Bringing Them Home

by

Sir Ronald Wilson
and
The Honourable Justice Murray Kellam

An address delivered at a meeting of the Medico-Legal Society at the Melbourne Club held on 9 May 1998. The Chairman of the meeting was Her Honour Judge Elizabeth Curtain.

SIR RONALD WILSON. The inquiry came about as a result of lobbying over many years by the Aboriginal link-up services that have been established primarily on the east coast particularly New South Wales and Queensland, to seek to alleviate the sufferings of those members of the indigenous community who had, earlier in their lives as children, been separated from their families. The Commonwealth Minister, Robert Tickner, attended the Going Home Conference held in Darwin in October 1994. It was a very moving conference with 600 people many of whom were telling their stories as they remembered them of separation from their families. Robert Tickner then promised an inquiry and consequently in 1995, he requested the Commission to undertake it.

We visited every capital city in Australia and 32 provincial centres from Cape Barren Island off the coast of Tasmania in the south, to Cairns and the Torres Strait and Darwin in the north down to Perth in the west.

We interviewed 777 people of whom 535 were witnesses who could speak personally of the separation policies. The other 240 came from government, from churches, from mission administrators, from researchers, academics and, indeed, anyone who was inclined to come forward in response to the invitations that were published, as widely as we could, throughout Australia.

There has been some criticism of the methodology and the accuracy of the report. I am no longer formally associated with the Commission as an office bearer - but we have no conscience about that criticism. We believe that it is as honest and faithful a task as the responses to the advertisements allowed us to be, and I personally have every confidence in the general accuracy of the report, although of course, there may be omissions, there may be some mistakes.

We unfortunately suffered from the lack of co-operation from the Commonwealth Government and this may have affected the accuracy and the detail of the administration of Aboriginal policies in the Northern Territory because until 1978, the Commonwealth Government between 1910 and 1978 was the responsible government for the administration of affairs in the Territory. The Commonwealth Government which had just recently been elected in March of '96, unfortunately despite whatever encouragement we could give, spent some months initially wrestling with the question of whether it would make a submission at all and then it was unable to do so before the hearings concluded at the end of September. We did receive a submission subsequently and a short submission for which we were grateful.

I now invite you to see the video bearing the same title as our report, "Bringing Them Home" and after the video I will make concluding remarks and then after we have been privileged to hear Justice Kellam, I will do my best to answer any questions which you might have. (Video played to meeting.)

"Bringing Them Home" has had a wonderful reception in the minds and hearts of many Australians and it is becoming part of the reconciliation movement that was originally launched as a recommendation of the Deaths in Custody Royal Commission in 1991 and became the subject of the Council for Aboriginal Reconciliation Act passed by the National Parliament in 1991 with no dissent in the Parliament. It had the support of all the political parties and it has since worked to further a process of reconciliation. The Council has just been renewed for the third time and is now in its last term. There is a sunset clause that has the Council ceasing to exist on 1 January 2001, the date when we celebrate the Centenary of Federation.

One of the key issues the Council has identified as being important to the process of reconciliation is for all Australians to recognise the importance of our shared history, that as an Australian people, if we are going to discover our unity together it will be in part because we acknowledge that all Australians have the one history in this land. The contribution that this inquiry has made, and in its report "Bringing Them Home", is to bring to the consciousness of non-indigenous Australians the part of our history which hitherto has not been widely known. In that sense, it furthers the process of reconciliation by enabling a fresh understanding of our past. Their past, the Aboriginal past, is our past as well. It is wonderful to see the contribution that this report has made to the reconciliation process in striking a chord in communities all over Australia.

The event which is to be celebrated throughout Australia on 26 May is an initiative recommended in the report but made alive by the action of the national Stolen Generations group which chose 26 May as the first anniversary on which the report was tabled in the Parliament. It chose that day and then invited all other Australians to join with them in the commemoration of the past and present sufferings of these stolen generations. It is not a day for acknowledgment of guilt or retribution or anything of that kind. It is a unifying experience for all Australians on this day to come together in memory of the history, our shared history, in acknowledging the sufferings, past and present, of the stolen generations and to join in unity in a commitment to walking together into the future in the process of reconciliation.

