



Hon Dr Tony Buti MLA
Minister for Education; Aboriginal Affairs;
Citizenship and Multicultural Interests

Our Ref: 80-07117/3

Hon Peter Foster
Chair
Standing Committee on Environment and Public Affairs

Via email: env@parliament.wa.gov.au

Dear Chairman *Peter*

PETITION 072 – STOLEN GENERATIONS COMPENSATION

Thank you for your letter dated 17 February 2023 requesting further information on the progress of Stolen Generations redress schemes and litigations in other jurisdictions. In response to your inquiries, I can provide the following information:

Stolen Generations Redress Schemes in other jurisdictions

Attachment A provides a summary of the current and recent Stolen Generation Redress Schemes in Victoria, New South Wales, and the Commonwealth (Territories Stolen Generations Redress Scheme) (TSGRS). A further summary of closed schemes in Tasmania and South Australia is also included.

Stolen Generations litigation

Attachment B provides a list of completed Stolen Generations litigation from across Australia that the Department of the Premier and Cabinet (the Department) is aware of. There is also a summary of the recently settled Stolen Generations class action against the Commonwealth Government.

This information includes reference to the Federal Government's response to the Stolen Generations through a redress scheme and settled litigation.

Identification of Gaps in respective responses by other jurisdictions

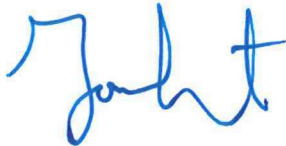
The Department is continuing to review the current and past schemes and their implementation from both an administrative and substantive perspective. There are commonalities across all schemes primarily in providing an individual cash component.

Many schemes provide for individual apologies to be provided by senior government representatives, and some later schemes provide for certain limited non-cash supports, such as counselling, legal or financial advice.

Existing schemes make some provision for the communal needs of Stolen Generations survivors, such as resourcing for programs that address collective healing, or culturally appropriate services tailored to the needs of Stolen Generations survivors.

State-specific measures including allowance for memorials, funeral funds, repatriation measures and varying levels of counselling, advice, and healing support, demonstrate the ways in which individual States have listened and responded to Stolen Generations survivors in different ways in each of the schemes.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tony Buti', with a stylized, cursive script.

Dr Tony Buti MLA
MINISTER FOR ABORIGINAL AFFAIRS

- 3 APR 2023

SCHEME PROCESSES / ADMINISTRATION / GOVERNANCE

STOLEN GENERATIONS REDRESS SCHEMES – CURRENT/RECENT SCHEMES – COMPARISON

VICTORIA (VIC) – NEW SOUTH WALES (NSW) – COMMONWEALTH (TSGRS)

CRITERIA

CRITERIA	VIC	NSW	TSGRS
IDENTITY	Aboriginal or Torres Strait Islander person	All surviving children removed by the Aborigines Welfare Board	Aboriginal or Torres Strait Islander person who is a Stolen Generations survivor
AGE	Under 18 at time of removal	Not specified	Under 18 at time of removal from family or community
REMOVAL BY	Removal by government or non-government agency	Removed by, committed to, or otherwise came into the care of the NSW Aborigines Protection or Welfare Boards under the <i>Aborigines Protection Act 1909</i> (NSW)	Removal by government or non-government officers or agencies
REMOVAL DATE	First removed in Victoria prior to 31/12/1976*	First removed prior to 2 June 1969**	Removed from: NT before 1 July 1978 ACT before 11 May 1989 Jervis Bay Territory***
OTHER FACTORS	Separated from family for a period of time that resulted in loss of family, community, culture, identity and language (guideline is 3 months)		
DECEASED APPLICANTS	Living persons only, but next of kin may continue application on behalf of applicant who dies after applying (payable to estate)	Living persons only, but discretion to continue deceased person's application if requested by estate.	Family of those deceased on or after scheme announcement on 5 Aug 2021 and who fulfilled above criteria

SCHEME PROCESSES / ADMINISTRATION / GOVERNANCE

*Changes to Commonwealth and State laws ended many race-based; also establishment of Victorian Aboriginal Child Care Agency in 1976 provided greater community input into child protection decisions. **Date of the repeal of the *Aborigines Protection Act 1909* (NSW). *** Commencement of self-government.

