Bringing them HOME

A guide to the findings and recommendations of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families

Developed for students by the Human Rights and Equal Opportunity Commission
http://www.humanrights.gov.au
Editors note:

This report is a guide to the major themes, findings and recommendations of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families.

Quotes in this guide appear in italics. However all references can be found in the full Report where details of the witness or author are provided.

The full report is available at:

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We may go home, but we cannot relive our childhoods. We may reunite with our mothers, fathers, sisters, brothers, aunties, uncles, communities, but we cannot relive the 20, 30, 40 years that we spent without their love and care, and they cannot undo the grief and mourning they felt when we were separated from them. We can go home to ourselves as Aboriginals, but this does not erase the attacks inflicted on our hearts, minds, bodies and souls, by caretakers who thought their mission was to eliminate us as Aboriginals.

— Link Up (NSW)

This report is dedicated to the generations of Aboriginal children taken from their families and communities, who are still searching for home, and to the memory of the children who will never return. It is dedicated to the mothers, fathers and families of the 'stolen generations'.

To those who told their stories to the Inquiry, we extend our deep thanks and admiration for finding the courage and strength to bear witness.

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Introduction

Indigenous children have been forcibly removed from their families and communities since the very first days of the European occupation of Australia.

In that time, not one Indigenous family has escaped the effects. Most families have been affected in one or more generations by the removal of one or more children. Nationally, the Inquiry concludes that between one in three and one in ten Indigenous children were forcibly removed from their families and communities between 1910 and 1970.

The National Inquiry was established by the Federal Attorney General in 1995. It was conducted by the Human Rights and Equal Opportunity Commission (HREOC).

The Inquiry visited every state and territory capital and most regions of Australia, from Cape Barren Island in the south to the Torres Strait and the Kimberley in the north. Limited resources meant the Inquiry could not travel to every centre.

The Inquiry took evidence in public and private sittings from Indigenous people, government and church representatives, former mission staff, foster and adoptive parents, doctors and health professionals, academics, police and others. People also made written submissions. Most hearings were conducted by HREOC President, Sir Ronald Wilson, and the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson.

In each region an Indigenous Commissioner was appointed to assist with the hearings. An Indigenous Advisory Council, with representatives from every major region, also assisted the Inquiry.

A total of 777 people and organisations provided evidence or a submission; 535 were Indigenous people who gave evidence or submissions about their experiences of forcible removal. Most had been removed as children; others were parents, siblings or children of removed children.

Terms of Reference

I, MICHAEL LAVARCH Attorney General of Australia, HAVING REGARD TO the Australian Government's human rights, social justice and access and equity policies in pursuance of section 11(1)(e), (j), and (k) of the Human Rights and Equal Opportunity Commission Act 1986, HEREBY REVOKE THE REQUEST MADE ON 11 MAY 1995 AND NOW REQUEST the Human Rights and Equal Opportunity Commission to inquire into and report on the following matters:

(a) trace the past laws, practices and policies which resulted in the separation of Aboriginal and Torres Strait Islander children from their families by compulsion, duress or undue influence, and the effects of those laws, practices and policies;

(b) examine the adequacy of and the need for any changes in current laws, practices and policies relating to services and procedures currently available to those Aboriginal and Islander peoples who were affected by the separation under compulsion, duress or undue influence of Aboriginal and Torres Strait Islander children from their families, including but not limited to current laws, practices and policies relating to access to individual and family records and to other forms of assistance towards locating and re-unifying families;

(c) examine the principles relevant to determining the justification for compensation for persons or communities affected by such separation;

(d) examine current laws, practices and policies with respect to the placement and care of Aboriginal and Torres Strait Islander children and advise on any changes required taking into account the principle of self-determination by Aboriginal and Torres Strait Islander peoples.

Reunion: Going Home Conference, Darwin, 1994
The scope of the Inquiry

The Inquiry had four terms of reference:

(a) Removal by compulsion, duress or undue influence

The Inquiry was required to trace the history of forcible removal of Indigenous children from their families ‘by compulsion, duress or undue influence’ and the effects of removal.

Compulsion can be illegal (such as kidnapping) or legal (such as when a court orders a child to be removed for ‘neglect’).

They put us in the police ute and said they were taking us to Broome. They put the mums in there as well. But when we’d gone about ten miles they stopped, and threw the mothers out of the car. We jumped on our mothers’ backs, crying, trying not to be left behind. But the policeman pulled us off and threw us back in the car. They pushed the mothers away and drove off, while our mothers were chasing the car, running and crying after us. We were screaming in the back of that car.

The Inquiry found most Indigenous parents did not freely give up their children. Where removals occurred for reasons of ‘education’ or ‘betterment’, offers were presented in a such a way families could not refuse them.

Duress and undue influence occur where the family didn’t have any real choice because of the pressure put on them by people or circumstances to induce the surrender of their children. For example:

The mission manager said, ‘Mrs J has a couple of boys already.

We’ll take her third one’. If Mrs J would have objected, the welfare officer says, ‘Well, if you don’t give us that child, we’ll take the other two.’

Some removals may have been justified as being in the children’s best interests at the time, but the Inquiry was not limited to considering only those removals which could not be justified.

(b) Adequacy of services for those affected

The Inquiry had to examine the adequacy of services available for people affected by forcible removal, especially access to personal and family records and assistance for family reunions.

(c) What principles would justify compensation?

The Inquiry was asked to report on what principles would justify compensation for forcible removal.

(d) The causes of removals today

The Inquiry was asked to look at the causes of removals of Indigenous children from their families today and how these can be prevented. The Inquiry’s focus was on the juvenile justice and child welfare systems of every state and territory. The Inquiry also considered adoption and family law.

The Inquiry was asked to take into account the principle of self-determination. Self-determination is a collective human right of peoples. It can mean many things: freedom from political and economic domination by others; self-government and the freedom to make decisions about family, community, culture and country. It can take many forms, from regional agreements to community constitutions, depending on each community’s needs and aspirations.

Terms of Reference (a): Tracing the history

The histories we trace are complex and pervasive. The actions of the past resonate in the present, and will continue to do so in the future. This time line provides a brief outline of the laws, practices and policies of forcible removal and some of the context in which they were developed.

45 000 years ago

Rock engravings made in South Australia. The earliest dated petroglyphs.

1451

Dutch documents record the journeys of Macassan trepangers to northern Australia. From 1588 Macassan praus sail to the north-eastern coast of the Northern Territory. Trade between Aborigines and the Macassans continues until 1906.

1770

Lieutenant James Cook claims possession of the whole east coast of Australia. Cook raises the British flag at Possession Island off the tip of Cape York Peninsula.
1788
British occupation of Australia begins. Aboriginal resistance is immediate. Clashes are reported over next 10 years in Parramatta and Hawkesbury districts.

1814
Governor Macquarie’s ‘Native Institution’ opens at Parramatta. This school for Koori children closes in 1820 when Koori families withdraw their children. They realise its aim is to distance them from their families and communities.

1824
In Tasmania, settlers are authorised to shoot Aborigines. Martial law is declared in Bathurst NSW after conflict with Aborigines becomes a serious threat to white settlement.

