary motion of apology, in which a number of Coalition parliamentarians advance similar arguments. As for commentary,

- see, eg, Keith Windschuttle, 'Don't Let Facts Spoil the Day', *The Australian* (online), 9 February 2008 <<http://www.theaustralian.news.com.au/story/0,25197,23182149-28737,00.html>> at 15 February 2009; Editorial, 'Making Good on the Past to Build Future', *The Australian* (Sydney), 13 February 2008, 15; Andrew Bolt, 'Skewed Truth Books Our Place Among the Killers', *The Herald-Sun* (Melbourne), 26 March 2008, 20; Michael Bennett, 'Open Letter Rejects Indigenous Apology', *The West Australian* (Perth), 29 February 2008, 18. See also Keith Windschuttle, *The Fabrication of Aboriginal History: Volume Three: The Stolen Generations 1881–2008* (Macleay Press, 2009).
- 12 Derisively called the 'black armband version of history'.
- 13 On the ascendancy of neoliberalism, see, eg, Mark Western et al, 'Neoliberalism, Inequality and Politics: The Changing Face of Australia' (2007) 42(3) *Australian Journal of Social Sciences*, 401. On the waning fortunes of the welfare state in Australia, see, eg, Greg Marston and Rob Watts, 'The Problem with Neo-Conservative Social Policy: Rethinking the Ethics of Citizenship and the Welfare State' (2004) 33 *Just Policy* 34.
- 14 See, eg, Noel Pearson, *Our Right to Take Responsibility* (Noel Pearson and Associates, 2000); Noel Pearson, 'Address to Treasury: Passive Welfare and Service Delivery' (Speech delivered to the Commonwealth Department of Secretary, Canberra, 25 September 2006) <<http://www.cyi.org.au/speeches.aspx>> at 15 February 2009; Cape York Institute for Policy and Leadership, *From Hand Out to Hand Up: Cape York Welfare Reform Project* (2007) <<http://www.cyi.org.au>> at 15 February 2009. See also Bettina Cass, 'Contested Debates About Citizenship Rights to Welfare: Indigenous People and Welfare in Australia' in Diane Austin-Broos and Gaynor MacDonald (eds), *Culture, Economy and Governance in Aboriginal Australia* (Sydney University Press, 2005).
- 15 A central feature has been the governmental emphasis placed on 'mutual responsibility' between Aboriginal people and government, which was a concept at the heart of the 'new arrangements' in Indigenous affairs introduced by the Howard Government in 2005. See Australian Government, *New Arrangements in Indigenous Affairs* <<http://www.indigenous.gov.au/NewArrangementsBrochure.pdf>> at 15 February 2009. For an excellent discussion of the influence of the discourse of passive welfare on native title negotiations, see Sarah Burnside, 'We're From the Mining Industry and We're Here to Help: The Impact of the Rhetoric of Crisis on Future Act Negotiations' (2008) 12(2) *Australian Indigenous Law Review* 54.
- 16 As the then Aboriginal and Torres Strait Islander Social Justice Commissioner Dr Bill Jonas stated in his 1998 *Social Justice Report*, '[m]yths about government handouts and "special treatment" for Aboriginal people have fed into the argument that

- compensation to the stolen generations would be “divisive”:
Aboriginal and Torres Strait Islander Social Justice Commissioner,
above n 8, 40. Importantly, it should be acknowledged that
even Pearson, and others such as Marcia Langton who have
been unsympathetic in recent times to the ‘rights agenda’, have
supported the payment of compensation. See Noel Pearson,
‘When Words Aren’t Enough’, *The Australian* (Sydney), 12
February 2008, 11; ABC Television, ‘Aboriginal Leaders Reflect
on Historic Apology’, *The 7:30 Report*, 12 February 2008 <[http://
www.abc.net.au/7.30/content/2007/s2160984.htm](http://www.abc.net.au/7.30/content/2007/s2160984.htm)> at 15 February
2009.
