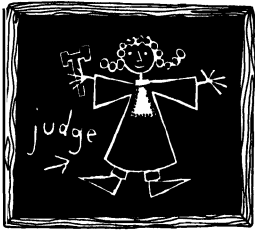


LEGAL STUDIES



Answers to several of the questions asked in the legal studies column in the last edition of the *Alternative Law Journal* (Vol. 22, No. 4, p.195) follow. These answers are based on an appendix of commonly asked questions about the removal of Indigenous children contained in 'Fifth Report 1997' of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The Report, which also provides a summary of the section of 'Bringing them Home' addressing contemporary policies and practices of removal, can be obtained from the Publications Officer, Human Rights and Equal Opportunity Commission: tel 02 9284 9728.

What was the official justification for forcibly removing Aboriginal and Torres Strait Islander children from their families? (Question 2)

The Inquiry found that the predominant aim of the forcible removal of Indigenous babies and children was to absorb or assimilate the children into the wider, non-Indigenous community so that their unique cultural values and identities would disappear. There was a clear and explicit intention to eliminate Indigenous peoples.

[T]his conference believes that the destiny of the natives of aboriginal origin, but not that of full blood, lies in their ultimate absorption by the people of the Commonwealth, and it therefore recommends that all efforts be directed to that end.¹

It was thought that the Indigenous peoples of Australia were a 'dying race', and that children of 'mixed descent', particularly those with fairer skin, could be assimilated into the broader community.

Children were not allowed to know anything about their families or their Indigenous heritage. Their names were changed. They were punished for speaking their own language. Many were never told they were Indigenous and were inculcated with the racist beliefs of the non-Indigenous people around them.

We were all rostered to do work and one of the girls was doing Matron's office, and there were all these letters that the girls had written back to the parents and family ... the answers were all in the garbage bin. And they were wondering why we didn't write. That was one way they stopped us keeping contact with our families. Then they had the hide to turn around and say, 'They don't love you. They don't care about you'. ['Bringing them Home', p.155]

Indigenous children who were removed not only lost their families. They lost their languages, their cultures, their rights to land and their identities. Many were taught to hate and fear their people and so were taught to hate themselves.

We were playing in the schoolyard and this old black man came to the fence. I could hear him singing out to me and my

sister. I said to [my sister], Don't go. There's a black man'. And we took off. It was two years ago I found out that was my grandfather. He came looking for us. I don't know when I ever stopped being frightened of Aboriginal people. I don't know when I even realised I was Aboriginal. It's been a long hard fight for me. ['Bringing them Home', p. 211].

Removal policies did not just affect individuals and their families. Whole communities lost their confidence in bringing up their own children, and have been denied one of their most important and precious roles.

When you look at a family tree, every person that is within that family tree is born into a spiritual inheritance. And when that person isn't there, there's a void. There's something missing on that tree. And that person has to be slotted back into his rightful position within the extended family. While that person is missing from the extended family, then that family will continue to grieve and continue to have dysfunctions within it. Until the rightful person comes and takes their spiritual inheritance within that family. ['Bringing them Home', p. 215]

The findings of 'Bringing them Home' indicate that the forced removal of Indigenous children was discriminatory although it occurred under a 'protection' regime. How can official acts done with the intention of protecting Indigenous children be discriminatory? (Question 3)

The Inquiry found that the main reason for removal of Aboriginal and Torres Strait Islander children from their families was not concern for a child's well-being. The majority of children were removed because they were Indigenous.

The removal of vast numbers of children on the grounds of their race was the unique experience of Aboriginal and Torres Strait Islander children. No other group in Australia was subject to such laws and practices. No other Australians were subject to discriminatory assimilation policies from the moment they were born. And no other section of the Australian community had their children

taken away in such a systematic and insensitive manner.

I was taken off my mum as soon as I was born, so she never even seen me. What Welfare wanted to do was adopt all these poor little black babies into nice, caring white families, respectable white families, where they'd get a good upbringing. I had a shit upbringing. Me and [adopted brother who was also Aboriginal] were always treated different to the others ... we weren't given the same love, we were always to blame ... found my mum when I was eighteen — she was really happy to hear from me, because she didn't adopt me out. Apparently she did sign adoption papers, but she didn't know [what they were]. She said to me that for months she was running away from Welfare [while she was pregnant], and they kept finding her. She remembers being in — it wasn't a hospital — but there were nuns in it, nuns running it. I was born at Crown Street. They did let her out with her brother one day and she run away again. Right from the beginning they didn't want her to have me. ['Bringing them Home', p. 50]

Although each State and Territory had different laws which sanctioned the removal of Indigenous children, government officials throughout Australia had absolute power over Indigenous families. In some States, where laws permitted the removal of Indigenous children on the grounds of race alone, a bureaucrat could simply order the removal of an Indigenous child without having to prove to a court that the child was neglected. Removal was racially discriminatory and continued after Australia committed itself internationally to abolish racial discrimination.