1830
Tasmanian Aboriginal are people forcibly settled on Flinders Island. Conditions are appalling and many die. Later the community is moved to Cape Barren Island.

1911
Aborigines Act (SA). The Chief Protector is made the legal guardian of every Aboriginal and ‘half-caste’ child under 21 with control over the child’s place of residence. The Chief Protector is replaced by the Aborigines Protection Board in 1939. Guardianship power is repealed in 1962.

1925
Australian Aborigines Progressive Association formed in NSW.

1928
Coniston Massacre, NT. Settlers and police admit to shooting 31 Aborigines after a white dingo trapper is killed.

1937
First Commonwealth-State conference on ‘native welfare’ adopts ‘assimilation’ as the national policy: ‘the destiny of the natives of aboriginal origin, but not of the full blood, lies in their ultimate absorption ... with a view to their taking their place in the white community on an equal footing with the whites.’

1938
Australian Aborigines Conference held in Sydney. Meeting on January 26, the 150th anniversary of NSW, Aborigines mark the ‘Day of Mourning’.

1980
Link Up (NSW) Aboriginal Corporation established. Followed by Link Up (Qld) in 1988. Link Up provides family tracing, reunion and support for forcibly removed children and their families.

1981
Secretariat of National Aboriginal and Islander Child Care (SNAICC) established. SNAICC represents the interests on a national level of Australia’s 100 or so Indigenous community-controlled children’s services.

1983

1988
Australia’s representative to the United Nations Human Rights Committee acknowledges: ‘public policy regarding the care of Aboriginal children, particularly during the post-war period, had been a serious mistake.’

Thousands of Aboriginal people and supporters march through the streets of Sydney to celebrate survival on the Bicentennial of British colonisation of Australia.

1991
Royal Commission into Aboriginal Deaths in Custody presents its report to the Federal Government. It finds that of the 99 deaths it investigated, 43 were of people
who had been separated from their families as children.

1992
High Court’s ‘Mabo’ decision. The doctrine of terra nullius is abolished.

1994
Going Home Conference, Darwin, brings together over 600 Aboriginal people removed as children to discuss common goals of access to archives, compensation, rights to land and social justice.

1995
National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families established in May.

Children’s experiences

Children could be put into an institution or mission dormitory, fostered or adopted. Many children were fostered or adopted after spending time in a children’s home. Many spent time in more than one institution or foster family. Later many were sent out to work. Some moved from institution or foster family to detention centre or psychiatric hospital. More than half (56%) the people who gave evidence to the Inquiry had experienced multiple placements following their removal.

They were discouraged from family contact

The Inquiry found ‘assimilation’ was rigorously pursued by most authorities and by non-Indigenous foster and adoptive families. In particular, children and their families were discouraged or prevented from contacting each other.

One of the girls was doing Matron’s office, and there was 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 in 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’.

When my mum passed away I went to her funeral, which is stupid because I’m allowed to go see her at her funeral but I couldn’t have that when she requested me. They wouldn’t let me have her.

The Inquiry found that many children were told they were unwanted, rejected or their parents were dead, when this was not true.

I remember this woman saying to me, ‘Your mother’s dead, you’ve got no mother now. That’s why you’re here with us’. Then about two years after that my mother and my mother’s sister came to The Bungalow but they weren’t allowed to visit us because they were black.

We were transferred to the State Children’s Orphanage in 1958. Olive [aged 6 weeks] was taken elsewhere — Mr L telling me several days later that she was admitted to hospital where she died from meningitis. In 1984, assisted by Link Up (Qld), my sister Judy discovered that Olive had not died but rather had been fostered. Her name was changed.

They were taught to reject Aborigines and Aboriginality

The Inquiry found many witnesses were taught to feel contempt for Aborigines. Those who knew their own heritage transferred that contempt to themselves.

We were told that our mother was an alcoholic and that she was a prostitute and she didn’t care about us. They used to warn us that when we got older we’d have to watch it because we’d turn into sluts and alcoholics, so we had to be very careful. If you were white you didn’t have that dirtiness in you ...

I didn’t know any Aboriginal people at all, none at all. I was placed in a white family and I was just — I was white. I never knew, I never accepted myself to being a black person until — I don’t know if you ever really do accept yourself as being ...

How can you be proud of being Aboriginal after all the humiliation and the anger and the hatred you have? It’s unbelievable how much you can hold inside.

Institutional conditions were very harsh

The Inquiry found that the conditions of missions, government institutions and children’s homes were often very poor. Resources were insufficient to improve them, or keep children properly clothed, fed and sheltered.

There was no food, nothing. We was all huddled up in a room like a little puppy dog on the
Sometimes at night we’d cry with hunger. We had to scrounge in the town dump, eating old bread, smashing tomato sauce bottles, licking them. Half of the time the food we got was from the rubbish dump.

Institutional regimes were often very strict, with severe punishments for breaking the rules.

**Their education was often very basic**

The Inquiry found that the education provided in Indigenous children’s institutions was essentially a preparation for menial labour. However, the promise of a good education was often the inducement for parents to relinquish their children to the authorities.

I don’t know who decided to educate the Aboriginal people but the standard was low in those mission areas. I started school at the age of eight at grade one, no pre-school. I attended school for six years, the sixth year we attended grade 4, then after that we left school, probably 14 years old.

I wanted to be a nurse, only to be told that I was nothing but an immoral black lubra, and I was only fit to work on cattle and sheep properties.

**Many never received their wages**

The Inquiry found that children placed in work by the authorities were not entitled or trusted to receive their wages. These were supposed to be held in trust, but many never received the money that was rightfully theirs.

We never, ever got our wages. It was banked for us. And when we were 21 we were supposed to get this money. We never got any of that money ever. And that’s what I wonder: where could that money have went? Or why didn’t we get it?

**Excessive physical punishments were common**

Many witnesses told the Inquiry of being physically assaulted and brutally punished in placements. These children were most at risk of this treatment in foster or adoptive families. Almost a quarter (23.4%) of witnesses to the Inquiry who were fostered or adopted reported being assaulted there. One in six children who were institutionalised reported physical assault and punishments.

WA Chief Protector, A.O. Neville found it necessary to ban ‘degrading and injurious punishments and the practice of holding inmates up to ridicule, such as dressing them in old sacks or shaving girls’ heads’. A NSW superintendent was told ‘that on no account must he tie a boy up to a fence or tree, that such instruments as lengths of hosepipe or a stockwhip must not be used, that no dietary punishments shall be inflicted’.

**Dormitory life was like living in hell. It was not a life. The only things that sort of come out of it was how to work, how to be clean, you know and hygiene. That sort of thing. But we got a lot of bashings.**

**The children were at risk of sexual abuse**

Sexual abuse was reported to the Inquiry by one in five people who were fostered and one in ten people who were institutionalised. One in ten alleged they were sexually abused in a work placement organised by the Protection Board or institution.

There was tampering with the boys ... the people who would come in to work with the children, they would grab the boys’ penises, play around with them and kiss them and things like this. These were the things that were done ... It was seen to be the white man’s way of lookin’ after you. It never happened with an Aboriginal.

