

BETRAYING THE VICTIMS

THE 'STOLEN GENERATIONS' REPORT

by RON BRUNTON

The seriousness of the 'stolen generations' issue should not be underestimated, and Aborigines are fully entitled to demand an acknowledgement of the wrongs that many of them suffered at the hands of various authorities. But both those who were wronged and the nation as a whole are also entitled to an honest and rigorous assessment of the past. This should have been the task of the 'stolen generations' inquiry. Unfortunately, however, the Inquiry's report, *Bringing Them Home*, is one of the most intellectually and morally irresponsible official documents produced in recent years.

In this *Backgrounder*, Ron Brunton carefully examines a number of matters covered by the report, such as the representativeness of the cases it discussed, its comparison of Aboriginal and non-Aboriginal child removals, and its claim that the removal of Aboriginal children constituted 'genocide'. He shows how the report is fatally compromised by serious failings.

Amongst many others, these failings include omitting crucial evidence, misrepresenting important sources, making assertions that are factually wrong or highly questionable, applying contradictory principles at different times so as to make the worst possible case against Australia, and confusing different circumstances under which removals occurred in order to give the impression that nearly all separations were 'forced'.

INTRODUCTION

The Inquiry and its background

Bringing Them Home, the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, addresses a very serious and difficult issue in Australia's recent past.¹ For a number of years, indigenous organizations and their supporters have been arguing that previous policies which resulted in Aboriginal children being taken from their families were responsible for some of the major social problems in contemporary Aboriginal communities. The Royal Commission into Aboriginal Deaths in Custody, which reported in 1991, found that of the 99 individual cases it investigated, 43 'experienced childhood separation from their natural families through intervention by the state, mission organizations or other institutions'.² This finding gave added impetus to calls for an investigation that would challenge widespread public ignorance about these practices and recommend appropriate responses from government.

The Inquiry was conducted by the Human Rights and Equal Opportunity Commission (HREOC) after receiving a reference from the Attorney-General in the former Labor Government, Michael Lavarch, in May 1995. HREOC's then president, Sir Ronald Wilson, and Mick Dodson, then the Aboriginal and Torres Strait Islander Social Justice Commissioner, had primary responsibility for the Inquiry, but they were assisted by a number of other Commissioners, including indigenous women appointed for each region visited by the Inquiry (page 18).

An understandable legacy of Aboriginal bitterness

The forcible removal of innocent children from caring parents by government or church officials is indefensible in a liberal democratic society, as is any legislation or programme which uses racial or ethnic status as the major or sole determinant of the way in which people will be treated. It is unfortunate that some commentators who would normally stress the importance of the family as an institution, or warn of the dangers of unbridled state intervention into private spheres, seem insensitive to these matters.³ There can be no doubt that in many parts of the country during particular periods of this century Aboriginal parents had an understandable fear that the authorities might take their children with very little or no excuse, and that this is an important reason behind the legacy of Aboriginal

bitterness that other Australians need to comprehend and overcome.

A proper recognition of the injustices that Aborigines suffered is not just a matter of creating opportunities for reparations, despite the emphasis that the *Bringing Them Home* report places on monetary compensation (for example, pages 302–313; Recommendations 14–20). A civilized liberal society needs to approach its own history with candour. Amongst other reasons, this is necessary to help in preserving the integrity of core moral principles that may have been compromised, and to provide substance to the abiding hope that positive lessons can be learnt from previous mistakes.

Bringing Them Home makes a number of eloquent statements along these lines. It quotes the words of a member of the Chilean National Commission for Truth and Reconciliation, established to investigate the Pinochet regime's violations of human rights:

[S]ociety cannot simply block out a chapter of its history; it cannot deny the facts of its past, however differently these may be interpreted. Inevitably, the void would be filled with lies or with conflicting, confusing versions of the past. A nation's unity depends on a shared identity, which in turn depends largely on a shared memory. The truth also brings a measure of healthy social catharsis and helps to prevent the past from reoccurring (page 307).

Why the Inquiry betrayed Aborigines who suffered injustice

Because the issues at stake in the 'stolen generations' inquiry are so important, and because these involve a number of matters of ongoing and heated contention, it was imperative that the Inquiry did everything in its power to ensure that its accounts of past practices and its conclusions were beyond any reasonable question. Otherwise the painful experiences which the Inquiry sought to make known could be easily dismissed or ignored, as could their contemporary implications. But the Commissioners unwisely seem to have interpreted their role as being that of advocates, providing the media with emotive commentaries on evidence as it was presented and indicating that they would be promoting the findings irrespective of the Government's views.⁴

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And unfortunately, anyone who expects to find a rigorous, sober and factual assessment of the past in *Bringing Them Home* will be sorely disappointed. The report is a most unworthy and tendentious document.

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Amongst its many faults, it is poorly argued, it demonstrates considerable intellectual and moral confusion, it applies inconsistent principles at different times so as to create a 'damned if you do/damned if you don't' situation, it misrepresents a number of its sources and ignores crucial information, and it readily makes major assertions which are either factually wrong or unsupported by appropriate evidence. It is immaterial whether these defects are a result of a deliberate attempt to distort, or whether they stem from the Inquiry's inability to bring the requisite judgement and analytical skills to its task. When accounts that purport to make people aware of injustices misrepresent events, or omit relevant matters for reasons of partiality, or make unfounded claims, they dishonour the very people whose interests they claim to uphold. *Bringing Them Home* betrays the Aboriginal victims of the past almost as surely as would a report which attempted to deny their experiences completely.

These are serious charges, and they are not made lightly. In this *Backgrounder* I will attempt to demonstrate that they are warranted. Although considerations of length preclude a comprehensive examination of all the report's flaws, I believe that there are sufficient grounds to justify treating *Bringing Them Home* as one of the most intellectually and morally irresponsible reports to be presented to an Australian government in recent years.

**CASES COMING WITHIN THE
SCOPE OF THE INQUIRY**

Distortion and confusion in distinguishing between different kinds of separations

The Inquiry's terms of reference required that it examine separations that occurred under 'compulsion, duress or undue influence'. The report attempts to distinguish between these three conditions.

Compulsion is used to cover the forcible or coerced removal of a child, whether legal or illegal, and in-

cluded court-ordered removals (page 5). Duress is used to cover situations that involved threats or moral pressure. The report states that this does not exclude acceptance by those affected. It also states that 'definitions [of duress] commonly refer to *illegally* applied compulsion' (page 6; emphasis in original).

This leads to some confusion, because the report goes on to discuss whether Aboriginal parents in remote locations who agreed to sending their children to schools in distant centres were submitting to duress. It argues that while one interpretation would be that the families were being given appropriate opportunities to have their children educated, 'another focuses on the power relations between the makers of these offers and the families. Viewed in that way there was clearly an element of duress' (page 8). It states that where the promise of education was linked to a threat—for example, a charge of neglect—if the offer was not accepted, 'the ensuing separation was clearly forced' (page 9), although it is uncertain whether the authors think this means that it was a case of 'compulsion' or 'duress'. The report notes that the circumstances of offers of education are generally not clear, and claims that it has not assumed that all these removals occurred under duress. However, no examples have been provided that might give an indication of whether the Inquiry considered cases of children being separated for education at distant schools

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which it judged as falling outside its terms of reference, or how relevant criteria might have been applied to make such judgements. Certainly, there are few grounds for thinking that the Inquiry was cautious in accepting such cases, given that it responded to submissions noting that parents were free to keep in touch with their children—and that the children sometimes returned home for the holidays—by stating 'Realistically, however, there was no likelihood that Indigenous families would have the material resources to ensure continuous regular contact' (page 8).

There is another important point relating to the education of children. The report is not consistent in its attitude towards legislation and practices that distinguished between Aborigines and non-Aborigines. Sometimes this is denounced. Thus for example, it states that 'from about 1950 the continuation of separate laws for Indigenous children breached the international prohibition of racial discrimination' (page 277). Yet at

other times it accepts such distinctions as 'special measures' under section 8 of the Commonwealth *Racial Discrimination Act 1975*, although it is certainly arguable whether section 8—which refers back to Article 1.4 of *The International Convention of All Forms of Racial Discrimination*—would really apply in the circumstances it suggests (for example, page 312). However, given that compulsory education has long been required for

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non-Aboriginal children, and 'duress' applied to the parents of children who do not attend school, it is hard to see how the report can simultaneously complain about the continuation of separate laws for Aboriginal children and condemn compulsory education for them. Most

jurisdictions had compulsory school attendance for all Aboriginal children by 1950, although it was difficult to enforce this in some remote areas.⁵ (What was really discriminatory and shameful was the degree to which schools were racially segregated in some States.⁶)

The report is even more confused when it comes to 'undue influence'. It quotes a dictionary definition which indicates this occurs when a 'person is induced not to act of his own free will', and it states that the relevant meaning would be 'putting improper pressure on the family to induce the surrender of the children' (page 9). The report adds that the relationship between the family and the 'inducer' has to be a relationship of influence, and claims that this would be the case in relations with government administrators, closed settlement managers, and any 'spiritual adviser' (page 9), which seems to cover nearly all the circumstances under which removal might legally be effected. But it then goes on to give examples which involve outright deception. So it is not clear whether *any* suggestion or action from people in a relationship of influence that led to separation was a case of 'undue influence'—because their power or status invariably compromised an Aborigine's ability to exercise his or her free will—or whether this term only applies to certain kinds of suggestions. (It is also worth noting that 'undue influence' is a term that may be appropriate to describe the attempts by some pastoralists to preserve the *status quo*, and to oppose any moves to educate Aboriginal children, against Aboriginal desires in the 1950s and early '60s 'to live more like "white" people', such as the anthropologist Ruth Fink described for the Murchison region of Western Australia.⁷)

Wrongly speaking as though all separations were 'forced'

Despite the difficulties that these definitions present, the report adopts a terminological tactic that can only be seen as highly tendentious. It uses the term 'forcible removal' for all cases of separation covered by the above terms, supposedly for 'ease of reference', and to contrast with removals which were truly voluntary on the part of parents, or where the child was orphaned and 'there was no alternative Indigenous carer to step in' (page 5). But the report's statements would seem to leave very little room indeed for 'truly voluntary' decisions on the part of Aborigines.

The confusion and distortion apparent in some of the report's discussion about the kinds of cases which fell within the terms of reference make it difficult to feel confident that the Inquiry adopted a judicious approach to its task. Indeed, the only circumstances in which specific cases are presented as falling outside the Inquiry's scope involve children being brought up by relatives other than parents, because the Inquiry adopted a broad definition of 'Indigenous family' (page 12).

Unsatisfactory treatment of the number of children removed

The above considerations need to be kept in mind when assessing the report's discussion of the numbers involved, and its statement that 'we can conclude with confidence that between one in three and one in ten Indigenous children were forcibly removed from their families and communities in the period from approximately 1910 until 1970' (page 37). Nevertheless, some commentators seem to have cast off any sense of caution when it comes to numbers. Thus in an article in *The Times Literary Supplement*, La Trobe University academic Judith Brett wrote 'This century, about 100,000 Aboriginal and Torres Strait Islander children were removed from their families'.⁸ This article, like many others expressing a credulous stance towards the *Bringing Them Home* report, also gives the impression that all the removals included in this inflated number involved the forcible separation from caring parents. This impression is facilitated by the report's unwillingness to attempt any distinction between different kinds of removal in its numerical estimates, or even to suggest that such a breakdown would be conceptually warranted, no matter how difficult it might be to make such estimates.

