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**Submission to the Australian Senate Inquiry into the Stolen Generation Compensation Bill 2008**

**Dear Senators**

**1. Preamble**

The ERISJ welcomes the opportunity to contribute to the Senate Legal and Constitutional Affairs Committee's Inquiry into the Stolen Generation Compensation Bill 2008.

**2. Endorsing Multiple Forms of Compensation, including those not canvassed here**

We support multiple forms of compensation for the Stolen Generations and their descendants and communities. We applaud the symbolic, public and psychological contributions of Prime Minister Rudd's February Apology, recognising this distinctive contribution to individual, community and national healing.

We have noted on your Committee's website various submissions already lodged with your Inquiry. In the interests of brevity, allow us to indicate that a number of general remarks that we would otherwise make here have already been made to you in *Reconciliation Victoria's* submission. (We have no contact or affiliation with this organisation). Among their views that converge with our own are the importance of non-monetary forms of compensation, and the sociological insight that systemic solutions are always required for systemic problems. As a courtesy, we attach their submission to this one.

**3. Monetary Compensation: First Principles**

Endorsing several elements of *Reconciliation Victoria's* submission allows us to move to succinctly propose an approach to the monetary dimension. We will leave it to compensation experts, Aboriginal organisations and Government to quantify the appropriate sums. Suffice to say here that a six-figure sum for each removed person is clearly warranted. The necessity for monetary compensation derives from the following First Principles that, we respectfully submit, ought centrally organise your thoughts.

Mr Noel Pearson is probably correct when observing that the motives of some child removal advocates and foster parents, and the consequences for those removed, were mixed and included virtually every conceivable outcome. Yet we conclude that a particular element was present with such consistency as to be patterned and itself causally generative. There was surely a deep racism in the underpinning assumptions that enabled *en masse* indigenous child removal in Australia, whether one contemplates its intermittently child protection, assimilationist or eugenicist (breeding out ‘full-castes’) components. The assumption or extrapolation by government and non-government agencies alike of a widespread, almost uniform, Aboriginal parental incapacity would not, and could not, have been perpetrated upon European parents.

#### **4. Monetary Compensation: Reconciling Competing Virtues**

We propose a distributional principle that links compensation to its triggering phenomenon, removal. This seems important both for a ‘compensational jurisprudence’ and for compensation’s physical and psychic remedial propensities. To the question *should there be compensation?*, the question that immediately follows is *who precisely are the injured parties?* The injured were first and foremost those removed, but, secondly, we need contemplate others palpably affected and afflicted. We can differentiate three principal damaged parties: the Removed themselves, their families of origin and destination, and communities from which people were removed. We gesture here toward just three forms of community damage. Families and especially parents of those left behind were forever grieved and partly disabled. The Removed did not make the social, cultural, parental and economic contributions they otherwise might have to that community. Third, the Removed likely bore a damaged psyche and countenance even if reunited much later with their originating community. It follows that compensation must have **individual, familial, transgenerational and community components and benefits.**

How to conceptualise monetary compensation accordingly, such that the Removed person is the **principal but not sole** beneficiary? That tortious and Family Law settlements often divide entitlements and judgements proportionally (70:30, 50:50, etc) delivers some forms of distributional justice, yet simultaneously ensures the dynamic of the *zero-sum game*. That is, every dollar distributed to one party takes one away from another. Our proposal avoids this. It also avoids an atomised philosophical individualism without alienating the just claims of actual individuals. Further, our advocating compensation for a broadly conceived field of those injured risks an ambit claim that could be so expensive as to be politically impracticable - and hence jeopardise the entire monetary component of Apology. Our proposal seeks to overcome the latter risk through three measures: income-yielding investments in perpetuity, inheritable entitlements thereto, and a proposal that reasonably anticipates the Removed’s pleasure rather than resentment at a contribution to their communities.

