

**Submission
No 17**

**INQUIRY INTO REPARATIONS FOR THE STOLEN
GENERATIONS IN NEW SOUTH WALES**

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Submission to the NSW Legislative Council

***Reparations for the Stolen Generations in New South
Wales (Inquiry)***

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The NSW Aboriginal Land Council acknowledges and pays its respects to members of the Stolen Generations and their families.

About the NSW Aboriginal Land Council

The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983 (NSW)* (**ALRA**), NSWALC is an independent, self-funded non-government organisation that has an elected governing council and the objective of fostering the aspirations and improving the lives of Aboriginal peoples in NSW.

Pursuant to the ALRA, NSWALC has the following functions amongst others:

- The acquisition, control, and management of (and other dealings in) lands in accordance with the ALRA; including the claiming of unused Crown land;
- The protection and promotion of Aboriginal culture and heritage in NSW;
- The facilitation of business enterprises; and
- The provision of advice to the NSW Government of matters related to Aboriginal land rights.

NSWALC provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) that exist in NSW. As elected bodies, Aboriginal Land Councils represent the not only the interests of their members, but of the wider Aboriginal community.

The ALRA was enacted in recognition of, and in an attempt to remedy, the ongoing effects of the dispossession of Aboriginal peoples in NSW. The ALRA significantly acknowledges and recognises the prior ownership of NSW by Aboriginal peoples. Principles of self determination and compensation are embodied in the ALRA.

The preamble of the ALRA recognises that '*Land is of spiritual, social, cultural, and economic importance to Aboriginal peoples*'. When introducing the *Aboriginal Land Rights Bill 1983* into the NSW Parliament, the then Minister for Aboriginal Affairs, the Hon. Frank Walker explained:

'...[the] Government has made a clear, unequivocal decision that land rights for Aborigines is the most fundamental initiative to be taken for the regeneration of Aboriginal culture and dignity, and at the same time it lays the basis for a self-reliant and more secure economic future for our continent's Aboriginal custodians...'¹

Background

The Inquiries' terms of reference seek to review the recommendations of the 'Bringing them Home' report published in 1997 through the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children and Their Families (the **National Inquiry**) and in particular the Recommendation 3 relating to reparations. This recommendation included:

- Acknowledgment and apology,
- Guarantees against repetition,

¹ New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 March 1983, p.5088 (Frank Walker).

- Measures of restitution,
- Measures of rehabilitation, and
- Monetary compensation.²

The National Inquiry was established after a continued push by Aboriginal organisations at Federal and State levels (including NSWALC) to investigate past government policies and practices that saw thousands of Aboriginal children forcibly removed from their families. The Inquiry identified reparations as the most appropriate measures to assist and provide recompense to Aboriginal communities and the Stolen Generations for loss of identity and culture as a result of government policies of forced removal.

In 1997, the NSW Parliament:

1. Apologised unreservedly to the Aboriginal people of Australia for the systematic separation of generations of Aboriginal children from their parents, families and communities;
2. Acknowledged Parliament's role in enacting laws and endorsing policies of successive governments whereby profound grief and loss have been inflicted upon Aboriginal Australians;
3. Called upon all Governments to respond with compassion, understanding and justice to the report of the Human Rights and Equal Opportunity Commission entitled 'Bringing Them Home',
4. Reaffirmed its commitment to the goals and processes of reconciliation in NSW and throughout Australia.³

At the Commonwealth level progress towards an apology was slow. In 2008, the Federal Government issued an apology to the Stolen Generations.

NSWALC acknowledges the significance of these unilateral apologies as responses to the Bringing Them Home report. There nevertheless remains significant opportunities for governments to further pursue other recommendations of the National Inquiry, such as comprehensive reparations.

This submission discusses other reparation proposals identified by the National Inquiry and makes recommendations to the Committee regarding these proposals. The submission also provides commentary on some of the NSW Government's Aboriginal Affairs policies which relate to reparation proposals.