The risks of placing reliance on the report's statements about the number of children removed are further demonstrated by the fallacious claim that 'More recent surveys are likely to understate the extent of re-

removal because many of those removed during the early periods of the practice are now deceased' (page 37). This would only follow if it could be shown that the death rate of people who were removed was higher than that of people who were not removed—and if so, it would usually be possible to adjust the removal rates accordingly. Once the percentage of people in a given age group who were removed has been ascertained in a contemporary survey, this allows an estimate of the number removed during particular periods of time to be calculated.

HOW REPRESENTATIVE ARE THE CASES DISCUSSED BY THE INQUIRY?

How did the Inquiry substantiate its findings?

Obviously, any inquiry is limited to at least some extent by the cases of those who chose to respond to its request to make submissions or provide evidence. In its Internet site on the World Wide Web HREOC has a page titled 'Questions and Answers about "Stolen Children"', which specifically attempts to rebut the charge that the Inquiry was unrepresentative and that the only people who it spoke to were those who had had bad experiences. Amongst other points, it claims that as well as taking evidence from a very wide range of people it also 'conducted extensive searches and analysis of historical documents and records which substantiated its findings'.

It is reasonable to ask for more detailed information to support this claim, particularly in the light of accumulating research pointing to the role of suggestion in creating false memories of events that never actually happened.⁹ It would be quite understandable, for instance, if in later life some children whose parents really did neglect them—and the parents themselves—reinterpreted the circumstances under which authorities intervened in the family.¹⁰ But we are not told how many of the cases presented in confidential evidence or submissions *were* checked against documentary records. While in at least some States, access to the relevant personal records would have required the permission of the individual concerned, it would not have been improper for the Inquiry to have told witnesses who refused such permission that their evidence could not be given the same weight as that of other witnesses. It is important to know the actual number of cases where checks were attempted, the number where the relevant permission might not have been given—or where the records had been destroyed or were not readily obtainable—and the extent to which any checks confirmed

significant aspects of the evidence and submissions presented to the Inquiry. Did the Inquiry, for instance, come across any situations similar to one faced by the Royal Commission into Aboriginal Deaths in Custody, where a Commissioner found important discrepancies between what the mother of a deceased man was now saying and the official files, noting that he found the mother's instructions to her counsel in relation to these matters 'odd'?¹¹

Bringing Them Home does not discuss such issues, nor provide any evidence that the Inquiry attempted to distinguish possibly false or exaggerated claims about experiences and later effects from genuine claims. Indeed, Sir Ronald Wilson has been quoted as making a statement which seems inconsistent with the claim about substantiation made in HREOC's Internet site: 'I didn't stop, as a judge would have stopped, to ask where's the corroboration.

How could you doubt the authenticity of a story when tears are running down the faces of the storytellers?'¹² It is surprising that Sir Ronald, a former High Court judge, did not seem to realise that by asking 'Where's the corroboration?' and demonstrating that appropriate corroboration had been sought and obtained, he would be strengthening the cases of witnesses and assuring the credibility of the Inquiry's findings.

Does the report misrepresent the evidence presented to the Inquiry?

Bringing Them Home states

The bulk of the evidence to the Inquiry detailed damaging and negative effects. However, our terms of reference clearly are not confined to these. The Inquiry did receive some submissions acknowledging the love and care provided by non-Indigenous adoptive families (and foster families to a much lesser extent) or recording appreciation for a high standard of education. However, all of the witnesses who made these points also expressed their wish that they had not had to make the sacrifices they did (pages 12–13).

Certainly, the impression that one gains from reading the report is almost uniformly bleak. On my as-

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assessment, only fourteen of the approximately 250 quotations from confidential evidence or submissions point to anything like reasonably positive experiences at any stage (numbers 136, 154, 155, 178, 252, 305, 307, 384, 544, 557, 667, 696, 818, 823).¹³ And with only three exceptions (numbers 178, 252, 307¹⁴) these were all qualified by negative experiences, some of them quite overwhelming.

There is no way in which we can readily assess the relationship between this extremely negative portrayal and the experiences of all the children who were removed. On the one hand, it may provide a fairly representative picture, whereas accounts such as Channel 9's *Sunday* programme on 10 August 1997, where some Aborigines made unqualified statements in support of their own removal, may be misleading. On the other hand, it is possible that only people with a certain range

of experiences chose to come forward to the Inquiry. This may have been because those with generally positive experiences did not feel strongly enough to make the effort that would have been required. Alternatively, they may have felt, rightly or wrongly, that the Inquiry would not be

as interested in their accounts as it would be in those from people who had a different story to tell, however much the Inquiry may claim that it sought out all points of view.

There is an even more disturbing possibility—that for whatever reason, the Inquiry has not faithfully represented the evidence and submissions that were presented to it, and has given greater prominence to the negative accounts. There are some grounds for suggesting that this is more than a theoretical possibility, despite the Inquiry's acknowledgement, quoted above, that its terms of reference were not confined to examining the negative effects. One of these grounds is the fact, to be discussed later, that the authors have actually omitted crucial information on another matter from the report so as to give a particular slant to the findings.

Unsatisfactory treatment of the reasons for the removal of children

Other grounds become apparent when considering the question of the reasons behind the taking of children. The report does acknowledge that at least some remov-

als may have been justified because of dangers to children's welfare. However these are excused as being 'due to the dispossession and dependence of Indigenous families' (page 10), thus continuing a long Australian tradition of belittling the human dignity and moral agency of Aborigines—and other people in 'victim' categories—by always looking for alibis.¹⁵ Nevertheless, the report states that such cases still come within its terms of reference, and goes on to make the following claim:

In contrast with the removal of non-Indigenous children, proof of 'neglect' was not always required before an Indigenous child could be removed. Their Aboriginality would suffice. Therefore, while some removals might be 'justifiable' after the event as being in the child's best interests, they often did not need to be justified at the time (page 11).

While the claim that under the relevant legislation removals did not need to be properly justified at the time may be true in most States at particular periods of time, it is certainly not universally true. For instance, as the report itself notes, under the *NSW Aborigines Protection Amending Act 1940* the removal of a child required establishing 'to the satisfaction of a Children's Court that the child was "neglected" or "uncontrollable"' (page 46). Similarly, in Western Australia, at least from 1954, when the removal power of the Commissioner for Native Affairs was revoked, 'child welfare legislation required a court to be satisfied that the child was destitute or neglected' (page 112).¹⁶ It is possible to accept that the standards for assessing neglect may have been culturally inappropriate, that many parents had very little hope of contesting court decisions, and that some children who were removed were badly abused in institutions or foster homes (factors which may also have applied to impoverished white families as well). Nevertheless, the matter of the actual justification given for removal cannot simply be dismissed. This is because in order to understand the whole sorry story of child removals it needs to be considered in its historical context, and because the report itself suggests that 'the issue of justification may be relevant to any remedy that might be contemplated' (page 11). Furthermore, while legislation at different times may have allowed officials to remove any Aboriginal child without prior judicial scrutiny (page 254), it is important to distinguish between what was permitted—or forbidden—under legislation and what actually occurred.¹⁷

The report deals with the issue of justification in a most unsatisfactory manner. Certainly, in many cases Inquiry witnesses may have been too young to have known the reasons given for their removal. But nearly a third of the witnesses were six years old or more when

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they were removed. And although some of the relevant files relating to individual removals have been lost or destroyed (page 325), it would also appear that many people have been able to access their own files. Furthermore, as noted earlier, HREOC claims that the Inquiry conducted extensive searches of historical records and documents.

Nevertheless, only nineteen of the individual witness accounts or their accompanying commentary provide any hint of the reason that was offered for their separation from their families (numbers 82, 112, 133, 154, 155, 156, 163, 191, 213, 284, 316, 384, 504, 553, 667, 766, 776, 818, 851), and nearly all of these impugn or dismiss the supposed reason. The only cases where a suggestion is given that separation might have been justified are numbers 667, where the witness stated 'I don't think Mum had any options. I don't know where I'd have ended up', (page 64); and 766, which states that 'Jenny grew up in a chaotic family experiencing violence, alcoholism and sexual abuse from her father. At three and a half years she was placed in foster care' (page 229). Certainly, it is fair to state that the report attempts to give the impression that the bases for removal were nearly always unjustified.

Cases considered by the Deaths in Custody Royal Commission raise questions about the picture presented by Bringing Them Home

While many people no doubt believe that removals of Aboriginal children were nearly always arbitrary and unjustified, there is another publicly available data base which suggests a much more complex picture—the cases that came before the Royal Commission into Aboriginal Deaths in Custody. No-one reading the publications from the Royal Commission can accuse the commissioners of refusing to acknowledge the harsh treatment that Aborigines have experienced. Nevertheless, an examination of the 43 cases the Royal Commission considered which involved childhood removals¹⁸ shows that while many were the results of a callous indifference to the feelings and circumstances of the parents and their children, and an unwillingness to consider alternatives, there were also a significant number in which some defence can be offered for the authorities' actions. (Of course, this does not mean that the subsequent abuse that children may have suffered in institutions or in foster care, etc., can be ignored or excused.)

Thus, in the case of Clarence Nean, who was removed from his parents in NSW in 1950, Hal Wootten (who was one of the first officials to claim that the taking of children under the assimilation policy might constitute 'genocide'¹⁹) states

the file shows that the Nean children were made wards because of genuine fear for their survival, backed by strongly expressed medical concern. There is the telling fact that another daughter died in circumstances also judged indicative of neglect... It should be recorded that after being made a ward, Clarrie was placed with a series of Aboriginal foster parents, themselves living in modest circumstances and identifying as Aborigines. There was no attempt to merge him into the white community.²⁰

Parenthetically, this case points to yet another inadequacy of the *Bringing Them Home* report. If separated Aboriginal children were being fostered with Aboriginal families who identified as such, during a time 'when even greater numbers of Indigenous children were removed from their families to advance the cause of assimilation' (page 34), the intentions of authorities would seem to have been more complex than the report allows. Indeed, the fact that Aboriginal children were given to Aboriginal foster parents is implied by the report's own figures that the Aborigines' Welfare Board advertised for foster parents for 150 Aboriginal children in 1950 and that it had been able to have 116 wards fostered by 1958, 90 with non-Indigenous families (page 48). The report does not comment on these figures. And despite the claim that 'lighter coloured children were sent to institutions for non-Indigenous children or fostered by non-Indigenous families' (page 48), Clarrie Nean was described as being 'light' in 'caste'.²¹

The cases of Barbara and Fay Yarrie in the late 1960s and early 1970s, also indicate that authorities would seem to have had some justification—even in contemporary terms—in believing that serious neglect was occurring, especially as these also involved complaints about the children's welfare from OPAL, an Aboriginal charitable organization.²² Similar considerations apply with Karen O'Rourke, who was initially taken in January 1969 after 'police responded to a call from a neighbour and found the three O'Rourke children alone in the house and obviously neglected.' In early March the children were returned to their parents on probation, but two weeks later their non-Aboriginal father 'telephoned the Foundation for Aboriginal Affairs and requested that a welfare officer come and collect his children as his wife had deserted the matrimonial home.'²³ A number of other cases were more complicated, but they also suggest that the relevant authorities were attempting to make genuine assessments about the welfare of the children concerned, however culturally uninformed these assessments may now seem.²⁴

At least 15 of the 43 cases involved court-ordered removals to institutions because of delinquent or crimi-

nal behaviour. Again, some of these cases indicate far too great a willingness to institutionalize Aboriginal children for petty offences. For instance, the man who died at the Sir Charles Gairdner Hospital in Perth had first been imprisoned for stealing two blocks of chocolate.²⁵ But others indicate that institutionalization only occurred after a number of repeat offences and after earlier responses had failed to curb the delinquent behaviour. Thus Hal Wootten comments in relation to Shane Atkinson:

Given his enormous criminal record by this stage, one has to remind oneself that he was still only 11. While it was tragic to see such a young child committed to an institution, it has to be acknowledged, in all fairness, that the authorities had not acted precipitately, although they seem to have offered no real help to the family.²⁶

In another example, Steven Michael was sent to a Mission training farm in 1968 at the age of 10, after committing a number of breaking, entering and stealing offences. Earlier court appearances had led to him being placed under Native Welfare supervision, but in the custody of his parents and grandmother.²⁷

However, although there is a long discussion of the juvenile justice system as a basis for contemporary separations in the *Bringing Them Home* report (pages 489–542), there is virtually no mention of the role that delinquency or criminal offences may have played in earlier separations. Only one of 143 individual confidential submissions or evidence to the Inquiry which are cited in the report refer to criminal offences as being the reason for a child being removed from his or her family, a fourteen-year-old boy sent to the Turana detention centre in Victoria in the 1980s (458, page 505).

