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The Impacts of Colonial Law and Policy on Indigenous Family Life in Australia¹

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From the moment that Britain colonised the landmass of Australia, the continuation of traditional Indigenous family life was threatened. It has even been argued that the policy and legislation of successive governments attempted to destroy the rights of Indigenous peoples to their children. Indigenous children were removed from their communities. These children are now known as the Stolen Generations. Past colonial law and policy continues to impact upon the enjoyment of traditional family life with disproportionately high removal rates of Indigenous children from their families and communities. Nationwide solutions such as the Aboriginal Child Placement Principle have gone some way in redressing this issue. In its present form, however, it remains a victim of poor implementation, funding, and inadequate consultation with Indigenous communities.

The British colonisation of Australia posed an overwhelming threat to the continued observance of traditional family life by the Indigenous population. In particular it has been stated that colonisation challenged and tried to destroy Indigenous peoples' rights to their children.² This is illustrated most significantly by government policies from what is called the Protection Era. At

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¹ The term "Indigenous Australians" is used in this paper to refer to both Australian Aboriginal peoples and Torres Strait Islander peoples of North-East Queensland.

² Brian Butler, "Aboriginal Children: Back To Origins" in *Family Matters* 35 (1993), 7-12.

this time, legislation facilitated government policies and practices that removed Indigenous children from their communities. This has undoubtedly contributed to the present day alienation of Indigenous societies within Australia.³ It is submitted that Indigenous children in contemporary Australian society – who continue to be subjected to the child protection system at a higher rate than non-Indigenous children – are still not free from the effects of past colonial law and policy in the enjoyment of their family life.⁴ Today, nationwide child welfare policies such as the Aboriginal Child Placement Principle have been implemented as law in the hope that Indigenous children are kept within their ethnic communities when there is no alternative but to remove them from their family.

TRADITIONAL INDIGENOUS FAMILY LIFE

The characteristics of traditional Indigenous family life are enormously different from those of European cultures.⁵ Unlike in European cultures, the core family unit is far greater extended to include the wider community. “In Indigenous societies, the extended family or kinship system traditionally managed virtually all areas of social, economic and cultural life...”⁶ The main care givers of a child are not only the parents, but grandparents, other relations and members of the wider community. Socialisation practices also differ greatly. Socialisation is the process by which a person learns about the culture of the society within which they live and the roles which different people

³ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing Them Home* (1997); available from <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen/stolen03.html>; internet; accessed 1 June 2007.

⁴ Heather McRae, Garth Nettheim, Laura Beacroft and Luke McNamara, *Indigenous Legal Issues: Commentary & Materials* (Sydney: Thomson Lawbook Co., 2003), 589.

⁵ For a comprehensive discussion of the characteristics of Indigenous family life, see: Judith Healy, Riaz Hassan and R. B. McKenna, “Aboriginal Families” in Storer, *Ethnic Family Values in Australia*, (Sydney: Prentice Hall, 1985).

⁶ Mick Dodson, “The Rights of Indigenous Peoples in the International Year of the Family” in *Family Matters* 37 (1994), 34.

within that society play.⁷ Given that socialisation practices in Indigenous and European cultures are markedly different, it is unsurprising that this leads to polarised perceptions of the world.

On colonisation, having viewed the radically different perspective taken by Australia's Indigenous peoples towards family life, the British settlers implemented a variety of laws and policy with the aim of removing children from their families and communities. McRae states that one of the main reasons for removing children from Indigenous communities under British colonial law and policy was the "devaluation and ignorance of Indigenous child rearing practices, often perceived by non-Aborigines as being lax and neglectful".⁸ The result of this line of thinking is seen in the law and policy of what became known as the Protection Era.