A brief history of the Stolen Generations in NSW

The *Aborigines Protection Act (1909)* (including subsequent amendments in 1915) was the first law that allowed the Aboriginal Protection Board (the **Board**) to remove Aboriginal children without parental consent if the Board considered it to be in the interest of the child's 'moral or physical welfare'.⁴

² Bringing them Home report, National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995). 245.

³ NSW Parliament, *Parliamentary Debates*, Legislative Assembly, 18 June 1997, Bob Carr.

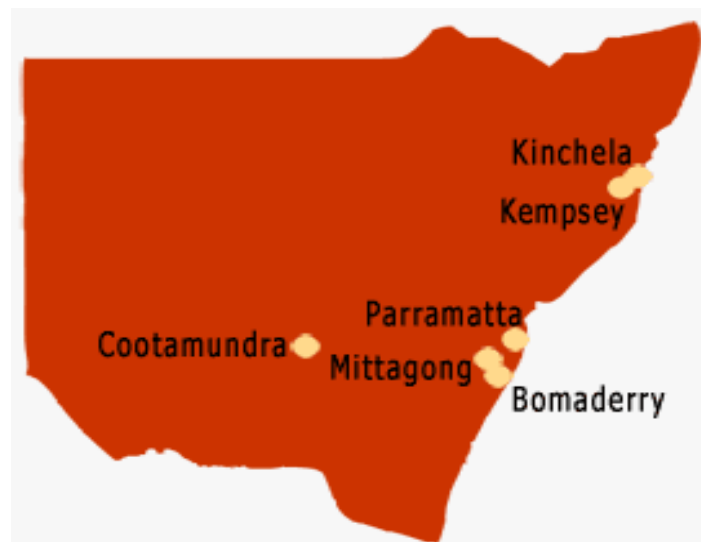
The *Aborigines Protection Act (1909)* was revoked in 1939 and Aboriginal children were brought under the jurisdiction of the *Child Welfare Act (1939)*. New provisions in the *Child Welfare Act (1939)* enabled Aboriginal children to be removed and placed in State Corrective Institutions (for example Parramatta Girls Home and the Mount Penang facility) for being found to be 'uncontrollable'. At these places children's Aboriginality would be defined (based on the completion of their skin⁵) and Aboriginal children would be segregated from other children.

"...to allow these children to remain on the Reserve to grow up in comparative idleness in the midst of more or less vicious surroundings would be, to say the least, an injustice to the children themselves, and a positive menace to the State."

Report of the Aborigines Welfare Board in 1911⁶

These institutions were characterised by the gross mistreatment of Aboriginal children.

The Department of Aboriginal Affairs publication in 1981, *The Stolen Generations; the Removal of Aboriginal children in New South Wales 1883 to 1969*, notes that there are no systematic records of Aboriginal children sent to State or religious homes, however the report does estimate that from between 1883 and 1969, 6225 children were sent to homes.⁷



⁴ Peter Read, NSW Department of Aboriginal Affairs, *The Stolen Generations; The removal of Aboriginal children in New South Wales 1883 to 1969*, (2006), 8 ('Read').

⁵ Ibid, 9.

⁶ Ibid,

⁷ Ibid.

*Locations of institutions in NSW where children of the Stolen Generation were taken*⁸

NSWALC acknowledges the psychological, physical and sexual abuse that took place in state and religious homes and the intergenerational trauma that Aboriginal peoples continue to suffer from today. The Bringing Them Home Report demonstrates the necessity of reparations measure such as preventing repetition, implementing restitution models, rehabilitation and monetary compensation.

Repetition

Concurrent issues with Aboriginal children in out-of-home care

Although government policies and legislation are no longer designed to separate and segregate Aboriginal communities and children (like the forced removal policies leading to the Stolen Generations), there remains enduring intergenerational and transgenerational issues as a result of forced removal policies.

