

# Aboriginal Legal Rights Movement Inc.



## NEWSLETTER FOR STOLEN GENERATIONS CLAIMANTS AND THEIR SUPPORTERS

(Newsletter Number 3, August 2013 )

The Aboriginal Legal Rights Movement (ALRM) is assisting and supporting the Stolen Generations claimants of South Australia by holding meetings of claimants, speaking to claimants individually, speaking to politicians on their behalf and through writing numerous letters seeking support. ALRM is also fostering relationships with legal firms to assist, if necessary with representation for potential legal claims.

ALRM is urging the State and Federal Government to adopt a compensation and reparation scheme to assist members of the Stolen Generation in line with the recommendations of the Bringing Them Home “The Stolen Children” Report.

These actions by ALRM are undertaken in response to the successful litigation brought by the late Bruce Trevorrow, who, before his tragic death had received compensation from the Government of SA in the amount of \$550,000 plus interest. This judgement established an important precedent for other potential claimants. Although Mr Trevorrow is now deceased an appeal against the judgment was pursued by the State of South Australia, against his widow. This appeal was heard in 2009-10 by the Full Court of the Supreme Court of South Australia. The Judgment in *State of South Australia v Lampard Trevorrow* [2010]SASC56 was handed down on 22<sup>nd</sup> March 2010. The original judgment was upheld, though some of the bases of the decision were overruled on appeal, in particular regarding false imprisonment and fiduciary obligations of the State.

### **Action undertaken by ALRM- A Meeting of Claimants**

On 29<sup>th</sup> July 2008, some 12 months after the historic Trevorrow decision was handed down by Justice Gray in the Supreme Court, ALRM arranged and held a meeting with potential claimants at the Irish Club in Carrington Street Adelaide.

This meeting was held by ALRM because of the flood of communications received from members of the Stolen Generation seeking support and information. Many people wanted to know about the potential for making a successful claim, following the Trevorrow precedent.

Some 45 to 50 people attended the July 2008 meeting. They were supplied fact sheets setting out the contents of the Trevorrow decision and information kits were also provided regarding

the prospects of future claims. A questionnaire for claimants to fill out was distributed with a request that the questionnaire be returned to ALRM.

The July meeting was addressed by Frank Lampard OAM, ALRM Chairman, Neil Gillespie the former CEO, Aldona Pretty, then civil practice manager and Andrew Collett, an independent Barrister. Following this meeting ALRM pushed for Government support but by April 2009 it was apparent, through the lack of response received, that there was resistance from Governments, Federal and State in supporting ALRM's bid to assist claimants.

ALRM expressed concern regarding the lack of resources available to provide adequate attention to such a complex and massive enterprise and the rights of Aboriginal People to have substantive access to justice but no positive response was forthcoming in the way of assistance.

Numerous letters were sent, before and after the July 2008 meeting to Federal and State Ministers seeking funding to assist claimants. All such requests were refused.

A number of the questionnaires, given out at the July 2008 meeting have been returned to ALRM and follow up has occurred. ALRM has been correlating information and investigating avenues of accessing documentation and records for potential claimants. This has been carried out and continues to be carried out by the civil section of ALRM. ALRM has been encouraged through the support it has received from the Aboriginal Community and has spent considerable time and resources trying to canvas and engage support from non-government sectors.

### **What then happened - a further Claimants Meeting and Meetings with Government Ministers.**

On 7<sup>th</sup> April 2009 a further claimants meeting was held by ALRM at Tandanya Cultural Centre. Some 18 to 20 potential claimants attended and were advised of the considerable efforts made by ALRM to secure funding, all of which have been unsuccessful to date.

Claimants were informed that ALRM is concentrating on getting the State Government to release documents which they have in their possession relating to claimants. ALRM is still committed though to meeting with Ministers to discuss a compensation scheme. Claimants were told that some claims, if they are to be litigated will have to be brought to court in the next 4 months, having regard to the facts sheets which were given to those claimants in July -August 2008.

Former State Aboriginal Affairs Minister, the present Premier Hon Jay Weatherill met with a delegation from ALRM Monday 11<sup>th</sup> May 2009. An ALRM delegation also met former Attorney General, the Hon Michael Atkinson in May 7<sup>th</sup> 2009. The State Government needs to move past the important first step of acknowledgement and apology to a compensation scheme for South Australia's Stolen Generation. It is fair to say that since 2009, little enough progress has been made with the state government on this issue.

### **Meetings with Ministers**

At Ministerial meetings ALRM has focussed on three issues.