That is the vision of the Council, the vision of the united Australia which respects this land of ours, which values its Aboriginal and Torres Strait Islander heritage and which provides justice and equity for all. I look forward to any discussion or questions for which there is time after we have had the privilege of listening to Justice Kellam. Thank you.

JUSTICE KELLAM. It was my intention following the Board of Inquiry's report to focus on what had taken place in Victoria and it might be said that if there is a theme to what I want to say, it is perhaps two-fold. The first is this, that one can get an impression from the media that this is a problem which does not relate all that much to Victoria. That is not right. Secondly, one can get the impression, perhaps from our own urban background, those of us who grew up in Melbourne, that all of this is very ancient history. Again, that is not so. It has a long history, some of it is ancient but it comes to today.

Those of you who grew up in Melbourne, like me, probably had very little to do with Aboriginal people prior to entering into your professional life. I know there are people here who have had a great deal to do with them but for most of us what we knew of them came through school history. It is apparent now that the history taught in secondary schools, at least in the period about which I am talking, the mid-1960s, was perfunctory at the least. In many ways, it is unclear as to why that might have been so because certainly in Victoria it could not have been through lack of relevant source records. The official documents in relation to government administration of the original inhabitants commence in 1836 and are still substantially available, held by State Archives and Commonwealth Archives. What is clear from a consideration of many of those documents - and many of them, as I understand it, have yet to be fully researched - is that in Victoria, as consistent with elsewhere in Australia, grievous wrongs have taken place to our Aboriginal people.

Notwithstanding at an early stage the apparent good intentions of the British Government, there is now clear evidence of early atrocities and other maltreatments. Indeed, in recent times, some 68 known massacre sites have been established in Victoria relating to incidents between 1826 and the mid-1850s. The early legal system did little to protect the Aboriginal population. No European was convicted of killing an Aboriginal until 1848 and that person received a sentence of two months' imprisonment for manslaughter. Aboriginals at that stage did not fare as well in the courts. By contrast, until that time, five Aboriginals had been hanged for murder and twelve had been transported for other crimes for terms between seven years to life.

However, it is apparent that there were those about in Melbourne, certainly in the 1850s, who understood the problems. We are all, of course, familiar with the Royal Commission into Aboriginal Deaths in Custody which commenced in Australia in 1987. I want to read to you an extract from a letter from the Board of Protection, addressed to the Governor of Victoria and dated 1 October 1886. *The Board has learnt from various reliable sources that a sentence of imprisonment is in some cases virtually a sentence of death, inasmuch from the nature and habits of the Aborigines. Few of them are able to submit to the necessary restraints and seclusion of a prison life and most often they rapidly pine and die. The Board would therefore humbly entreat Your Excellency's clemency in favour of these people, now fast disappearing from amongst us and pray that Your Excellency would be pleased to order it so that in cases of imprisonment a certain relaxation of the discipline of a prison should be allowed and such other necessary means adopted as would prevent the Aboriginal criminal losing all hope of life during a term of imprisonment.*

It is, in my view, stunningly indicative of the history of the administration relating to Aborigines that the author of that letter in 1886 understood the nature of the problem and yet little was done about that particular problem for nearly 130 years. The author of that report was the Central Board. It was the first of its kind in Australia. It was given the policy by the government of overseeing the policy of segregation which took place between the period of 1835 and 1886. The government policy during this period was to segregate indigenous people on reserves which were mostly controlled by missionaries, many of whom saw it as necessary to wean the children away from tribal influences. During this period of operation, settlement, and in my cases, forced re-settlement, of the remnants of Victorian tribes took place.

Following that policy, the Victorian Government passed the Aboriginal Protection Act. I see, Rowena Armstrong, the Chief Parliamentary Counsel for the State of Victoria is present and no doubt she would envy the possibility of getting an important Act through in nine sections and two pages. That very important Act provided, as I said, only nine sections. It authorised the making of regulations on a wide range of subjects. Two of the regulations which were entitled to be made pursuant to the Act were for prescribing the place where any Aboriginal may live. A further matter was to enable regulations to be made for the care and the custody of Aboriginal children. So by that

manner, major decisions about the treatment of indigenous children could be undertaken, away from the kind of parliamentary scrutiny and publicity that occurs in the statutes.