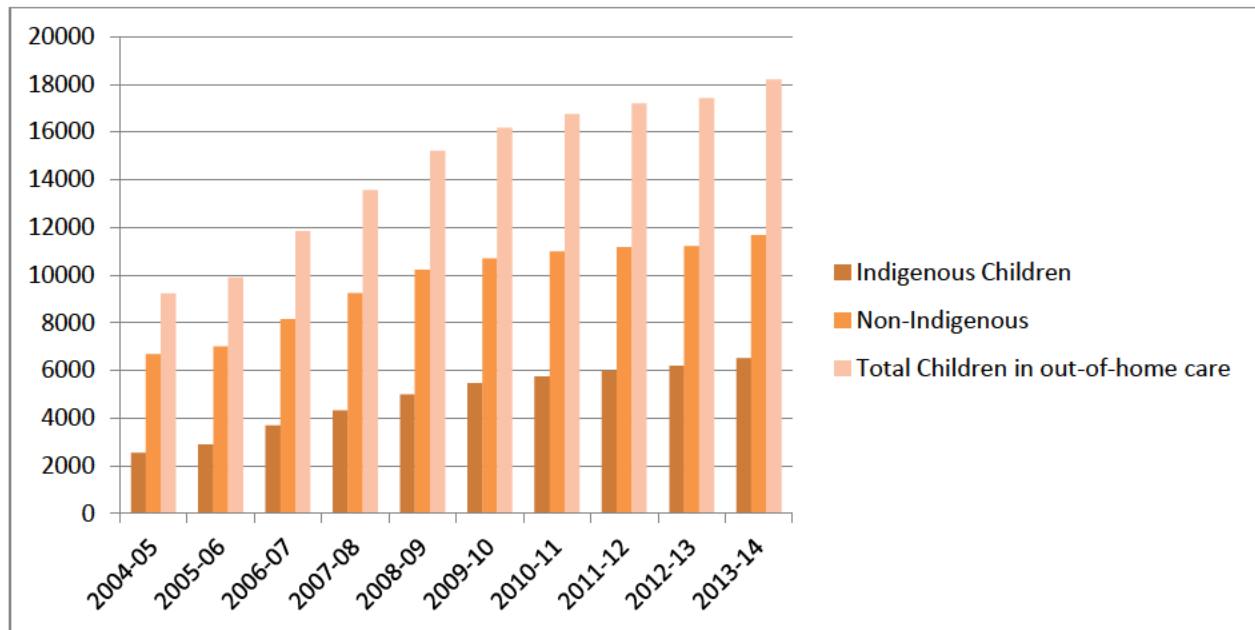
The Secretariat of National Aboriginal and Islander Child Care (**SNAICC**) states that while Aboriginal children under the age of 17 make up 4.6 per cent of the overall child population in Australia,⁹ Aboriginal children under the age of 17 make up 35.8 per cent of all children in out of home care.¹⁰ The SNAICC notes that this is an increase of 65 per cent since the Stolen Generation Apology in 2008.¹¹ The Bringing Them Home report concluded that the underlying causes for the over-representation of children in child protection and out-of-home care was due to the legacy of past policies of forced removal and cultural assimilation and intergenerational effects of forced removals.

⁸ Creative Spirits, A guide to Australia's Stolen Generations August 2015, <<http://www.creativespirits.info/aboriginalculture/politics/a-guide-to-australias-stolen-generations#axzz3gIQJPogo>>.

⁹ Secretariat of National Aboriginal and Islander Child Care, (Media Alert, 12 February 2015). <http://www.snaicc.org.au/_uploads/rsfil/002885_cdeb.pdf>.

¹⁰ Productivity Commission Report, *Child protection services*, No 15. (2014) Page 5 of Table 15A.23.

¹¹ Ibid.