I ran away because my foster father used to tamper with me and I’d just had enough. I went to the police but they didn’t believe me. So she [foster mother] just thought I was a wild child and she put me in one of those hostels and none of them believed me — I was the liar. So I’ve never talked about it to anyone. I don’t go about telling lies, especially big lies like that.

**Authorities failed to care for and protect the children**

The Inquiry found that welfare officials failed in their duty to protect Indigenous wards from these abuses, often in the very placements they had organised.

My sister saw our welfare officer when she was grown up and he told her that he’d always thought our [foster] house was abnormal. He thought us kids were abnormal. He thought we were like robots, we had to look at her before we said anything. When an officer comes along they’re supposed to talk to you on your own. Our foster mother insisted that she had to be in the room because they could sexually assault us while she was out of the room, so she wasn’t going to allow it. Being the minister’s wife, they agreed that she was allowed to sit there. So we never had the chance to complain. Welfare never gave us a chance.

**Some found happiness**

Some witnesses to the Inquiry told
of finding affection and happiness in their adoptive family or, more rarely, in a children’s home. The Inquiry found that the bonds permitted in these more enlightened placements went some way to overcoming the many other damaging effects for Indigenous children.

We were all happy together, us kids. We had two very wonderful old ladies that looked after us. It [Colebrook, South Australia] wasn’t like an institution really. It was just a big happy family. Y’know they gave us good teaching, they encouraged us to be no different to anybody else.

Terms of Reference (b): The journey home

Going home is fundamental to healing the effects of separation. Going home means finding out who you are as an Aboriginal: where you come from, who your people are, where your belonging place is, what your identity is. Going home is fundamental to the healing processes of those who were taken away as well as those who were left behind — Link Up (NSW).

The Inquiry found people have many reasons why they need to trace their families. Reunion is important at the very least for discovering information about health and inherited illnesses and for developing intimate relationships.

A complex emotional journey with an uncertain outcome

The Inquiry was told many separated children will never go home. The pathways have been lost; parents and families have died. Language barriers can inhibit reunions. People whose Aboriginality was denigrated in childhood may not want to admit to it. Those who do go home experience a variety of emotions including anxiety and fear.

I’ve seen the old lady four times in my life. She’s 86 years old. We were sitting on the bench [the first time]. I said, ‘I’m your son.’ ‘Oh’, she said, and her eyes just sparkled. Then a second later she said, ‘You’re not my son’. Well mate, the blinking pain. Didn’t recognise me. The last time she saw me I was three years old.

I went to Link Up who found my family had all died except one sister. I was lucky enough to spend two weeks with her before she died. She told me how my family fretted and cried when I was taken away. They also never gave up hope of seeing me again.

The Inquiry was told some reunions are unsupported, with inadequate preparation or counselling for either party. Some witnesses spoke of rejection by the community.

I’ve received a lot of hostility from other Aboriginal people. They’re my own relatives and they really hurt me because ... they have a go at me and say that I don’t even know my own relatives, and that I should; that I’ve got nothing in common with them. The damage is all done and I can’t seem to get close to any of them.

Some witnesses returned to families still grieving their loss and awaiting their return.

It was this kind of instant recognition, I looked like her, you know? It was really nice. She just kind of ran up to me and threw her arms around me and gave me a hug and that was really nice. And then suddenly there was all these brothers coming out of the woodwork. I didn’t know I had any siblings. And uncles and aunts and cousins. Suddenly everyone was coming around to meet me.

When I was 20 years old I was reunited with my mother for the first time shortly before she died. I suppose I had a natural curiosity to meet and know her. I had an urge to see my mother and when I met her she said, ‘I knew you’d come’. I didn’t know at this stage I was Aboriginal. My mother was the first Tasmanian Aboriginal person I had met. A few of my natural siblings were with her. I still haven’t met some of my natural siblings.

The Inquiry found that an unknown number of Indigenous children were taken overseas by foster or adoptive families. For them, locating family and re-establishing links are particularly difficult, if not impossible. The importance of doing so is likely to be as great for them as for people living in Australia.

Responses from churches and governments

The Inquiry investigated and made recommendations on three ways governments could assist people affected by forcible removal:

- giving people access to their personal files and information recorded about their families;
- funding family tracing and reunion services like Link Up; and
- funding Indigenous mental health programs dealing with grief and loss, parenting and families, and the other effects of forcible removal.
Access to personal and family records

The Inquiry found that most people have access to their own files but there are many difficulties:

- finding the file itself;
- some files have been lost or destroyed;
- different departments have different rules;
- there may be a fee;
- the waiting time can be lengthy; and
- church records are hard to access.

The Inquiry recommended the process of accessing personal and family records should be easier and more straightforward. There should be a Family Information Service in every state and territory for Aboriginal and Torres Strait Island people. The guidelines for access should be developed by a state or territory taskforce with government, church and Indigenous agency representatives.

The Inquiry found that many people need counselling when they read their files.

The Inquiry recommended Indigenous community-based family tracing and reunion services be established in each region and funded to meet all the needs of clients for as long as they need it.

There are a lot of untrue things about me on those files. I have cried about the lies on those files. There’s letters written there in my handwriting and I go berserk, I can’t handle it. I can’t go near them because I see my handwritten letters there as a little kid. You know, ‘May I see my brothers and sisters? I haven’t seen them for a long time. They’re dear to my heart’.

Do you know where my mum is? Can I please see my dad?’ There’s letters written back by them that my behaviour didn’t warrant visits. There’s letters there saying that if I didn’t improve my behaviour that I would not be able to be with my brothers and sisters and that I would never see my parents again.

The Inquiry recommended that counselling and support should be made available through Indigenous family tracing and reunion services.

Funding for Indigenous community-based family tracing and reunion services

The Inquiry found that Indigenous family tracing and reunion services exist in most states and territories. But their coverage is patchy:

- there is none in the ACT and only one worker in SA; none in Kimberley, Pilbara or Goldfields in WA (one is planned for Kimberley);
- services vary from assistance only with records in SA to comprehensive assistance and support in NSW;
- getting professional counselling is difficult; and
- travelling for reunions is not funded.

Once each person is reunited with their family, it’s the beginning of a slow process of getting to know their family and learning about their community. Support and counselling of the many underlying issues, is normally required as an ongoing process for many years — Link Up (Qld).

A holistic and community-based approach to mental health

The Inquiry found that most mental health services are inappropriate for Indigenous people’s needs:

- Indigenous people view mental health differently to non-Indigenous people;
- non-Indigenous doctors and nurses often lack understanding of Aboriginal or Islander culture;
- social and community well-being is often ignored;
- rural and remote communities don’t get the same services as cities and towns; and
- too many Indigenous people end up in mental hospitals or prison. Prevention and intervention are required.

The Inquiry recommended the focus should change from the individual who seems to be suffering mental illnesses to the needs of the whole community. Funding should go to community-based prevention services that take a holistic view of health and a cultural perspective on health and well-being of the whole family and community. Where specialists are needed they should work in partnership with Indigenous healers.