THE PROTECTION ERA: REMOVING INDIGENOUS CHILDREN FROM THEIR FAMILIES

The Protection Era was a period of Australian history marked by missionary and governmental control which lasted from the late 19th century up until the 1960s. The concepts of Social Darwinism circulating at the beginning of this era led to a widespread belief that Indigenous Australians were in many ways inferior to their European colonisers. They seen as a dying race, and their extinction was inevitable.⁹ Thus, measures to "protect" the Indigenous population were implemented through various laws and policy. It has been stated that far from "protecting" the Indigenous population, these measures resulted in "Aborigines [being]... controlled by the state and its agents through discriminatory legislation and intervention in their lives".¹⁰

⁷ E.g. males learn how and what it means to be sons, brothers, fathers, etc.

⁸ McRae, *Indigenous Legal Issues*, 571.

⁹ *Ibid.*, 30.

¹⁰ Bain Attwood, Winifred Burrage, Alan Burrage and Elsie Stokie, *A Life Together, A Life Apart: A History of Relations Between Europeans and Aborigines*, (Melbourne: Melbourne University Press, 1994), 3-4.

“Perhaps the most tragic aspect of the Protection Era was the removal of Indigenous children”.¹¹ By the late 19th century, legislation existed in all Australian jurisdictions facilitating the removal of Indigenous children from their families and communities.¹²

In Queensland, the *Aboriginal Protection and Restriction of Sale of Opium Act 1897* was the fundamental piece of legislation governing Indigenous people. This Act provided powers to make regulations for the “care, custody and education of the children of aboriginals [sic]”.¹³ Under this Act, there was no need for a Court committal process and no right of appeal available to Indigenous parents against removal. Institutionalisation could be for the “term of the child’s natural life”.¹⁴

Haebich claims “Queensland was the most extreme of the states in its desire to permanently segregate Aboriginal families in institutions”.¹⁵ Unlike other jurisdictions, whole families – as opposed to only children – were removed to missions and settlements.¹⁶ However, on arrival at these destinations, the family unit itself was deconstructed. Ruth Hegarty, an Indigenous writer, describes her introduction to settlement life:

*In about an hour the freedom of my family, the freedom they enjoyed to travel, work to be together, was taken away... it would be impossible for us all to remain together as a family. This pattern of separation dogged us for nearly all of our lives.*¹⁷

¹¹ McRae, *Indigenous Legal Issues*, 36.

¹² *Ibid*, 580.

¹³ Section 31(6), see also Section 9 which facilitated removal to Reserves.

¹⁴ McRae, *Indigenous Legal Issues*, 582.

¹⁵ Anna Haebich, *Broken Circles: Fragmenting Indigenous Families 1800-2000* (Freemantle, Australia: Fremantle Arts Centre Press, 2000).

¹⁶ Under powers granted by Section 9 of the Aboriginal Protection and Restriction of Sale of Opium Act 1897.

¹⁷ Ruth Hegarty, *Is That You Ruthie?* (Brisbane: University of Queensland Press, 1999), 12.

CREATING THE STOLEN GENERATIONS¹⁸

Children removed through government protection policies of the Protection Era have been described as the Stolen Generations. It is not unreasonable to claim that the impacts of colonisation on Aboriginal family life have been felt by almost every Indigenous Australian. It has been estimated that “today there may be one hundred thousand people of Aboriginal descent who do not know their families or communities”.¹⁹ A 1994 nationwide survey found that “over 10% of persons aged 25 years and over reported being taken away from their natural family by a mission, the government or ‘welfare’”.²⁰

Separation was devastating for those removed, their family and the wider community. Forcing children and parents to live apart led to the “destabilisation and destruction of kinship networks and the destabilisation of protective and caring mechanisms within Indigenous culture...”²¹ Many had difficulty grasping why they had been removed and felt deprived of a childhood, and parental love and affection. One Stolen Generations child is documented as stating: “I feel very bitter, hurt and confused over what has happened to me”.²² Further, the absence of role models and family socialisation

¹⁸ This term was first used by Dr Peter Read in *The Stolen Generations: The Removal of Aboriginal Children in New South Wales 1883 to 1969* (Sydney: New South Wales Ministry of Aboriginal Affairs, 1981) who believed many of the “ways” in which removals were facilitated could only be described as “stolen or kidnapped”.

¹⁹ Coral Edwards and Peter Read, *The Lost Children*, (Sydney: Doubleday, 1989), ix.