*1. Time limits.*

Time limitations will always be working against the claimants, having regard to the nature of the stolen generation cases. ALRM is seeking a commitment that the Government will not take time limitation points in relation to those persons who enter into negotiations for a settlement. The necessity to file and prosecute actions in every case in order to comply with time limitations will only increase considerably the expense and pressure on all parties.

*2. Documents*

ALRM is aware that many claimants still do not know what happened to them. ALRM asserts that the State owes a continuing obligation to stolen children, to ensure that they are given full information as to the circumstances of their removal and to ensure that they are given access to independent professional legal advice as to their legal rights. One of the unfortunate consequences of the appeal judgement in Trevorrow is that, absent a fiduciary obligation upon the State, there is now no specific and immediate obligation to provide documents to stolen generations claimants, other than through FOI and other usual legal processes. Still the State should provide all documentation on their cases, to claimants and without reservation. This needs to be done quickly and by a transparent process of disclosure to claimants. ALRM is the appropriate body to provide independent legal advice to the claimants and to facilitate the process .

*3. Costs*

The Claimants are vehement in their pursuit of their claims either through litigation or a compensation scheme, yet they are indigent and do not have the means to retain private lawyers. ALRM wants to avoid litigation. ALRM urgently needs Government funding to

- consult claimants,
- obtain and read documents and advise claimants, including those who do not have a claim,
- provide independent legal advice to all claimants as to their rights,
- prepare for and conduct a process of negotiation with Government.

These three points were made very strongly to Ministers Atkinson and Wetherill on the 7<sup>th</sup> and 11<sup>th</sup> of May 2009 and it can fairly be said that the State Government knows what ALRM is asking for!

In addition ALRM has made an extensive written submission to Federal Aboriginal Affairs Minister Jenny Macklin, seeking funding for numerous activities to assist the Stolen Generation, including for representation and for negotiation of a Compensation Scheme.

It is unfortunately true to say that since 2009, little enough progress has been made with the state government and its Ministers on this issue. ALRM hopes each annual Commemoration will assist in bringing the plight of Stolen Generation Claimants to the eyes of the public and to the ears of the Government Ministers.

ALRM lawyers have not been sitting on their hands. The former ALRM Civil Practice Managers Hazel Martin and Aldona Pretty have each been taking instructions and putting matters into court on behalf of their clients. Up to 10 cases have been settled to the satisfaction of ALRM clients by their ALRM lawyers. This is being continued through the acting civil practice Manager Mr George Lesses. Up to 40 cases are being worked on by

ALRM at the time of this Newsletter. Correspondingly, cases which have been dealt with by private lawyers have also been settled or are still in court.

### **What does this mean for me – a claimant?**

A variety of strategic positions need to be discussed with potential claimants with respect to the lodgement of claims in court. Because it is not separately funded to assist all claimants, ALRM will be assisting those clients it can assist under the terms and conditions of ordinary Aboriginal legal aid services. Unless we receive separate funding, ALRM does not think it will have the resources to assist all claimants and reminds claimants who have a claim potentially worth litigating that they have the option of seeing private lawyers also. Firms which have indicated a willingness to speak to and assist claimants so far are:-

1. Johnston and Withers – 17 Sturt St Adelaide SA 5000 PH: (08) 8231 1110
2. Bourne Lawyers – 21 Wright St Adelaide SA 5000 PH: (08) 8410 9699
3. John Doherty and Associates – 23 Wright St Adelaide SA 500 PH: (08) 8410 8087
4. Camatta Lempens – 1<sup>st</sup> Floor 345 King William St Adelaide SA 5000
5. PH: (08) 8410 0211
6. Lieschke & Wetherill 9-13 Market Street Adelaide Tel 82118662
7. Joanna Richardson, Legal Practitioner, Suite 7A, 75A Angas Street, Adelaide SA 5000, Ph: (08) 8227 1270 Fax: (08) 8227 1270, Mob: 0438 459 438, Email: [joannarichardson@bigpond.com](mailto:joannarichardson@bigpond.com)

This list of legal practitioners is by no means an exclusive list and of course claimants are able to see any lawyers they wish to see.