The Inquiry recommended that all those who work with Indigenous people — doctors, police, judges, magistrates, social workers — be
properly trained. Their training must include information about the history of forcible removal and the effects of forcible removal on children, families and communities. This is a prerequisite for the provision of good services to Indigenous communities. Family tracing and reunion services and Aboriginal and Islander Child Care Agencies are appropriate organisations to provide this training.

The Inquiry recommended that these services employ Indigenous people. Indigenous people should be trained and culturally appropriate Indigenous trainers should be employed. Scholarships and traineeships should be set up by governments for Indigenous people to become healers, health workers, genealogists, archivists, researchers and counsellors.

The roles of churches and missions

The Inquiry found churches played a major role in forcible removals by providing accommodation and other services to the children in line with government policy.

With hindsight, we recognise that our provision of services enabled these policies to be implemented. We sincerely and deeply regret any hurt, however unwittingly caused, to any child in our care

— The Daughters of Our Lady of the Sacred Heart Australian Province.

In addition to acknowledging and apologising for their roles, the Inquiry recommended that churches can help now by:

- providing access to the personal and family records they hold;
- providing or supporting culturally appropriate counselling services; and
- returning mission and institution land to Indigenous people.

Terms of Reference (c): Grounds for reparation

Lots of white kids do get taken away, but that’s for a reason — not like us. We just got taken away because we was black kids, I suppose — half-caste kids. If they wouldn’t like it, they shouldn’t do it to Aboriginal families.

A gross violation of human rights

The Inquiry concluded that the forcible removal of Indigenous children was a gross violation of their human rights. It was racially discriminatory and continued after Australia, as a member of the United Nations from 1945, committed itself to abolish racial discrimination.

The Inquiry found that by the early 1950s, the international prohibition of racial discrimination of the kind to which Indigenous families and children were subjected was well-recognised, even in Australia.

An act of genocide

The Inquiry concluded that forcible removal was an act of genocide contrary to the Convention on Genocide ratified by Australia in 1949. The Convention on Genocide specifically includes ‘forcibly transferring children of [a] group to another group’ with the intention of destroying the group.

Genocide is not only the mass killing of a people. The essence of genocide is acting with the intention to destroy the group, not the extent to which that intention has been achieved. A major intention of forcibly removing Indigenous children was to ‘absorb’, ‘merge’ or ‘assimilate’ them, so Aborigines as a distinct group would disappear. Authorities sincerely believed assimilation would be in the ‘best interests’ of the children, but this is irrelevant to a finding that their actions were genocidal.

A denial of legal rights

The Inquiry concluded that even before international human rights law developed in the 1940s the treatment of Indigenous people breached Australian legal standards. Indigenous families were entitled to expect the protection of the British common law imported into Australia.

Two relevant legal principles were denied on racial grounds to Indigenous families. These principles grew from the common law’s respect for personal and family liberty and parental rights.

The first was that children should not be removed from their parents unless a court makes that decision. The court order must be based on evidence proving removal is in the best interests of the child. The second principle was that parents are the legal guardians of their children unless a court orders otherwise in the interests of the child. The legal guardian has the right to decide where the children will live and how they will be educated and raised.

In WA (1905-1954), NT (1911-1964), NSW (1915-1940), SA (1911-1923) and Queensland (1897-1965) Indigenous children could be taken without a court order.
But Australian law applying to non-Indigenous families required a court finding of ‘neglect’, ‘destitution’ or ‘uncontrollability’ before a child could be removed into State care.

In WA, SA, NT and Queensland most Indigenous parents lost their guardianship rights because the law made the Protector or Protection Board the legal guardian of their children. But under British and Australian law, non-Indigenous parents were the full guardians of their children unless a court transferred guardianship to the State.

The authorities failed in their duties to many children

The Inquiry found that many forcibly removed children had harrowing experiences in mission dormitories, childrens homes, group homes and foster families. Many were denied proper care and education, contrary to the legal responsibilities of the authorities at the time. The Inquiry concluded that, by causing harm and allowing the children to be harmed and abused, the Protection Board or Native Welfare breached its legal duty to look after them properly.

And for them to say Mum neglected us! I was neglected when I was in this government joint down here. I didn’t end up 15 days in a hospital bed when I was with me Mum and Dad.

The right response is reparations

The Inquiry concluded forcible removal involved human rights breaches and the denial of common law protections to Indigenous families and children. Governments have a responsibility to respond with ‘reparation’ to those affected.

‘Reparation’ is the appropriate response to gross violations of human rights. According to international legal principles, reparation has five parts:

1. acknowledgment of the truth and an apology;
2. guarantees that these human rights won’t be breached again;
3. returning what has been lost as much as possible (known as restitution);
4. rehabilitation; and
5. compensation.

The Government has to explain why it happened. What was the intention? I have to know why I was taken. I have to know why I was given the life I was given and why I’m scarred today. Why was my Mum meant to suffer? Why was I made to suffer with no Aboriginality and no identity, no culture? Why did they think that the life they gave me was better than the one my Mum would give me?

And an apology is important because I’ve never been apologised to. My mother’s never been apologised to, not once, and I would like to be apologised to.

Thirdly, I’ve been a victim and I’ve suffered and I’ll suffer until the day I die for what I’ve never had and what I can never have. I just have to get on with my life but compensation would help. It doesn’t take the pain away. It doesn’t take the suffering away. It doesn’t take the memories away. It doesn’t bring my mother back. But it has to be recognised.

And I shouldn’t forget counselling. I’ve had to counsel myself all my life from a very young age. And in the homes I never showed my tears ... I’ve been told that I need to talk about my childhood. I need to be counselled for me to get on with my life.

Reparation should be made to everyone affected

The Inquiry determined everyone affected by forcible removals should be entitled to reparation. Those affected include the children who were forcibly removed, their families, communities, children and grandchildren.

Making reparation

1. Recording testimonies

Australian governments should ensure the adequate funding of appropriate Indigenous agencies to record, preserve and administer access to the testimonies of people affected by forcible removal, who wish to provide their histories in written, audio or audio-visual form.

2. Acknowledgement and apology

Australian parliaments, police forces and churches should acknowledge their responsibility and apologise to everyone affected by forcible removal.

3. Commemoration

There should be a national Sorry Day for the children and their families and ATSIC should coordinate other commemorations in local and regional areas.
4. **Public education**

Everybody — including primary and secondary school children, judges, doctors, police and other decision-makers — should be told about the history of forcible removal and the continuing effects on families, communities and the next generation.

5. **Going home to country**

Family reunion workers should have enough funds to help people go home to their country and to tell their communities about the history of forcible removal and its effects.

6. **Learning the language and culture again**

Language, culture and history centres should be established in each region to teach the separated children and their descendants their language and to teach the history to everyone.

7. **Identification**

Indigenous organisations which help people find their families should be able to certify a person is of Aboriginal or Torres Strait Islander descent and is accepted as Aboriginal or Torres Strait Islander by the organisation.

8. **Compensation**

A person who was a forcibly removed child should get a lump sum amount for compensation unless the removal was justifiable.

