



7 December 2011

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RB; rp

Mr Jason Caire
Executive Officer
Aboriginal Lands Parliamentary Standing Committee
Parliament House
North Terrace
ADELAIDE SA 5000

and via Email: alpsc@parliament.sa.gov.au

Dear Mr Caire

Inquiry into the *Stolen Generations Reparation Tribunal Bill 2010*

The Society welcomes the opportunity to provide comment to the Aboriginal Lands Parliamentary Standing Committee's inquiry into the *Stolen Generations Reparation Tribunal Bill 2010* ('the Bill'). The Bill has been examined by the Society's Aboriginal Issues Committee and accordingly we provide the following comments, which we trust will be of assistance to the Committee.

In principle, the Society supports the Bill as an important step in ensuring redress for the harm caused to members of the Stolen Generations, their families and communities. This position is in line with a resolution of the Council of the Law Society of South Australia on 29 November 2010 that:

Having regard to

- 1 *the factual background of the case of *Trevorrow v The State of South Australia No 5 [2006] 98 SASR 146**
- 2 *the strong likelihood that there are a number of other Aboriginal people in fundamentally the same position as Mr Trevorrow*
- 3 *the complexities and difficulties inherent in the usual court process in general and these cases in particular*
- 4 *the passage of time*

the Council of the Law Society supports the establishment of an appropriate system in order to achieve the expedited and simplified resolution of their claims.

This in principle support is subject to the following more specific observations regarding the operation of the Bill as drafted.

The Bill applies to persons in a situation very similar to that of the late Mr Trevorrow. The Society notes that the Aboriginal Legal Rights Movement Inc advocates the broadening of the Bill to also apply to persons *lawfully* removed from their families under court orders. As a matter of ensuring justice for those who have suffered as a result of past policies of removal this argument has considerable merit; however, it extends beyond the facts of the Trevorrow case and would substantially increase the potential reparations bill. It is appropriate that this suggestion for the broadening of the class of eligible claimants be thoroughly examined by the Standing Committee.

Section 19 of the Bill is critical to its operation, indicating the class of potential claimants. Under s 19(2), eligibility for reparation is extended to 'a lineal descendant of a deceased person'; under s 19(3) eligibility is further extended to 'a relative, family member or descendant of a person' who has themselves 'suffered harm as a consequence of the removal of that person from his or her family'. It is noted that these sections extend eligibility to apply for reparations well beyond the situation in Trevorrow, where Mr Trevorrow had a personal right of action, to encompass claims by descendants, relatives and family members. This is consistent with broader principles of justice, but again extends significantly beyond the facts of the Trevorrow case and would substantially increase the potential reparations bill. It is appropriate that this broadening of the class of eligible claimants also be thoroughly examined by the Standing Committee.

Section 20 of the Bill outlines the role of the Tribunal in the awarding of reparations. Sub-sections 20(2)(c)-(f) ask the Tribunal, whose chief functions are quasi-judicial in nature, to make orders inconsistent with a judicial role and which are instead appropriate to an executive body. Thus, the Tribunal would be empowered to fund projects, fund the provision of services, and fund the construction of memorials, as well as to order "*monetary payments ... to meet particular needs*". It is recommended that these executive functions not be conferred on the Tribunal, whose reason for existence is to perform quasi-judicial work.

Subject to the above comments, the Society supports, in principle, the enactment of the *Stolen Generations Reparations Tribunal Bill 2010*.

Yours faithfully



Ralph Bönig
PRESIDENT