

**Submission  
No 30**

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

**Organisation:** Redfern Legal Centre

**Date received:** 19/10/2015

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# Redfern Legal Centre

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16 October 2015

The Director  
General Purpose Standing Committee No.3  
Parliament House  
*by email: [gpsc3@parliament.nsw.gov.au](mailto:gpsc3@parliament.nsw.gov.au)*

**Attention:** The Chairperson, The Hon. Jane Barham MLC

Dear Ms Barham

**Re: Submission to Parliamentary Inquiry into reparations for the Stolen Generations in NSW**

Please find attached our submission: Reparations for the Stolen Generations in NSW.

We would welcome the opportunity to appear before the inquiry to further discuss our submission.

Yours faithfully,  
**Redfern Legal Centre**

Joanna Shulman  
Chief Executive Officer

# Redfern Legal Centre

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**SUBMISSION:**

Reparations for the Stolen Generation in NSW

**AUTHORS:**

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**DATE:**

16 October 2015

'RLC acknowledges that we work on Aboriginal land, traditionally the home of the Gadigal people of the Eora Nation'

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Interviews by appointment: Monday to Thursday 6.30pm – 8pm

# Redfern Legal Centre

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## **1. Introduction: Redfern Legal Centre**

Redfern Legal Centre (RLC) is an independent community legal centre providing access to justice for disadvantaged individuals in the Redfern area and across NSW. RLC has a particular focus on human rights and social justice, with specialised practices in domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies.

Through our exposure to vulnerable clients across this range of legal practice areas, RLC has a unique insight into common legal difficulties and the value of potential reform. We work collaboratively with key partners to promote awareness of legal issues and legal rights within the community.

## **2. RLC's work with Aboriginal and Torres Strait Islander peoples**

RLC has a long history of working with Aboriginal and Torres Strait Islander people to engage with the justice system to exercise rights. That work has included legal advice and casework across many areas of law. Of relevance to this Inquiry, RLC has assisted clients in dealing with stolen wages matters and with the Queensland Redress Scheme. Although RLC has assisted clients in these areas we also acknowledge that as a community legal centre our service does not speak for all Aboriginal or Torres Strait Islander people. We respect and acknowledge the importance of Aboriginal and Torres Strait Islander people affected by the stolen generation being consulted throughout this Inquiry.

## **3. RLC's view in summary**

RLC welcomes the opportunity to comment on the Parliamentary Inquiry into the *Reparations of the Stolen Generation*. RLC understands that those who may have experienced the adverse affects of this period are now elderly or of ill health and that many have passed away. In saying this RLC acknowledges that although reparation may involve a lengthy process of inquiry it should be highlighted that this is a matter of high priority.

At a recent event at the Parliament House Theatre in NSW Michael Walsh a proud Aboriginal man, of the Kinchella Boys Home Aboriginal Corporation, spoke in relation to the stolen generation and the impact it has had on himself and his family. He noted that many of the Stolen Generation are now dying and his words rang clear as he spoke with urgency and asked '*Please do not let the stolen generations die with regret*'. This powerful statement not only suggests that reparations need to occur but that they need to occur before the members of the Stolen Generation are no longer with us.

RLC acknowledges that the basis of the parliamentary inquiry is to provide a response to the *Bringing them Home Report* (BTHR) however understands that this report did not provide a definition concerning the stolen generation. It may be acknowledged that any definition can potentially limit the scope for reparations however drawing on the BTHR it may be found that Aboriginal and Torres Strait Islander children who had been forcibly removed, by either compulsion, duress or undue influence should be included. We also note that, as part of the executive summary of the Forde Report (*Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions 1999*), it was recognised that institutions did not begin to develop an awareness about the adverse affects that the impersonal treatment of children could

have on one's personal, emotional, psychological and physical well being until the late 1960's and it was some years before changes were implemented in sustainable ways. Similar findings are recorded by the Senate Standing Committee in *Forgotten Australians: A report on Australian who experienced institutional or out-of-home care as children* 2004 . As a result RLC believes that the inquiry should take into account a generous period of eligibility and that this date be extend up to those removed and in care at any time up until the early 1980's.