²⁰ Australian Bureau of Statistics, *National Aboriginal & Torres Strait Islander Survey 1994, Detailed Findings*, (Canberra: AGPS, 1995), 2.

²¹ McRae, *Indigenous Legal Issues*, 492.

²² Aboriginal Legal Services of Western Australia, *Telling Our Story*, (Perth: ALSWA, 1995), 28.

meant that many were ill-prepared for adulthood.²³ Growing up, many experienced alienation and confusion about their cultural identity.²⁴

Removed children were often taught to reject their Aboriginality and Aboriginal culture in an attempt at assimilation to the white community. “Aboriginality was not positively affirmed. Many children experienced contempt and denigration of their Aboriginality... This cut the child off from his or her roots...”²⁵ A controversial claim is that the aim of these policies amounted to genocide within International law.²⁶ Article 2(e) of the *UN Convention on the Prevention and Punishment of the Crime of Genocide* defines genocide as the forcible transferring of children of a national, ethnical, racial or religious group with the intent of destroying that group.²⁷ Arguably, the attempts of the Australian Government during the Protection Era to absorb Indigenous children into the wider Australian community had the intention of destroying the “unique cultural values and ethnic identities” of Indigenous peoples.²⁸ Article 7 of the *UN Draft Declaration on the Rights of Indigenous Peoples* further defines “cultural genocide” as “any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural

²³ Hegarty, *Is That You Ruthie?*, 12.

²⁴ Australian Government Department of Immigration and Multicultural and Indigenous Affairs, “Consultation on a National Plan to Address Threats to Australia’s Social Cohesion, Harmony and Security”; available from http://www.immi.gov.au/multicultural/mcrg/Discussion_Paper.pdf; internet; accessed 28 April 2006.

²⁵ National Inquiry, *Bringing Them Home*; internet; 19. See Heading B.

²⁶ Made by various sources, including the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, although dismissed by others, see Commonwealth of Australia, Senator the Hon John Herron, Minister for Aboriginal & Torres Strait Islander Affairs, *Federal Government Submission to the Senate Legal & Constitutional References Committee ‘Inquiry Into the Stolen Generations’* (Canberra: Federal Government Submission, 2000).

²⁷ United Nations, “United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948)”; available from <http://www.law-ref.org/GENOCIDE/article2.html>; internet; accessed 1 June 2007.

²⁸ National Inquiry, *Bringing Them Home*, internet.

values or ethnic identities” and “any form of population transfer which has the aim or effect of violating or undermining any of their rights”.²⁹ Arguably, the practice of child removals constitutes a “population transfer”, depriving Indigenous Australians “of their integrity as distinct peoples”, of their “cultural values” and “ethnic identity”.

THE LEGACIES OF COLONIAL LAW AND POLICY FOR THE STOLEN GENERATIONS: THE “BRINGING THEM HOME REPORT”

Above all, the legacies of this period are the many social problems which affect contemporary Indigenous society. In 1997 the Australian Federal Government produced the *Bringing Them Home Report*, which followed the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*.³⁰ This comprehensive report documented the experiences of removed children and explained how “for individuals, their removal as children... [has] permanently scarred their lives”.³¹ The personal experiences of the Stolen Generations are central to the document, and reading through these it is possible to highlight the legacies which are the result of Protection laws and policy on Indigenous family life.

One legacy is the loss of family relationships and identity which can never be replaced.³² Link-Up (NSW) states that reunion is “fundamental to healing the effects of separation”.³³ It is important for the individual in terms of learning where they came from and who they are. Although there have been many positive reunions, the *Bringing Them Home Report* records that “tragically...

²⁹ United Nations, “United Nations Draft Declaration on the Rights of Indigenous Peoples (1994)” available from [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument); internet; accessed 1 June 2007.

³⁰ National Inquiry, *Bringing Them Home*; internet. See Index.

³¹ *Ibid.*, 3.

³² *Ibid.*, 25.