The Inquiry did not decide how much that should be. In addition to the lump sum, anyone who can prove harm caused by forcible removal (of themselves or a child or a parent) should be compensated for that harm on the grounds of:

- racial discrimination;
- arbitrary deprivation of liberty;
- pain and suffering;
- abuse;
- disruption of family life;
- loss of cultural rights and fulfilment;
- loss of native title rights;
- labour exploitation;
- economic loss;
- loss of opportunities.

9. **National Compensation Fund**

Australian governments should establish a National Compensation Fund so people don’t have to go to court to be compensated for the wrongs done to them. A Board should be set up to administer the fund, made up of Indigenous and non-Indigenous people and chaired by an Indigenous person. The Board should not be legalistic or formal, but culturally appropriate and accessible to all Indigenous people.

**Terms of Reference (d) : Removal of children today**

The Inquiry found that entrenched disadvantage and dispossession mean the removal of Indigenous children continues today. Indigenous children are six times more likely to be removed for child welfare reasons and 21 times more likely for juvenile justice detention, than non-Indigenous children.

In child welfare, Indigenous children are more likely than non-Indigenous children to be removed on the ground of ‘neglect’ rather than ‘abuse’. Often Indigenous parenting styles are wrongly seen as the cause.

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’. — Link Up (NSW).

The Inquiry found that there are many reasons for the continuing high removal rates of Indigenous children. Indigenous young people come into conflict with the law due to policing and the administration of justice. Indigenous families and communities live in poverty, are provided with inadequate and usually inappropriate services and do not have decision-making power about the services they receive, particularly about how children and young people are dealt with.

The Inquiry found that Indigenous young people who come into contact with the child welfare system are more likely to come into contact with the juvenile justice system. Those who do, often don’t receive equal treatment before the law. Indigenous young people generally receive harsher sentences than non-Indigenous youth, particularly when being sentenced to detention.

**Self-determination and social justice are the keys**

The Inquiry recommended that self-determination should be recognised for all Indigenous communities. Commonwealth, state and territory governments should work with ATSIC, SNAICC, the National Aboriginal and Islander Legal Service Secretariat...
(NAILSS) and the Aboriginal and Torres Strait Islander Social Justice Commissioner to draft legislation setting out a framework for negotiating regional or local agreements on self-determination about children and families.

The Inquiry found that some communities may want control of the child welfare and juvenile justice systems themselves—the transfer of legal powers should be possible. Other communities may want to share powers with the state or territory. Others may want organisations or community councils to make certain decisions. Yet others may want to be responsible for community-based sentences for juvenile offenders. The range of choices is wide and every community should be assisted to choose what is right for itself.

The Inquiry recommended that the social justice recommendations of the Royal Commission into Aboriginal Deaths in Custody should be implemented and the Commonwealth Government should adopt a social justice package for children and families.

**Conclusion**

The Inquiry has been of fundamental importance in validating the stories of generations of Indigenous people who until now have carried the burden of one of Australia's greatest tragedies.

The Inquiry understands many children from other cultures have been forcibly removed from their families. We recognise their pain; we urge Australia to undertake the process of healing these broken relationships, where it is possible to do so.

Indigenous families and communities have endured gross violations of their human rights. These violations continue to affect Indigenous people's daily lives. They were an act of genocide, aimed at wiping out Indigenous families, communities and cultures, vital to the precious and inalienable heritage of Australia.

The Inquiry's recommendations are directed to healing and reconciliation for the benefit of all Australians.

A commitment to the implementation of both the spirit and letter of these recommendations is essential to the future unity, justice and peace of the nation.

The process of telling and listening has only begun. The process will not be easy; it will not go away.

It is for all of us to make the journey of reconciliation, and with open hearts and minds it is possible for us to begin ‘bringing them home’.

**Recommendations**

**Recording testimonies**

1. That the Council of Australian Governments ensure the adequate funding of appropriate Indigenous agencies to record, preserve and administer access to the testimonies of Indigenous people affected by the forcible removal policies who wish to provide their histories in audio, audio-visual or written form.

**Procedure for implementation**

2a. That the Council of Australian Governments establish a working party to develop a process for the implementation of the Inquiry’s recommendations and to receive and respond to annual audit reports on the progress of implementation.

2b. That the Commonwealth fund the establishment of a National Inquiry audit unit in the Human Rights and Equal Opportunity Commission to monitor the implementation of the Inquiry’s recommendations and report annually to the Council of Australian Governments on the progress of implementation of the recommendations.

2c. That ATSIC fund the following peak Indigenous organisations to research, prepare and provide an annual submission to the National Inquiry audit unit evaluating the progress of implementation of the Inquiry’s recommendations:

- Secretariat of National Aboriginal and Islander Child Care (SNAICC), Stolen Generations National
Secretariat, National Aboriginal Community Controlled Health Organisation (NACCHO) and National Aboriginal and Islander Legal Services Secretariat (NAILSS).

2d. That Commonwealth, state and territory governments undertake to provide fully detailed and complete information to the National Inquiry audit unit annually on request concerning progress on implementation of the Inquiry’s recommendations.

Components of reparations

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.

Claimants

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.

Acknowledgment and apology: parliaments and police forces

5a. That all Australian parliaments:

1. officially acknowledge the responsibility of their predecessors for the laws, policies and practices of forcible removal;
2. negotiate with the Aboriginal and Torres Strait Islander Commission a form of words for official apologies to Indigenous individuals, families and communities and extend those apologies with wide and culturally appropriate publicity; and
3. make appropriate reparation as detailed in following recommendations.

5b. That state and territory police forces, having played a prominent role in the implementation of the laws and policies of forcible removal, acknowledge that role and, in consultation with the Aboriginal and Torres Strait Islander Commission, make such formal apologies and participate in such commemorations as are determined.

Acknowledgment and apology: churches and others

6. That churches and other non-government agencies which played a role in the administration of the laws and policies under which Indigenous children were forcibly removed acknowledge that role and in consultation with the Aboriginal and Torres Strait Islander Commission make such formal apologies and participate in such commemorations as may be determined.

Commemoration

7a. That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, arrange for a national Sorry Day to be celebrated each year to commemorate the history of forcible removals and its effects.

7b. That the Aboriginal and Torres Strait Islander Commission, in consultation with the Council for Aboriginal Reconciliation, seek proposals for further commemorating the individuals, families and communities affected by forcible removal at the local and regional levels. That proposals be
implemented when a widespread consensus within the Indigenous community has been reached.

**School education**

8a. That state and territory governments ensure that primary and secondary school curricula include substantial compulsory modules on the history and continuing effects of forcible removal.

8b. That the Australian Institute of Aboriginal and Torres Strait Islander Studies be funded by the Commonwealth to develop these modules.

**Professional training**

9a. That all professionals who work with Indigenous children, families and communities receive in-service training about the history and effects of forcible removal.

9b. That all undergraduates and trainees in relevant professions receive, as part of their core curriculum, education about the history and effects of forcible removal.

**Genocide Convention**

10. That the Commonwealth legislate to implement the Genocide Convention with full domestic effect.

**Assistance to return to country**

11. That the Council of Australian Governments ensure that appropriate Indigenous organisations are adequately funded to employ family reunion workers to travel with clients to their country, to provide Indigenous community education on the history and effects of forcible removal and to develop community genealogies to establish membership of people affected by forcible removal.