- 17 For details of the trial, see Cape York Institute for Policy
and Leadership, *Welfare Reform* <[http://www.cyi.org.au/
welfarereform.aspx](http://www.cyi.org.au/welfarereform.aspx)> at 15 February 2009; Department of
Families, Housing, Community Services and Indigenous Affairs,
Cape York Welfare Reform <[http://www.facsia.gov.au/internet/
facsinternet.nsf/family/wpr_cape_york_wf.htm](http://www.facsia.gov.au/internet/facsinternet.nsf/family/wpr_cape_york_wf.htm)> at 15 February
2009.
- 18 Jenny Macklin, ‘Compulsory Income Management to Continue
as Key NTER Measure’ (Press Release, 23 October 2008) <[http://
www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/
content/nter_measure_23oct08.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/nter_measure_23oct08.htm)> at 15 February 2009;
Australian Government and Northern Territory Government,
Response to the Report of the NTER Review Board (2009) 3
<[http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/
response_to_reportNTER/Documents/Aust_response_1882953_1.
pdf](http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/response_to_reportNTER/Documents/Aust_response_1882953_1.pdf)> at 25 March 2010; Australian Government, *Policy
Statement: Landmark Reform to the Welfare System,
Reinstatement of the Racial Discrimination Act and Strengthening
of the Northern Territory Emergency Response* (2009) 1 <[http://
www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/policy_
statement_nter/Documents/landmark_reform_welfare_system.
pdf](http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/policy_statement_nter/Documents/landmark_reform_welfare_system.pdf)> at 25 March 2010.
- 19 Melissa Nobles, *The Politics of Official Apologies* (Cambridge
University Press, 2008) 141.
- 20 Ibid 141–2; Janna Thompson, ‘Apology, Justice, and Respect:
A Critical Defense of Political Apology’ in Mark Gibney et al
(eds), *The Age of Apology: Facing Up to the Past* (University of
Pennsylvania Press, 2008) 31, 43.
- 21 Nobles, above n 19, 143.
- 22 Ibid 2.
- 23 Commonwealth, *Parliamentary Debates*, House of
Representatives, 13 February 2008, 170 (Kevin Rudd, Prime
Minister).
- 24 See Senate Standing Committee on Legal and Constitutional
Affairs, Parliament of Australia, *Stolen Generation Compensation
Bill 2008*, above n 11, 20. But see Peter Faris, ‘Now Say and Pay’,
The Herald-Sun (online), 28 February 2008 <[http://www.news.
com.au/heraldsun/story/0,,23286891-5000117,00.html](http://www.news.com.au/heraldsun/story/0,,23286891-5000117,00.html)> at 15
February 2009.
- 25 Pearson, ‘When Words Aren’t Enough’, above n 16. See also
Marcia Langton and Jackie Huggins, quoted in ABC Television,
‘Aboriginal Leaders Reflect on Historic Apology’, above n 16;
Kerry O’Brien, quoted in ABC Television, ‘Govt Announces New
Era for Indigenous Policy’, *The 7:30 Report*, 13 February 2008
<<http://www.abc.net.au/7.30/content/2007/s2162067.htm>> at 15
February 2009; Faris, above n 24; David Hollinsworth, ‘More Than
Words Needed to Make Apology Count’, *The Sydney Morning
Herald* (Sydney), 14 February 2008, 17; ‘Mansell Talks Up Hope of
Compensation’, *The Hobart Mercury* (Hobart), 13 February 2008,
1. Against this trend, Mick Dodson argued that an apology and
reparations should be considered as two separate issues: see
Mick Dodson, quoted in Sarah Maddison, *Black Politics: Inside
the Complexity of Aboriginal Political Culture* (Allen & Unwin,
2009) 226.
- 26 Richard B Bilder, ‘The Role of Apology in International Law’ in
Mark Gibney et al (eds), *The Age of Apology: Facing Up to the
Past* (University of Pennsylvania Press, 2008) 13, 28.
- 27 See above n 5.
- 28 See, eg, AAP, ‘WA Faces Stolen Generation Legal Action’, *The
Sydney Morning Herald* (online), 26 May 2010 <[http://news.smh.
com.au/breaking-news-national/wa-faces-stolen-generation-legal-
action-20100526-wdsr.html](http://news.smh.com.au/breaking-news-national/wa-faces-stolen-generation-legal-action-20100526-wdsr.html)> at 4 July 2010.