This omission is very puzzling. If the many hundreds of oral or written testimonies presented to the

Inquiry were to any extent representative, it is hard to believe that none of them mentioned that separation occurred because of an offence, or offences, committed by the child. At one point *Bringing Them Home* notes that a 1989 survey, which found that 47 per cent of Aboriginal respondents had been separated from

both parents in childhood, had to be treated with caution, because separation included 'hospitalisation and

juvenile detention in addition to removal' (page 37). This might seem to suggest that juvenile detention resulting from criminal offence was not regarded as 'forcible removal' by the Inquiry. However, elsewhere, in the context of discussing contemporary separations, the report makes it quite clear that it regarded removals resulting from the juvenile justice system as coming within its purview (page 425 & Chapter 24). Indeed, it would seem most unlikely that the Inquiry could have automatically excluded such cases from its consideration without specifically noting the fact and explaining the reasons, particularly as they were included in the 43 cases of family separation identified by the Royal Commission into Aboriginal Deaths in Custody. This is a figure which the report cites on two occasions (pages 317, 556). One of these citations is made in the context of stating that

There is clearly a direct association between removal and the likelihood of criminalisation and further instances of removal. The compounding effects of separation and criminalisation were shown dramatically in the Royal Commission into Aboriginal Deaths in Custody investigations (page 556).

In other words, the report is willing to suggest that removal may have led to delinquent behaviour, but seems most reluctant to consider that it was a child's initial behaviour that might have led to removal.

Failure to provide necessary summary data relating to witnesses

These considerations lead to a broader question relating to the presentation of the evidence witnesses gave to the Inquiry. According to the report, the Inquiry took written or oral evidence from 535 indigenous people concerning their experiences of the removal policies (page 21). These presumably included a substantial number of people who were not themselves taken, as totals in summary tables are only around 370.²⁸ However, the report presents extracts from the confidential evidence or submissions of only 143 people;²⁹ extracts from 55 of these people have been presented more than once, and in two cases, five times. But there has been very little attempt to provide summary information for the witnesses as a whole. Indeed only three matters are the subject of summary tables: the types of placements witnesses experienced (pages 153, 187), age at removal (page 182), and sexual assaults reported (page 162). Consequently it seems fair to state that the experiences of the majority of witnesses have been largely ignored.

It would be reasonable to expect summary information about the witnesses relating to such matters as the official reasons for the original removal, whether the

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child was subsequently returned to the parents or other relatives, the extent to which contact with parents or relatives was maintained, and so on. The Royal Commission into Aboriginal Deaths in Custody investigations showed that in a great many—though not all—cases it was possible to obtain information about the reasons for removal from official files or other sources. It also indicated that in a significant number of cases removal was not permanent and that contact with family members was maintained. The *Bringing Them Home* report makes damning generalizations about these issues,³⁰ and offers a few heart-rending statements from witnesses, but it does not present any numerical summary data.

It is also reasonable to ask for demographic summaries relating to educational qualifications and other characteristics of witnesses. These would assist in assessing both the fairness of statements such as 'witnesses to the Inquiry removed to missions and institutions told of receiving little or no education, and certainly little of any value' (page 170), and the extent to which the witnesses were representative of all Aborigines who were removed from their families. The later assessment could have been based on a comparison with demographic information obtained from the 1994 ABS survey of Aborigines and Torres Strait Islanders, some of which has actually been presented in the report, although with a quite different purpose in mind (pages 14–15).

Omissions of the kind that I have discussed above do not provide any basis for thinking that the cases and circumstances that have been selected for discussion in the report have been chosen in a fair and dispassionate manner.

THE UNSATISFACTORY COMPARISON BETWEEN ABORIGINAL AND NON-ABORIGINAL EXPERIENCES

The HREOC's Internet site addresses the issue of the difference between the removal of Aboriginal and non-Aboriginal children from poor families or single mothers. In more uncompromising terms than in the report itself, it claims that the removal of indigenous children was unique. 'Non-Indigenous children may have been removed because their families failed to meet the standards and values of middle-class welfare workers. Aboriginal children were removed *because* of their Aboriginality' (emphasis in original; cf. pages 10–11). However, the report does invoke middle class standards and values to explain the removals of Aboriginal

children (page 266), although again there is the kind of inconsistency which creates a 'damned if you do/ damned if you don't' situation. Thus, 'no fixed abode' and 'sleeps in the open air' are disparaged as a means of indicating neglect because they 'appear overwhelmingly to target Indigenous lifestyles' (page 267), while later the report appears to accept statements in a submission from the Aboriginal Legal Service of WA, that 'without housing, an individual's education, economic and socio-cultural developments are severely curtailed' (page 549).

The existence in various jurisdictions of special legislation which diminished the rights of Aborigines and made it easier to remove Aboriginal children was clearly racially discriminatory, and cannot be defended. But insofar as the report makes claims about the differences in the treatment and experiences between Aboriginal and non-Aboriginal children, these need to be established with the appropriate evidence. However, the report makes no attempt to compare like with like, for the material relating to non-Aboriginal children comes not from actual experiences, but largely from inferences, unsupported opinions and questionable generalizations (see, for example, pages 29, 33, 34, 44, 109, 169, 251–252, 260, 262–264). While the Inquiry's terms of reference only covered Aboriginal and Torres Strait Islander children, it would still have been possible to present a more balanced and comprehensive consideration of the circumstances relating to non-Indigenous children.

The most striking example of an inappropriate comparison with seemingly partisan intent is the reference that is made to an 1874 inquiry by the NSW Public Charities Commission which found that institutionalization was damaging to the welfare of children. This is cited three times, with the claim that 'non-indigenous children soon benefited from this new awareness. Indigenous children did not.' (page 169; other citations on pages 44, 262). This would seem to fly in the face of the continued existence of homes for non-Aboriginal children up until recent decades, including in NSW, which the report itself acknowledges (for example, pages 31, 48, 79).

The release of the *Bringing Them Home* report triggered a number of reminders about the experiences of non-Aboriginal victims of state or church-instigated

THE REPORT MAKES NO ATTEMPT TO COMPARE LIKE WITH LIKE, FOR THE MATERIAL RELATING TO NON-ABORIGINAL CHILDREN COMES NOT FROM ACTUAL EXPERIENCES, BUT LARGELY FROM INFERENCE, UNSUPPORTED OPINIONS AND QUESTIONABLE GENERALIZATIONS

family disruption, although the fact of social welfare interference in the lives of children from poor and supposedly dysfunctional non-Aboriginal families is hardly a secret. Allegations about the 'duress' and 'undue influence' that was placed on unmarried mothers to relinquish their babies for adoption, including acceptance of 'consent' given while under heavy medication, are also receiving widespread publicity'.³¹ Whatever the legislation may have required, many non-Aboriginal children who became wards of the state also had appalling experiences.³² From the late nineteenth century until the mid-1960s thousands of British children were

sent to Australia and Canada under schemes promoted by Dr Barnardo's Homes and other organizations and many of these children had families who had not consented to their migration. As late as the 1950s, authorities believed that the ties between these children and their families should be

discouraged because the rationale for removal was that they had been 'deprived of a normal home life in the first place'.³³

The Inquiry could have requested that its terms of reference be amended so that non-Aboriginal victims of such child-removal policies could give evidence (although this would almost certainly have made the claim that the removal of Aboriginal children constituted 'genocide' even more difficult to sustain). It could also have carried out a far more rigorous and comprehensive examination of documentary sources—both primary material, such as court records, and secondary analyses—to assess how different the pressures and constraints on poor and powerless non-Indigenous families and the experiences of their removed children really were.

MICK DODSON, ONE OF THE TWO COMMISSIONERS WITH PRIMARY RESPONSIBILITY FOR THE INQUIRY, WAS SPECIFICALLY QUOTED AS STATING THAT 'ASSIMILATION IS GENOCIDE' AT A TIME WHEN THE INQUIRY WAS STILL IN PROGRESS

ties regarding it as an unworthy and irresponsible document.

The report's argument about genocide depends on article IIe of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, which defines genocide as including 'forcibly transferring children of [a national, ethnical, racial or religious] group to another group'. (On the initiative of the Soviet Union, the Convention does not cover social or political groups, thus excluding Pol Pot's extermination of up to two million Cambodians, and the millions of 'class enemies' liquidated by Stalin.³⁴) The report notes that as a result 'Genocide can be committed by means other than actual physical extermination. It is committed by the forcible transfer of children, provided the other elements of the crime are established' (page 271).³⁵ The authors of the report clearly see the 'other elements' as being the assimilation policy, as it was this policy which was supposedly intended to destroy the 'group':

the predominant aim of Indigenous child removals was the absorption or assimilation of the children into the wider, non-Indigenous, community so that their unique cultural values and ethnic identities would disappear, giving way to models of Western culture. In other words, the objective was 'the disintegration of the political and social institutions of culture, language, national feelings, religion, and the economical existence of' Indigenous peoples (Lemkin 1944, page 79³⁶). Removal of children with this objective in mind is genocidal because it aims to destroy the 'cultural unit' which the Convention is concerned to preserve.

In other words, the objective of assimilation is quite central to the 'genocide' argument of the report. Indeed, Mick Dodson, one of the two Commissioners with primary responsibility for the Inquiry, was specifically quoted as stating that 'assimilation is genocide' at a time when the Inquiry was still in progress.³⁷ This gives rise to a number of very important issues that need to be discussed, some of which have implications well beyond the immediate issue of genocide.