**Language, culture and history centres**

12a. That the Commonwealth expand the funding of Indigenous language, culture and history centres to ensure national coverage at regional level.

12b. That where the Indigenous community so determines, the regional language, culture and history centre be funded to record and maintain local Indigenous languages and to teach those languages, especially to people whose forcible removal deprived them of opportunities to learn and maintain their language and to their descendants.

**Indigenous identification**

13. That Indigenous organisations, such as Link Ups and Aboriginal and Islander Child Care Agencies, which assist those forcibly removed by undertaking family history research be recognised as Indigenous communities for the purposes of certifying descent from the Indigenous peoples of Australia and acceptance as Indigenous by the Indigenous community.

**Heads of damage**

14. That monetary compensation be provided to people affected by forcible removal under the following heads:

1. racial discrimination;
2. arbitrary deprivation of liberty;
3. pain and suffering;
4. abuse, including physical, sexual and emotional abuse;
5. disruption of family life;
6. loss of cultural rights and fulfilment;
7. loss of native title rights;
8. labour exploitation;
9. economic loss; and
10. loss of opportunities.

**National Compensation Fund**

15. That the Council of Australian Governments establish a joint National Compensation Fund.

**National Compensation Fund Board**

16a. That the Council of Australian Governments establish a Board to administer the National Compensation Fund.

16b. That the Board be constituted by both Indigenous and non-Indigenous people appointed in consultation with Indigenous organisations in each state and territory having particular responsibilities to people forcibly removed in childhood and their families. That the majority of members be Indigenous people and that the Board be chaired by an Indigenous person.

**Procedural principles**

17. That the following procedural principles be applied in the operations of the monetary compensation mechanism:

1. widest possible publicity;
2. free legal advice and representation for claimants;
3. no limitation period;
4. independent decision-making which should include the participation of Indigenous decision-makers;

5. minimum formality;

6. not bound by the rules of evidence; and

7. cultural appropriateness (including language).

**Minimum lump sum**

18. That an Indigenous person who was removed from his or her family during childhood by compulsion, duress or undue influence be entitled to a minimum lump sum payment from the National Compensation Fund in recognition of the fact of removal. That it be a defence to a claim for the responsible government to establish that the removal was in the best interests of the child.

**Proof of particular harm**

19. That upon proof on the balance of probabilities any person suffering particular harm and/or loss resulting from forcible removal be entitled to monetary compensation from the National Compensation Fund assessed by reference to the general civil standards.

**Civil claims**

20. That the proposed statutory monetary compensation mechanism not displace claimants common law rights to seek damages through the courts. A claimant successful in one forum should not be entitled to proceed in the other.

**Destruction of records prohibited**

21. That no records relating to Indigenous individuals, families or communities or to any children, Indigenous or otherwise, removed from their families for any reason, whether held by government or non-government agencies, be destroyed.

**Record preservation**

22a. That all government record agencies be funded as a matter of urgency by the relevant government to preserve and index records relating to Indigenous individuals, families and/or communities and records relating to all children, Indigenous or otherwise, removed from their families for any reason.

22b. That indexes and other finding aids be developed and managed in a way that protects the privacy of individuals and, in particular, prevents the compilation of dossiers.

**Joint records taskforces**

23. That the Commonwealth and each state and territory government establish and fund a Records Taskforce constituted by representatives from government and church and other non-government record agencies and Indigenous user services to:

1. develop common access guidelines to Indigenous personal, family and community records as appropriate to the jurisdiction and in accordance with established privacy principles;

2. advise the government whether any church or other non-government record-holding agency should be assisted to preserve and index its records and administer access;

3. advise government on memoranda of understanding for dealing with interstate enquiries and for the interstate transfer of files and other information;

4. advise government and churches generally on policy relating to access to and uses of Indigenous personal, family and community information; and

5. advise government on the need to introduce or amend legislation to put these policies and practices into place.

**Interstate enquiries**

24. That each government, as advised by its Records Taskforce, enter into memoranda of understanding with other governments for dealing with interstate enquiries and for the interstate transfer of records and other information.

**Minimum access standards**

25. That all common access guidelines incorporate the following standards.

1. the right of every person, upon proof of identity only, to view all information relating to himself or herself and to receive a full copy of the same;

2. no application fee, copying fee or other charge of any kind to be imposed;

3. a maximum application processing period to be agreed by the Records Taskforce and any failure to comply to be amenable to review and appeal;
4. a person denied the right of access or having any other grievance concerning his or her information to be entitled to seek a review and, if still dissatisfied, to appeal the decision or other matter free of charge;

5. the right of every person to receive advice, both orally and in writing, at the time of application about Indigenous support and assistance services available in his or her state or territory of residence;

6. the form of advice provided to applicants to be drafted in consultation with local Indigenous family tracing and reunion services and to contain information about the nature and form of the information to be disclosed and the possibility of distress;

7. the right of every person to receive all personal identifying information about himself or herself including information which is necessary to establish the identity of family members (for example, parent’s identifying details such as name, community of origin, date of birth); and

8. the right of every person who is the subject of a record, subject to the exception above, to determine to whom and to what extent that information is divulged to a third person.

**Freedom of Information legislation in the Northern Territory**


**Indigenous Family Information Service**

27. That the Commonwealth and each state and territory Government, in consultation with relevant Indigenous services and its Records Taskforce, establish an Indigenous Family Information Service to operate as a first stop shop for people seeking information about and referral to records held by the government and by churches. That these services be staffed by Indigenous people. That to support these services each government and church record agency nominate a designated contact officer.

**Training**

28. That the Commonwealth and each state and territory government institute traineeships and scholarships for the training of Indigenous archivists, genealogists, historical researchers and counsellors.

**Indigenous repositories**

29a. That, on the request of an Indigenous community, the relevant Records Taskforce sponsor negotiations between government, church and/or other non-government agencies and the relevant Indigenous language, culture and history centre for the transfer of historical and cultural information relating to that community and its members.

29b. That the Council of Australian Governments ensure that Indigenous language, culture and history centres have the capacity to serve as repositories of personal information that the individuals concerned have chosen to place in their care and which is protected in accordance with established privacy principles.

**Establishment of family tracing and reunion services**

30a. That the Council of Australian Governments ensure that Indigenous community-based family tracing and reunion services are funded in all regional centres with a significant Indigenous population and that existing Indigenous community-based services, for example health services, in smaller centres are funded to offer family tracing and reunion assistance and referral.

30b. That the regional services be adequately funded to perform the following functions:

1. family history research;

2. family tracing;

3. support and counselling for clients viewing their personal records;

4. support and counselling for clients, family members and community members in the reunion process including travel with clients;

5. establishment and management of a referral network of professional counsellors, psychologists, psychiatrists and others as needed by clients;

6. advocacy on behalf of individual clients as required and on behalf of clients as a class, for example with record agencies;

7. outreach and publicity;

8. research into the history and effects of forcible removal;
9. indigenous and non-Indigenous community education about the history and effects of forcible removal;

10. engaging the service of Indigenous experts for provision of genealogical information, traditional healing and escorting and sponsoring those returning to their country of origin;

11. participation in training of Indigenous people as researchers, archivists, genealogists and counsellors;

12. participation in national networks and conferences;

13. effective participation on Record Taskforces; and

14. support of test cases and other efforts to obtain compensation.