- 29 *Trevorrow v South Australia (No 5)* (2007) 98 SASR 136; *South
Australia v Lampard-Trevorrow* [2010] SASC 56 (Full Court).
- 30 There was also an award of a victims’ compensation payment
(\$35 000) to Stolen Generations member Valerie Linow for abuse
while in New South Wales State care. For further discussion of the
cases, see Antonio Buti, ‘The Stolen Generations and Litigation
Revisited’ (2008) 13(2) *Melbourne University Law Review* 382;
Chris Cunneen and Julia Grix, ‘The Stolen Generations and
Individual Criminal Victimisation: Valerie Linow and the New
South Wales Victims Compensation Tribunal’ (2003) 14 *Current
Issues in Criminal Justice* 306; Andrea Durbach, ‘“The Cost of a
Wounded Society”: Reparations and the Illusion of Reconciliation’
(2008) 12(1) *Australian Indigenous Law Review* 22; Cunneen and
Grix, *The Limitations of Litigation in Stolen Generations Cases*,
above n 1.
- 31 The scheme was established in 2006 under the *Stolen
Generations of Tasmania Act 2006* (Tas). See also Stolen
Generations Assessor, *Report of the Stolen Generations
Assessor*, Tasmanian Department of Premier and Cabinet (2008).
- 32 See Lin Thorp, ‘Memorial to the “Forgotten Australians”’ (Press
Release, 26 November 2008) <[http://www.media.tas.gov.au/print.
php?id=25387](http://www.media.tas.gov.au/print.php?id=25387)> at 15 February 2009; Ombudsman Tasmania,
‘Listen to the Children’: Review of Claims of Abuse from Adults in

- State Care as Children* (2004) <<http://www.ombudsman.tas.gov.au/publications>> at 15 February 2009.
- 33 See Queensland Department of Communities, *About the Redress Scheme* <<http://www.communities.qld.gov.au/community/redress-scheme/about-scheme.html>> at 15 February 2009.
- 34 See WA Department of Communities, *Redress WA* <<http://www.redress.wa.gov.au/index.asp>> at 15 February 2009.
- 35 As of June 2008, 53 per cent of the 6655 applicants to the Queensland scheme identified as Indigenous. At 11 November 2008, 40 per cent of the applicants to the WA scheme were Indigenous. See Queensland, *Parliamentary Debates*, Legislative Assembly, 18 July 2008, 59 (Lindsay Nelson-Carr); Western Australian Department of Communities, *Submission to the Senate Community Affairs Committee Inquiry into the Progress Made with the Implementation of the Recommendations Into: The Child Migrant Inquiry Report, Lost Innocents: Righting the Record; The 2004 Report, Forgotten Australians: A Report on Australians Who Experienced Institutional or Out-of-Home Care as Children; The 2005 Protecting Vulnerable Children: A National Challenge Report* (2008) 7 <http://www.aph.gov.au/senate/Committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/submissions/sub12.pdf> at 15 February 2009.
- 36 In accordance with a recommendation from the 2008 South Australian 'Mullighan Inquiry' into child abuse in state care, the South Australian Government established a taskforce to 'closely examine redress schemes for victims of child sexual abuse and to investigate the possibilities of a national approach to the provision of services.' South Australian Government, *Implementation Statement by the Minister for Families and Communities to the Children in State Care Commission of Inquiry Report* (2008) 55. Following this, the South Australian Government established an *ex gratia* compensation scheme for former residents in state care who suffered sexual abuse: see South Australian Government, *Application Guidelines for Ex Gratia Payments for Former Residents in State Care Who Experienced Sexual Abuse as Children* (2010) <<http://www.agd.sa.gov.au/pdfs/CISC%20-%20Application%20Guidelines%20%2829-1-10%29.pdf>> at 4 July 2010.
- 37 Senator Chris Evans advised on 16 June 2008 that, in relation to the Government's response to the 2004 Senate report *Forgotten Australians*, which had recommended a national compensation scheme be established for people abused while in government care, 'no decision has yet been made ... but we are ... talking through what an appropriate response would be.' Commonwealth, *Parliamentary Debates*, Senate, 16 June 2008, 2150 (Chris Evans).