#### **5. Monetary Compensation: Transgenerational Calculus To Reflect Transgenerational Injury**

##### 5.1 25% for Originating Communities of the Removed

Twenty-five percent of the total quantum of Governmental allocation would be to communities that experienced removal. A Removed person knowing that this 25% makes a tangible form of contribution to their own community/people – a likely contribution had they not been removed - will assist a sense of pride that ‘at least

something positive for my community has come out of this' among all the loss and sadness. Reinstating a little of their contribution to their community restores at least a little dignity to each party. Each Removed person would have the right to specify the community-building category to which their 25% is allocated – health, education, employment generation, a community investment pool for asset-building, and so on. They will look on with pleasure and pride as the projects to which they had contributed take shape and deliver palpable benefits to people they see daily. This practically assists a community's pressing needs, and the Removed's psychic re-integration and status within this community.

There are several reasons to conceive this 25% in communitarian fashion. Communitarianism is a principal cultural and political attribute throughout indigenous Australia. Communities and not only individuals paid the price of removal, in countless ways. However unhelpful in some respects, there is some aptness in the historic analogies of wars or slavery that sometimes decimated entire communities for decades.

### 5.2 25% for Needs and Expenses of those Removed

Twenty-five percent would be either as a lump sum or an annuity for each Removed Aboriginal person; they could nominate which of these forms it took. Removed persons have expenses and needs that many others do not. This 25% seems a practical form of 'restorative justice', for putting the Removed people in touch with cultural meaning, connection or actual people lost because of Removal. This 25% could be used toward additional medical expenses generated by removal's multiple forms of damage, plus subsidise counselling as required, private medical insurance, etc. It might also assist with accessing language lessons in one's first (indigenous) language, or to access cultural awareness that would otherwise have occurred. It would be entirely discretionary for the Removed person whether, upon their passing, any of this 25% remained intact for distribution to their heirs.

### 5.3 50% as a perpetual asset, providing annual compensation for the Removed, their families and descendants

Fully fifty percent would be for the **joint** use of the Removed and family, and then inherited in perpetuity by their descendants. This would be an income-yielding, invested asset over which the Removed is effectively caretaker rather than sole proprietor. A perpetual family asset would, however inadequately, recognise and seek to compensate **multiple generations** traumatised and routinely damaged by the policy. The children, grandchildren and probably future descendants of the Removed have been hurt in ways obvious and subtle – not least arising from psychological devastation to the Removed or diminished capacity for paid employment.

Descendants, too, deserve – and physically need – compensation – and suffer in ways that may not be acknowledged precisely because they themselves were not removed. The caveat on the sum (effectively proscribing asset disposal) is not to trigger a new paternalism, but – somewhat ironically – to partially resource the quintessential paternal and maternal roles of 'providing for the needs of their own'. Fully 50% is provided here as an inheritable, income-generating resource in perpetuity

## **6. Administration and Funds Management**

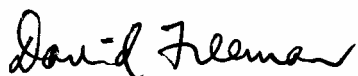
How to administer this scheme? There are two competing virtues here: individual autonomy of Removed persons and asset-protection for this one-off financial 'windfall' for them, their families and their estate. Peak Aboriginal organisations should be consulted on how this ought to be resolved, and whether they themselves might participate in any fund management.

It is also possible that fund management assistance could be available on a pro-bono basis from (eg) Australian banks, credit unions and superannuation funds. Possibly they would agree to waive all fees as a community service. Administration by them could be done at relatively low cost to them. Surely much of the work is computerised after initial key-in of data and organisation of investments. Investments could be reallocated to better performing assets on the same commercial basis that superannuation and other funds make such decisions. Approximately one-tenth of annual yield could be stipulated for compulsory reinvestment as a permanent hedge against inflation dissipating the asset.

## **7. In Conclusion**

However platitudinous the observation, this is a country of remarkable wealth, with significant annual Governmental surpluses for more than a decade. In this setting, it is not flamboyant to rhetorically inquire: *if not now, when?* Australia's current wealth is substantially built upon Aboriginal land and labour - yet this wealth eludes Aboriginal people themselves. A modest contribution such as that proposed here will provide a crucial chapter in the writing of a better national story.

We commend these considerations to your Committee, and thank you again for this opportunity.



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David Freeman  
**Director**  
9 April 2008

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