### **The Tandanya Resolution**

At the Meeting held at Tandanya the following resolution was passed unanimously by those present:-

“This meeting of Aboriginal people, affected by past policies of taking children away from their families acknowledges that the Aboriginal Legal Rights Movement called this meeting that we have attended and that we attended this meeting to express our concerns as follows:

1. That since August 2007 when the Trevorrow judgement was handed down by the Supreme Court of South Australia we
  - (i) have continued to feel distressed over our losses
  - (ii) we need recognition and social welfare support
  - (iii) we need a compensation scheme to acknowledge the wrongs that were done to us and to provide us with recompense
  - (iv) we need time limitation periods not to be taken against us if we decide to litigate over our losses
  - (v) we need documentation relevant to our cases to be provided to us by government immediately
  - (vi) we need honest forthright and candid communications from the State government about the government’s position over the Trevorrow case and over our cases and an assurance that they will assist us and communicate with us

2. We express our concerns that no-one from the State Government did us the courtesy of attending this meeting, despite having been invited by the Aboriginal Legal Rights Movement”.

ALRM hopes to be able to send out regular updates of this Newsletter, to keep potential claimants and their supporters up to date with the progress of our campaign. We seek compensation and reparations for the Stolen Generation of SA.

ALRM welcomes comments and contributions from claimants, their advisors and supporters for future editions of this Newsletter.

### **Stolen Generations Reparations Bill.**

The Hon Tammy Franks MLC has put into State Parliament a Bill called the *Stolen Generations Reparations Tribunal Bill in 2010*. That Bill is before the Aboriginal Lands Parliamentary Committee. The ALRM Submission to that Committee is attached to this newsletter.

## **ALRM SUBMISSION TO ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE**

9<sup>th</sup> December 2011

Mr Jason Caire  
Executive Officer  
Aboriginal Lands Parliamentary Standing Committee  
Parliament House, North Terrace Adelaide 5000

### **Re Stolen Generations Reparations Tribunal Bill 2010**

Thank you for providing to ALRM a copy of the *Stolen Generations Reparations Tribunal Bill 2010*. ALRM is the peak body in South Australia for the representation of Aboriginal legal interests. ALRM was involved in the representation of the late Mr Trevorrow. ALRM lawyers now act for a group of stolen generation claimants in the South Australian courts. ALRM is acutely aware that apart from those claimants for whom we act, there are many more claimants for whom access to justice has been hitherto denied. ALRM has been contacted by some 156 persons who are seeking a remedy for the injustices done to them. ALRM looks upon a reparations tribunal as essential for the speedy, fair and proper resolution of outstanding claims.

ALRM supports this Bill in principle and calls for its speedy enactment.

ALRM has reason to estimate that there are up to 250 people who were taken away from their parents under the regime described in the *Trevorrow* No 5 judgement, between about 1950 and 1962, when the *Aboriginal Affairs Act* abolished the Aboriginal Protection Board.<sup>1</sup> Those removals all occurred in circumstances that are potentially liable to be found by a court to have been wrongful and to sound in damages. Nevertheless it is also estimated that of those 250 people, their files, which had been held by the Children’s Welfare and Public Relief Board and the Aboriginal Protection Board, - in a very high percentage of the cases, the files have been culled and destroyed. This makes it difficult for those whose files have been

---

<sup>1</sup> Trevorrow v State of SA No5 [2007]SASC285at para 394

destroyed to litigate and thus the proposal for a compensation Tribunal is especially welcomed.

That said, in relation to those 250 odd claimants, payments need to reflect the *Trevorrow No 5 judgement* and the specific findings in that judgement of illegality, breach of statutory duty, negligence and misfeasance, all of which sounded in exemplary damages. That is consistent with the Van Boven principle, which the Bill, by clause 6(f) relies upon as a guiding principle for the Tribunal, that reparations and compensation by ex gratia payments be proportionate to the gravity of the violations and the resulting damage.

Beyond those cases there are those whose cases do not fall strictly within the *Trevorrow No 5* judgment, but which are deserving, because of the damage done to the individuals concerned. They are discussed below.

What follows are the ALRM comments on the Bill tabled by the Hon Tammy Franks MLC and read a second time by her on 21<sup>st</sup> July 2010. It is a Bill specifically tailored to South Australian history and conditions.

### **Eligibility for Reparations and Ex Gratia Payments**

One important feature of the Jennings Bill is clause 19. This deals with the definition of eligibility for reparation or ex gratia payment.

Clause 19(a) (i) and (ii) refer to a child *removed* from his or her family.

This is a better definition than the 2008 Senate *Stolen Generations Compensation Bill* which referred to *forcible removal* and thus relied upon compulsion, duress, trickery and lies as well as undue influence. All of these concepts are necessarily encompassed by the simple descriptor 'removal'.