- 38 For more information on the NSW Aboriginal Trust Fund Repayment Scheme, see NSW Department of Premier and Cabinet, *Aboriginal Trust Fund Repayment Scheme* <<http://www.atfrs.nsw.gov.au/>> at 15 February 2009. For more information on the Queensland Indigenous Wages and Savings Reparations, see Aboriginal and Torres Strait Islander Partnerships (Queensland), *Indigenous Wages and Savings Reparations Scheme* <<http://www.atsip.qld.gov.au/programs/iwsrs/>> at 15 February 2009. For discussion of Indigenous 'stolen wages', see, eg, Sean Brennan and Zoe Craven, *Eventually They Get It All...': Government Management of Aboriginal Trust Money in New South Wales* (Research Report, Indigenous Law Centre, 2006); Rosalind Kidd, *Trustees on Trial: Recovering the Stolen Wages* (2006); Rosalind Kidd, *Hard Labour, Stolen Wages: National Report on Stolen Wages*, ANTaR (2007) <<http://www.antar.org.au/sites/default/files/stolenwages.pdf>> at 15 February 2009; Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Unfinished Business: Indigenous Stolen Wages* (2006) <http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2004-07/stolen_wages/report/report.pdf> at 15 February 2009. On the link between the Stolen Generations and stolen wages, see Rosalind Kidd, *Hard Labour, Stolen Wages: National Report on Stolen Wages*, ANTaR (2007) 9 <<http://www.antar.org.au/sites/default/files/stolenwages.pdf>> at 15 February 2009.
- 39 Former Senator Andrew Bartlett introduced in 2008 the Stolen Generation Compensation Bill 2008 (Cth), which was rejected in June 2008 by the Senate Standing Committee on Legal and Constitutional Affairs: see Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generation Compensation Bill 2008*, above n 11. The Greens' Stolen Generations Reparations Bill 2010 (Cth), developed by the Public Interest Advocacy Centre ('PIAC') and the Australian Human Rights Centre, was introduced into the Senate on 24 September 2008 but is yet to be debated. See PIAC, 'Reparations Tribunal Crucial to Stolen Generations Reparation Bill' (Press Release, 24 September 2008) <http://www.piac.asn.au/news/media/20080924_rtctsgsb.html> at 15 February 2009.
- 40 FaHCSIA, *Submission*, above n 2, 2.
- 41 *Ibid.* The 'closing the gap' policy was first flagged in a COAG communiqué on 20 December 2007: COAG, *COAG Meeting: 20 December 2007* <http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm#indigenous> at 15 February 2009. See also Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, 171 (Kevin Rudd, Prime Minister); Aboriginal and Torres Strait Islander Social Justice Commissioner and Steering Committee for Indigenous Health Equality, *Close the Gap: National Indigenous Health Equality Targets* (2008) <http://www.humanrights.gov.au/social_justice/health/targets/health_targets.pdf> at 15 February 2009; Jenny

- Macklin, quoted in ABC Television, 'Govt Announces New Era for Indigenous Policy', above n 25; Jenny Macklin, quoted in ABC Television, 'Macklin Rules Out Compensation for Stolen Generation', *Lateline*, 13 February 2008.
- 42 Jenny Macklin, quoted in ABC Television, 'Govt Announces New Era for Indigenous Policy', above n 25.
- 43 John Gardiner-Garden, 'Indigenous Affairs', *Budget Review 2008-09*, (Research Paper No 31, Parliamentary Library, 2008) 108 <<http://www.aph.gov.au/library/pubs/rp/2007-08/08rp31.pdf>> at 15 February 2009.
- 44 Ibid.
- 45 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, 171 (Kevin Rudd, Prime Minister).
- 46 Maddison, above n 25, 11.
- 47 Alexander Segovia, 'Financing Reparations Programs: Reflections from International Experience', in Pablo de Greiff (ed), *The Handbook of Reparations* (Oxford University Press, 2006) 650, 654.
- 48 Ibid 654 (note 13).
- 49 Pablo de Greiff, 'Justice and Reparations', in Pablo de Greiff (ed), *The Handbook of Reparations* (Oxford University Press, 2006) 451, 470.
- 50 Ibid.