³³ NSW is an Aboriginal organisation established to assist removed or separated Aboriginal people find their way home to their Aboriginal family and culture; National Inquiry, *Bringing Them Home*, internet, 25.

some people discovered their parents had... passed away while others were denied by distraught parents and not given an opportunity to meet them".³⁴ Even for those who traced, located and met their families, the lost years and bonds could never fully be recovered.³⁵

The lack of family and kinship has further resulted in the production of a generation who, without role models, have grown up ill-equipped for parenting themselves.³⁶ Consequently, they have experienced difficulties which often resulted in their own children being removed, producing a continuing cycle of removal.³⁷

The loss of family and land ties has in many cases precluded Stolen Generations children from mounting successful native title claims.³⁸ A substantive requirement of claiming native title is the requirement of a 'continuing connection with traditional land'.³⁹ Through being physically separated from land and family, many Indigenous people do not know where they are from. The separation often left Indigenous communities unable to impart important knowledge about culture and language to their children and thus, any spiritual or cultural link is also impossible to prove.⁴⁰

As well as being deprived of family and traditional culture, removals have also strongly contributed to the modern-day material poverty suffered by

³⁴ Ibid., 1; Ibid., 25.

³⁵ Ibid.

³⁶ It has been stated that 1 in 10 Indigenous parents were themselves victims of childhood removal, see above n15; McRae, *Indigenous Legal Issues*, 492.

³⁷ National Inquiry, *Bringing Them Home*, internet, 24.

³⁸ Richard H. Bartlett, "The Source, Content and Proof of Native Title at Common Law" in *Resource Development and Aboriginal Land Rights in Australia*, Richard H. Bartlett, ed. (Perth: The University of Western Australia & Murdoch University), 56.

³⁹ Native Title Act 1993, Section 223.

⁴⁰ Justice Howard Olney held in *Members of the Yorta Yorta Aboriginal Community v State of Victoria* (2001) 110 FCR 244, at 566, that a link may be "spiritual" within the definition of Section 223 of the Native Title Act 1993.

Indigenous people, which in turn has contributed to many of their social problems. For example, a link has been proffered between removals and poor housing, which leads to poor education, lowered employment opportunities and in turn income.⁴¹

A growing body of research also indicates that there is a link between the separation of families and problems such as alcoholism, substance abuse, suicide and mental illness.⁴² For example, the Victorian Medical Service found that 65% of Indigenous clients undergoing psychiatric treatment had been separated from one parent in childhood, while 47% had been separated from both, and 27% had been institutionalised.⁴³

Another legacy of the removal of the Stolen Generations is their present over-representation in the Australian criminal justice system. Cunneen states that an explanation of such over-representation “involves analysing interconnected issues [including] the impact of the forced removal of Indigenous children”.⁴⁴ The Royal Commission into Aboriginal Deaths in Custody found that within the period of January 1980 and May 1989, forty-three of the ninety-nine Aboriginal prison deaths whose cases were studied had experienced childhood separation from their families.⁴⁵ Furthermore, recent research highlights “at

⁴¹ National Inquiry, *Bringing Them Home*; internet; 58.

⁴² *Ibid.*, 24.

⁴³ Pat Swan, “200 years of unfinished business” in *Aboriginal Medical Service Newsletter* (1988), 12-17.

⁴⁴ Chris Cunneen, *Aboriginal Justice Plan: Discussion Paper*, (Sydney: NSW Aboriginal Justice Advisory Council, 2002), 33

⁴⁵ See figure 2.10, Royal Commission into Aboriginal Deaths in Custody. “*National Report Volume One*, (1991)”, available from http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/rciadic/national/vol1/BRM_VOL1.RTF; internet; accessed 1 July 2007.

least 52% of Aboriginal women interviewed in NSW prisons had come from a family affected by the Stolen Generations”.⁴⁶

For members of the Stolen Generations affected by historical removal policies, the *Bringing Them Home Report* proposes five elements of reparation.⁴⁷ These are an acknowledgement of ‘the truth’ and an apology, guarantees against repetition, measures of restitution, measures of rehabilitation, and monetary compensation.