THE CHARGE OF 'GENOCIDE'

Assimilation and the UN Convention on Genocide

The most egregious aspect of the Inquiry is its 'finding' that the forcible removal policy constituted 'genocide' and 'a crime against humanity' (pages 270–275). The way in which the report handles this matter is symptomatic of its more general approach, and justi-

Assimilation of indigenous people supported by international bodies in post-war period and the major proponent of Genocide Convention

It must be recognized that assimilation policies directed at indigenous or tribal people were strongly promoted by international bodies at least until the 1960s. A recent study of the way in which indigenous people were represented in the international legal literature and by international organizations from 1945 notes that 'the

self-confident and enthusiastic project of the International Labour Organisation (“ILO”) in the 1940s, 1950s, and 1960s, [was]... to develop and assimilate indigenous people into modern society’. This assimilation was seen as ‘desirable and just’.³⁸ The ILO and others who focused on indigenous questions saw the backwardness and ignorance of indigenous people as threatening their health, and even their survival, and

ARE THE REPORT’S AUTHORS REALLY TRYING TO SUGGEST THAT ABORIGINAL CHILDREN SHOULD NOT HAVE RECEIVED MEDICAL TREATMENT—OR EDUCATION—IF THIS REQUIRED THEM TO BE SENT TO METROPOLITAN OR REGIONAL CENTRES?

as leaving them open to exploitation.³⁹ The ILO’s concern with the assimilation of indigenous people culminated in ILO Convention 107 of 1957, on The Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries. While article 2.2.c of this convention asked governments to create ‘possibilities of

national integration to the exclusion of measures tending towards the artificial assimilation of these populations’, and 2.4 excluded the use of ‘force or coercion’, any suggestion that policies whose prime intent was the assimilation of indigenous people were genocide would have been ridiculed. It was countries with anti-assimilationist policies, such as South Africa, that were regarded as reprehensible.

Indeed, it seems reasonable to think that complaints such as those in the report that larger numbers of Indigenous children were removed from their families in the 1950s and 1960s in order, amongst other reasons, ‘to attend school in distant places, to receive medical treatment’ (page 34) would have been seen as unhinged. Even now one can ask, are the report’s authors really trying to suggest that Aboriginal children should not have received medical treatment—or education—if this required them to be sent to metropolitan or regional centres?

It should also be noted that Raphael Lemkin, the Polish jurist who coined the term ‘genocide’ and ‘the major proponent of the United Nations Convention’ (page 271), specifically discussed the question of ‘cultural genocide’, although a prohibition on this form was excluded from the final convention. (Kuper states that the inclusion of the removal of children in the Genocide Convention is a relic of earlier formulations by UN committees on cultural genocide.⁴⁰) However,

Lemkin cautioned that the prohibition on cultural genocide was not directed against policies which attempted to assimilate a group into

the larger society. Instead, the provision sought to prohibit drastic methods, used to aid in the rapid and complete disappearance of the cultural, moral, and religious life of a group of human beings.⁴¹

The report makes no mention of Lemkin’s acceptance of assimilation, although the quotation comes from an article by Matthew Lippman that the authors used elsewhere in an attempt to support the genocide charge (pages 272, 274, 275). Lemkin’s other views on genocide play an important part in the report’s argument (pages 271, 273, 275). So if the authors were aware of Lemkin’s position on assimilation, they could hardly ignore the question of the relation between the approaches he was trying to prohibit and the stated objectives of assimilation in Australia, with their reference to terms like ‘ultimate absorption’ (page 32, from the 1937 Commonwealth–State Native Welfare Conference) and ‘in the course of time’ (page 34, from the 1951 Native Welfare Conference). Once again, the authors of the report appear to have stacked the cards.

Misrepresentation of potential conflicts between individual and group interests in the Genocide Convention

Rightly or wrongly, the international consensus was that the social and cultural conditions of indigenous people hindered their ability to achieve the rights and advantages enjoyed by others in the countries in which they were living. In other words, there was believed to be a tension between the maintenance of indigenous cultures and facilitating the rights and even the individual existence of their members. The report addresses this issue obliquely in a crucial section headed ‘Mixed motives are no excuse’, but its treatment is so misleading that it verges on the dishonest. It raises the question of whether the convention applies ‘where the destruction of a particular culture was believed to be in the best interests of the children belonging to that group or where the child removal policies were intended to serve multiple aims, for example, giving the children an education or job training as well as removing them from their culture’ (page 273). Its answer is that the convention does apply because

The debates at the time of the drafting of the Genocide Convention establish clearly that an act or policy is still genocide when it is motivated by a number of objectives. To constitute an act of genocide the planned extermination of a group need not be solely motivated by animosity or hatred (page 274).

As its authority for this claim the report cites pages 22–23 of a paper on the convention by Matthew Lippman.⁴² However, while these pages certainly dis-

cuss the question of motives, and the debates that surrounded them, *there is absolutely no suggestion* that these covered circumstances where there might be a tension

AGAIN THERE IS NO CONSIDERATION OF CIRCUMSTANCES WHERE THERE WAS A BELIEVED POSSIBLE CONFLICT OF INTEREST BETWEEN THE CHILDREN'S WELFARE AND THE PRESERVATION OF THE GROUP

between the interests of an individual and the preservation of a group. The debates dealt with circumstances where a group had been destroyed because that was the specific objective of the destroyers, as against circumstances where the group had been destroyed as a consequence of economic or political measures taken against it. Indeed, it would have been most peculiar for the matter of any conflict between the interests of sections of the group and the group as a whole to have been covered in these debates because, at least as Lippman presents them, they focused on the *killing* of the group.

The only comments cited by the report that might be thought of as relevant to the question of mixed motives are those of the Venezuelan delegate who spoke in support of including the forcible transfer of children within the definition of genocide. The delegate stated that 'such transfer might be made from a group with a low standard of civilization ... to a highly civilized group ... yet if the intent of the transfer were the destruction of the group, a crime of genocide would undoubtedly have been committed' (page 271).⁴³ However, again there is no consideration of circumstances where there was a believed possible conflict of interest—however ill-founded the belief—between the children's welfare and the preservation of the group.

Widespread belief amongst those once concerned with Aboriginal welfare that 'mixed race' children should be regarded as different to 'full bloods'

The report misleadingly asserts that "'mixed race" or "half-caste" children were recognised as "children of the group", that is as Indigenous children and not in any sense as children of no group or as children shared by different groups' (page 272). In support it cites an Aboriginal Child Care Agency document which states

Since colonisation of this continent it is quite reasonable to assume that a child born our [sic] of mixed parentage have never been categorised, if one could say that, as 'part-white' or 'part-European'. Thus once it is known that a child has an Aboriginal parent, he or she is seen by the wider community as an Aborigine and will

be subjected to racist and other negative attitudes experienced by Aborigines (page 272).

But the assumption is not correct. Writing about the late 1930s, Paul Hasluck noted that

Among those reformers who were advocating more generous policies on native affairs [i.e. those who were promoting 'assimilation' policies], the special claims of mixed race persons were pressed by saying they were just as much European as Aboriginal. Instead of saying they were 'part-Aboriginal' we should recognise them as 'part-European'.⁴⁴

In fact, from the 1920s there were widely varying views about how 'half-castes' should be regarded. There was a vocal body of opinion, deeply concerned with Aboriginal welfare, which insisted on the need to make clear legislative and administrative distinctions between 'full-bloods' and 'mixed-bloods'. As Russell McGregor notes, support for this view came from across the political spectrum, from the Communist trade union official Tom Wright, whose 1939 pamphlet *New Deal for Aborigines* was endorsed by the NSW Labor Council, to the National Missionary Council. McGregor observes, 'as vehemently as Wright condemned the missionaries, on this issue at least, he and they saw eye to eye'.⁴⁵ In 1946, in a booklet published by the National Council for Civil Liberties of Great Britain, Geoffrey Parsons drew on a wide range of critical Australian sources, to present a damning indictment of past and contemporary policies. As for the future, Parsons argued, echoing Wright,

there are two distinct problems. First and most urgent is the problem of the full-blooded Aborigine. There are thousands of them still living in tribal or semi-tribal conditions, but their number grows less each year, and unless the Australian Government can be induced to change its policy and to adopt the appropriate measures it will be too late to save them, for the remaining tribes will already have been forced to start out along the well-trodden road that leads from disruption to demoralisation and final extinction.⁴⁶

The 'second problem' was the 'mixed blood' Aborigines. While believing that ultimately the two problems were the same, in that the objective for both categories had to be for their inclusion in the Australian community as equal citizens, Parsons stated that the immediate problems were different because in broad terms

the appearance of children of mixed blood signalises that the disintegration of tribal life through contact with white civilisation has already begun, and that the opportunity of ena-

bling the community, *as a community* [his emphasis], to remain intact and escape the stage of demoralisation no longer exists.⁴⁷

He argued for the establishment of 'inviolable reserves' for the full-bloods and full civil rights for all people of mixed race. The 'first essential step' was to ensure 'that the words "Aborigine" and "Native" shall apply only to full-blooded Aborigines' in legislation. In other words there was a vocal and influential body of opinion that was warning Australian governments that they would be complicit in 'genocide'—although the term itself was not used—unless they differentiated between 'full-bloods' and 'mixed bloods'.

Rejection of 'mixed race' children by some Aboriginal groups

Bringing Them Home also claims 'Aboriginal society regards any child of Aboriginal descent as Aboriginal' (page 272). While this may be generally true today, it has not always been true. In the early days of European contact in parts of southern Australia, there is evidence, coming from Aboriginal people themselves, that children of white fathers were not allowed to live.⁴⁸ The anthropologist Professor Annette Hamilton, who carried out research in the Arnhem Land settlement of Maningrida in the 1960s wrote,

Part-European babies were not reared in the past. Today there is only one such baby at Manangrida [sic], a one-year-old born to an Anbara girl... Mixed-unions are frowned on by men and women alike as a matter of principle, although there is no apparent discrimination or hostility to either the infant or his/her mother. Apart from these uses of infanticide, I have no evidence at all that infanticide was practised as a conscious mean of population control...⁴⁹

On the *Sunday* programme, Marg Harris, a woman born around 1930 of an Arunta mother and white father, told how her full brother was killed at birth by her mother, and how she was rescued from the same fate by her grandmother. She said that she 'was not one of [her mother's] people', and that they told her 'she shouldn't be amongst them'.⁵⁰ Colin McLeod, writing of his experiences in the Northern Territory in the 1950s, notes that 'people of full Aboriginal descent rarely considered themselves as one with those of part Aboriginal background, and the reverse was also the case'. He also refers to the physical cruelty that part-Aboriginal children sometimes experienced at the hands of 'full-bloods', simply because they were 'yella fellas'.⁵¹ As late as 1969, Nandjiwara Amagula, an Aborigine from Groote Eylandt in the Northern Territory, made comments to an adult education summer school in Perth

which suggest considerable ambivalence about the identity of 'mixed-blood' Aboriginal children. He said that 'the people of Groote Eylandt are not very happy to have their daughters playing around with white people. We want to build up our own nation with our own colour'.⁵²

Certainly, there was a widespread notion amongst Europeans in the inter-war period and beyond, that 'half-castes' were rejected by 'full-bloods' as not being proper Aborigines,⁵³ although anthropological research in a number of regions in the 1930s by people such as A.P. Elkin and Caroline Kelly showed that this was not necessarily true.⁵⁴ Nevertheless, however mistaken such views were, they cannot be ignored in any assessment of whether the removal of 'mixed-blood' children was really designed to undermine Aboriginal 'cultural units'.