- 51 For quotes from Mick Dodson and Lowtija O'Donoghue see Durbach, above n 30, 30-1. See Antonio Buti, 'Reparations, Justice Theories and Stolen Generations' (2008) 34(1) *University of Western Australia Law Review* 168, 187.
- 52 See above n 5.
- 53 See above n 42.
- 54 De Greiff, above n 49, 466.
- 55 I say that compensation is 'erroneously' perceived as a handout because to conceive of compensation for harms suffered by Aboriginal people removed from their families as handouts is to entirely misconstrue the issue, which, as Dr Bill Jonas has acknowledged, should rightly be conceived of as 'a plain matter of justice'. Aboriginal and Torres Strait Islander Social Justice Commissioner, above n 8, 26.
- 56 Segovia, above n 47, 670.
- 57 Ibid 670-1. On the need for a more open and inclusive, and less selective, form of national reconciliation, see Paul Muldoon, 'Reconciliation and Political Legitimacy: The Old Australia and the New South Africa' (2003) 49(2) *Australian Journal of Politics and History* 182; Paul Muldoon, 'Thinking Responsibility Differently: Reconciliation and the Tragedy of Colonisation' (2005) 26(3) *Journal of Intercultural Studies* 237.
- 58 Compensation was not entirely ruled out by the recent Senate Inquiry into the Stolen Generation Compensation Bill 2008 (Cth), and the inquiry also recommended the establishment of a working group to monitor the implementation of the *Bringing Them Home* recommendations (which included compensation to the Stolen Generations): see Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generation Compensation Bill 2008*, above n 11, 121-2. The membership of that committee was dominated by Labor Senators (five out of 10, with three Liberal Senators, one Democrat and two Greens). The Federal Labor Government had in fact prior to the Senate inquiry established a Stolen Generations working group, though whether it will monitor the implementation of *Bringing Them Home* recommendations remains to be seen. See FaHCSIA, *Submission*, above n 2, 2.
- 59 Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Generation Compensation Bill 2008*, above n 11, 48.
- 60 *Trevorrow v South Australia (No 5)* (2007) 98 SASR 136.
- 61 Brian Pink and Penny Allbon, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Australian Bureau of Statistics and Australian Institute of Health and Welfare (2008); Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission (2007); Australian Institute of Health and Welfare, *Australia's Health 2008* (2008) 68-9; Standing Committee on Aboriginal and Torres Strait Islander Health and Statistical Information Management Committee, *National Summary of the 2003 and 2004 Jurisdictional Reports Against the Aboriginal and Torres Strait Islander Health Performance Indicators*, Australian Institute of Health and Welfare (2006) 48 <<http://www.aihw.gov.au/publications/ihw/ns03-04jratsihpi/ns03-04jratsihpi.pdf>> at 15 February 2009. But see Brian Pink, *Discussion Paper: Assessment of Methods for Developing Life Tables for Aboriginal and Torres Strait Islander Australians*, Australian Bureau of Statistics (2008). Recent research suggests that Stolen Generations are actually worse off than other Indigenous people in terms of health and economic wellbeing, amongst other things: see Joel Gibson, 'Policy of Integration Left Aborigines Isolated', *The Sydney Morning Herald* (online), 13 February 2009 <<http://www.smh.com.au/national/policy-of-integration-left-aborigines-isolated-20090212-85zb.html?page=-1>> at 15 February 2009.
- 62 See Jon Altman, Nicholas Biddle and Boyd Hunter, 'The Challenge of "Closing the Gaps" in Indigenous Socioeconomic Outcomes' (Topical Issue Paper No 8, CAEPR, 2008) <<http://www.anu.edu.au/caepr/ClosingTheGaps.pdf>> at 15 February 2009.
- 63 Kevin Rudd, speaking on Channel 7's *Sunrise* on 29 February 2008, quoted in FaHCSIA, *Submission*, above n 2, 1.
- 64 Ibid.

- 65 Commonwealth Government, *Submission to the Senate Legal and Constitutional References Committee Inquiry into the Stolen Generation: Executive Summary* (2000) <<http://www.australianpolitics.com/issues/aborigines/>> at 15 February 2009; Commonwealth Government, *Submission to the Senate Legal and Constitutional References Committee Inquiry into the Stolen Generation* (2000) <<http://www.australianpolitics.com/issues/aborigines/>> at 15 February 2009; Senate Legal and Constitutional References Committee, *Healing: A Legacy of Generations*, above n 7, 227.