Return of those removed overseas

31a. That the Commonwealth create a special visa class under the Migration Act 1951 (Cth) to enable Indigenous people forcibly removed from their families and from Australia and their descendants to return to Australia and take up permanent residence.

31b. That the Commonwealth amend the Citizenship Act 1948 (Cth) to provide for the acquisition of citizenship by any person of Aboriginal or Torres Strait Islander descent.

31c. That the Commonwealth take measures to ensure the prompt implementation of the International Transfer of Prisoners Bill 1996.

Research

32. That the Commonwealth Government work with the national Aboriginal and Torres Strait Islander Health Council in consultation with the National Aboriginal Community Controlled Health Organisation (NACCHO) to devise a program of research and consultations to identify the range and extent of emotional and well-being effects of the forcible removal policies.

Indigenous well-being model

33a. That all services and programs provided for survivors of forcible removal emphasise local Indigenous healing and well-being perspectives.

33b. That government funding for Indigenous preventive and primary mental health (well-being) services be directed exclusively to Indigenous community-based services including Aboriginal and Islander health services, child care agencies and substance abuse services.

33c. That all government-run mental health services work towards delivering specialist services in partnership with Indigenous community-based services and employ Indigenous mental health workers and community members respected for their healing skills.

Health professional training

34a. That government health services, in consultation with Indigenous health services and family tracing and reunion services, develop in-service training for all employees in the history and effects of forcible removal.

34b. That all health and related training institutions, in consultation with Indigenous health services and family tracing and reunion services, develop under-graduate training for all students in the history and effects of forcible removal.

Mental health worker training

35. That all state and territory governments institute Indigenous mental health worker training through Indigenous-run programs to ensure cultural and social appropriateness.

Parenting skills

36. That the Council of Australian Governments ensure the provision of adequate funding to relevant Indigenous organisations in each region to establish parenting and family well-being programs.

Prisoner services

37. That the Council of Australian Governments ensure the provision of adequate funding to Indigenous health and medical services and family well-being programs to establish preventive mental health programs in all prisons and detention centres and to advise prison health services. That state and territory corrections departments facilitate the delivery of these programs and advice in all prisons and detention centres.

Private collections

38a. That every church and other non-government agency which played a role in the placement and care of Indigenous children forcibly removed from their families, at the request of an Indigenous language, culture and history centre, transfer historical and cultural information it holds relating to the community or communities represented by the centre.
38b. That churches and other non-government agencies which played a role in the placement and care of Indigenous children forcibly removed from their families identify all records relating to Indigenous families and children and arrange for their preservation, indexing and access in secure storage facilities preferably, in consultation with relevant Indigenous communities and organisations, in the National Library, the Australian Institute of Aboriginal and Torres Strait Islander Studies or an appropriate state library.

38c. That every church and non-government record agency which played a role in the placement and care of Indigenous children forcibly removed from their families provide all possible support to Indigenous organisations delivering counselling and support services to those affected by forcible removal.

**Land holdings**

41. That churches and other non-government agencies review their land holdings to identify land acquired or granted for the purpose of accommodating Indigenous children forcibly removed from their families and, in consultation with Indigenous people and their land councils, return that land.

**Social justice**

42. That to address the social and economic disadvantages that underlie the contemporary removal of Indigenous children and young people the Council of Australian Governments:

1. in partnership with ATSIC, the Council for Aboriginal Reconciliation, the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner and Indigenous community organisations dealing with Indigenous families and children’s issues, develop and implement a social justice package for Indigenous families and children; and

2. pursue the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody which address underlying issues of social disadvantage.

**Self-determination**

43a. That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat national legislation establishing a framework for negotiations at community and regional levels for the implementation of self-determination in relation to the well-being of Indigenous children and young people (national framework legislation).

43b. That the national framework legislation adopt the following principles:

1. that the Act binds the Commonwealth and every state and territory government;

2. that within the parameters of the Act Indigenous communities are free to formulate and negotiate an agreement on measures best suited to their individual needs concerning children, young people and families;

3. that negotiated agreements will be open to revision by negotiation;

4. that every Indigenous community is entitled to adequate funding and other resources to enable it to support and provide for families and children and to ensure that the removal of children is the option of last resort; and

5. that the human rights of Indigenous children will be ensured.

43c. That the national framework legislation authorise negotiations with Indigenous communities that
so desire on any or all of the following matters:

1. the transfer of legal jurisdiction in relation to children’s welfare, care and protection, adoption and/or juvenile justice to an Indigenous community, region or representative organisation;

2. the transfer of police, judicial and/or departmental functions to an Indigenous community, region or representative organisation;

3. the relationship between the community, region or representative organisation and the police, court system and/or administration of the state or territory on matters relating to children, young people and families including, where desired by the Indigenous community, region or representative organisation, policy and program development and the sharing of jurisdiction; and/or

4. the funding and other resourcing of programs and strategies developed or agreed to by the community, region or representative organisation in relation to children, young people and families.

National standards for Indigenous children

44. That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Commission, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat, national legislation binding on all levels of government and on Indigenous communities, regions or representative organisations which take legal jurisdiction for Indigenous children establishing minimum standards of treatment for all Indigenous children (national standards legislation).

National standards for Indigenous children under state, territory or shared jurisdiction

45a. That the national standards legislation include the standards recommended below for Indigenous children under state or territory jurisdiction or shared jurisdiction.

45b. That the negotiations for national standards legislation develop a framework for the accreditation of Indigenous organisations for the purpose of performing functions prescribed by the standards:

Standard 1: Best interests of the child factors

46a. That the national standards legislation provide that the initial presumption is that the best interest of the child is to remain within his or her Indigenous family, community and culture.

46b. That the national standards legislation provide that in determining the best interests of an Indigenous child the decision-maker must also consider:

1. the need of the child to maintain contact with his or her Indigenous family, community and culture;

2. the significance of the child’s Indigenous heritage for his or her future well-being;

3. the views of the child and his or her family; and

4. the advice of the appropriate accredited Indigenous organisation.

Standard 2: When best interests are paramount

47. That the national standards legislation provide that in any judicial or administrative decision affecting the care and protection, adoption or residence of an Indigenous child the best interest of the child is the paramount consideration.

Standard 3: When other factors apply

48. That the national standards legislation provide that the removal of Indigenous children from their families and communities by the juvenile justice system, including for the purposes of arrest, remand in custody or sentence, is to be a last resort. An Indigenous child is not to be removed from his or her family and community unless the danger to the community as a whole outweighs the desirability of retaining the child in his or her family and community.