Aboriginal rejection of Aboriginal culture until the 1960s

Even in the 1960s, anthropologists and others who could legitimately claim expert knowledge were stating that it was wrong to think of many—though not all—Aboriginal communities as having a culture that was significantly different from that of the surrounding white community. The report disparages comments from James Bell as representing the idea 'that there was nothing of value in Indigenous culture' (page 32). But Bell, an anthropologist who had spent a number of years carrying out research amongst urban Aborigines in NSW (though this is not indicated in the report), had simply stated that culturally, there was very little difference between many 'part-Aborigines' in NSW and economically depressed poor whites.⁵⁵

Bell's observations were consistent with those of a number of other anthropologists who worked in settled Australia during the 1940s to early 1960s. Jeremy Beckett wrote of the lack of interest Aborigines in western NSW had in learning about Aboriginal culture from one of the last initiated men in the area, and spoke of the irony of 'an Aboriginal turning to white people [like Beckett himself] to preserve the culture which his own people were rejecting'.⁵⁶ And although the report states that Diane Barwick 'described a distinct culture and sense of community that existed among Indigenous people living in Melbourne' in the years after

THERE WAS A VOCAL AND INFLUENTIAL BODY OF OPINION THAT WAS WARNING AUSTRALIAN GOVERNMENTS THAT THEY WOULD BE COMPLICIT IN 'GENOCIDE'—ALTHOUGH THE TERM ITSELF WAS NOT USED—UNLESS THEY DIFFERENTIATED BETWEEN 'FULL-BLOODS' AND 'MIXED BLOODS'

the 1954 Child Welfare Act (page 61), Barwick's observations—made during anthropological research in the early 1960s—were not so much at variance with those of Bell. She certainly referred to a strong sense of Aboriginal identification, and a contempt for those who tried to pass as whites. But she also noted the similarity between the Victorian Aboriginal population and non-Aboriginal migratory workers, and that 'knowledge of aboriginal languages and customs has almost disappeared.'⁵⁷ And in 1969, George Harwood, an Aboriginal public servant with the Department of Native Welfare of Western Australia, noted that there was a very large and growing number of Aborigines who 'are no more Aboriginal in the cultural meaning of the term than any white Australia born in Australia'.⁵⁸

The accuracy of these observations need not concern us here, although they were made by people with a strong professional and personal commitment to the interests of Aborigines. What is important is that they need to be taken into consideration as part of the intellectual climate within which assimilation policies were being carried out, and to be weighed against claims that officials were trying to 'destroy the "cultural unit" which the [Genocide] Convention is concerned to preserve' (page 273).

Omission of evidence about strong Aboriginal support for assimilation

In discussing the question of assimilation or absorption the report has also omitted a crucial piece of information. As will be seen, unlike some of the other points discussed above, this can hardly be excused by a claim that the report's authors did not know of the information.

At the time when the assimilation policy was first being formulated, in the late 1930s, 'one common strand in the views of all Aboriginal spokespersons in the south [was] the desire for incorporation into white society'.⁵⁹ This statement is taken from Andrew Markus's book, *Governing Savages*, which the report referred to sixteen times as a source of information and quotations (for example, pages 31, 45, 135, 137, 264). Indeed the passionate statement of William Ferguson and Jack Patten in their 1938 manifesto *Aborigines Claim Citizen Rights* accusing Australians of wishing to exterminate Aborigines, which is quoted on page 46 of the report, is not taken from the original, but from the quotation included in Markus's book. Seven sentences below this quotation Markus notes what Ferguson and Patten were actually urging, and goes on to include a further quotation from their manifesto:

The hope for the future lay in the absorption of Aborigines—in both the cultural and biological senses—into the white world:

We have no desire to go back to primitive conditions of the Stone Age. We ask you to teach our people to live in the Modern Age, as modern citizens... We ask for equal education, equal opportunity, equal wages, equal rights to possess property, or to be our own masters—in two words: *equal citizenship!*... The mixture of Aboriginal and white races are practicable... Aborigines can be absorbed into the white race within three generations, without any fear of a 'throw-back'.⁶⁰

Subsequently Ferguson was to repeat the call for racial amalgamation. Thus he told a Minister for the Interior in 1940 that 'we consider the gradual absorption of the aborigines into the white race to be the most practical and natural course for our people'.⁶¹

In other words, the source of Ferguson and Patten's bitterness was the unwillingness of white Australians to assimilate Aborigines, the fact that they had—in the words of another historian who has commented on the political demands of the two men—'selfishly attempted to exclude Aborigines from the benefits of [European] civilisation'.⁶² Certainly, however, they were also strongly opposed to the forcible removal of Aboriginal children from their families, which they saw, with full justification, as a denial of their legitimate rights.⁶³

It is virtually impossible to believe that the authors of the report could have taken the extermination quote from Markus's book and not see the additional information he provided. Yet no hint of such information has been provided anywhere in *Bringing Them Home*, even if only to argue against its significance, perhaps by suggesting that Ferguson and Patten's sentiments might not have been representative.⁶⁴ Of course, an acknowledgement that major—and radical—Aboriginal leaders were publicly arguing for absorption at around the same time that assimilation policies were being officially formulated would put a rather different perspective on many of the claims and arguments in the report,

AN ACKNOWLEDGEMENT THAT MAJOR—AND RADICAL—ABORIGINAL LEADERS WERE ARGUING FOR ABSORPTION AT AROUND THE SAME TIME THAT ASSIMILATION POLICIES WERE BEING FORMULATED WOULD PUT A RATHER DIFFERENT PERSPECTIVE ON MANY OF THE ARGUMENTS IN THE REPORT

including that of 'genocide'. In fact, if the historian Heather Goodall is to be believed, the first Aboriginal criticisms of 'the cultural destruction sought by the "Assimilation Policy"', at least in NSW, did not come until 1958, 'when Bert Groves reasserted, for the first time since 1927, the cultural distinctiveness and values of Aboriginal societies'.⁶⁵ So it would seem that the authors simply chose to omit such potentially damaging information, despite its importance for a proper understanding of the historical context in which the assimilation policies were introduced. But by such an omission, the credibility of the report is gravely compromised.

The one attempt to deal with the problem Ferguson and Patten present by a commentator who endorses *Bringing Them Home* is Robert Manne's recent essay 'The stolen generations'.⁶⁶ (However, Manne makes no reference to the fact that the report omits the relevant evidence, although I had brought this to his attention well before the essay was first presented.⁶⁷) He writes

This terrible thought [that the elimination of 'half-castes' was desirable]... was even shared, as Ron Brunton has argued, by two Aboriginal activists of mixed descent. That these two people thought the solution to the problem they posed was to breed out their own Aboriginal blood bears some resemblance to one of the most abject Jewish responses to European anti-Semitism—Jewish self-hatred.⁶⁸

As Christopher Pearson has pointed out, this attempt to present the unnamed Ferguson and Patten as somehow pathological is a caricature.⁶⁹ The Jews who reacted to anti-Semitism by abjectly blaming themselves for their plight would never have produced a pamphlet like *Aborigines Claim Citizen Rights*, with its stirring denunciations of their oppressors. Nor would they have taken any part in organizing an event like the 'Day of Mourning' to coincide with the sesquicentenary of European settlement on Australia Day in 1938, the event Ferguson and Patten's pamphlet was designed to publicize. In his book, *Imagined Destinies*, which Manne cites as one of the four that 'greatly assisted' him in preparing his essay, Russell McGregor specifically discusses the question of whether Ferguson and Patten were 'dupes of a dominant ideology'—or whether they simply using rhetoric to disguise another agenda. McGregor concludes that their statements need to be taken as the genuine beliefs of men who were trying to challenge dominant white perceptions. Jewish victims of self-hatred internalized the perceptions of others; they did not challenge them.

Can you just say you are sorry for genocide?

Another telling indication of the intellectual and moral irresponsibility of *Bringing Them Home* comes from internal evidence. Recommendation 10 states: 'that the Commonwealth legislate to implement the *Genocide Convention* with full domestic effect' (page 295). Articles III and IV of this convention specifically state that persons who have committed genocide, conspired to commit genocide, directly and publicly incited others to commit genocide, attempted genocide, or who have complicity in genocide 'shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals'.⁷⁰ However, nowhere in the report is there any suggestion that those involved in the supposed genocide of child removal should be brought to trial. Obviously, it did not even occur to the authors to include a discussion of why criminal proceedings might not be desirable.

Raimond Gaita, one of the commentators who accepts the reasonableness of the genocide charge, states that there are overwhelming reasons why those responsible for the child removals should not be brought to justice, and that the prospect of any such proceedings would trigger a vicious backlash against Aborigines. This forecast is by no means as obvious as he pretends, for it is reasonable to believe that, *faced with indisputable evidence that people who had committed crimes against humanity were at large*, any nation possessing a sense of decency and justice would accept the need to bring the guilty to account. The implication of Gaita's forecast seems to be that Australians fall well short of the moral probity that he seeks to exemplify. Or perhaps his statement can be read as a subconscious admission that the genocide charge is deeply mischievous, despite his own attempts to establish 'that Australians are now obliged to examine their consciences for reasons similar to those which obliged the Germans to do so after the war'. Gaita does suggest that 'neither the left nor the right take seriously the report's accusation'. He thinks that as far as the left is concerned, many of its members 'have for so long spoken frivolously of genocide that they have become inoculated against its serious meaning'. Like others who must be aware of the many serious defects of *Bringing Them Home*, Gaita seems most reluctant to criticize the report, and he avoids accusing the authors of the report of frivolity. But by Gaita's

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own criterion that 'fully understanding the seriousness of genocide [requires] that one find it at least thinkable that those who are accused of it should be brought to trial', they too have not taken their own accusation seriously.⁷¹ An additional reason for thinking that the authors of *Bringing Them Home* were being frivolous in their charge of genocide is provided by the remarkable statement Sir Ronald Wilson is reported to have made, 'if that word ['genocide'] offends you, don't use it'.⁷²

Why has it taken so long for the charge of genocide to be made?

Although there have always been people who knew what was involved in the child removal policies and who criticized them, the claim of 'genocide' has only been made in recent years. The report itself notes that strong criticisms of child removal policies go back to the last century (see, for example, pages 71, 123, 140); and the HREOC Internet site even has a special section titled 'Who spoke out at the time?' which includes some of these criticisms. The report also acknowledges that its genocide finding differs from that of the Royal Commission into Aboriginal Deaths in Custody, but claims that its own research has been much wider, enabling it to conclude that a principal aim of child removal policies, 'was to eliminate Indigenous cultures as distinct entities' (page 273). (There is some misrepresentation involved here as the convention refers to 'a national, ethnical, racial or religious group', not 'culture'.)

Professor Colin Tatz, from the Centre for Comparative Genocide Studies, is quoted as a source for the practices of the Victorian Aborigines Welfare Board, to which he belonged in the mid-1960s (pages 7, 65). His comments that Aboriginal children were removed because they were Aboriginal, rather than being individuals who might need care, are also cited as a basis for the genocide finding (page 273). Subsequently, Tatz has publicly supported the genocide charge, writing almost gleefully that 'Australia is on the sharp hook this time'.⁷³ But Tatz, who has been writing on Aboriginal issues, including child removal, since the early 1960s, seems to have given no indication then that child removals constituted 'genocide', even though some of these writings specifically addressed the question of international concerns and the possibility of bringing international pressure to bear on Australia.⁷⁴ Given his academic history and interests, he can hardly claim ignorance of the Convention.