- 66 In the context of the former Howard Government, a number of commentators have pointed to the hypocrisy in that Government's refusal to extra-judicially compensate the Stolen Generations while at roughly the same time providing *ex gratia* compensation payments to former Australian prisoners of war. See, eg, Megan Davis, 'Indigenous Rights and the Constitution: Making the Case for Constitutional Reform' (2008) 7(6) *Indigenous Law Bulletin* 6, 6; Durbach, above n 20, 38 (note 145).
- 67 See, eg, Peter Beattie, 'State Govt Offers Reparations to About 16 400 Indigenous QLDERS' (Press Release, 16 May 2002) <<http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=13686>>; Alan Carpenter, *Submission to the Inquiry into the Stolen Generation Compensation Bill 2008* (2008) 2 <http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compenation/submissions/sub81.pdf>.
- 68 De Greiff, above n 49, 458.
- 69 Ibid. An interesting inversion of this individualisation of Stolen Generations members is evident in the Howard Government's response to the *Cubillo and Gunner* case, the failure of which was used by the Howard Government as a basis for extrapolating a finding that there was no 'sweeping general policy of removal and detention'. See Mark Metherell and Debra Jopson, 'What Stolen Generation?: Howard Seizes on Ruling' in Justin Healey, *Towards Reconciliation*, Issues in Society Volume 140 (2001) 35.
- 70 De Greiff, above n 49, 454.
- 71 *Cubillo v Commonwealth (No 2)* (2000) 103 FCR 1; aff'd (2001) 112 FCR 455.
- 72 Judith Bessant, 'Procedural Justice, Conflict of Interest and the Stolen Generations' Case' (2004) 63(1) *Australian Journal of Public Administration* 74.
- 73 Ibid. The Government's position on resolving Stolen Generations legal claims is that it would 'endeavour to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution; and seek to settle monetary claims in accordance with legal principle and practice.' FaHCSIA, *Submission*, above n 2, 3.
- 74 Kim Beazley, quoted in Bessant, above n 72, 78.
- 75 Cunneen and Grix, *The Limitations of Litigation in Stolen Generations Cases*, above n 1, 28ff.
- 76 Ibid 35.
- 77 *Williams v Minister, Aboriginal Land Rights Act 1983* (Unreported, Supreme Court of New South Wales, Bruce J, 23 July 1997); *Williams v Minister, Aboriginal Land Rights Act 1983* (1999) 25 Fam LR 86; *Williams v Minister, Aboriginal Land Rights Act 1983* [2000] Aust Torts Reports 81–578.
- 78 Amanda Cornwall, quoted in Cunneen and Grix, *The Limitations of Litigation in Stolen Generations Cases*, above n 1, 32. For an instance of where the courts did extend the limitation period, see *Trevorrow v South Australia (No 5)* (2007) 98 SASR 136; *South Australia v Lampard-Trevorrow* [2010] SASC 56 (Full Court).
- 79 Cunneen and Grix, *The Limitations of Litigation in Stolen Generations Cases*, above n 1, 27.
- 80 Ibid 23.
- 81 Ann Curthoys, Ann Genovese and Alexander Reilly, *Rights and Redemption: History, Law and Indigenous People* (UNSW Press, 2008) 162. That being said, there was still a considerable amount of evidence that was missing or unavailable: *South Australia v Lampard-Trevorrow* [2010] SASC 56 (Full Court), [12] (per curiam).
- 82 Ibid 141.
- 83 Cunneen and Grix, *The Limitations of Litigation in Stolen Generations Cases*, above n 1, 23.
- 84 Ibid 27.
- 85 Curthoys, Genovese and Reilly, above n 81, 143ff; Cunneen and Grix, *The Limitations of Litigation in Stolen Generations Cases*, above n 1, 24ff.
- 86 *Kruger v Commonwealth* (1997) 190 CLR 1, 36–7, 53–4.
- 87 *Cubillo v Commonwealth (No 2)* (2000) 103 FCR 1, [162], [1146].