It should be noted however, that during the currency of the Bringing Them Home Inquiry, ALRM was made aware of the circumstances of a number of Aboriginal people in South Australia who on their account of the matter, although they were removed, the circumstances of their removal do not now give rise to a feeling of distress, or a desire for compensation.

### **Subparagraph (i) Commentary**

Subparagraph (i) refers to removal under legislation that applied specifically to Aborigines or Torres Strait Islanders. This effectively encompasses the repealed *Aborigines Act* in its various forms. It was removal by the Aboriginal Protection Board, purportedly under that Act, but not in law authorized by it – which was clearly unlawful removal on *Trevorrow* principles. [2007]SASC 489 Gray J and upheld in the Full Court [2010]SASC56 at para224-226. As such, if subparagraph (i) is read with subparagraph (ii) it should give rise to eligibility for reparations and payments in the cases of those Aboriginal people whose cases are similar to the cases of the late Mr *Trevorrow*. To that extent, the Bill should achieve one of its stated aims.

### **Subparagraph (ii) Commentary**

Subparagraph (ii) refers to removals prior to 31<sup>st</sup> December 1975 in specified circumstances of government action. It refers to removal that was carried out, directed or condoned by the State government or an agent of the State government.

ALRM submits that the criterion of government action, direction or condonation is sufficiently wide to encompass removals for which government should take responsibility. Condonation should, for example cover those cases where non-government organizations such as missions removed and cared for children and this was known about and the arrangement was *condoned* by the Aborigines Department.

However the description of government should be widened beyond 'agents' to include government instrumentalities also. Specifically Subparagraph (ii) should be widened by including the word 'instrumentalities' as a further alternative beyond agent. Refer to *TransAdelaide v Evans* [2005] SASC 175.

It is not entirely clear however, that this subparagraph 19 (a) (ii) will cover removals of Aboriginal children under the *Children's Welfare and Public Relief Board* and pursuant to the *Maintenance Act 1926*. Many potential claimants were removed by Court order, which whilst it was not unlawful in the same way as the purported *Aborigines Act* removals referred to in *Trevorrow*, still gave rise to exactly the same forms of harm to the Aboriginal children concerned. It is appropriate that these cases be covered, if only in respect of the harm actually suffered as a result of their removal, and which removal could not satisfy the 'best interests' criterion in clause 19(a).

As long as subparagraph 19(a) (ii) only refers to actions of the State government, not the State, as inclusive of the State's courts, which ordered those removals, it is by no means clear that those separations and removals under the *Maintenance Act* would be covered by subparagraph (ii). This point should be clarified by legal opinion before the Bill is considered further.

Still if our suspicions are correct then it creates a significant dilemma for the Parliament. How could a Bill be supported which provides for ex gratia payments and reparations in cases of persons lawfully removed by court order, and in circumstances where their parents were given an opportunity to be heard on the question of removal? *Trevorrow* No 5 [2007] SASC 285 at paras 417-420.

The ALRM position is that in appropriate cases removals under the *Maintenance Act 1926*, should give rise to eligibility for ex gratia payments and reparations, though necessarily, that could not cover losses arising from the denial of a hearing being given to their parents.

In terms of drafting, a practical solution might be to separate off eligibility criteria based on unlawful removal and its consequences, from eligibility criteria based upon harm that flowed from the way the removal, whether lawful or not, was carried out. There would then follow differential eligibility, to different types of reparations and payments.

Eligibility should arise because Aboriginal children who became "state children" as a result of a court order were treated differently from non-Aboriginal children. Frequently they were supervised by the Aborigines Department and fostered inappropriately or institutionalized. Return to family was rendered more difficult in their cases, by the policies of that Department and it is that fact, and the consequences of non-return in terms of psychological injury, which should give rise to eligibility. In addition there are the cases of those who were removed, apparently lawfully in the Northern Territory and brought to South Australia and were subject to the same regime under the Aborigines Department.

ALRM is in a position to seek instructions from claimants to whom this applies and invite them to raise in public forums the nature and extent of the harm they suffered, notwithstanding that their cases are not on all fours with *Trevorrow* No 5.

In addition ALRM is aware of at least one case where a removal took place and maintenance was paid by Government to a non Aboriginal foster family for some period of years before a Court order for removal was sought and obtained. Such cases would it seems be quite properly captured by clause 19(a) subparagraph(ii)

In addition we note the cut-off date of 31<sup>st</sup> December 1975. We assume this refers to the date of commencement of operation of the *Racial Discrimination Act*. It thus seems to be assumed that the *Racial Discrimination Act* could give rise to a remedy for events after the coming into operation of that legislation.