In 1965, the Victorian Section of Amnesty International prepared a report on Aborigines, at the request of the international body following an appeal by the Federal Council for Advancement of Aborigines and Torres Strait Islanders. Amongst other matters, it re-

ferred to the powers authorities still had over Aboriginal children in some jurisdictions, and found that the conditions under which Aborigines lived contravened international conventions. But again, there was no reference to genocide.⁷⁵ The *Bringing Them Home* report refers to the widespread publicity given to statements in October 1951 by Dr Charles Duguid, President of the Aborigines Advancement League, that 'the practice of taking babies from their mothers [was] "cruel" and "the most hated task of every patrol officer"' (page 142). Some years earlier, Dr Duguid had threatened to embarrass Australia overseas over a plan to grant grazing licences in Pintubi country.⁷⁶ Once more one can ask, given his recognition of the wrongs of child removal, why didn't he refer to the Convention, which Australia had ratified two years earlier, and which came into force in 1951 (page 270)?

Had these people been willing to invoke the Convention when they became aware of what was going on, the acute embarrassment that Australia would have suffered had the Convention really been contravened almost certainly would have brought an immediate end to these supposedly genocidal practices. So the questions inescapably arise, are people like Colin Tatz 'on the sharp hook' and complicit in genocide by their silence? Why has it taken so long to make the charge?

**THE QUESTIONS INESCAPABLY
ARISE, ARE PEOPLE LIKE COLIN
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LONG TO MAKE THE CHARGE?**

TREATING CULTURE LIKE PRE-WAR AUSTRALIANS TREATED RACE

The language of race, the categorization of people according to the proportion of their European or Aboriginal ancestry and the assessment of their character and determination of their life-chances according to these proportions, pervaded discussions of Aboriginal matters in the inter-war period and for some time beyond. Whether the discussions were those of the Commonwealth and State officials at the 1937 Conference,⁷⁷ the critics of government policy such as Wright and Parsons, or even Ferguson and Patten's assurances—based on statements from Professor Archie Watson of Adelaide University⁷⁸—about the low risk of 'throwbacks', they were based on assumptions about 'race'

which are rightly repellent to a great many contemporary Australians. These assumptions are not only scientifically groundless, their 'rejection of the person; the assimilation of the individual to the collective; the assignment of praise or blame, reward or punishment, respect or contempt on the basis of some real or alleged, or imagined tendency of the collective as a collective'⁷⁹ repudiates the liberal values most Australians hold—and supposedly held in the past.

But the report is unfortunately not immune from biologically-based and collectivist thinking itself. This is most apparent in the discussion about the need to involve Indigenous agencies in the adoption of Indigenous children, and the supposed problems that arise if the relinquishing parent 'does not identify as Indigenous herself or himself or does not identify the baby as such or where a non-Indigenous relinquishing parent does not notify the department that the child's other parent is Aboriginal or a Torres Strait Islander' (page 472). The report suggests that legislation could require the adoption agency to establish 'the cultural heritage of every child surrendered for adoption. This positive duty would authorise the department or agency to breach the mother's confidentiality to the extent needed to trace her own and the father's background' (page 473). This expresses a notion that culture is a matter of biological transmission and is little different from the thinking that any child with a white parent should not be brought up by Aborigines. It can just as easily lead to sacrificing the best interests of the child to the presumed interests of a collective (cf. pages 431, 476), as the case of Melita Kepple, a two-year-old Aboriginal girl from north Queensland demonstrates. When Melita's mother died, she was eventually fostered with a white couple, with the approval of her father and other relatives. But after eighteen months, the Family Services Department forcibly removed her, placing her with an Aboriginal woman who is alleged to have a history of alcohol problems and violence, on the grounds that she should be brought up in her community.⁸⁰

POTENTIAL CONFLICTS OF INTEREST

Sir Ronald Wilson's previous involvement with a 'genocidal institution'

In the mid-1960s, as a consequence of his position as Moderator of Assembly in the Presbyterian Church of Western Australia, Sir Ronald Wilson was on the board of Sister Kate's home for Aboriginal children. During the course of the Inquiry, he apologized for the role

that he thereby played in the removal of Aboriginal children from their families and communities. He has also been quoted as stating 'I had no knowledge of the wrongness of the practice',⁸¹ a remarkable admission given that he now claims that the practice constituted 'genocide', which is generally seen as the ultimate crime against humanity.

This self-confessed previous inability to make a proper moral assessment might have led other individuals to think twice about their involvement in such an inquiry, although Sir Ronald may well be able to completely detach himself from activities in his past for which he now feels guilt or sorrow. But he could not be unmindful of the danger of providing even the slightest grounds for public suspicion that his judgement might be affected by a desire to atone for this past; or alternatively, that recommendations about actions that might be taken against those with any degree of responsibility for the removals could be influenced by his own situation. His involvement, no matter how limited, with an organization which he must now classify as 'genocidal', should have precluded him from any official participation in the Inquiry.

Should someone with close links to the Uniting Church make recommendations which could impact on the financial interests of churches?

Sir Ronald's long history as an office holder with the Presbyterian Church—and its successor, the Uniting Church—creates a second basis for public perceptions of a potentially serious conflict of interest.⁸² One of the terms of reference of the Inquiry was to 'examine the principles relevant to determining the justification for compensation for persons or communities affected by [the] separations'. (Although this was a later addition to the original terms of reference.⁸³) Given the extent to which religious institutions were involved in the removal of children, any recommendations the Inquiry made under this reference could clearly have a significant impact on the churches.

In some places the report's statements suggest that the churches generally did no more than implement

MANY MISSIONS WENT WELL BEYOND A SIMPLE COMPLIANCE WITH GOVERNMENT POLICIES. THEY WERE ENTHUSIASTIC ADVOCATES OF PROGRAMMES AND ACTIVITIES WHOSE CONSEQUENCES CLEARLY COME WITHIN THE HEADS OF DAMAGE UNDER WHICH THE INQUIRY RECOMMENDS THAT MONETARY COMPENSATION SHOULD BE PAID

government policy; for example, 'the churches share some responsibility for forcible removals *because of their involvement in providing accommodation, education, training and work placements for the children.*' (my emphasis, page 405; see also page 309). But material presented in other sections indicates that many missions went

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OTHERS WERE RACIST, TYRANNICAL
AND CALLOUS. MANY WERE,
AT BEST, HIGHLY PATERNALISTIC**

well beyond a simple compliance with government policies, and that they were enthusiastic advocates of programmes and activities whose consequences clearly come within the heads of damage under which the Inquiry recommends that monetary compensation should be paid (Recommendation 14; for examples see pages 75, 104, 119, 127, 141). Furthermore, in a number of cases, mission staff appear to have perpetrated acts which were

totally at variance with government policies, involving serious physical and sexual abuse (pages 148–49, 161, 163, 194).

It is also worth noting that in *Shades of Darkness*, Paul Hasluck recorded his belief that the policy of transferring 'quadroon' and 'octoroon' children out of the Northern Territory 'into southern denominational institutions with a view to their ultimate adoption by whites' in the early 1930s 'originated with the Christian missions'. He added that, when he became Minister for Territories, opinion in the Northern Territory administration was still divided about this policy, 'but in southern church circles and among those who were sympathetically concerned with the plight of Aborigines there was a strong continuing advocacy of giving children "a chance in life"'.⁸⁴ A similar point is made by Colin McLeod, speaking of the 1950s:

it was the churches—not the Welfare Branch—that engaged in social engineering by removing Aboriginal children from their families for ideological—rather than pragmatic—reasons... They would often send children down south to keep them away from their own culture.⁸⁵

Indeed, policies regarding the separation of children from their families differed between denominations, and between missions of particular denominations. A study of Aboriginal education published by the Australian Council for Educational Research in 1948 re-

corded that at the Anglican Forrest River Mission in Western Australia, for instance, girls were taken from their parents at the age of eleven and housed in dormitories which they could only leave under strict supervision. Boys were taken to the dormitories when they were nine, but they were not locked in at night and were allowed to visit their families every evening. The study also found that every Catholic mission had its own boarding school, and this was 'regarded as very important since it removes children from their "pagan" atmosphere'. At the Presbyterian Ernabella mission, however, the study noted the deliberate attempt to ensure that traditional culture would not be undermined, and quoted the school teacher as stating 'no family tie has been broken, no superior complexes set up. The child still finds his most satisfying impression and expression in the nightly corroboree; he still seeks most the family circle and the society of his kind'.⁸⁶

The record of missionary activity amongst Aborigines is clearly very mixed. Some missionaries were champions of Aboriginal rights and dignity, often under very difficult circumstances. Others were racist, tyrannical and callous. Many were, at best, highly paternalistic.⁸⁷ But similar comments could be made about government officials responsible for implementing Aboriginal policies. Nevertheless, the report seems to let the churches off rather lightly. They are given a choice as to whether they wish to contribute to the National Compensation Fund to be established by the Council of Australian Governments to provide monetary benefits to those who were removed from their families (Recommendation 15, page 309). The only requirement for material compensation that is placed on them is the return of land obtained for the specific purpose of accommodating removed children (Recommendation 41).

There may be good reasons for not insisting that the churches bear a larger share of the financial burden for the damage they are alleged to have caused. But a report prepared under the primary responsibility of someone with such close official links to a major church cannot escape the suspicion that these reasons may not have been fully canvassed.

CONCLUSION

The strong criticisms I have made of a number of significant aspects of the *Bringing Them Home* report certainly do not cover all its faults, as my aim has been indicative rather than exhaustive. In making these criticisms I do not wish to provide any grounds for Aus-

tralians to dismiss the 'stolen generations' issue, or the other shameful denials of human rights that Aborigines have suffered. But if one takes seriously the distress that was inflicted on many Aboriginal children and

families by discriminatory, callous and humiliating policies and practices of the past—as I believe Australians must—the only dignified response is an uncompromising commitment to presenting the truth. It does not need to be heavily adorned or thoroughly sanitized. Unfortunately, the authors of *Bringing Them Home*, together with the many historians and others who have read the report yet remain

silent about the numerous flaws they must have recognized, obviously seem to think otherwise.

A candid, thorough and credible examination of the 'stolen generations' issue would actually have been a constructive undertaking. It would have helped other Australians to understand that in all kinds of ways Aborigines were once made to feel they were inferior human beings, and the destructive consequences that followed from such thinking and practices. As well as meeting legitimate Aboriginal requests for a genuine acknowledgement of past wrongs, it could have encouraged all Australians to reflect on the risks of providing legislative authority to racial or ethnic differences. It could also have encouraged an intelligent debate on the appropriate limits of state intervention into family life, particularly in the difficult circumstances where the welfare of children may reasonably be thought to be under serious threat. Even the most critical observers of Australia's past would probably still concede that there were occasions when a *refusal* to separate an Aboriginal child from his or her family would have led to the child's serious injury or death, whether or not the removal was handled callously, or whatever degree of indifference the authorities later displayed towards the child's interests.⁸⁸ Assisting authorities to achieve a wise and humane balance on this onerous issue could have been just one beneficial outcome of a sensible Inquiry.