- 88 *Williams v Minister, Aboriginal Land Rights Act 1983* (1999) 25 Fam LR 86, [88], [647].
- 89 *Trevorrow v South Australia (No 5)* (2007) 98 SASR 136, 153–4. But see the discussion of the case in Curthoys, Genovese and Reilly, above n 81, 163.
- 90 Cunneen and Grix, *The Limitations of Litigation in Stolen Generations Cases*, above n 1, 24.
- 91 Ibid 41.
- 92 Ibid 39.
- 93 Jenny Macklin, quoted in ABC Television, 'Govt Announces New Era for Indigenous Policy', above n 25.
- 94 FaHCSIA, *Submission*, above n 2, 1.
- 95 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, 170 (Kevin Rudd, Prime Minister).
- 96 Tasmania, *Parliamentary Debates*, House of Assembly, 21 November 2006, 33 (Paul Lennon, Premier).
- 97 Anna Bligh and Warren Pitt, '\$100 Million Redress Scheme for Children Abused in Queensland Institutions' (Press Release,

- 31 May 2007) <<http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=52151>> at 15 February 2009.
- 98 Robyn McSweeney, 'Redress WA Reaches Half-Way Mark' (Press Release, 8 November 2008) <<http://www.redress.wa.gov.au/docs/redresswamcs.pdf>> at 15 February 2009; Robyn McSweeney, 'Stolen Generations Who Suffered in Care Urged to Seek Redress Option' (Press Release, 12 December 2008) <<http://www.redress.wa.gov.au/docs/redresswamcs1.pdf>> at 15 February 2009.
- 99 John Mickel, 'Stolen Wages Fund Draws to a Close' (Press Release, 24 January 2006) <<http://statements.cabinet.qld.gov.au/MMS/StatementDisplaySingle.aspx?id=44304>> at 15 February 2009.
- 100 Commonwealth, *Parliamentary Debates*, House of Representatives, 23 May 2001, 26 859 (Julie Bishop)
- 101 See generally de Greiff, above n 49.
- 102 See, eg, Tasmania, *Parliamentary Debates*, House of Assembly, 18 October 2006, 47 (Paul Lennon, Premier) (Tasmanian Stolen Generations scheme); Commonwealth, *Parliamentary Debates*, House of Representatives, 22 May 2001, 26 720 (Bruce Scott, Minister for Veterans Affairs) (Commonwealth prisoner-of-war scheme); Queensland Department of Communities, *Redress Scheme* <<http://www.communities.qld.gov.au/community/redress-scheme/>> at 15 February 2009. See also de Greiff, above n 49, 460–1.
- 103 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, 170 (Kevin Rudd, Prime Minister).
- 104 See above n 25. See also de Greiff, above n 49, 461.
- 105 See, eg, Bligh and Pitt, above n 97; Tasmania, *Parliamentary Debates*, House of Assembly, 4 March 2008, 18, 'Premier's Address' (Paul Lennon, Premier).
- 106 De Greiff, above n 49, 466.
- 107 FaHCSIA, *Submission*, above n 2.
- 108 This needs to be considered against the possibility that the monetary compensation received is *not* used by recipients to improve their lives. I consider this issue in the next section.
- 109 For an excellent summary of the Indian residential schools system (which is in many ways analogous to the removal laws, policies and practices characterising the Stolen Generations) see Bradford W Morse, 'Government Responses to the Indian Residential Schools Settlement in Canada: Implications for Australia' (2008) 12(1) *Australian Indigenous Law Review* 41.
- 110 FaHCSIA, *Submission*, above n 2, 3.
- 111 Ibid.
- 112 See above n 38.
- 113 Kidd, *Hard Labour, Stolen Wages*, above n 38, 9.
- 114 Peter Sutton, 'The Politics of Suffering: Indigenous Policy in Australia Since the 1970s' (2001) 11(2) *Anthropological Forum* 125, 128–9. See also Michael C Dillon and Neil D Westbury, *Beyond Humbug: Transforming Government Engagement with Indigenous Australia* (2007) 10; Janet Hunt, 'Between a Rock and a Hard Place: Self-Determination, Mainstreaming and Indigenous Community Governance' in Janet Hunt et al (eds), *Contested Governance: Culture, Power and Institutions in Indigenous Australia* (2008) 27, 27, 37.