This should be further investigated, but ALRM raises the question why such an arbitrary cut off should apply and why it is assumed that the *Racial Discrimination Act* actually can give an adequate remedy for children taken away after that crucial date. There could have been removals after that date to which the subparagraph should apply and which are not necessarily dealt with in a satisfactory manner by the *Racial Discrimination Act*. Such a cut-off date does not apply to subparagraph (i) because the *Aborigines Act* had been repealed well before 1975.

The only saving criterion for a removal under clause 19(a) is that the Tribunal be satisfied that the removal was in the person's best interests. This latter point is of some interest, since it is difficult to see how this criterion of best interests of the child *could* apply to an unlawful separation. It is also noteworthy that 'best interests of the child' is a modern criterion, applied to present legislation in family law etc., so it may be that this exception will have a small, but important impact in relation to legislation from the earlier parts of the twentieth century.

## **Commentary upon the Bill as a Whole**

### **Part 1 Clause 3 Interpretation.**

Matters of interpretation are dealt with serially throughout this submission. The definition of Aboriginal person and Torres Strait Islander persons is satisfactory.

### **Part 2 Division 1&2 Functions of the Tribunal**

Under the Bill clause 5(b), a function of the Tribunal is to make an apology. The Tribunal should not ordinarily make the apology but it should have a power to make recommendations to Ministers that the Government make an apology to individuals on behalf of the State. This would require an amendment to clause 5(b). Arguably an apology from the Government, whether through the State Governor or through a particular Minister means more and it is more appropriate that the State as a whole make the apology, as being the author of the harm suffered. It is conceivable that the Government of the day might have a policy that the Governor in Council or the Government through a Minister decline to make an apology, so it is suggested that if that occurs, the Tribunal should be empowered to do so in that very precisely defined circumstance, and only after relevant criteria have been satisfied.



Clause 5(c) needs to be more specific .It would be difficult to give the Tribunal further functions by regulation. ALRM recommends that other functions to be given to the Tribunal could include

- Supporting and endorsing Foundations such as the ‘Stolen Generation of Aboriginal Children Healing Foundation’ recommended for by the Ngarrindjeri Regional Authority in its submission to the Premier of August 2007
- Assisting in various ways Aboriginal people who had been taken away from their families in other states and territories, but who now reside in South Australia but do not have claims in this State. (Such assistance should be short of reparations and payments for which the State of South Australia is not strictly responsible for interstate cases)
- Assisting in various ways Aboriginal people who had been taken away from their families in other states and territories, but who now reside in South Australia, and were fostered or dealt with in South Australia under the Aborigines Department. These cases might warrant further assistance and payments also
- Causing reviews, appraisals and assessments to be done of the effectiveness of the reparation orders it makes and examination of the degree to which the actual needs of the Stolen Generation are met by Tribunal orders. This function should be specifically mandated for report to Parliament

### **Division 3, Members Of The Tribunal.**

ALRM strongly recommends that this provision contain requirement that Aboriginal people should be able to constitute the Tribunal. Again this is consistent with the Ngarrindjeri Regional Authority submission, which had said that the Tribunal “shall comprise members of indigenous and non-indigenous backgrounds with experience and understanding of the issues of the Stolen Generation of Children.”

### **Division 4 Proceedings Of Tribunal**

Clause 12(3) and (4) are appropriate. The formula in clause 12(4) is appropriate to achieve the requirement that the Tribunal hear and determine proceedings as expeditiously as possible. Clause 12(5) is appropriate, parties should be allowed to have legal representation.

### **Funding for Legal Aid**

Given that it is proposed that legal representation should be allowed, provision will need to be made, whether by the Commonwealth or the State for specific legal aid funding for claimants and on an appropriate scale, having regard to the complexity of the cases. Arrangements for adequate legal aid funding should be made before the Bill is enacted so that parties are not left in a position of seeking assistance from state and federal governments, neither of which are willing to take responsibility for the costs involved. A principle of cooperative federalism should be applied, such as is recommended in the Price Waterhouse Coopers Report on Cooperative Federalism and Legal Aid Funding (Report December 2009)

### **Division 4**

Division 4 should be strengthened. Apart from a power to subpoena, the Tribunal should have personal powers of search and seizure in relation to documents and other evidence. That such a power exists, rather than that it might ever be exercised is the rationale for having it. Compare the powers of search and seizure in section section 22(1)(d),(e)and(f) *Coroner’s Act 2003*.The other powers of the Tribunal under Division 4 are satisfactory.