SCHEME INCLUSIONS

INCLUSIONS	VIC	NSW	TSGRS
INITIAL SCHEME BUDGET	\$155 million	\$78 million	\$378.6 million
INDIVIDUAL MONETARY PAYMENTS	\$100,000	\$75,000	\$75,000
ADDITIONAL PAYMENT		\$7,000 funeral fund	\$7,000 healing assistance payment
DISCRETIONARY PAYMENT	\$10,000 funeral fund		
TOTAL POSSIBLE INDIVIDUAL AMOUNT	\$110,000	\$82,000	\$82,000
ADVANCE PAYMENT	\$20,000 for terminally or critically ill		Priority processing considered for urgent applications
NON-CASH INDIVIDUAL SUPPORTS	Up to \$9,550 per individual: Trauma-informed counselling – up to 35 hours at up to \$180 per hour (including GST) [max \$6,300] Financial counselling – up to five hours at up to \$250 per hour (including GST) [max \$1,250]	Priority access to social, public and affordable housing Identify and deliver innovative and culturally appropriate health and aged care services and better access opportunities to access existing services Repatriation of Stolen Generations survivors incarcerated overseas	Free legal advice and financial counselling. Access to existing Link-Up services.

SCHEME PROCESSES / ADMINISTRATION / GOVERNANCE

	Legal advice – up to five hours at up to \$400 per hour (including GST) [max \$2,000]		
COLLECTIVE HEALING AND OTHER SUPPORTS	Supported access to healing programs such as family reunions, reconnection to Country and language programs	<p>Stolen Generations healing fund - \$5 million over 10 years for collective healing initiatives.</p> <p>Financial support for the four independent Stolen Generations organisations in NSW (amount not specified)</p>	\$6.55 million for support through Link-Up and the Healing Foundation

SCHEME PROCESSES / ADMINISTRATION / GOVERNANCE**TRUTH TELLING**

PROVISIONS	VIC	NSW	TSGRS
Individual response (PDR)	<p>Personal apology from Victorian government</p> <p>Opportunity to record and share story and experience</p>	<p>Those eligible for redress payments receive apology letter from the Minister.</p> <p>Survivors may choose to receive personalised written or face-to-face apology from senior NSW Government representative, including opportunity for survivor to make impact statement. Aboriginal facilitators assist this process.</p>	Survivors offered opportunity to tell their story to a senior government person about the impact the removal from family or community. Can be acknowledged face-to-face, through a personal letter, or both.
Access to records	Access to State records held regarding removal	Access to Family Records Service in NSW	
Memorials	Family can apply for funding (up to \$10,000) under the funeral fund for memorials or headstones, or for repatriation of remains of Stolen Generations member deceased prior to scheme.	Stolen Generations memorial plaques to be installed at railway stations and other sites of remembrance.	
Public education		Incorporation of content on Stolen Generations in Year 7-10 syllabus	
Other		Investigation of Aborigines Welfare Board sites to locate missing Aboriginal children	

SCHEME PROCESSES / ADMINISTRATION / GOVERNANCE

Features	VIC	NSW	TSGRS
Assessment process	Online or paper application; applicant gives authority to State to search; looking for evidence of removal from family, date and location of removal, duration of removal; may ask for information or conduct further research if necessary; final application sent to an assessment panel for decision on whether applicant has met eligibility criteria.	<p>Applications received and investigated by SG reparations unit at Aboriginal Affairs.</p> <p>If official records are unclear or cannot be found the applicant is contacted for more information</p> <p>Independent assessors consider all available evidence and make recommendation for payment to Minister</p> <p>Minister's decision is final, but guidelines allow for a review if claimant considers some information not considered</p>	<p>Application by filling out application form</p> <p>Attach copies of supporting records if available (but not necessary) – application form gives NIAA authority to search for records</p> <p>Confirm identity</p> <p>Supporting records are not essential; NIAA will research any accessible records that may assist with application</p> <p>Wide range of documents (official and unofficial) acceptable</p> <p>Review of decision (but not details) possible</p> <p>Link-up service can also provide free and confidential assistance</p>
Aboriginal input	<p>Package designed by Aboriginal Steering Committee</p> <p>Assessment Panel chaired by Stolen Generations person</p>	Three independent assessors appointed by the Governor – assessors are all Aboriginal and empowered to consider a range of evidence	External Advisory Board (EAB) established to provide advice to the NIAA throughout the establishment, policy development, and implementation phases of the Scheme to ensure it is delivered in a survivor-focused, trauma-informed,