- 115 See generally Dillon and Westbury, above n 114, ch 1.
- 116 See above n 61.
- 117 See National Indigenous Money Management Agenda, *Banking for the Future*, Reconciliation Australia (2007) <http://www.reconciliation.org.au/downloads/622/NIMMA_background.pdf> at 15 February 2009; Urbis Keys Young, *National Indigenous Money Management Agenda: Community Consultations: Final Report* (2006) <http://www.reconciliation.org.au/downloads/622/community_consultation_report_25October2006.pdf> at 15 February 2009.
- 118 See Gibson, above n 61.
- 119 Arguably, similar thinking is at the heart of many critiques of the Australian policy of 'self-determination': disenchantment with self-determination in Australia is often not so much about the idea itself but about the nature of its implementation in this country. See, eg, Sutton, above n 114, 128–9; Dillon and Westbury, above n 114, 10; Hunt, above n 114.
- 120 Madeleine Dion Stout and Rick Harp, *Lump Sum Compensation Payments Research Project: The Circle Rechecks Itself* (Research Project, Aboriginal Healing Foundation, 2007).
- 121 Ibid xiv, 69.
- 122 Ibid 69.
- 123 National Indigenous Money Management Agenda, *Banking for the Future*, Reconciliation Australia (2007) <http://www.reconciliation.org.au/downloads/622/NIMMA_background.pdf> at 15 February 2009; Urbis Keys Young, *National Indigenous Money Management Agenda: Community Consultations: Final Report* (2006) <http://www.reconciliation.org.au/downloads/622/community_consultation_report_25October2006.pdf> at 15 February 2009; Burnside, above n 15.
- 124 WA Department of Communities, *Help for Applicants*, Redress WA <<http://www.redress.wa.gov.au/support.asp>> at 15 February 2009.
- 125 Australian Government, *Financial Literacy for Indigenous Australians*, Understanding Money <<http://www.understandingmoney.gov.au/content/education/indigenous/>> at 15 February 2009; FaHCSIA, *Indigenous Financial Management Initiative* <<http://www.fahcsia.gov.au/internet/facsinternet.nsf/indigenous/programs-ifmi.htm>> at 15 February 2009; FaHCSIA, *Indigenous Money Management* <[\(2010\) 14\(1\) AILR](http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-</p>
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- money_management.htm> at 15 February 2009; 'Minister Calls for Indigenous Financial Literacy Boost', *ABC News* (online), 8 December 2008 <<http://www.abc.net.au/news/stories/2008/12/08/2440693.htm>> at 15 February 2009; FaHCSIA, *Cape York Welfare Reform: Family Responsibilities Commission Fact Sheet* <http://www.fahcsia.gov.au/internet/facsinternet.nsf/family/wpr_family_respons_factsheet.htm> at 15 February 2009.
- 126 *South Australia v Lampard-Trevorrow* [2010] SASC 56 (Full Court). See also Mike Rann, 'Findings to be Tested in Trevorrow Appeal' (Press Release, 28 February 2008) <<http://www.ministers.sa.gov.au/news.php?id=2838>> at 15 February 2009.
- 127 This also appears to be the case based on the goals of the peak Stolen Generations bodies, the National Sorry Day Committee and the Stolen Generations Alliance. See National Sorry Day Committee, *Submission into the Inquiry into the Stolen Generation Compensation Bill 2008* (2008) <http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compensation/submissions/sub43.pdf> at 15 February 2009; Stolen Generations Alliance, *SGA Submission to the Senate Inquiry into Compensating the Stolen Generations* (2008) <http://www.aph.gov.au/senate/committee/legcon_ctte/stolen_generation_compensation/submissions/sub25.pdf> at 15 February 2009. See also Stolen Generations Victoria, *Final Report of the 'Unfinished Business: Reparations, Restitution and Rehabilitation' Forums* (2008) 6; 'Stolen Gens Appeal Thrown Out of Court', *ABC News* (online), 22 March 2010 <<http://www.abc.net.au/news/stories/2010/03/22/2852320.htm>> at 25 March 2010.
- 128 See above n 39.