A further regulation passed pursuant to that Act allowed for the removal of any Aboriginal child neglected by its parents or left unprotected to any of the places of residence specified in the regulation; mission stations, or industrial or reformatory schools. Another provided that every Aboriginal male under fourteen years of age and also all unmarried Aboriginal females under the age of eighteen years could be, when so required by the person in charge of any station, removed from their parents and placed in a separate accommodation place.

Over a period of time, the Aborigines Protection Board which was set up pursuant to that Act in 1869 became chronically short of funds and it was decided to devote its budget to full bloods who were thought to be dying out. Half-castes, as the Act defined others, were sent out into the community. That policy of merging and dispersing can be seen to have taken place between 1886 and 1957 when the policy of assimilation was undertaken. Pursuant to that policy, half-caste infants were licensed or apprenticed to people. Half-caste boys were apprenticed or sent out on farms, girls were sent to work as servants and, having left the mission station were not allowed to return to their families without official permission for visits. Orphan half-caste children were transferred to the care of an institution for neglected children. All part Aborigines aged thirty-four and younger were to leave the stations and their families one or other of their parents being full bloods under the Act.

Subsequent regulations extended the Board's removal power further to allow it to send children of mixed descent, whether orphaned or not, to reformatories and to the Department of Neglected Children. Families who refused to consent to the removal of their children were told they'd have to leave the stations and would be denied rations. Historian M F Christie wrote in 1979, in reference to colonial Victoria at this period of time, about the 1886 Act and he said, "The 1886 Act could be construed as an attempt of legal genocide." Certainly, it was aimed at removing the Aborigines as a distinct and observable group with its own culture and life. This policy continued on to the point where, in the early third of this century, the only staffed institution operated by the Aborigines Protection Board was at Lake Tyers.

The fiftieth report of the Aborigines Protection Board, published in 1923, said, and I quote, "After the personnel of the Board was rearranged in 1916, it was decided that the general policy should be

to gradually concentrate the Aboriginals and half-castes on one station at Lake Tyers, where it was proposed to finally concentrate the whole of the Aboriginal population." This concentration policy, perhaps an unfortunate term taking into account what was to follow using similar words in Europe, which was adopted during that period of time, did little to improve the lot of those living at Lake Tyers. By way of example, in 1946 the Melbourne Tribune published an article that Aboriginal workers at Lake Tyers were paid threepence an hour, a wage that had been unheard of in the European community since at least the 1890s.

An example of the control exercised by the Board over Aborigines in relatively recent times appears in the records. This person was an adult. One Joe Wandin sought permission from the Board to take part in a sports meeting at Bendigo. An agreement was drawn up by the Board, which Wandin signed. It provided that Wandin would occupy accommodation at the sports ground at Bendigo under the supervision of a named supervisor whilst he competed in his athletic event. Further, the agreement provided that any prize money - it was a professional running event - that he might win, less five pounds, would be forwarded to the manager of the Lake Tyers station. Furthermore, upon his return, 10 per cent of any prize money was to be given to the Lake Tyers station sports fund. That was 1948, and we might find it extraordinary that such paternalism existed about an adult as recently as that. If one thinks that paternalism to that degree was being exercised about adults, what about children?

Between 1957 and 1970 a different policy was adopted in consequence of Premier Bolte commissioning Charles McLean to review and recommend changes to Victoria's Aboriginal Affairs laws. McLean found that the policy of segregating full descent people at Lake Tyers and dispersing those of mixed descent had failed and he recommended the establishment of an Aborigines Welfare Board with an assimilationist objective. Most of his recommendations were mirrored in the Aborigines Act passed in 1957. That Act established the Aborigines Welfare Board to promote the moral, intellectual and physical welfare of Aborigines with a view to their assimilation in the general community.

In the course of the debate on the Bill, comments were made on the desirability of separating Aboriginal children from what were regarded as the degenerate influences of their family. This is 1957. The best hope expressed by some in the House for these children was seen in making them leave. They were part of a non-indigenous society.

When the Board was set up, one of the major focuses that it undertook was providing housing and this, of course, was of significant advantage in one way, but ironically the provision of public housing for indigenous families brought them into contact with government authorities and thereby at an increased risk of having their children taken. By 1961, six government institutions had been opened to cope with the increasing numbers of Aboriginal children removed in Victoria. Until then, most indigenous children had been referred to non-government agencies. How these people ended up can be seen from this fact; that until 1985, Victorian Police were empowered to forcibly remove children under child welfare laws. That had been a power that they had for many years previous to 1985.