Number of children in out-of-home care in NSW¹²

The Productivity Commission notes that NSW has a total of 6,520 Aboriginal children in out-of-home (35.8 per cent of all children).¹³ 2,967 children had spent more than five years in out-of-home-care (35 per cent)¹⁴ and 1,948 had spent from two to less than five years in out-of-home-care (37 per cent).¹⁵ In NSW 43 per cent of all Aboriginal and Torres Strait Islander children are in out-of-home-care. This is quite a contrast to other states which have a lower portion of children in out-of-home-care -- Victoria 8.7 per cent, Queensland 22.3, WA 12.5, SA 5.2.¹⁶

The Aboriginal Child Placement Principle, developed by the Department of Human Services in Victoria, is designed to enhance and preserve Aboriginal children's sense of identity as Aboriginal by ensuring that Aboriginal children and young people are maintained within their own biological family, extended family, local Aboriginal community, wider Aboriginal community and their Aboriginal culture.¹⁷ The SNAICC has endorsed this principle which includes:

1. Prioritising placement of Aboriginal and Torres Strait Islander children in order, with their Aboriginal and Torres Strait Islander family, community, or other Aboriginal and Torres Strait Islander families, where such placement is safe for the child.
2. Requiring consultation with Aboriginal and Torres Strait Islander families, communities and organisations about child protection intervention, and child placement and care.

¹² Productivity Commission Report <http://www.pc.gov.au/research/recurring/report-on-government-services/2015/community-services/child-protection/government-services-2015-volume-f-chapter15.pdf>

¹³ Ibid, page 1 of Table 15A.20

¹⁴ Ibid, page 1 of Table 15A.21

¹⁵ Ibid.

¹⁶ Ibid, 202.

¹⁷ Victorian Government Department of Human Services, *Aboriginal Child Placement Principle* (2002).

3. Ensuring that Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connection to their family, community and culture, especially children placed with non-Indigenous carers.¹⁸

This principle has been enacted into law in all Australian states and territories (*NSW Children and Young Person (Care and Protection) Act 1998*, ss11-14). The presumption is that removal of an Aboriginal or Torres Strait Islander child from their family should be an intervention of last resort.

The Queensland Department of Communities, Child Safety and Disability Services, provides data which demonstrates that over 50 per cent of all Aboriginal children have been placed in out-of-home care in accordance with the Aboriginal Placement Principle from between 2010 and 2014. As of 30 June 2014 1,839 (55 per cent) were placed with a relative, non-Indigenous relative, other Indigenous caregiver, or placed within an Indigenous residential care service.¹⁹

The NSW Government does not provide similar statistics to demonstrate whether the NSW Government is adhering to the principles. The Government does, however, refer to the principles in the Aboriginal Consultation Guide published by the Department of Family and Community Services.²⁰

NSWALC understands that the NSW Government is working to develop initiatives to ensure that children are not taken out of their home and resettled unless it is the last resort. However, statistics of Aboriginal children in out of home care in NSW do not present a bright picture. The NSW Government must ensure that its policies to not slide back into repetition of old practices and in particular wide scale policies and practices relating to the removal of Aboriginal children from their families.

Additionally, NSWALC notes that information on the NSW Government adherence to the Aboriginal Placement Principle needs to be publicly available and its continued implementation needs to be monitored.

Recommendation 1: The NSW Government must ensure that its policies to not slide back into repetition of old practices and in particular wide scale policies and practices relating to the removal of Aboriginal children from their families.

Recommendation 2: The NSW Aboriginal Land Council recommends that the NSW Government publicly provide data and report on the implementation of the Aboriginal Placement Principle.

¹⁸ Secretariat of National Aboriginal and Islander child Care, *Aboriginal and Torres Strait Islander Child Place Principle*, (2013)

¹⁹ Queensland government, Department of Communities, Child Safety and Disability Services, *Indigenous Child Placement Principle*. (2010 – 2014 statistics).

²⁰ NSW Children and Young Person (Care and Projection) Act (1998), ss11-13.

The Northern Territory Emergency Response

While reviewing the Bringing Them Home Report and reparations against repetition, the Inquiry is urged to consider the Northern Territory Emergency Response (**NTER**). Measures introduced by the Federal Government as a part of the NTER included compulsory income management, Commonwealth take-over of Aboriginal land on five-year leases and a range of law and order measures related to alcohol purchasing and consumption and access to pornography. The NTER was launched as a response to a declared crisis of child abuse in the Northern Territory.