The Report states an apology is ‘the first step’ in any reparation process and there is certainly international precedent for institutional apologies.⁴⁸ However, the Howard Government, significantly, refuses to make an apology. The reasons for refusal are threefold: firstly, because the current generation should not bear responsibility for the past, secondly, an apology may give rise to legal liability and finally, the Federal Government believes there is a lack of public support for one.⁴⁹ The Government’s stance may explain the lack of success of claims for monetary compensation, especially considering the refusal to apologise on the basis that this may give rise to legal liability.⁵⁰

⁴⁶ Rowena Lawrie, “Speak Out Strong: Researching The Needs Of Aboriginal Women In Custody”, (Sydney: NSW Aboriginal Justice Advisory Council, 2002), 43.

⁴⁷ National Inquiry, *Bringing Them Home*; internet; 30.

⁴⁸ For example, in South Africa, the *Truth and Reconciliation Commission* “believes acknowledging the truth and expressing regret is the best way to heal the nation of the legacy of apartheid”, See Australian Human Rights & Equal Opportunities Commission “Frequently Asked Questions about the National Inquiry”; available at http://www.humanrights.gov.au/social_justice/stolen_children/faqs.html#ques3; internet; 1 June 2007.

⁴⁹ McRae, *Indigenous Legal Issues*, 606.

⁵⁰ In general, the Howard Government’s “new right history” approach to the history of British Colonisation of Australia protects the idealised version of colonisation, and downplays the accuracy of the findings of Reports such as *Bringing Them Home* in McRae, *Indigenous Legal Issues*, 14-16.

In *Kruger, Bray v The Commonwealth*, six plaintiffs challenged the constitutional validity of the *Aboriginal Ordinance (Northern Territory) 1918* under which they had been removed.⁵¹ They claimed that the legislation breached implied constitutional rights and freedoms, including the right of equality, the freedom of religion, of movement and association, and a freedom from Genocide.⁵² However, for each argument either the existence of such a right or its violation was dismissed by the High Court of Australia.

In *Cubillo v The Commonwealth*, the Commonwealth defended an action brought by two plaintiffs seeking recompense for “false imprisonment, breach of statutory duty, negligence, and breach of fiduciary obligations” resulting from childhood removal.⁵³ Again, the High Court held that the plaintiffs had failed to found a case on the four outlined causes of action.⁵⁴ The cumulative result of *Kruger, Cubillo* and others has produced a significant “dead-end” for many of the Stolen Generations seeking monetary compensation.⁵⁵

McRae states that cases brought under criminal injuries compensation schemes “appear to be the only successful claims brought by members of the Stolen Generations”.⁵⁶ For example, in *Linow’s Case*, the plaintiff’s claim was successful as she could produce evidence from both the police and a psychologist of the psychological trauma suffered as the result of sexual assault she suffered in an institution as a child.⁵⁷ However, the monetary compensation arose from the sexual assault suffered as a consequence of removal as opposed to the suffering caused by the childhood removal itself.

⁵¹ (1997) 146 ALR 126.

⁵² *Supra*, n26-29.

⁵³ (2001) 184 ALR 249; McRae, *Indigenous Legal Issues*, 599.

⁵⁴ Both at first instance and on appeal to the Full Federal Court.

⁵⁵ *Supra* n52; *Supra* n53; For example, *Williams v Minister, Aboriginal Land Rights Act 1983* (1999) 25 Fam LR 86.

⁵⁶ McRae, *Indigenous Legal Issues*, 602.

⁵⁷ *Ibid*.

At present the Federal Government has provided a \$63m package assisting family reunions and health related services, however it does not intend to address any of the other *Bringing Them Home Report* recommendations.⁵⁸ Abrahams states that this response “fails to grasp an historic opportunity to move Australia into the next millennium with a clearer conscience and an open heart and mind”.⁵⁹

It is certainly clear that “the impacts of the removal policies continue to resound through the generations of Indigenous families”.⁶⁰ Overwhelmingly, the impact does not stop with the removed children; often it is inherited by their children “in complex and sometimes heightened ways”.⁶¹ Today, efforts are being focussed on limiting the reverberation of the legacies of childhood removal through later generations of Indigenous families. In recent years, a particular attempt has been made to end the continuing high rates of removal of Indigenous children through the implementation of the Aboriginal Child Placement Principle (ACPP) into contemporary Australian State and Territory Government policy and law.