## **Division 5**

ALRM recommend that the clauses on appeals should specify what grounds of appeal are open to parties. As it stands the Tribunal would already be subject to the judicial review jurisdiction of the Supreme Court to cure defects of natural justice and jurisdictional error and the like. If such proceedings were to take place they would be costly and time consuming, so it is preferable that a well-defined, cheap and easy appeal process be open to all parties.

### **Part3 Applications for reparations or ex gratia payments.**

Consistent with the views of other respondents to the Committee ALRM shares the opinion that the maximum allowable ex gratia payment should be similar to the amount claimable by victims of crime, namely the sum of \$50,000, not the \$20000 limit found in the Bill.

The eligibility criteria are satisfactory, subject to the commentary above of Clause 19(a) In relation to clause 19 (b) and (c), these clauses need bolstering up. It must be born in mind that proof of intergenerational harm will be difficult for the purposes of clause 19(c) (ii). It must also be born in mind that this is likely to be a broadly used clause- as the stolen generation gradually die their children will be left to make claims. From the *Trevorrow* judgments it is apparent that these intergenerational losses are of great importance to Aboriginal people, but utterly elusive and difficult to define or prove. ALRM suggest that there be broadly defined and accepted indicia of intergenerational harm, as referred to in clause 19.They might include:

- Loss of access to traditional language and knowledge.
- Loss of access to traditional cultural practices and advancement within traditional cultural practices.
- Loss of access to relatives.
- Loss of access to traditional country and land and waters and statutory and other rights pertaining to them.
- Exclusion from native title rights and interests generally
- Psychological harm to an individual by reason of the adverse and harmful involvement in the welfare and criminal justice systems of family relatives.

It is noted that under Clause 20 (2) (a) and (b) the Tribunal can award funding for the establishment or maintenance of Aboriginal Cultural History Centres and education programs. It is submitted that there should be some provision requiring coordination of such funding with government planning and approval processes. Provision of such services and facilities is usually a government style function, so it is important that the orders the Tribunal makes be coordinated to some degree with existing government functions. Also that the existence of Tribunal orders should not be able to be used by the Government of the day as an excuse for failing to provide other parallel services. The same applies to the other awards of reparations by funding under clause 20(2) (c) to (f). This giving to a Tribunal power to order funding is at least a novel concept in legislative, technique; still it is appropriate to support it.

Consistent with the Submission of the Ngarrindjeri Regional Authority, the form of reparations should also include a mechanism for the taking, recording and preserving of oral history and stories of the members of the Stolen Generation.

The restrictions on compensation payments in clause 20(4) (b) will cause hardship in some cases where records have been lost. ALRM recommends a clause widening the parameters of proof of abuse or neglect to make it clear that original documentary evidence is not

necessarily required, provided that expert evidence and other evidence based on contemporary information is available and probative of past abuse and neglect.

In addition, the parameters of compensable injury under clause 20(4)(b) should be widened from 'abuse or neglect as a child' to also encompass psychological injury as a result of the treatment received at the time of, or following removal of the Aboriginal child from his or her family.

Other aspects of clause 20 are not objectionable, in particular the definition of abuse or neglect in clause 20(5) is satisfactory.

Clause 21, which deals with ex gratia payments is satisfactory and may well be all that can apply to assist those claimants whose documents have been lost or destroyed. If what ALRM says about clause 19 is accepted, then it may be that differential forms of ex gratia payments will arise in cases where the child was or was not removed by court order, but still suffered psychological harm.

Clauses 22, 23 and 24 which deal with time for deciding applications, joint applications and the form of applications are satisfactory and do not require submission or comment.

Clauses 25, 26 and 27 which deal with the establishment of the Stolen Generation Fund, the Annual Report and the Regulation making power are satisfactory and do not require submission or comment. That is of course, subject to adequate provision being made by the State Treasurer. Again, ALRM urges the adoption of a scheme of cooperative federalism.

Finally it is appropriate that there is no sunset clause.

Yours faithfully

**Frank H. Lampard OAM Chairperson ALRM**

### **Conclusion**

This is the third News Letter published by ALRM on the Stolen Generations. The Trevorrow judgment has withstood appeal and the Parliament is still considering a Greens Party Bill. It is intended that this news-letter will inform the public and the potential claimants of the current state of affairs and of the need for more action to assist claimants.

ALRM © 22<sup>nd</sup> August 2013