NSWALC considers that the principal policy failing of the NTER was that the implementation of the response was interventionist in approach as well as requiring a racial discriminatory approach. It was also a policy characterised by a lack of community consultation, participation and control and severely undermined principles of self-determination. It appeared at the time of implementation, that the Government was unwilling to enter into dialogue, or negotiate with Aboriginal communities about policy and law reform proposals that were adopted.²¹

The NTER has been, as a result, highly controversial and it teeters on the application of repetition of old government intrusion policies which have caused significant trauma for Aboriginal peoples. NSWALC does not encourage or support any policy enacted in NSW that seeks to repeat similar interventions into communities in NSW.

Recommendation 3: The NSW Aboriginal Land Council recommends that the NSW Government avoid the development of any policies that are based on principles of intervention as these teeter on the application of repetition of old government intrusion policies.

Rehabilitation and Restitution

Government policies and failures

In 2011 the NSW Government developed a Ministerial Taskforce on Aboriginal Affairs. The Taskforce was developed partly in response to the Auditor-General's report *Two Ways Together – NSW Aboriginal Affairs Plan* and the NSW Ombudsman's report *Addressing Aboriginal Disadvantage: the need to do things differently*.

The Auditor General's Report found that the implementation process of Two Ways Together Plan across agencies with Aboriginal communities ineffective in many policy areas when attempting to narrow the gap between outcomes for Aboriginal people and the non-Aboriginal peoples. Indeed, the weakness in the Two Ways Together plan meant accountability of agencies to adhere to the plan was unclear.²²

There were failures to meet set performance measures across the identified priority areas affecting Aboriginal people (as outlined in Auditor General's report). Over the course of the Two Ways Together plan these performance measures changed and the complexity of governance and the reporting

²¹ Ibid.

processes became difficult to evaluate. Indeed, the indicators used to report on the performance of the Two Ways Together Plan showed limited achievement in improving the lives of Aboriginal people.²³

The Ministerial Taskforce published a final report which recommended that the overall direction of a new plan should be to support strong Aboriginal communities through:

1. Strengthened mutual accountability for delivering services and achieving outcomes;
2. Strengthened role of Aboriginal people in local decision making;
3. Strengthened support for Aboriginal language and culture; and
4. Strengthened economic participation including making sure Aboriginal people get the education and training they need to fulfil their economic potential.

The final report also proposed the strengthening of accountability measures including:

- Embedding a new partnership with Aboriginal people across NSW;
- Ensuring the new strategy for Aboriginal affairs is implemented successfully; and
- Improving the effectiveness of government expenditure in Aboriginal affairs.²⁴

In response the NSW Government implemented the Opportunity, Choice, Healing, Responsibility, Empowerment (**OCHRE**) initiatives. These initiatives specifically focus on:

- Connected Communities to change the way educational services are delivered in some Aboriginal communities
- Opportunity Hubs to give school students pathways to real jobs by getting local employers involved in career planning at school
- An Aboriginal Economic Development Framework that sets the strategic direction for NSW
- Industry-Based Agreements to improve employment and job retention outcomes for Aboriginal people
- Language and Culture Nests to support Aboriginal students to learn languages in communities and schools and better engage families in education so languages are preserved and used
- A Local Decision Making model to increase the capacity of Aboriginal communities and non-government organisations to make decisions about local service delivery
- An independent Aboriginal Council to ensure a stronger voice for Aboriginal people in Government and help monitor the delivery and design of the initiatives
- An independent Coordinator General who will chair the Council, to work in collaboration with NSW Government agencies to broker solutions and obtain information to assist the Council in assessing the Government's performance.²⁵

NSWALC notes that what is evident from the Auditor General's report was a consistent failure over an extended period of time to ensure that key targets within Aboriginal affairs plans were met. Over the next ten years of its plan, the NSW Government must avoid this repetition.²⁶

²⁴NSW Government, *OCHRE, NSW Government Plan for Aboriginal affairs: education, employment & accountability* (2013), 3.

²⁵NSW Government, *OCHRE, NSW Government Plan for Aboriginal affairs: education, employment & accountability* (2013), 8-9.