The present situation in relation to the 'stolen generations' is most unsatisfactory. On the one hand, it is a matter of great importance, with the potential to corrode relations between Aborigines and non-Aborigi-

nes indefinitely. The Inquiry has galvanized a great deal of pain and dismay from both Aborigines and non-Aborigines, and this will not simply dissipate. But the widespread rejection of Canada's recent apology to its indigenous people over a similar issue,⁸⁹ suggests that even if the Federal Government were to reverse its current stance and make a formal apology to the 'stolen generations', any statement it could realistically make would not resolve the matter. Unfortunately, many of the people who are most vocal in calling for an apology seem more concerned about a political struggle over legitimacy and power than they are about restoring a moral balance, or in alleviating the distress of those who suffered injustice. As the black American commentator Thomas Sowell has noted, the leaders of such political struggles have little incentive to bring about a genuine reconciliation, as their position and influence usually depend on maintaining a climate of resentment. "The point is "to create the appropriate climate for bitter recriminations"... [If] through miscalculation, a demand may be made that can be and is met... what is conceded must then be denounced as paltry and insultingly inadequate, however important it may have been depicted as being when it seemed unattainable".⁹⁰

But on the other hand, the Government and the public have been given an official report which is highly unprofessional and misleading. By taking the report as it stands seriously, further impetus has been given to the culture of deceit that threatens Australians' understanding of certain Aboriginal issues, and which has been most blatantly manifested in the fraudulent claims about 'women's business' on Hindmarsh Island.⁹¹ (It is worth noting that at least three of the Commissioners for the present Inquiry have publicly supported those making these fraudulent claims.)

The report is also likely to hinder authorities from effecting an appropriate balance on the question of intervention in circumstances where Aboriginal children are being abused or neglected, and may therefore result in some otherwise preventable injuries or deaths. And a great deal of damage of a different kind could result from the claim that Australia has committed 'genocide'—perhaps even as recently as a

IF ONE TAKES SERIOUSLY THE DISTRESS THAT WAS INFLICTED ON MANY ABORIGINAL CHILDREN AND FAMILIES BY DISCRIMINATORY, CALLOUS AND HUMILIATING POLICIES AND PRACTICES OF THE PAST—AS I BELIEVE AUSTRALIANS MUST—THE ONLY DIGNIFIED RESPONSE IS AN UNCOMPROMISING COMMITMENT TO PRESENTING THE TRUTH

AS 'KEEPERS OF THE FLAME' FOR AUSTRALIA'S DIGNITY, LABOR CANNOT ALLOW PEOPLE WHO IT BELIEVES HAVE COMMITTED GENOCIDE TO GO UNPUNISHED WITHOUT UTTERLY COMPROMISING THAT DIGNITY. LABOR MUST EXPLAIN WHAT IT INTENDS TO DO ABOUT PROSECUTING THE PEOPLE WHO WERE RESPONSIBLE

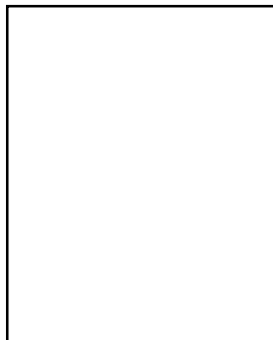
decade ago: 'The continuation into the 1970s and 1980s of the practice of preferring non-Indigenous foster and adoptive families for Indigenous children was also arguably genocidal' (page 274). Already it has become part of the conventional wisdom of many academics, who are blithely speaking of 'the cultural and biological genocidal policies of the stolen generation years'.⁹² The Inquiry's use of the term 'genocide' has even been endorsed as 'accurate' by a former conservative Prime Minister, Malcolm Fraser.⁹³ These assessments will quickly find their way into the texts which are used to give young Australians their understanding of the past, and they are also likely to be thrown back in Australia's face when complaints are made about human rights abuses in other countries.

And given that Australia is now a country which has been found to have recently committed genocide by an official Inquiry, the question of what must be done with those who bear the burden of guilt cannot be ignored. The present Government does not accept the finding—although it could have done far more to explain to Parliament and the people why it has to be rejected—but it has been accepted by a number of Federal members of the ALP.⁹⁴ A party which sees itself as 'keepers of the flame' for the 'dignity of the Australian nation'⁹⁵ could not allow people who it believes have committed genocide to go unpunished without utterly compromising that dignity. It is therefore incumbent on Labor to explain what it intends to do, should it return to power, about prosecuting the people who were responsible for introducing and implementing the supposedly genocidal policies. Alternatively, an infinitely better course of action would be to reject the report's genocide finding, and give serious consideration to whether a report which has been so irresponsible on this issue can be used as an appropriate guide to approaching other issues it discussed.

Perhaps the ideal way of solving the deplorable situation which the misrepresentations of *Bringing Them Home* has created would be a new Inquiry with expanded

terms of reference to include the forced removal of non-Aboriginal children, and which would be conducted by people who would treat their task with the rigour, objectivity and probity it demands. But such a solution is not a realistic option, for no government would be willing to take this course of action. Perhaps the only appropriate alternative would be for the nation's leaders to be more forthright and courageous in delineating a morally and intellectually honourable approach to the 'stolen generations' issue; explaining that while the issue is very serious, both the victims and the nation have been let down by the Inquiry.

Unfortunately, this may also be an unrealizable hope. The present Government has been trapped in a destructive polarity on Aboriginal issues. It is right to reject the 'black armband' history that has become so prevalent in recent years, not because it may undermine a not always justified sense of national pride, but because it is frequently unbalanced, careless with the truth, and politically tendentious. It is also right to reject the separatist approach—which is also evident in the report in such matters as the promotion of the Draft Declaration of the Rights of Indigenous Peoples (pages 562–565).⁹⁶ But it seems unable to present its objections in a way that would convince Australians who are genuinely committed to the vision of reconciliation—'a united Australia which respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all'—that there are moral alternatives to those presented by the 'Aboriginal industry'. Too many members of the Howard Government seem to have lost confidence in the moral authority of their own supposed philosophical principles of liberalism, and seem to accept that they have no right to occupy the moral high ground. They need to remember that Martin Luther King's stirring wish that his children would see a time when people 'will not be judged by the colour of their skin but by the content of their character' is a classic expression of the liberal ideal.



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ACKNOWLEDGEMENTS

A number of friends and colleagues made very helpful comments on a draft version of this *Backgrounder* which I circulated in December 1997. As a couple of these people expressed a desire not to be publicly identified I have decided not to name anyone, but I thank all of those who gave me written or oral comments. However, responsibility for the final document rests solely with me.

ENDNOTES

- 1 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing Them Home*, Commonwealth of Australia, 1997. References to this document are included in the text as page numbers. All other references are in these endnotes.
- 2 Royal Commission into Aboriginal Deaths in Custody, *National Report*, volume 1, page 44.
- 3 For example, Peter Howson, 'Truth on "stolen" children', *Herald Sun*, 9 October 1997; Geoffrey Partington, *Hasluck versus Coombs: White Politics and Australia's Aborigines*, Quakers Hill Press, Sydney, 1996, pages 30–31, 97.
- 4 See, for example, Ronald Wilson & Michael Dodson, 'There's no compensation for not seeing your mother', [Letter to the editor], *Australian Financial Review*, 1 April 1996; Georgina Wilson & Kimina Lyall, "'Nothing to say" on stolen children', *The Australian*, 26 September 1996; Graham Lloyd, 'Lost dreams', *Courier-Mail*, 21 May 1997; Kimina Lyall, Mike Steketee & Stuart Honeysett, 'Howard muffed apology, says inquiry chief', *The Australian*, 27 May 1997.
- 5 P.W. Beckenham, *The Education of the Australian Aborigine*, ACER, 1948, pages 4–11.
- 6 See, for example, Heather Goodall, 'New South Wales', in Ann McGrath, ed. *Contested Ground: Australian Aborigines under the British Crown*, Allen & Unwin, 1995, pages 75, 96.
- 7 Ruth Fink, 'The contemporary situation of change among part-Aborigines in Western Australia', in R.M. & C.H. Berndt, eds. *Aboriginal Man in Australia*, Angus and Robertson, 1965, pages 428–429.
- 8 Judith Brett, 'Every morning as the sun came up: the enduring pain of the "stolen generation"', *Times Literary Supplement*, 3 October 1997, page 4.
- 9 See, for example, Elizabeth F. Loftus, 'Creating false memories', *Scientific American*, volume 227, number 3, September 1997, pages 50–55.
- 10 Cf. the claim that 'most witnesses refuted suggestions that they were neglected or abused by their parents, some making the contrast with their subsequent experiences in institutions or foster homes' (page 11).
- 11 Royal Commission into Aboriginal Deaths in Custody, D.J. O'Dea, *Report of the Inquiry into the Death of Donald Chatalungi*, 1990. In this, and most of the other cited Royal Commission Cases, I have worked from the *Justice and Equity* CD-ROM, AGPS, which does not include the pagination of the original reports.
- 12 Quoted in *House of Representatives Hansard*, by Graeme Campbell in Grievance Debate, 2 June 1997, from *The West Australian*, 30 May 1997. In this speech Campbell also provides an example of the later reinterpretation of the circumstances under which a child was removed, noting that Pat Dodson's eulogy to the late Robert Riley stated that Riley had been forcibly taken, although 'his mother asked Sister Kate to take him because she was in a relationship with a man who could not stand Robert and whose bashings would probably have killed Robert'.
- 13 Some examples of these positive statements are: 'even though I had a good education with [adoptive family] and I went to college, there was just this feeling that I did not belong there' (No. 384, page 13); 'I've got everything that could be reasonably expected: a good home environment, education, stuff like that, but that's all material stuff.' (No. 136, page 13); 'My adopted parents are fantastic.' (No. 667, page 64); '...we only learnt from being brought up by missionaries. They took some of that grief away in teaching us another way to overcome the grief and the hurt and the pain and the suffering. So I'm very thankful from that point of view and I believe that nothing comes without a purpose.' (No. 305, page 130); 'I guess I had quite a good relationship with my adoptive Mum, Dad and sisters.' (No. 823, page 244). In two of the cases, 155 (page 243) & 696 (page 202), the quoted material itself does not point to positive experiences, but the identifying comments state that the person was 'happily adopted'.
- 14 The first and third of these cases involved children placed at Colebrook Children's Home in South Australia, the second, a child who was fostered, also in South Australia.
- 15 A specific example of this kind of thinking is the following statement: 'Anna's story illustrates the inter-generational transfer of the effects of forcible removal. Anna's Koori grandmother was forcibly removed from her family and her mother abandoned her when she

