



Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's consultation paper on redress and civil litigation.

1. Context

In January 2015 the Royal Commission into Institutional Responses to Child Sexual Abuse sought responses to its Consultation Paper in relation to redress and civil litigation (**the Consultation Paper**) for those who as children were subject to institutional child sexual abuse. Danila Dilba Health Service's (**Danila Dilba**) submission seeks to comment broadly on the principles upon which these issues should be considered.

2. Danila Dilba overview

Danila Dilba Health Service was established in 1991 as an Aboriginal-controlled organisation. Our aim is to improve the physical, mental, spiritual, cultural and social wellbeing of Biluru (and Torres Strait Islander) people in the Yilli Rreung (greater Darwin) region.

Danila Dilba is primarily funded by the Australian government through the Department of Health's Indigenous and Rural Health Division. We employ 110 people and provide services from five locations in the Darwin and Palmerston area, including three medical clinics, a mobile clinic, a dental clinic and a Social and Emotional Wellbeing (SEWB) Centre including counselling support to members of the stolen generation and their families via our Bringing Them Home program.

3. A human rights legal framework as a means to consider redress and civil litigation

Concepts such as compensation, reparation, redress and litigation in regard to remedying the gross violations perpetrated upon Aboriginal and Torres Strait Islander people have primarily been considered through the prism of human rights international law, most notably in regards to the matters of stolen wages, stolen land and stolen generations. As Dr Sarah Pritchard sets out:

Provisions of international treaties and decisions of international bodies, such as the UN Human Rights Committee, confirm the obligation of States to provide reparations to victims of gross human rights violations. In 1996, relevant international practice was synthesised by a Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Professor Theo van Boven. Van Boven's Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law provide that:

In accordance with international law, States have a duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

4. Concepts in regard to the right to reparation and compensation in Bringing Them Home: The 'Stolen Children' report, 1997 (**Bringing Them Home**)

Bringing Them Home emerged from the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children and frames the degree of impact upon Aboriginal and Torres Strait Islander people as such:

The loss, grief and trauma experienced by Aboriginal people as a result of the separation laws, policies and practices can never be adequately compensated. The loss of the love and affection of children and parents cannot be compensated. The psychological, physical and sexual abuse of children, isolated among adults who viewed them as members of a "despised race" cannot be adequately compensated. The trauma resulting from these events have produced life-long effects, not only for the survivors, but for their children and their children's children. The loss of Aboriginal identity, culture, heritage, community and spiritual connection to our country cannot be adequately compensated. Nor can the loss of the parents and other leaders who provide the vision, the strength and the responsibility to carry our communities forward into the future. It is also impossible to adequately compensate us

for the internalised racisms expressed as divisiveness within communities caused by separations, such that we judge ourselves and each other as being more or less 'Aboriginal'.

Bringing Them Home sets out a range of views in regards to the matter of reparation and compensation.

For example:

- Insofar as reparation and compensation can assist us to heal from the harms of separation, it is our right to receive full and just reparation and compensation for the systematic gross violations of our fundamental human rights;
- Some acknowledgement and some form of compensation would assist people to feel that their pain and their suffering has been recognised and it has been recognised that something has been done to them;
- It is a central part of the healing process because you have to have the recognition and to have proper recognition you have to have some form of compensation, because a wrong has been done to these people. And for it to be a proper recognition, there has to be compensation. Unless there is proper recognition of what has been done, people really cannot begin to heal properly.

Further, Bringing Them Home cites an international human rights legal framework as an appropriate and effective means by which to consider human rights violations as such:

Principles for responding to the effects of forcible removals must be developed from an understanding of Australian history as having included gross violations of human rights. International human rights treaties and norms of customary international law impose obligations on countries to respect human rights standards and to prevent their violation, including by private persons. States breach their obligations when they fail to prevent human rights violations by others as well as when human rights are violated by state action. In either event the victims have a right to reparation.

Bringing Them Home also refers to the work of Professor van Boven, in this instance his indication of certain obligations which result from the responsibility of jurisdictions for:

breaches of international human rights law entail corresponding rights on the part of individual persons and groups of persons who are under the jurisdiction of the offending State and who are victims of those breaches. The principal right these victims are entitled to under international law is the right to effective remedies and just reparations.

5. Relevant Bringing Them Home recommendations

Bringing Them Home makes two recommendations broadly relevant to the Consultation Paper as follows:

Recommendation 3.

That, for the purposes of responding to the effects of forcible removals, 'compensation' be widely defined to mean 'reparation'; that reparation be made in recognition of the history of gross violations of human rights; and that the van Boven principles guide the reparation measures. Reparation should consist of:

1. acknowledgment and apology,
2. guarantees against repetition,
3. measures of restitution,
4. measures of rehabilitation, and
5. monetary compensation.

Reparation may be claimed individually and where appropriate collectively, by the direct victims, the immediate family, dependants or other persons or groups of persons connected with the direct victims.

Recommendation 4.

That reparation be made to all who suffered because of forcible removal policies including:

1. individuals who were forcibly removed as children,
2. family members who suffered as a result of their removal,
3. communities which, as a result of the forcible removal of children, suffered cultural and community disintegration, and
4. descendants of those forcibly removed who, as a result, have been deprived of community ties, culture and language, and links with and entitlements to their traditional land.

6. Position

While Danila Dilba recognises the legal and conceptual distinctions between reparation and compensation and redress and civil litigation, their shared objective is the recognition of, and suitable response to, gross human rights violations. To this end, Danila Dilba supports the framing of responses

to these violations within an international human rights legal framework and more specifically in accordance with recommendations three and four of Bringing Them Home. As such, if the intent of the Royal Commission into Institutional Responses to Child Sexual Abuse is to uphold the concepts of redress and civil litigation in the terms of both this framework and these recommendations, then Danila Dilba is in general terms supportive.