CURRENT INDIGENOUS CHILD WELFARE LAW AND POLICY: A DIFFERENT STANCE?

⁵⁸ Ibid, 604; Abrahams, “Bringing Them Home or Taking Them Nowhere: The Federal Government’s Response to the National Inquiry into the Stolen Generations” (1998) 4 (9) *Indigenous Law Bulletin* 15. Abrahams goes on to state that in total the Federal Government has only fulfilled 17 of the 54 Bringing Them Home Report Recommendations.

⁵⁹ Ibid.

⁶⁰ National Inquiry, *Bringing Them Home*; internet; 24.

⁶¹ Chris Cunneen, “The New Stolen Generations” (paper presented at the Australian Institute Of Criminology Conference, Adelaide, 1997); National Inquiry, *Bringing Them Home*; internet; 30.

From the end of Protectionism and Assimilation in the late 1960s, there was a considerable change in government policy, including the emergence of the ACPP.⁶² One Indigenous group, the Aboriginal Taskforce on Adoption stated in 1976:

*We believe that the only way in which an aboriginal child [sic] who is removed from the care of his parents can develop a strong identity and learn to cope with racism is through placement in an environment which reinforces the social and cultural characteristics of aboriginal society. We believe that white families are unable to provide such a supportive environment... We assert that the placement of aboriginal children... should be the sole prerogative of the aboriginal people. Only they are in a position to determine what is in the best interests of the aboriginal child.*⁶³

The emergence of the ACPP has been viewed as a key acknowledgement that past policies inflicted suffering on Indigenous people, as well as accepting that Indigenous children are better raised in their own communities where they can retain their own heritage, customs, languages and institutions.⁶⁴ It is submitted that the ACPP provides a bulwark against the legacies of Protectionism from reverberating through future generations of Indigenous Australians, and as such there should be a resolute effort to implement its content.

Generally, the principle “outlines a preference for the placement of Aboriginal children with Aboriginal people when they are placed outside their families”.⁶⁵

⁶² Largely the emergence of the principle has been due to the efforts of Aboriginal and Islander Child Care Agencies (ACCAs), the first of which was formed in 1977 in Victoria.

⁶³ McRae, *Indigenous Legal Issues*, 614.

⁶⁴ Law Reform Commission of New South Wales, “Research Report Seven: The ACPP (1997)”, available at <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/RR7CHP3>; internet; 1 June 2007; Butler, “Aboriginal Children: Back to Origins”, (1993), 35, *Family Matters*, 7, 8.

⁶⁵ Law Reform Commission, “Research Report Seven”; internet.

Preference is firstly for placement with extended family, then within the child's Aboriginal community, and lastly with other Aboriginal people.⁶⁶ The ACPP also requires Indigenous organisations to be involved in the decision-making process.

All Australian jurisdictions except Western Australia have now implemented the ACPP into their laws. However, the process of implementation was by no means prompt. To take the example of the State of Queensland, the State Government adopted the principle as policy in 1987 however it was not until the Child Protection Act 1999 that the principle was finally given statutory recognition.⁶⁷ Although the principle's increasing recognition in the late 1980s and through the 1990s should be viewed as an advance, the *Bringing Them Home Report* claimed, for example, that in 1993 Indigenous children were thirteen times over-represented in care throughout Australia compared to non-Indigenous children.⁶⁸ Even after the statutory recognition of the ACPP throughout most of the country, disproportionately high figures persist. In 2001 the Australian Institute of Health and Welfare reported that rates of Indigenous children in out-of-home care are nine times higher than those of non-Indigenous children.⁶⁹ This continuing high rate suggests there might be impediments to the implementation and success of the ACPP, which must be overcome to ensure its proper functioning.⁷⁰

The first impediment to the ACPP which the *Bringing Them Home Report* criticises is the fact that Indigenous people "cannot control its implementation", that is to say "they are not assisted or permitted to determine the destiny of

⁶⁶ Ibid.

