Issues of the Stolen Generation

by Jack Rush
Jack (John Timothy) Rush is a barrister and Queen’s Counsel, who served as counsel for Lorna Cubillo and Peter Gunner in a cause heard in the Federal Court of Australia. He presented ‘Issues of the Stolen Generation’ at Trinity College on 12 April 2000.

This paper represents the sixteenth in a series prepared by Trinity College which focuses upon broad issues facing the community in such areas as education, ethics, history, politics, and science. Copies are available upon request from the Tutorial Office, Trinity College, Parkville, Victoria 3052 Australia.
Last week we learned that as far as the Australian Government is concerned the Stolen Generation does not exist. The removal of 1 in 10 children from mothers and families (if this figure be the correct figure) according to the Prime Minister, is not a whole generation - the term is a misnomer. According to Senator Herron, the Minister for Aboriginal Affairs, it all happened a long time ago and it is not for present day Australians to apologise for the conduct of government many years ago. I want to argue to you tonight that these statements and the underlying attitudes they convey are disgraceful. I argue that the conduct of the national government is inexcusable.

Let me tell you about my background so that you can assess the reasonableness or otherwise of my position. I am a lawyer, a barrister. In 1996 I accepted a brief to act on behalf of two people, Lorna Cubillo and Peter Gunner, who lived in the Northern Territory. They are aboriginal people of mixed descent. Both had fathers who were European. I had not met them. I understood they had taken legal action against the Commonwealth Government. The Commonwealth Government up until the mid 1970s was responsible for the administration of the Northern Territory.

I was not particularly interested in indigenous issues when I accepted the brief. I had attended a Melbourne school, gone to university and had a comfortable career. These issues did not concern me. The court case for Lorna Cubillo and Peter Gunner started in Darwin in 1999. In March last year the Commonwealth unsuccessfully tried to strike out the claims. The taking of evidence started on 10/8/99 in Darwin. The cases concluded on Friday, 31/3/00. We await judgement.

What I talk to you about today is the oral evidence taken in the trial. I will talk to you about the documents taken from archives that indicate the policy of the Commonwealth Government in the Northern Territory both before the Second World War and afterwards until more recent times.

I want to tell you first about the evidence of the removals of these children from their families. Removals that involved taking them away and isolating them from their family, culture and land. I say land because land is vital to the culture and religion of aboriginal people. For aboriginal people to be removed from their land or country is a loss of great enormity. Land is life - land is traditions - land speaks. It is difficult for us to comprehend the significance of land in aboriginal culture.

Lorna Cubillo was 8 years of age. In 1947 she was at Philip Creek. Philip Creek lies in the heart of the Northern Territory not far from Tennant Creek and between Alice Springs and Darwin. She attended a rudimentary school. Philip Creek was what was called a ration depot where aboriginal people would congregate. The Warrumungu people had been forced there after their ancestral lands were taken over by pastoral activity in the 1920s. They were forced there after "the Coniston massacre" - the last massacre in the Northern Territory when aboriginals were hunted and killed. The fear of this massacre lasted for generations.

Early one morning in July 1947 16 part aboriginal children were put of the back of a truck - an open truck at Philip Creek. Lorna Cubillo was one of those children. She was 8 years of age and probably the oldest child on the truck. The children were told they were going on a picnic. With the crying and wailing of adult aboriginal people around the truck and in the area they soon realised that this was not the case.

An aunt of Lorna Cubillo was one of the people near the truck. A female missionary was having a tug of war with Lorna Cubillo’s aunt. The missionary was trying to take her baby - still being breastfed. Eventually Lorna Cubillo’s aunt, distressed and crying, pointed to Lorna on the truck - "Napangka you care for this baby" and handed the baby to Lorna Cubillo on the truck. Lorna Cubillo was 8 years old. An 8 year old responsible for a 2 year old baby.
As the truck drove away from Philip Creek mothers cut themselves with stones and hit themselves over the head with sticks. Others chased the truck screaming and yelling. Lorna Cubillo’s last memory of Philip Creek is of those people running after the truck disappearing in a cloud of dust. The children on the truck were all crying, not knowing where they were being taken. Lorna Cubillo, who had been told of Europeans killing aboriginals, thought she too would be killed.

For 3 days and 2 nights she cared for the baby on the back of the truck as it was driven to Darwin. She was given a blanket. The baby had diarrhoea. She kept folding the blanket into squares until it was so soiled she threw it from the truck. She fed the baby by dribbling water into the baby’s mouth. The water was taken from a 44 gallon drum on the back of the truck.

The Commonwealth Government that organised all this says it owes Lorna Cubillo no apology.

In the Northern Territory the government department used patrol officers for aboriginal administration. They had powers of police over aboriginal people. The patrol officer who drove the truck gave evidence in the Darwin court case. He described the event, this removal, as a scene he never wished to experience again. But of course he was only doing his job.