During the 1950s significant numbers of children were removed from indigenous communities at Gippsland, Western District, Goulburn Valley, ostensibly pursuant to the Child Welfare Act. The Victorian Government, which as I understand it did cooperate fully with the Inquiry, in its final submission noted that during 1956 and 1957 more than 150 children, that is more than 10 per cent of the children in the Aboriginal population of Victoria at that time, were living in state institutions, many of them at Ballarat orphanages. It noted that the great majority had been seized by police and charged in the Children's Court with being in need of care and protection. It noted that although many police had acted from genuine concern, some were perceived as having been over-eager to enter Aboriginal homes and bully parents with threats to remove their children. Of course, during this period of time, very few Aboriginal families were aware of their rights. They accepted police intrusion at any hour of the day. There was an ignorance of legal procedure and there was no legal aid to speak of. So it was not until 1969 when the Aboriginal Affairs Act was passed, or amended to provide that Victorian Police were to notify the Ministry whenever an Aboriginal child was brought before the Children's Court that there was any control or check on this. Indeed, prior to that amendment requiring notification, it was rare for a Children's Court care and protection case to be defended in respect of Aboriginal children.

The other way by which children came into institutions was that up until 1957, the main source of outside assistance available to indigenous people and children was non-government welfare agencies. Up until 1954, private welfare agencies and individuals were authorised to apprehend children they suspected were neglected, assume guardianship of them and keep them in institutions. In 1957 there were at least 68

institutions managed by 44 different non-government agencies, which had no minimum standards of conduct and treatment imposed until the Child Welfare Act of 1954. The report of the National Inquiry demonstrates how the informality of private placements by those organisations made it difficult for removed children to discover how they were taken. The lack of welfare regulation meant that offers made to Aboriginal families for temporary assistance from non-government agencies or individuals was the start of an irreversible process.

Furthermore, the adoption laws in Victoria, until 1964, were loose to say the least. No doubt many of you in the medical profession will remember before 1964 that virtually anyone could arrange an adoption. The process involved the mother signing a consent form and thereafter losing all rights. In the 1960s, police officers routinely investigated reports of girls under the age of sixteen years giving birth. Young mothers, whether indigenous or non-indigenous, were told that if they did not consent to the adoption of their babies, the father of the child would be prosecuted for carnal knowledge. More strict regulations of adoptions occurred in consequence of the Adoption Act 1964 and although adoptions were better regulated after that date, not all problems were solved.

The Aboriginal Affairs Ministry of Victoria was set up in 1968. In its first annual report, it expressed concern about unauthorised fostering arrangements of Aboriginal children. That report stated that about 300 Aboriginal children were known to have been informally separated from their parents, with possibly more unknown. At that time, the Aboriginal population in Victoria was estimated to be about 5,000. Despite the apparent recognition in government reports that the interests of indigenous children were best served by keeping them in their own communities, the government's own reports stated that the number of Aboriginal children forcibly removed continued to increase and rose from 220 in 1973 to 350 in 1976.

I have referred only to a couple of facts to demonstrate very quickly the course of history in Victorian relations towards its Aboriginal people and in particular the children. Nearly every fact to which I have referred tonight is supported by a contemporaneous record in the Public Records Office. What those records reveal and what the report by the Human Rights Commission, about which Sir Ronald Wilson has spoken tonight, makes clear is this; the history of our treatment of the Aboriginal community is not just something of the long ago past. The removal of children from their parents went on for nearly a century,

through until the 1970s. Such events occurred during the lifetime of nearly everybody in this room. The impact of what occurred is still with us today. In 1998, there are still members of our Aboriginal community looking for their parents, brothers and sisters. A well respected Victorian leader of the Aboriginal community involved with Aboriginal Legal Aid told me a year or so ago that he believed that every single Koori in Victoria would know somebody who has been taken away. Many of those children who were stolen are continuing to search for their communities and they are returning back. The great contemporary tragedy, however, is that very often when they do return back, they do so via the avenue of the legal system of the courts and of the prisons.