RLC considers that any definition should also be broad enough to include children removed from families, which were justified on the grounds of protecting children from abuse or neglect under child welfare legislation, particularly where children were not placed with members of their extended family. In addition to the failures in care referred to above, children who remained in institutional care or placed with non-Aboriginal or Torres Strait Islander families also experienced a loss of family, culture, their relationship to country and also a frequent and damaging loss of identity.

RLC believes that in considering the scope of reparations, the government needs to acknowledge and address that the actions taken by government have also had wider social, economic and cultural impact on the families of the members of the Stolen Generation and subsequent generations.

RLC also acknowledges that the BTHR is a tribute to the strength and struggles of thousands of Aboriginal and Torres Strait Islander people affected by the forcible removal of children and acknowledge the hardships they endured, sacrifices made and attempts to make recommendations as a response to these hardships.

#### Redfern Legal Centre's experience

For the purposes of this discussion, although RLC has also had experiences in dealing with cases of stolen wages, the **Queensland Redress Scheme** is seen to be of most relevance.

In 2008 RLC had over 20 clients who sought our assistance in relation to claims under the Queensland scheme for redress for children who were abused or neglected in institutional care. The files relating to those claims are in archives and are not to hand at the time of writing this submission. Nevertheless the experiences of those people were moving and are recalled by Elizabeth Morley, the Principal Solicitor who was responsible for those cases.

Nearly all of our clients identified as Aboriginal or Torres Strait Islander peoples and their life stories spoke to the degree of harm they experienced, the continuing impact their removal has had on them personally, their endurance in the face of such great loss and the personal trauma they experienced. These experiences were often adversely reflected in their current circumstances and if their childhood situations had of been otherwise, this may have allowed our clients to achieve and contribute much more to society and achieve their own personal ambitions.

Of those clients who approached RLC nearly all fell within the criteria for eligibility of the scheme. For those who did not meet the eligibility requirements, it was often because they had not lived within institutional care as defined within the scheme or had only very briefly stayed in institutional care on the way to living with their extended family.

The strengths of the scheme were that:

- It was a response to the Forde Report, which provided an evidence base and supported the histories reported by our clients. This evidence included significant details relating to information that would have been extremely difficult for claimants to obtain, for example confirmation of certain rooms used for particular types of punishment. This reduced the need for individual claimants to gather significant evidence relating to a number of institutions that they may have been housed in over a number of years.
- The scheme provided active support in gathering and producing copies of personal records to claimants, which had the combined effect of allowing clients to better frame their claims and also rebuild some of their own family and personal history. This latter material included information about why they had been taken into care, where their family members lived whilst they were in care, why they may have been removed, as well as names of extended family members. Having lived in institutional care without the ability to access this information or have it renewed by their family throughout their lives, many had little remembrance or knowledge of some of these details, which was particularly adverse for clients with an Aboriginal or Torres Strait Islander background.
- The scheme did not require overly complex documentation which was much less than would have been required by an individual pursuing a claim in the District Court. Largely speaking it was enough for the claimant to complete a statutory declaration detailing their story and experiences with institutions as well as how these experiences had impacted on their life. Supporting documentation such as medical reports and statutory declarations from siblings were also obtained where possible.
- The scheme had two levels of payments with criteria for each. This limited the degree to which people had to undertake further medical reports or relive trauma in trying to justify why they should receive an individualised level of payment.
- The scheme essentially recognized that for much of the period concerned, the standard of care of children in institutions was inadequate and involved neglect which would not be acceptable today. Generally this meant that any child who spent more than a very brief time in institutional care during the period was accepted for a Level 1 payment.
- The scheme did not require claimants to prove that they were treated with a lower standard of care than was considered the reasonable standards of that period, or whether the relevant staff or officers knew or ought to have known what was happening for instance, which are factors of common law litigation and often require expert evidence.
- The scheme did not require claimants to overcome a time limitation long passed to bringing court proceedings and to show special circumstances why the court should exercise discretion to allow the claim to be lodged late.

The weaknesses of the scheme, however, were that:

- The amount of compensation was not commensurate with the serious impacts that the neglect and abuse incurred in out of home care would render. Many of the claimants

could be said to have lost a lifetime of gainful employment, lived with ongoing physical and mental health issues or injuries, had difficulty maintaining relationships and so on.