²⁶NSWALC notes that the Government has published a one year report into OCHRE: OCHRE One Year on.

Recommendation 4: The NSW Aboriginal Land Council recommends that the NSW Government develop mechanisms to monitor government policies and initiatives to ensure that outcomes for Aboriginal communities are achieved.

Building Cultural Recognition, Healing and Rehabilitation

The *Keeping Places & Beyond: Building Cultural Futures in NSW* Summit in 2011 identified that while NSW has the largest Aboriginal population in Australia, it does not provide (compared to other mainland States) adequate art and cultural spaces for Aboriginal peoples.²⁷ While there is a vibrant network of spaces for the Aboriginal arts and cultural sector across regional NSW there is no one physical or virtual site that accumulates stores and presents this knowledge and experience – a space that links heritage, arts and cultural practice.²⁸

A report compiled by the Australian Institute of Health and Welfare and the Australian Institute of Family Studies found that art plays an important role in culture, society or local community.²⁹ Both community arts and arts therapies have demonstrated links in improving physical and mental wellbeing, as well as improving social cohesion and inclusion.³⁰ Arts programs for young people can provide a vehicle for improving education engagement, academic achievement and job-readiness, and reduce anti-social behaviour.³¹ Arts programs can be useful in building a sense of purpose, hope and belonging.³²

The role that art plays is an integral in the maintenance and transmission of Aboriginal culture and maintaining links to Country.

Aboriginal arts programs and activities also increased social inclusion and civic participation. Participation in arts programs can also lead to economic development directly through the employment specific jobs and skills or indirectly by encouraging increased tourism.³³

The NSW Government must continue to invest in Aboriginal arts programs to support Aboriginal peoples continued cultural connections and traditions. These Aboriginal arts initiatives may also provide healing opportunities.

Additionally, the NSW Government must invest in mental health counselling, family reunion services and parenting support as these services contribute to rehabilitation process. Those services that are

²⁷ Museums and Galleries NSW, *Keeping Places & Beyond: Building cultural futures in NSW; a reader. Building Cultural Places in NSW.* (2011), 2.

<http://mgns.org.au/media/uploads/files/keeping_places_and_beyondnew2.pdf>.

²⁸ Ibid.

²⁹ Australian Government, Australian Institute of Health and Welfare, Australian Institute of Family Studies, *Closing the gap clearinghouse; Supporting health communities through arts programs.* (2014), 4.

³⁰ Ibid, 4.

³¹ Ibid.

³² Ibid.

³³ Ibid. 8.

quarantined explicitly for Stolen Generation members have compounded by under resourcing and funding issues.

Recommendation 5: The NSW Aboriginal Land Council recommends that the NSW Government adequately invest in Aboriginal arts and healing programs.

Recommendation 6: The NSW Aboriginal Land Council recommends that the NSW Government invest in mental health counselling, family reunion services and parenting support as these services contribute to rehabilitation process.

Reparation Tribunals

NSWALC also acknowledges the work conducted by the Public Interest Advocacy Centre (**PIAC**) through the Reparation Tribunals which have developed a model designed to ensure that Aboriginal people were involved in the design and delivery of current reparation programs and the development of future Government policies.

A model for a Stolen Generation Reparation Tribunal should focus on:

1. Recognising the distinct and unique needs of the Stolen Generation,
2. Focusing on healing beyond the limitations of monetary compensation
3. Providing for an inclusive process of accessing and formulating reparations by those eligible for redress,
4. Permitting group claims in recognition of the collective harm which whole communities continue to experience as a consequence of forced removal policies,
5. Encouraging a 'whole of government' and community response to effecting and implementing reparations measures,
6. Promoting a process of truth and reconciliation, and
7. Preventing repetition of past practices and ongoing harm by considering the effects of existing policies, laws and regulations.³⁴

The composition of a Reparation Tribunal must include members of the Stolen Generations, or their families. It should also focus on reviewing government policy and programs – historic and current.

The establishment of a Reparation Tribunal should provide meaningful consultation process for those, both directly and indirectly, affected the forced removal of Aboriginal people in NSW.