QUESTION: MR MCLEOD. (Question inaudible)

SIR RONALD WILSON. I am very concerned with Mr McLeod's history and the experiences to which he has referred. Let me just put in one or two aspects of the context in which the Inquiry operated. We were not concerned with voluntary separations. The Inquiry's terms of reference specifically limited the Inquiry to separation by compulsion, duress or undue influence. Secondly, the report acknowledges that many of the people involved in the forcible removal of children did so with the best of motives; they genuinely believed the process was in the best interests of the children.

The Report finds that the policy at that time was genocidal and, of course, we were not talking about the policy from 1826 that Justice Kellam very interestingly traced the history of Victoria back to that point. What he said bears out the history as reflected in the Report, that much of the forcible separation of children that has gone on since earliest days of settlement, was exploitative in its motivation in the first stage. That is to say, the children were forcibly removed when they became useful to the settlers. The girls either probably as domestic servants in the stations or farm houses. The boys became useful as unskilled labour on the farms and stations. There are stories in the Report that tell the history, even in more recent decades, of children who were institutionalised being sent out like this. The primary motivation of the institutionalisation was certainly not just education. Education was deficient in many institutions. State schools were not open to Aboriginal children as recently as the 50s in Western Australia.

The other point that I want to make is that the assimilation policy, having gone through the exploitative process from the 1886 and the legislative period in the late 19th century, became protectional. The

chief administrator of native affairs was called the Chief Protector and his delegates were the police officers in the different states. The legislation from that time gave the Chief Protector the full legal guardianship in many states of every Aboriginal child, regardless of whether they were of full blood or mixed descent, until they were sixteen. In some cases it was later - for example in Western Australia it was sixteen originally and it became twenty-one in 1936. So it was a developing control system, ostensibly in the protection of the Aboriginal people as a whole and the children in particular.

Then it moved into the assimilation process in the belief that the assimilation of the children would lead to the destruction of the Aboriginal race. To put it in the words of A O Neville, the Chief Protector and later the Administrator of Native Affairs in Western Australia from 1915 to 1940, "We could have a million blacks in this country," and the tone of that statement, of course, was to raise the horror of his listeners, devoted, as most Australians were, to a White Australia Policy, "We could have a million blacks in this country but if we take the children and bring them up so they can cope economically and socially in western society, we will soon forget that there was ever any Aboriginal race in Australia." Neville was not alone in the propagation of that view. He was supported by Mr Cook, the Chief Protector in the Northern Territory, particularly in words that are recorded as having been spoken by Cook in 1933. He was supported by Mr Bleakly, the Chief Protector of Natives in Queensland. In 1937 the first national conference of Aboriginal Affairs administrators was attended by every state and territory - well, the Northern Territory was not self-governing, nor was the ACT, so I can leave the word 'territory' out - in the Commonwealth except Tasmania which, as you know, continued in the belief until the1960s that there were no Aborigines left in Tasmania. That conference adopted a resolution urging very government in Australia to pursue the assimilation policy, through the forcible transfer of children. As has been indicated, that policy already in place in the States that I have mentioned was promoted then through till certainly the 50s. The word 'genocide' was not known, as I understand it, until a Polish philosopher, Mr Lemkin, coined the word in papers he wrote about 1944 and then it became, of course, the title of the Genocide Convention, adopted by the General Assembly of the UN in 1949. That was a debate which made quite explicit that the process of destruction of a race could be achieved not only by physical extermination, but also by simply the taking of the children and giving

them a new name, a new understanding of themselves, a new religion, a new history and, well virtually, a new everything. The evidence that we heard about kids being told they were not Aboriginal and being taught to show the same contempt for Aborigines as was so often shown by the white community was an illustration of the assimilation policy leading to the destruction of a race, simply because if you take the children and give them all that newness there is no future for the race that they have left behind.

We called it genocidal in character. There was no offence of genocide in this country. Australia ratified the Genocide Convention but it never incorporated it in domestic law. We were not a retributive inquiry. We were not asked to find offenders. We were asked to trace a history and it was none of our business, as some of our critics have suggested, that we should name people who should, if they were still alive - although they would be very elderly - be prosecuted for the crime of genocide. If they were ever to do so, it would have to be the subject, as I would understand it, of retrospective legislation to be passed at some time in the future.