BETRAYING THE VICTIMS:
THE 'STOLEN GENERATIONS' REPORT

- was six years old.' (page 205). Are we really being asked to accept that a mother's abandonment of her own child can be reduced to these terms?
- 16 See also the table 'Administrative removal powers not subject to prior judicial scrutiny' (page 254).
- 17 See, for example, Pat Jacobs, *Mister Neville*, Fremantle Arts Centre Press, 1990, for A.O. Neville's statements about the number of children removed to Moore River in the previous three years.
- 18 I should note at this point that whereas it is possible to identify the majority of these individual cases, in some cases there is ambiguity, as it is not always clear whether the separation was voluntary or not. I have assumed that the Royal Commission used the cut-off age of 16. This is the age that the present Inquiry used in its table listing the age at removal of witnesses, (page 182). Although the present report refers to the Royal Commission's findings (pages 317, 556), its very wide definition of 'forced removal'—as discussed earlier—would seem to cover some cases that were not included in the Royal Commission's figure of 43.
- 19 Royal Commission into Aboriginal Deaths in Custody, *National Report*, volume 5, pages 33–34; J.H. Wootten, *Report of the Inquiry into the Death of Malcolm Charles Smith*, page 77.
- 20 Royal Commission into Aboriginal Deaths in Custody, J.H. Wootten, *Report of the Inquiry into the Death of Clarence Alec Nean*, 1990.
- 21 *Ibid.*
- 22 Royal Commission into Aboriginal Deaths in Custody, L.F. Wyvill, *Report of the Inquiry into the Death of Barbara Denise Yarrrie*, 1990; *Report of the Inquiry into the Death of Fay Lena Yarrrie*, 1990.
- 23 Royal Commission into Aboriginal Deaths in Custody, L.F. Wyvill, *Report of the Inquiry into the Death of Karen Lee O'Rourke*, 1990.
- 24 For example, Royal Commission into Aboriginal Deaths in Custody, D.J. O'Dea, *Report of the Inquiry into the Death of Christine Lesley Ann Jones*, 1989; D.J. O'Dea, *Report of the Inquiry into the Death of Graham Trevor Walley*, 1990; L.F. Wyvill, *Report of the Inquiry into the Death of Daniel Alfred Lacey*, 1990; L.F. Wyvill, *Report of the Inquiry into the Death of Darren Steven Wouters*, 1991.
- 25 Royal Commission into Aboriginal Deaths in Custody, D.J. O'Dea, *Report of the Inquiry into the Death of an Aboriginal Man on 25 February 1983 at Sir Charles Gairdner Hospital*, 1990.
- 26 Royal Commission into Aboriginal Deaths in Custody, J.H. Wootten, *Report of the Inquiry into the Death of Shane Kenneth Atkinson*, 1991.
- 27 Royal Commission into Aboriginal Deaths in Custody, D.J. O'Dea, *Report of the Inquiry into the Death of Steven Glenn Michael*, 1990.
- 28 These tables suggest some carelessness on the part of the authors, as their numbers differ, even though two of them are supposedly exhaustive in giving the number for whom the relevant information was not recorded (pages 182, 187). And the table on sexual assaults gives a much higher total, without making clear what I assume is the reason—that it would be possible for an individual to record a response for more than one category (page 162).
- 29 In calculating this figure I have assumed that the same number was retained for confidential evidence and confidential submissions. In some cases this is obvious, from the descriptive remarks following the case number. But in other cases similarly numbered cases are from people in different States or from a man in one instance and a woman in another. I have assumed that this is a result of typographical or other errors.
- 30 For example, 'Contact with family members was at best limited and strictly controlled' (page 155).
- 31 For example, Geoffrey Gray, 'Letter to the Editor', *The Australian*, 22 May 1997; Breck McCay, 'Letter to the Editor', *The Australian*, 22 May 1997; 7.30 *Report*, ABC Television, 26 November 1997.
- 32 See, for example, Meaghan Shaw, 'Former wards to sue state over neglect, abuse', *The Age*, 19 November 1997.
- 33 See, for example, Allen Moore, *Growing Up with Barnardo's*, Hale & Iremonger, 1990; John Moss, *Child Migration to Australia*, London, Home Office, 1953; Anonymous, 'England's stolen generation may receive compensation', *The Age*, 2 August 1997.
- 34 See, for example, Leo Kuper, *Genocide: Its Political Use in the Twentieth Century*, Penguin, 1981, page 25; Frank Chalk, 'Definitions of genocide and their implications for prediction and prevention', *Holocaust and Genocide Studies*, volume 4, 1989, pages 150–151.
- 35 It is worth noting that article IID of the convention covers 'imposing measures intended to prevent births within the group', and that in the United States this has been used to claim that birth control programmes directed at the black community are a form of genocide (Robert G. Weisbord, *Genocide? Birth Control and the Black American*, Greenwood Press & The Two Continents Publishing Group, 1975). This would suggest that in the future Australia may well be accused of genocide by inhabitants of countries which have been the recipients of funding for family planning programmes.
- 36 The reference is to Raphael Lemkin's study, *Axis Rule in Occupied Europe*, Carnegie Endowment for International Peace, 1944. Clearly, the closure of the quotation mark before Indigenous indicates that he did not use this term—which was not in wide use at the time. I do not know what term Lemkin did use here.
- 37 Rosemary Neill, 'Dialogue of the deaf', *The Weekend Australian*, 29–30 June 1996.

BETRAYING THE VICTIMS:
THE 'STOLEN GENERATIONS' REPORT

- 38 Chris Tennant, 'Indigenous peoples, international institutions and the international legal literature from 1945–1993', *Human Rights Quarterly*, volume 16, 1994, pages 10, 12.
- 39 *Ibid.*, pages 14–15, 26.
- 40 Leo Kuper, *The Prevention of Genocide*, Yale University Press, 1985, page 12.
- 41 Matthew Lippman, 'The 1948 Convention on the Prevention and Punishment of the Crime of Genocide: forty-five years later', *Temple International and Comparative Law Journal*, volume 8, number 1, 1994, page 37.
- 42 *Ibid.*
- 43 The ellipsis marks are in *Bringing Them Home*, and as I have not seen the original document I do not know whether the included section fairly represents the delegate's comments. The comments are also quoted in Matthew Lippman, *op. cit.*, page 35, with the same set of ellipsis marks.
- 44 Paul Hasluck, *Shades of Darkness*, Melbourne University Press, 1988, page 69.
- 45 Russell McGregor, *Imagined Destinies: Aboriginal Australians and the Doomed Race Theory, 1880–1939*, Melbourne University Press, 1997, page 245; see also pages 139–141, 244–248.
- 46 Geoffrey Parsons, *Black Chattels: The Story of the Australian Aborigines*, National Council for Civil Liberties, London, 1946, page 41.
- 47 *Ibid.*
- 48 Theresa Clements, *From Old Maloga: (The Memoirs of an Aboriginal Woman)*, n.d., page 2.
- 49 Annette Hamilton, *Nature and Nurture: Aboriginal Child-Rearing in North Central Arnhem Land*, AIAS, Canberra, 1981, pages 25–26; see also page 123.
- 50 Channel 9, *Sunday* programme, 10 August 1997.
- 51 Colin McLeod, *Patrol in the Dreamtime*, Mandarin, 1997, pages 236, 175–176.
- 52 'The Northern Territory: Aboriginal opinions', in D.E. Hutchinson, *Aboriginal Progress: A New Era?*, University of Western Australia Press, 1969, page 136.
- 53 See, for example, Tony Austin, *I Can Picture the Old Home So Clearly*, Aboriginal Studies Press, 1993, page 4; Paul Hasluck, *op. cit.*, page 69.
- 54 Russell McGregor, *op. cit.*, page 203.
- 55 James H. Bell, 'Assimilation in New South Wales', in Marie Reay (ed.), *Aborigines Now*, Angus and Robertson, 1964, pages 64, 67–68.
- 56 Jeremy Beckett, 'George Dutton's country: portrait of an Aboriginal drover', *Aboriginal History*, volume 2, 1978, page 25. See also, for example, Robert Tonkinson, 'Foreword', in Ronald M. Berndt & Catherine H. Berndt, with John Stanton, *A World That Was: The Yaraldi of the Murray River and the Lakes, South Australia*, Melbourne University Press, 1993, pages xxi–xxii.
- 57 Diane Barwick, 'The self-conscious people of Melbourne', in Marie Reay (ed.), *Aborigines Now*, Angus and Robertson, 1964, page 20.
- 58 George Harwood, 'Looking toward the future', in D.E. Hutchinson, *op. cit.*, page 43.
- 59 Andrew Markus, *Governing Savages*, Allen & Unwin, 1990, page 174.
- 60 Markus himself does not take this quote from the original pamphlet, but from Jack Horner's book on William Ferguson. Although the original pamphlet is rather hard to find, a substantial portion of it has been reprinted in Nigel Parbury, *Survival: A History of Aboriginal Life in New South Wales*, Ministry of Aboriginal Affairs, NSW, 1986, pages 108–112.
- 61 Andrew Markus, *op. cit.*, page 179.
- 62 Russell McGregor, 'Protest and progress: Aboriginal activism in the 1930s', *Australian Historical Studies*, volume 25, number 101, 1993, page 557.
- 63 Nigel Parbury, *op. cit.*, page 110.
- 64 In a paper originally published in 1983, Peter Read stated 'to what extent Aborigines wanted to follow the suggestion of such leaders of the 1930s as Ferguson and Patten of voluntary assimilation with the whites is not clear. This important subject still awaits an in-depth study'. "'A rape of the soul so profound": some reflections on the dispersal policy in New South Wales', in Valerie Chapman & Peter Read, eds., *Terrible Hard Biscuits: A Reader in Aboriginal History*, Allen & Unwin and *The Journal of Aboriginal History*, 1996, page 271. To the best of my knowledge, such a study has not been published, and indeed, given its rather explosive implications in the contemporary climate of opinion—including the problems it could cause for native title claimants—there would be many difficulties in carrying out such a study with the objectivity it would require.
- 65 Heather Goodall, *op. cit.*, page 105. The 'since 1927' is a reference to rallies held in that year in which Fred Maynard, a Hunter Valley Aborigine, called for the recognition of Aboriginal cultural achievements, pages 83–84.
- 66 Robert Manne, 'The stolen generations', *Quadrant*, January–February 1998.
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- 68 *Ibid.*, page 62.

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- 82 According to the biography of Sir Ronald on the HREOC's World Wide Web site, he was President of the Assembly, Uniting Church in Australia, 1988–91, and Moderator, WA Synod, Uniting Church in Australia, 1977–79.
- 83 Phillip Ruddock, 'Response to Question Without Notice from Wilson Tuckey on Stolen Children', *House of Representatives Hansard*, 2 June 1997.
- 84 Paul Hasluck, *op. cit.*, page 121.
- 85 Colin McLeod, *op. cit.*, page 73.
- 86 P.W. Beckenham, *op. cit.*, pages 14, 18–19, 22.
- 87 See, for example, Richard Broome, *Aboriginal Australians*, 2nd edition, Allen & Unwin, 1994, pages 101–119.
- 88 Cf. the discussion on 'justification', *Bringing Them Home*, pages 10–11.
- 89 'White Canada not sorry enough', *The Weekend Australian*, 10–11 January 1998.
- 90 Thomas Sowell, *Preferential Policies: An International Perspective*, 1990, page 174. I made a similar point in my last *Backgrounder*, 'The Human Wrongs of Indigenous Rights', volume 9, number 1, page 7, in relation to the UN Draft Declaration on the Rights of Indigenous Peoples.
- 91 See Ron Brunton, 'The False Culture Syndrome: The Howard Government and the Commonwealth Hindmarsh Inquiry', *IPA Backgrounder*, volume 8, number 2, March 1996.
- 92 For example, Noel Preston, 'A much-needed apology', *Courier-Mail*, 17 January 1998.
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