Recommendation 7: The NSW Aboriginal Land Council supports the establishment of a Reparation Tribunal to provide an avenue for members of the Stolen Generations and their families develop Government policy that targets their unique concerns.

³⁴ PIAC Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Stolen Generations Compensation Bill April 2008.

Furthermore, restitution is prevention of a situation which allowed for perpetration of gross human rights violations. Members of the Stolen Generations share a unique experience and as such, they have distinct needs. Members have typically lost the use of their languages, been denied cultural knowledge and inclusion. While the government has invested to some extent in Link-Up, Bringing Them Home programs, social and emotional wellbeing centres and mental health service programs – there is significant under-resourcing of these programs with services experiencing heavy workloads.

NSWALC is of the view that programs should also be targeted towards engaging directly with Stolen Generation members to identify and address their unique and specific needs as well as making continued funding commitments to Link-Up and other relevant programs.

Recommendation 8: The NSW Aboriginal Land Council recommends that the NSW Government continue to adequately fund Link-Up.

Compensatory measures

In NSW, the only compensatory measure for the dispossession of Aboriginal peoples as a result of colonisation is the ability to claim unused and unneeded Crown land through the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*. As at 30 June 2015, 2660 Aboriginal land claims have been granted by the NSW Government, with another 28,054 yet to be determined.

NSWALC is of the view that Aboriginal peoples have the right to be compensated for the traumas caused by government policies which resulted in the Stolen Generations. As outlined in the Bringing Them Home Report, monetary compensation is the only outstanding reparation option that governments have yet to act on. NSWALC recommends that monetary compensation must be considered by the NSW Government (as well as the Commonwealth Government).

*“I think it is a central part of the healing process because you have to have the recognition and to have proper recognition you have to have some form of compensation, because a wrong has been done to these people. And for it to be a proper recognition, there has to be compensation. Unless there is proper recognition of what has been done, people really cannot begin to heal properly.”*³⁵ Dr Jane McKendrick

Recommendation 9: The NSW Aboriginal Land Council recommends that the NSW Government compensate Aboriginal peoples affected by forced removal policies of the Stolen Generations.

Conclusion

NSWALC has highlighted some of the lingering issues that were presented in the Bringing them Home Report and has proposed recommendations to assist in addressing these issues.

³⁵ Bringing Them Home Report, 242

A summary of recommendations are below:

- **Recommendation 1:** The NSW Government must ensure that its policies to not slide back into repetition of old practices and in particular wide scale policies and practices relating to the removal of Aboriginal children from their families.
- **Recommendation 2:** The NSW Aboriginal Land Council recommends that the NSW Government publicly provide data and report on the implementation of the Aboriginal Placement Principle.
- **Recommendation 3:** The NSW Aboriginal Land Council recommends that the NSW Government avoid the development of any policies that are based on principles of intervention as these teeter on the application of repetition of old government intrusion polices.
- **Recommendation 4:** The NSW Aboriginal Land Council recommends that the NSW Government develop mechanisms to monitor government policies and initiatives to ensure that outcomes for Aboriginal communities are achieved.
- **Recommendation 5:** The NSW Aboriginal Land Council recommends that the NSW Government adequately invest in Aboriginal arts and healing programs.
- **Recommendation 6:** The NSW Aboriginal Land Council recommends that the NSW Government invest in mental health counselling, family reunion services and parenting support as these services contribute to rehabilitation process.
- **Recommendation 7:** The NSW Aboriginal Land Council supports the establishment of a Reparation Tribunal to provide an avenue for members of the Stolen Generations and their families develop Government policy that targets their unique concerns.
- **Recommendation 8:** The NSW Aboriginal Land Council recommends that the NSW Government continue to adequately fund Link-Up.
- **Recommendation 9:** The NSW Aboriginal Land Council recommends that the NSW Government compensate Aboriginal peoples affected by forced removal polices of the Stolen Generations.

If you have further questions regarding the content of this submission please contact the Policy and Programs Unit on