⁶⁷ National Inquiry, *Bringing Them Home*; internet; 48. In particular, see Sections 6, 82 and 83. For a comparison of the implementing legislation in existence in other Australian jurisdictions see figure 11.3, McRae, *Indigenous Legal Issues*, 622-624.

⁶⁸ National Inquiry, *Bringing Them Home*; internet; 48.

⁶⁹ Australian Institute of Health and Welfare, "The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples", available at <http://www.aihw.gov.au/publications>; internet; 1 June 2007.

⁷⁰ McRae, *Indigenous Legal Issues*, 589.

their children”.⁷¹ Although the ACPP highlights awareness of the cultural needs of Indigenous children and the importance of consultation with Indigenous organisations, this is done within “an established bureaucratic framework”.⁷² This acts as an impediment to the ACPP’s success because the starting point from which the activities under the ACPP are conducted are culturally biased and do not reflect traditional Aboriginal laws or culture.⁷³ The decision-making process itself “operates as a powerful disincentive to Indigenous families to volunteer to be foster carers”.⁷⁴ For many, the evaluation schemes appear inappropriate. An example of the perceived inappropriateness of the evaluation scheme is that financial positions are considered when determining suitability. As a result of this consideration, a combination of socio-economic factors has precluded a number of prospective Indigenous foster carers, thus producing a shortage, leading to a high proportion of Indigenous children being placed with non-Indigenous foster carers.⁷⁵

A further impediment is the differing approaches taken by states towards the ACPP.⁷⁶ The “extent and style of consultation” required between an ACCA and a government body responsible for the removal of children varies considerably between states.⁷⁷ This is attributable to the absence of one unitary piece of Commonwealth legislation providing a global definition of the ACPP. Lack of continuity undermines and confuses the principle and hinders its effectiveness.

⁷¹ Ibid, 617; Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid, 618.

⁷⁵ Paul Ban, “Aboriginal Child Placement Principle and Family Group Conferences” in *Australian Social Work* Volume 58, Number 4 (2005), 384-388.

⁷⁶ Both in terms of legislation and government policy. Again, for a diagrammatical illustration of the differences between legislation see figure 11.3, McRae, *Indigenous Legal Issues*, 622-624.

⁷⁷ Ibid, 617.

Yet another recurring issue is the inadequate funding of ACCAs.⁷⁸ The so-called ‘partnerships’ between government bodies and ACCAs are unequal not only due to such funding deficiencies, but also because “departments retain full executive decision-making power and the power to allocate resources affecting Indigenous children’s welfare”.⁷⁹

Despite having its impediments, the fact that the ACPP exists marks an attempt at reducing continuing removal trends. Undoubtedly, the proper functioning of the ACPP would be greatly facilitated if the impediments to its implementation outlined above are addressed head-on by all the Australian jurisdictions working collectively. Although such policies come too late for members of the Stolen Generations, their plight has not been forgotten.

CONCLUSION

It is indisputable that the effects of colonial law and policy on Indigenous Australia “resonate[s] in the present and will continue to do so in the future”.⁸⁰ As such, the impacts of colonisation on Aboriginal family life cannot be viewed as confined to the history books. In particular, legacies found in contemporary Indigenous society resulting from the Protection Era have become so complex that no simple answer will bring an end to the continuing disproportionately high rates of removal of Indigenous children from their families and communities. The ACPP provides hope that there is a concerted effort to tackle the issue of childhood removal, but its impediments highlight that much progress is still needed before Indigenous family life is truly free from the effects of past colonial law and policy. Undeniably, the impact of colonisation of Aboriginal family life was – and is – profound.

⁷⁸ McRae, *Indigenous Legal Issues*, 618.

⁷⁹ *Ibid.*

⁸⁰ National Inquiry, *Bringing Them Home*; internet; 3.

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