There was no issue of neglect or lack of food or welfare consideration for these children. Lorna Cubillo was in good health and developing as any other normal 8 year old child in that aboriginal community. Lorna Cubillo’s sisters – full blood – using the phrases of the time – were aboriginal kids. They were not taken – the only criteria for removal was the colour of skin. Lorna Cubillo was part aboriginal or in the terminology of the time “half-caste”. Half-caste children were removed from their families.

From 1947 till 1956 Lorna Cubillo was detained in an institution in Darwin. The case that we put on her behalf in the Darwin Court was that this was an institution devoid of love and affection and proper care. That she had been removed from a family that gave that love and affection in circumstances where no white child would have been removed – removed in circumstances where lasting psychological harm could be expected. Anthropologists are experts in the study of human life and cultures. Anthropological evidence called at the trial spoke of the kinship system – the extraordinary system of aboriginal life where mother’s aunts are also mothers and father’s brothers are fathers and through the extended family children are reared, loved and cared for. No institution – especially not the one that Lorna Cubillo was condemned to – could replace this.

In the institution in Darwin physical punishment was the norm. To give you an example of that punishment the evidence of Lorna Cubillo was to the effect on one occasion in 1955 she was flogged by a male missionary with the buckle end of a belt which caused scarring to her face and the partial severing of a nipple. Her crime was to splash in a creek on a Sunday. For the religious zealots who ran the institution to do such a thing on Sunday, the Sabbath, was deserving of this punishment.

Lorna Cubillo as a consequence of her institutionalisation lost her language – she could not communicate with her family and aboriginal mother when she left the institution. Between 1947 and 1955 she had no communication with her family. She was told aboriginal culture, dances and song were the work of the Devil. Aboriginals were condemned to the eternal fires of hell. The geographical separation between Tennant Creek and Darwin was like having people on the other side of the world. Her family in Tennant Creek meanwhile mourned her as if she was dead. Our federal government argued in court with great fervour that this was the equivalent of a child going to boarding school.
What I recount tonight is only part of the life of Lorna Cubillo. She is indeed a remarkable woman. Her struggle to overcome these events is worthy of far greater detail. Her despair, loneliness and distress were truly conveyed when she gave her evidence.

For Peter Gunner there is a similar story. He was born at Utopia Station into an aboriginal clan culturally strong, renowned today for its artwork. He was also removed at 8 years of age. The documentary evidence revealed that he, along with other children, was hidden. They had charcoal put on their skin in an attempt to blacken their skin so that they would not be taken away. The evidence clearly identified he was being brought up within his aboriginal community like any other aboriginal child. Documents in 1954 written by patrol officers record his mother running into the bush to hide him on the approach of patrol officers’ vehicles.

The eventually caught him. He was removed and placed in an institution in Alice Springs. The documentary evidence reveals that the Commonwealth was aware of the deficiencies in the institution, the lack of staff and failings of the institution - before Peter Gunner was placed there. They were described in the literature as “appalling slum conditions” by the Archdeacon responsible for the institution.

There is dispute as to the manner in which Peter Gunner was removed from Utopia Station. Peter Gunner’s mother is dead but the Commonwealth argued that she gave consent to him being taken to Alice Springs. What is not in dispute is that the Commonwealth made a promise to Peter Gunner's mother that he would be returned home for school holidays. Peter Gunner was taken into the Commonwealth’s custody in 1956. He was not released from that custody until 1962 and during that time there was no attempt and no consideration given to the promise made to a tribal mother who had little or no English to reunite with him or keep him in touch. During his institutionalisation he was sexually assaulted. He had no-one to turn to. Peter Gunner lost his language and his contacts with family, and although he returned to live in Utopia in 1991, it is in circumstances where can still not speak the language and as a consequence of his removal he has missed the processes of initiation and education into tribal life and is in these terms considered an outsider.

I should emphasise that I have not done justice to the sadness of the life stories of each of these people. I hope I have conveyed the nature of the evidence that they gave to the court. Their stories are not isolated stories. What happened to them happened to hundreds of others. For these events to occur to any child is a sad reflection on those who were the perpetrators of the conduct. But the real significance of these of these claims and the evidence is that what happened to Lorna Cubillo and Peter Gunner was part of an overall policy that the Commonwealth put into place in the Northern Territory for the greater part of the 20th century.

The legislation under which the Commonwealth acted gave that government unprecedented power over aboriginal people. There is no equivalent legislation in the Commonwealth statute books.

To illustrate this point I refer to some of those powers contained in the legislation:

- Aboriginal people could not go into towns without permission.
- Aboriginal people could not travel from one part of the Northern Territory to another without permission.
- Aboriginal people could not marry without permission.
- Aboriginal people could not travel from one reserve to another reserve without permission.
- And the ultimate power, aboriginal parents had no rights in relation to their children.

The legislation provided that a senior public servant was the legal guardian of every aboriginal child. Children could be legally wrenched from families - parents’ rights were noting. Aboriginal people were treated as less than human. Don’t let people tell you there was no
effective apartheid legislation in Australia. The policy documents we recovered from archives during the course of this litigation indicate that from the earliest times it was the government intention to remove children and the deliberate intention was to strip the children of their aboriginal culture, heritage and identity.