The last thing I would hope Mr McLeod would think is that the Inquiry is accusing him of genocide. We do not presume for a moment that Mr McLeod's motivations were the destruction of a race or a part of a race. The actual wording, I did not do it justice in the video unfortunately, but to recall the actual wording in the Genocide Convention, it reads, "With the intention of the destruction of the whole or part of a racial or ethnical," I remember very strange spelling of the word 'ethnical', "community," then A, B, C. A is physical extermination. B, C, D. E is forcibly transferring the children of the group to another group. We agonised about using the word 'genocide' because we realised that it could be offensive. We decided to use it in order to step up the pressure on governments to take our recommendations seriously because our recommendations, as Mick Dodson said in the video, are realistic, they are practical, they latch onto existing institutions and trends in many ways that would make it easier than ordinarily would be the case for governments to implement all the recommendations framed within the concept of reparation for the gross violation of human rights. That is why we used the word. We thought it was right to call a spade a spade. But I sincerely ask Mr McLeod not to see the Report as an accusation personally against him. Genocide is not the simple removal, forcibly or otherwise, of a child. It is not the intended destruction of a child, if that happened to be the case in other circumstances than those

encountered by Mr McLeod. It is the intentional destruction or the intended destruction of a racial group or part of a group by the forcible transfer of its children. We used the word 'justifiable' in the context of the recommendation about compensation and we said that there should be a simple administrative structure established called a Compensation Fund, administered by a board that would be made up of equal numbers of indigenous and non-indigenous Australians, headed by an indigenous chairperson and that there should be a flat minimal amount, and we had in mind a modest sum, to acknowledge the forcible removal of a child. Simply to acknowledge the traumatic nature of that forcible removal and simply as a form of reparation.

We went on to say that if a claimant can establish, by reference to the same criteria as would have to be established in a civil case, that he suffered sexual abuse or undue physical abuse going beyond normal disciplinary purposes in his institutional life or in his foster life, then the board, would be empowered to provide further compensation. Let me just meet particularly the word 'justifiable'. It was used in that context and the precise context was that that minimal basic sum to acknowledge forcible removal would not be payable to anyone in respect of whom the government could show that his or her removal was justifiable. I do not recall its use in any context that related to the word 'genocide'

QUESTION: DR. BARR. Were there responses to the Inquiry from people who actually benefited from being removed from their families?

JUSTICE KELLAM. You will appreciate that we had to depend on two main sources, the first was the stolen children themselves that came forward in response to the advertisement inviting anybody who had any experience that they wished to impart to the inquiry to please come forward. The reported acknowledged that certainly some children came forward who had it good, as Julia Nouvelle said in the video. Julia was brought up on the North Shore of New South Wales with every possible material advantage, plus the affection of an adoptive family. She had more opportunity than most ordinary kids would have, she had some skill in swimming, and so she was coached by Forbes Carlisle, one of Australia's most outstanding swimming coaches.

Lois O'Donaghue is another person who could be said to have had it good, but as Julia says, that could never be a trade-off for never knowing her mother and the loss of a parent is something which most of the people who came to us acknowledged, even when they could say that the Sisters were lovely in the institution and we have acknowledged

the benevolent motivations of many of the people who took part in the system.

The important thing was the forcible removal and the evidence that we had and the only way a National inquiry can be true to its terms of reference is to obey them and to respond faithfully to the stories we got. The children themselves could not tell us what their circumstances were when they were very young and removed, some were removed from hospital when they were born, mothers were told they had died and things like that. Of course, the parents in many cases would be no longer alive. We did not have a lot of parents come forward to talk to us, there were many more who wished to tell their story, so we were told, but we lacked the time and resources to continue to receive all the stories and we ask that provision be made for those stories to continue to be told.

There were undoubtedly situations where the children were living in conditions which were less than desirable. Certainly alcohol was not a problem, I would not have thought in those days, because there were very strict regulations about the supply of alcohol, even when undertaken by Aborigines themselves, but who had the supposed benefit of citizenship rights. Many of you will remember the tragedy of Namitjira, the great artist in the Northern Territory, who received citizenship rights in acknowledgment of his wish to live in western society, then was gaoled for six months because he supplied liquor to his nephew. So alcohol was very strictly controlled.