SCHEME PROCESSES / ADMINISTRATION / GOVERNANCE

			and culturally sensitive manner. Includes members of public sector, SG advocate groups and Aboriginal persons.
Evidentiary onus	State undertakes searches and assessment of evidence	Onus is on Government to undertake relevant searches and research	Can be supplied but NIAA also search records
Legal ramifications		Legal representation not considered necessary due to this being an administrative, not legal, process; therefore, no legal assistance will be funded by the scheme	Offer of redress under the Scheme is a decision of plausibility that applicant meets the eligibility criteria but NOT a legal finding of fact or a legal admission of liability

SCHEME PROCESSES / ADMINISTRATION / GOVERNANCE**STOLEN GENERATIONS REDRESS SCHEMES – CLOSED****TASMANIA (VIC) – SOUTH AUSTRALIA (SA)**

Jurisdiction	Date	Scope	Number of eligible Applicants	Redress measures	Other measures
Tasmania	2007-2008	Living Stolen Generations survivors and eligible children Removals up until 1975	106 (85 living Stolen Generations survivors and 22 eligible children of deceased Stolen Generations)	\$5 million fund \$58,000 (approx.) for living Stolen Generations survivors, and between \$4,000 - \$6,000 for eligible children	
South Australia	2015-2019	Living Aboriginal people removed from their family as a child prior to 31 December 1975 without a court order	343 (53 priority applicants were fast tracked with a priority payment of \$5,000 for reasons of illness or age and later topped up)	\$11 million scheme \$6 million Individual Reparation Scheme \$20,000 ex gratia payments, plus an additional \$10,000. \$5m was allocated to a Stolen Generations Community Reparations Fund in 2018, however only \$2m expended after 2 rounds of projects. The unspent funds were redirected to individual ex gratia payments.	Meeting between Independent Assessor and applicants offered; Opportunity for Applicant to record their story.

LITIGATION ON RELATION TO STOLEN GENERATIONS

LIST OF PAST STOLEN GENERATIONS LITIGATION

The following is a list of significant previous cases that the Department of the Premier and Cabinet (the Department) is aware of in relation to Stolen Generations:

1. *Kruger v Commonwealth* (1997) 190 CLR 1
2. Appeal Determination, *Claim of Valerie Linow* (Victims Compensation Tribunal, New South Wales, File Reference 73125, 30 September 2002)
3. *Williams v The Minister, of Aboriginal Land Rights Act 1983* [1999] NSWSC 843 and [2000] NSWCA 255
4. *Cubillo & Gunner v The Commonwealth* [2000] FCA 1084
5. *Trevorrow v State of South Australia [No 5]* (2007) 98 SASR 136
6. *Collard v State of Western Australia* (2013) WASC 455

Of the judicial cases that went to hearing, only the Trevorrow case was successful. The Linow claim, determined by the NSW Victims of Crime Compensation Tribunal, resulted in an award of compensation under a standalone legislative scheme. Importantly, the compensation was awarded in respect of indecent and sexual assaults suffered while in state care, rather than for the removal itself.

RECENT STOLEN GENERATIONS LITIGATION:

The Department is aware of only one recent case (outlined below). The Department is not aware of any cases currently ongoing.

2021/117924 CUMMINGS V COMMONWEALTH OF AUSTRALIA

- On 28 April 2021 a class action was filed in the New South Wales Supreme Court against the Commonwealth Government on behalf of First Nations persons who were Removed Children (as defined in the Statement of Claim).
- On 5 August 2021, and after the Stolen Generations Class Action was filed, the Commonwealth government announced the Territories Stolen Generations Redress Scheme (TSGRS).
- The TSGRS did not apply to deceased estates of Stolen Generations who died before 5 August 2021, living carers or siblings of children who were removed (Kinship Group members) or deceased estates of Kinship Group Members.
- On 31 August 2022 a settlement was announced in the Stolen Generations class action. The settlement only applied to descendants and family members of the Northern Territory Stolen generations. The settlement did not apply to people who were eligible for the TSGRS.
- The Stolen Generations litigation settled for approximately \$50.45 million. Of that sum, approximately \$39.5 million will be available for distribution to Group Members.
- The Department is unaware of the final distribution to individual Group Members. The Supreme Court of NSW website does not yet show a record of an application for final approval of the settlement.