The Report also found that the forced removal of Aboriginal and Torres Strait Islander children amounted to genocide as understood at international law. How can you call it genocide when people were trying to save the children? (Question 4)

The crime of genocide does not necessarily mean the immediate physical destruction of a group. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Na-

tions in 1948 and ratified by Australia in 1949, defines 'genocide' in Article II:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm of members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the groups;
- (e) **Forcibly transferring children of the group to another group.** [emphasis added]

The Convention confirms that genocide is a crime against humanity.

The Inquiry's examination of historical documents found that the clear intent of removal policies was to absorb, merge or assimilate children so that Aboriginal people, as a distinct racial group, would disappear. Policies and laws are genocidal even if they are not solely motivated by animosity or hatred. The Inquiry found that a principal aim of removal laws was to eliminate Indigenous cultures as distinct entities. The fact that people may have believed they were removing Indigenous children for 'their own good' is immaterial. The removal remains genocidal.

'Bringing them Home' also found that Indigenous children continue to be removed from their families. Why did the Report come to this conclusion? (Question 5)

Although laws specifically designed to remove Indigenous children from their families were officially repealed dec-

ades ago, as far as Indigenous people are concerned their children effectively continue to be removed through the child welfare and juvenile justice systems. Due to the entrenched disadvantage and ongoing dispossession of Indigenous Australians, contemporary laws continue to discriminate against Indigenous families where raising children is concerned.

Aboriginal families continue to be seen as the 'problem', and Aboriginal children continue to be seen as potentially 'saveable' if they can be separated from the 'dysfunctional' or 'culturally deprived' environments of their families and communities. Non-Aboriginals continue to feel that Aboriginal adults are 'hopeless' and cannot be changed, but Aboriginal children 'have a chance'. ['Bringing them Home', p.453]

The Inquiry found that Indigenous children are 6 times more likely to be removed for welfare reasons and 21 times more likely to be in juvenile detention than non-Indigenous children ('Bringing them Home', pp.492-8). There are many reasons for these high rates of removal, including continuing cultural bias against Indigenous modes of parenting, inadequate and inappropriate services for Indigenous families and discriminatory treatment of young Indigenous people before the law.

There are countless reports documenting the damaging effects of removing Indigenous children from their families and communities and recommending alternative ways of dealing with the problems.² This work shows that supporting Indigenous families and communities to find their own solutions regarding their children works better than removal. Strengthening Aboriginal and Islander families and communities is far better than punishing their

children. Indigenous families and communities are entitled to raise and care for their families without fear of discriminatory institutional intervention. Indigenous peoples have the right to bring up their own children.

In July 1996 Australia's Prime Minister, John Howard, said:

I believe that Australian families not only provide the greatest source of emotional and spiritual comfort to Australian individuals but beyond that a functioning united coherent family is the most effective social welfare system that any nation has ever seen.

And the widening gap between rich and poor, much of the social disintegration of this country and much of the unemployment of this country can be traced to the disintegration of family life.³

Given the Prime Minister's reluctance to officially apologise to the 'stolen children' this statement is ambiguous and contradictory. It seems that the Government is dictating one set of values for Indigenous Australians, and another for the rest of the country.

Catherine Duff

Catherine Duff is a Sydney human rights lawyer.

References

1. First Commonwealth-State Native Welfare Conference 1937, quoted in 'Bringing them Home', p.32.
2. See for example, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Third Report 1995', AGPS, 1995 and 'Fourth Report 1996', AGPS 1996; Royal Commission into Aboriginal Deaths in Custody, National Report, AGPS, 1991.
3. The Prime Minister, the Hon. J. Howard, MP, 'Address to the 61st Annual State Conference of the National Party', Queensland, 20 July 1996.

'Sit down Girlie' continued from p.253

18 months he has sat on the High Court Justice Kirby has heard from only six women in 'speaking parts'. He estimates this to be 2 or 3% of the advocates appearing in the court. Such statistics suggest that the High Court too is a 'man's venue'.

In His Honour's view: 'it is possible that I will go through the next 18 months without seeing a woman advocate at the central podium in the grand courtroom in Canberra. More important than buildings and furniture by far is the reality of full participation in the workings of justice.' He posits the reasons for the disparity in speaking parts as — the fact that the male top performers are resistant to change; the risk that top

female advocates are quickly identified and appointed to judicial office; it is difficult to change the Bar as it is a collection of individuals rather than a monolithic corporation; the fact that the cases before the High Court are 'big league' cases and instructing solicitors are usually senior men who are not used to the concept that leading counsel may be female; client attitudes are given by some as a (spurious) reason for not selecting a female advocate as is the fact that many women interrupt their careers to raise children, and finally the 'ethos' of the Bar. His Honour noted that any group which for nearly 700 years has been comprised solely of men is bound to have inherited attitudes which may sometimes seem unwelcoming to some new entrants.

Girlie's favourite part of the talk was His Honour's hopeful statement that:

It is inevitable that the new entrants will alter the ethos and the culture of the legal profession. But it will take time. The road will often be rocky for those who set out to forge the changes. It will be a serious mistake if they sink their own personalities by copying precisely what has gone before. Women have unique things to offer the legal practice. They should not hold back from their own special contribution.

That's something uplifting to copy down and put on the wall of your office for inspiration when times get tough.

Dina Soares

Dina Soares is a Feminist Lawyer