Standard 4: Involvement of accredited Indigenous organisations

49. That the national standards legislation provide that in any matter concerning a child the decision-maker must also consider:

1. the need of the child to maintain contact with his or her Indigenous family, community and culture;

2. the significance of the child’s Indigenous heritage for his or her future well-being;
of notification and at each stage of decision-making thereafter including whether and if so on what grounds to seek a court order. In juvenile justice matters that organisation must be involved in all decisions at every stage including decisions about pre-trial diversion, admission to bail and conditions of bail.

**Standard 5: Judicial decision-making**

50. That the national standards legislation provide that in any matter concerning a child the court must ascertain whether the child is an Indigenous child and, in every case involving an Indigenous child, ensure that the child is separately represented by a representative of the child’s choosing or, where the child is incapable of choosing a representative, by the appropriate accredited Indigenous organisation.

51c. The preferred placement may be displaced where:

1. that placement would be detrimental to the child’s best interests;
2. the child objects to that placement; or
3. no carer in the preferred category is available.

51d. Where placement is with a non-Indigenous carer the following principles must determine the choice of carer:

1. family reunion is a primary objective;
2. continuing contact with the child’s Indigenous family, community and culture must be ensured; and
3. the carer must live in proximity to the child’s Indigenous family and community.

51e. No placement of an Indigenous child is to be made except on the advice and with the recommendation of the appropriate accredited Indigenous organisation. Where the parents or the child disagree with the recommendation of the appropriate accredited Indigenous organisation, the court must determine the best interests of the child.

**Standard 7: Adoption a last resort**

52. That the national standards legislation provide that an order for adoption of an Indigenous child is not to be made unless adoption is in the best interests of the child and that adoption of an Indigenous child be an open adoption unless the court or other decision-maker is satisfied that an open adoption would not be in the best interests of the child. The terms of an open adoption order should remain reviewable at any time at the instance of any party.

**Standard 8: Juvenile justice**

53a. That the national standards legislation incorporate the following rules to be followed in every matter involving an Indigenous child or young person.

53b. That the national standards legislation provide that evidence obtained in breach of any of the following rules is to be inadmissible against the child or young person except at the instance of the child or young person himself or herself.

**Rule 1: Warnings**

Arrest and charge are actions of last resort. Subject to Rule 2, a police officer is to issue a warning, without charge, to a child or young person reasonably suspected of having committed an offence without requiring the child or young person to admit the offence and without imposing any penalty or obligation on the child or young person as a condition of issuing the warning.
Rule 2: Summons, attendance notice
A child or young person may be charged with an offence when the alleged offence is an indictable offence. The charging officer must secure the suspect's attendance at the court hearing in relation to the charge by issuing a summons or attendance notice unless the officer has a reasonable belief that the suspect is about to commit a further indictable offence or, due to the suspect's previous conduct, that the suspect may not comply with a summons or attendance notice.

Rule 3: Notification
When a child or young person has been arrested or detained the responsible officer must notify the appropriate accredited Indigenous organisation immediately of the fact of the arrest and make arrangements for the attendance of a representative of that organisation.

Rule 4: Consultation
The responsible officer, in accordance with Standard 4, must consult thoroughly and in good faith with the appropriate accredited Indigenous organisation as to the appropriate means of dealing with every child or young person who has been arrested or detained.

Rule 5: Interrogation
No suspect or witness is to be interviewed in relation to an alleged offence unless:

- a parent or person responsible for the suspect or witness is present, unless the suspect or witness refuses to be interviewed in the presence of such a person or such a person is not reasonably available;
- a legal adviser chosen by the suspect or witness or, where he or she is not capable of choosing a legal adviser, a representative of the appropriate accredited Indigenous organisation is present; and
- c. an interpreter is present in every case in which the suspect or witness does not speak English as a first language.

Rule 6: Caution
No suspect or witness is to be interviewed in relation to an alleged offence unless:

- a. the caution has been explained in private to the suspect or witness by his or her legal adviser or representative;
- b. the interviewing officer has satisfied himself or herself that the suspect or witness understands the caution; and
- c. the suspect or witness freely consents to be interviewed.

Rule 7: Withdrawal of consent
The interview is to be immediately discontinued when the suspect or witness has withdrawn his or her consent.

Rule 8: Recording
Every interview must be recorded on audio tape or audiovisual tape. The tape must include the pre-interview discussions between the suspect or witness and the interviewing officer in which the officer must satisfy himself or herself that the suspect or witness understands the caution and freely consents to be interviewed.

Rule 9: Bail
Unconditional bail is a right. The right to bail without conditions can only be varied where conditions are reasonably believed due to the suspect’s past conduct to be necessary to ensure the suspect will attend court as notified. The right to bail can only be withdrawn where it is reasonably believed, due to the nature of the alleged offence or because of threats having been made by the suspect, that remand in custody is necessary in the interests of the community as a whole.

Rule 10: Bail review
The suspect has a right to have the imposition of bail conditions or the refusal of bail reviewed by a senior police officer. In every case in which the senior officer refuses to release the suspect on bail, the officer must immediately notify a magistrate, bail justice or other authorised independent person who is to conduct a bail hearing forthwith. The suspect is to be represented at that hearing by a legal adviser of his or her choice or, where incapable of choosing, by a representative of the appropriate accredited Indigenous organisation.

Rule 11: Bail hostels
When bail has been refused the suspect is to be remanded in the custody of an Indigenous bail hostel, group home or private home administered by the appropriate accredited Indigenous organisation unless this option is not available in the locality.
Rule 12: Detention in police cells

No suspect is to be confined in police cells except in extraordinary and unforeseen circumstances which prevent the utilisation of alternatives. Every suspect confined in police cells overnight is to be accompanied by an Indigenous person in a relationship of responsibility to the suspect.

Rule 13: Non-custodial sentences

Custodial sentences are an option of last resort. Every child or young person convicted of an offence who, in accordance with Rule 14 cannot be dismissed without sentence, is to be sentenced to a non-custodial program administered by the appropriate accredited Indigenous organisation or by an Indigenous community willing to accept the child. The child’s consent to be dealt with in this way is required. The selection of the appropriate program is to be made on the advice of the appropriate accredited Indigenous organisation and, where possible, the child’s family.

Rule 14: Sentencing factors

The sentencer must take into account:

a. the best interests of the child or young person;

b. the wishes of the child or young person’s family and community;

c. the advice of the appropriate accredited Indigenous organisation;

d. the principle that Indigenous children are not to be removed from their families and communities except in extraordinary circumstances; and

e. Standard 3.

Rule 15: Custodial sentences

Where the sentencer, having taken into account all of the factors stipulated in Rule 14, determines that a custodial sentence is necessary, the sentence must be for the shortest appropriate period of time and the sentencer must provide its reasons in writing to the state or territory Attorney General and the appropriate accredited Indigenous organisation. No child or young person is to be given an indeterminate custodial sentence or a mandatory sentence.

Family law

54. That the Family Law Act 1975 (Cth) be amended by:
1. including in section 60B(2) a new paragraph (ba) children of Indigenous origins have a right, in community with the other members of their group, to enjoy their own culture, profess and practice their own religion, and use their own language; and
2. replacing in section 68F(2)(f) the phrase ‘any need’ with the phrase ‘the need of every Aboriginal and Torres Strait Islander child’.