I readily acknowledge that the circumstances in some cases could have been detrimental to the child and the removal was justified and we have allowed for that in the compensation provisions and recommendations. It is just that we did not have specific information. Every state government assisted us readily and fully with their laws, their practices and their policies and they provide a strong corroboration for the tenor of the stories that we were told. Every government acknowledged that with hindsight the policy could be seen to have been wrong and to have occasioned great suffering. They acknowledge that and we could not have operated as we did in the time that we did without the support and encouragement of governments and it was government sources that I had in mind when I said we had it on reliable sources that there probably is not one family, Aboriginal family in Australia today that has not been scarred by the separation policies.

So I have no doubt at all that there are stories that are not told in the Report that would put a slightly different picture to that which

is portrayed. I think 140 or 150 of these stories we have actually reproduced in the words of the storyteller, and some of those record that they had it good, but they go on to point out the sad side of separation.

JUSTICE KELLAM. I just might add one matter to that question of Dr Barr's and it is this. That the acts to which I have referred demonstrate that proof of neglect was not always required, Aboriginality was sufficient, being a half-caste was sufficient, and that is the distinction in contrast with non-indigenous children. In terms of the issue that every Aboriginal child who was removed was neglected, well, the fact is that before the inquiry most witnesses refuted such suggestions, perhaps some were of an age to know that. If I can refer to the submission made by Philips Fox, Melbourne solicitors, on behalf of twenty of their Aboriginal clients talking about the question of neglect, the submission said this, "The memories of our clients certainly do not tell the opposite story of children saved or rescued from situations of misery and neglect, or of children who were lucky enough to be given in a chance in life. In reality, many have felt their chances were taken away, chances given only by growing up in a loving environment, not by being institutionalised as a child."

SIR RONALD WILSON. In December, the Commonwealth Government delivered, through Senator Herron, its response, and it stressed the importance of all Australians acknowledging the wrongs of the past. It of course firmly rejected any question of compensation and any question of a national apology through the parliaments. The response said that there would be money provided through the budgetary system to increase the number of counsellors available to deal with the consequences of separation on the mental health of those persons who had been removed and to facilitate the re-union program, because re-union has been found to be very traumatic to both sides. Those that have found their families and are going back have sometimes been rejected and have been told that "We don't know you, you don't know our language, you don't know our history, you have no connection to our land," so counselling on both sides has been found to be important to a happy re-union and the Commonwealth has accepted that.

Its monies are mainly in reunion and health areas, there is no doubt that the Minister for Health, Michael Wooldridge is sympathetic, he is a former shadow minister for Aboriginal Affairs and the Commonwealth is putting something like $63 million back into the system to enhance those aspects of Aboriginal Affairs and with particular reference to some of those recommendations. The difficulty is that the money is

nowhere in sight yet and now there has been a suggestion that $150,000 will be spent on a feasibility study, as to how to best strengthen the link-up services. One only needed to go to the link-up services in New South Wales and again in Queensland, which have been established for many years, New South Wales has been functioning since 1981 and there is a certain amount of despondency as to when, if ever, this money will get through and how much will be siphoned off to other people in the process, middle people, as so much of Aboriginal money has been in the past.

The Human Rights Commission has undertaken visits to every state and territory government in the last three months to discuss the state governments' implementation of the recommendations. Because many of them could be implemented through the states. I have been asked to accompany the officer who is undertaking that survey and we have been well received. But very little of practical importance has yet been done.

Governments are not unsympathetic, but obviously they are very cautious about compensation. The hope of the Inquiry was that there would be Commonwealth leadership, not disregarding the Federal division of function, but leadership in promoting and encouraging a nationwide response to the recommendations by the different governments in the areas where they could best implement the recommendations. We directed our recommendations to COAG, as an existing body which brought all the Premiers together, but right at the outset the Commonwealth said it was not going to undertake that role, it was a matter for the states as to what they wanted to do with the recommendations and that of course leaves it on a disparate basis, if the states do not take the initiative themselves to get together then it will - the recommendations may be implemented in one state but not in others.

What the Commission proposes to do is to formulate a report and we had our last visit to a government last week. The report will list the responses, not in a condemnatory or grizzling sort of way, it will be a very constructive report trying to point up the responses that are planned in some states that may assist others. In other words to supply the kind of co-ordination that we had hoped could more readily be done by the governments themselves if there were any national leadership.