This is not the stolen generation – this is the stolen generations – the impact of these policies was felt generation after generation by aboriginal children. Every aboriginal community has been affected.

Archival documents demonstrate the policy. In 1911 the Acting Administrator of the Northern Territory stated:

... in my opinion one of the first works to be undertaken is to gather in all half-caste children who are living with aborigines. The police could do most of the work. No doubt the mothers would object and there would probably be an outcry from well meaning people about depriving the mother of her child but the future of the children should, I think, outweigh all other considerations. It is quite impossible to state the number that would be so gathered in.

The report of the Administrator of the Northern Territory in 1931-32 stated:

... illegitimate children of not less than 50% white blood are removed from the aboriginal camps at an early age and placed in institutions where they are reared at European standards and given statutory state school education. On completion of their schooling the girls are taught domestic arts and dress and clothing making to fit them for a higher station as the wives of higher grade half-caste males or whites. The boys on leaving school are sent out for employment in the pastoral industry...

In 1930 the Secretary of the Prime Minister's Department set out the policy of the Commonwealth:

... half-castes are collected into special government homes where education is imparted by trained teachers. The standard of education varies according to the preponderance of aboriginal or European blood in their child. Quadroons and octoroons usually have more intelligence than cross breeds with a preponderance of aboriginal blood, and are accordingly educated to a higher standard than the latter.

In 1951 the following was endorsed by the relevant Minister, Mr Hasluck:

Aborigines are human beings with the same basic affections that we have and the aboriginal mother has real love for her children, especially those of tender age. We cannot expect a normal aboriginal mother to appreciate the reason why her part aboriginal child should be taken from her. In effecting the removal of part aboriginal children from their mothers, the above factors are to be taken into consideration...

My point is that all this was a policy of the national government. Basic feelings, emotions and bonds were not to be considered. It could never be right to unilaterally remove children from families - whatever the time in history under consideration. The laws that governed aboriginal people were based on considerations that they were less than human. For our government not to recognise this - not to act on this by way of an apology is a national disgrace. I want to deal with some of the arguments put forward to justify the government’s present position.

(i) A n apology will lead to a flood of compensation claims. An apology would not have made one iota of difference to liability issues in the cases that have just concluded. The cost of the claims of Lorna Cubillo and Peter Gunner - that is the legal
costs – are estimated at anywhere between $10 million and $15 million, or more. The defence was run through the office of the Prime Minister and Cabinet. It has always been the contention of those involved in this Stolen Generation litigation that the highest priority has been recognition of what occurred – an apology for what occurred – compensation has always been a secondary issue. I should emphasise that these are the most non-materialistic people one would ever meet.

(ii) This generation should not apologise for acts done by generations past. The Commonwealth Government is a continuing legal entity. It exists from decade to decade. Like a company – like BHP – the Commonwealth Government does not die every 3 years. The Commonwealth Government has no problem accepting responsibility for war veterans. It is not argued that the Second World War occurred in 1945 and therefore this government is not responsible for the decisions made by government back then. There is a continuing legal entity and a continuing legal responsibility for acts which have been performed. Another example of an apology in relation to acts that have been done in the past is the apology recently given by the President of the German Democratic Republic to the parliament in Israel. There is recognition of the harm and the hurt done in an apology. Such recognition with an apology enables this nation to move on. There is great healing in a sincere apology.

(iii) People thought they were doing the right thing. The actions I have spoken about should never have occurred and can never be justified. Putting that to one side the argument that "people thought they were doing the right thing" is no answer to such conduct. History is littered with appalling conduct that is frequently sought to be justified on the basis that people thought they were doing the right thing. Yet we understand that religious or political persecution has occurred in this context. Some of the greatest crimes against humanity have been so justified. When the Catholic church apologised in March for various conduct over its history it was an apology that recognised that those that perpetrated the actions thought they were doing the right thing – nevertheless this did not justify the conduct.

(iv) We should look to the future, not the past. This is a ‘black arm band’ view of history.

Such an argument is incongruous when put by a Prime Minister who later this month will visit Anzac Cove and the battlefields of the Somme to remember Australians who gave their lives. If it is right to commemorate this history it is also right to recognise the wrongs of our past. Recognition of the wrongs of the past is not diminishing the stature of this nation. Indeed such recognition will make it a much greater country. Is this country so mean that such an apology cannot be made by this government? Are we so blind as a nation that we cannot recognise what is bad as well as what is great in our history? The remarkable aspect of this important national issue is that it is your generation that recognises the hurt and harm. It is your challenge to ensure that those who prevaricate and those who would excuse such conduct do not win this critical debate. It is only by recognition of the wrongs of our history that we ensure that such conduct is not repeated.

So I would urge you all to take up this struggle – to ensure justice for our fellow Australians. Justice comes in many forms. But fundamental to the justice of the stolen generations is recognition of what happened and a sincere apology. Without this our nation can only been seen as a nation belittled and shallow.