That report will be published. Up to now I do not think the Aboriginal people have seen any significant response to the recommendations, but what they have seen is an enormous expression of regret; sorry books

in their hundreds are circulating around Australia. There will be, I have no doubt, hundreds of thousands of signatures in those sorry books, reflecting the sympathy, the sorrow of individual Australians who have been touched by the stories that the National Inquiry has brought to light. The sorry day, on 26 May, will be an occasion when those sorry books are presented to indigenous leaders around the country.

QUESTION: In relation to human rights and more particularly the rights of the child we need to recognise that even today by virtue of the legislation that is in the Migration Act, we are potentially perpetrating profound harm upon children that are born in Australia. In making this comment I am in no way seeking to denigrate or minimise the experience of the Aboriginal people in being forcibly separated from their parents.

What I would like you to know is that under the Migration Act if a migrant marries a resident and there is a child, and before permanent residency is approved that relationship fails, then that parent, the non-resident parent must depart Australia. The exception is if that non-resident parent can obtain sole or joint custody of the child. Now, if the non-resident parent is a woman, it is going to be much easier for that person to retain custody and hence, ultimately secure permanent residency. If the person is male then the difficulties are much more profound. Now, if you consider that it takes all round about two and a half years to secure permanent residency, based on your relationship to an Australian resident, in those instances the children are very little, and the chances of the male securing custody are indeed minimal.

So what I would be saying to everyone here tonight is, let us consider the injustices of our law generally, not only in terms of the injustices that have been perpetrated on the Aboriginal children, but also on the injustice that our law continues to perpetrate where policy considerations in respect of the abuse of the migration system are greater than the policy considerations in respect of the sanctity and the rights of the child. For those of you who are interested in human rights and equal opportunity issues, more particularly the rights of the child, Australia is a signatory to the United Nations Convention on the rights of children.

SIR RONALD WILSON. I realise that that statement does not call for a comment but it strikes very close to my heart and I am so pleased that the comment has been made. I happen to have an Indonesian daughter-in-law, who has been waiting patiently to have her marriage and her wish to live in Australia recognised by the Immigration

Department, but more than that it brings to my mind Mr Teo, and Mr Teo's fate. Mr Teo, you may remember, was a Malaysian who came to Australia. His brother dies, leaving a widow and consistent with Mr Teo's cultural tradition he married the widow. She had four children by her first marriage and three children by Mr Teo, making seven in all. On a visit to Malaysia, Mr Teo came back carrying some heroin, for the sad reason that his wife was an addict and it was for her personal use. She was already in Australia with seven children. He was arrested, convicted, sentenced to six years imprisonment and then ordered to be deported. He got through to the High Court and the High Court said that he had a legitimate expectation that the immigration authorities would take account of the Convention on the Rights of the Child and consider the future of the seven children if he were deported.

The reports which were shown to have been before the officer in the Immigration Department considering the deportation and who then recommended it, reported that the future of the children would indeed be bleak, if Mr Teo were deported. The officer did not advert to the provision of the Convention that requires that the best interests of the child shall be a primary consideration and the High Court said the ratification of the Convention is a declaration not only to the international community but to the Australian community that the government and its officers will take seriously the obligations that Australia has accepted through that ratification.

The legitimate expectation was limited to the belief in Mr Teo, that the officer would let him know if he was not proposing to take the Convention and the best interest of the children into account, so that Mr Teo would have the opportunity of arguing as to why he should, so the sad thing is that the then Labor government, this was 1995, immediately panicked and said, "There are 900 instruments, which all our government bureaucrats would be expected to be familiar with, we are now making an executive pronouncement that we will not recognise a legitimate expectation." They sought to introduce legislation to confirm the executive announcement; it was being debated on the last day before the last election in the Senate. The Democrats filibusted and the legislation did not pass. The present government has announced its intention to legislate to the same effect.

Although, in the last three years with an opportunity to test the law, there has not, to my understanding, been any similar report of any similar case demonstrating the importance of the government setting aside such a legitimate expectation and in any event there are about six

human rights instruments that would be affected the by the legitimate expectation being allowed to remain, or be relevant and nothing like 900. So if the Teo legislation gets up again in the present parliament, I hope that the observations that have been made by our friend tonight, might win some kind of protest of appropriate communities.