- The documentation required was still more than RLC's clients, as marginalized as they have been in their lives, could manage to bring together themselves. As a result, RLC's assistance was required to pull together even basic documentation. RLC staff could read the Forde Report and link the experience of the clients to the Report which would have been beyond the clients' abilities.
- While access to personal records was of great assistance, getting medical records and reports incurred costs and clients did not have the money to pay for the time it would take a medical practitioner to write a comprehensive report.
- RLC was only able to assist the number of clients we did because of the volunteer assistance of a solicitor and law student who worked solely on these matters over a number of months. RLC also utilised pro bono services, which were provided to us by a firm of solicitors.

#### The Claimants:

Nearly all the clients identified as Aboriginal or Torres Strait Islander people as discussed and their stories often detailed significant trauma, as well as continuing economic costs and a complete loss of family, culture, community and a disconnection with country.

The resulting losses and costs of these individuals and their communities can be summarised to include:

- Loss of self-esteem often resulting in poor relationship skills having experienced little in the way of nurturing or affection. This lack of affection and nurturing is now known to be a form of abuse that stunts childhood development;
- Loss of the connection and support within families that one might otherwise draw on throughout life and which is also one of the particular strengths of Aboriginal and Torres Strait Islander culture;
- Loss of cultural identity and relationship to country leaving claimants without a sense of belonging and limited foundation to pursue learning about their culture in the future;
- Loss of education, which might have allowed claimants to find solutions personally, employment and the ability to manage interactions with bureaucracies;
- Post traumatic stress, depression, anxiety and other mental illnesses;
- Self-medication using alcohol and other substances;
- Involvement with the criminal justice system as both victims and offenders;
- Domestic violence within relationships;



- A level of grief as their own children struggled or were placed in out of home care as a secondary consequence of the damaging experiences the claimants had experienced themselves throughout their childhood.
- Generally a deep sadness and often anger;
- Costs to clients relating to the minimal opportunity of being able to achieve or maintain gainful employment;
- Medical costs associated with post traumatic stress, ongoing depression and other related physical and mental health outcomes;
- Costs of responding to alcohol and substance abuse and associated crime or victimization;
- Costs associated with domestic violence, the breakdown of family relationships and children placed in out-of-home care;

#### The Care Environment:

On the face of the records of those claimants, today many would also have been removed from their immediate situation and placed in out-of-home care. This is because they would be perceived to be at risk of harm. However, flawed as the system still may be, Aboriginal and Torres Strait Islander children would now often be placed with extended family where possible under policies around kinship.

Instead, during this time they were placed in institutions where it was often considered enough to only provide a roof over their head and provide children with limited handed down clothing, inadequate food, poor education and an experience of abusive forms of discipline. Claimants were also left vulnerable to violence and exposed to predators. Siblings were split up and allowed little interaction or to practice cultural aspects of their lives. Children were often removed a great distance from their families which separated them from country and allowed them limited exposure to their culture.

#### Outcome of the scheme:

RLC arranged for a private firm of solicitors who specialized in common law litigation to advise claimants on any rights or merits of court action. All claimants were offered the opportunity to have this advice. Those who took that opportunity, chose not to pursue any matters through the common law. Involved in that decision were considerations of the prospects of success but also the effort it would take to withstand the years of litigation with no guarantee of success. The latter was a significant consideration for people who already have little in the way of positive interaction with the legal system and bureaucracy.

During the claim process clients also expressed how important it was to them to have their history told in writing and expressed to government. To have it said, written down and treated with respect was in itself an important validation and acknowledgment of the person and the fact of their experiences.

The scheme also prevented a significant burden being imposed on clients and the courts themselves.

#### **4. RLC's recommendations:**

RLC welcomes the opportunity to make a number of recommendations for this inquiry but these recommendations do not speak for all of the Aboriginal and Torres Strait Islander children involved in the stolen generation and stresses necessary consultation with those affected.

**Recommendation 1:** That there be a scheme for reparation developed to address the adverse affects of the Stolen Generation, being the Aboriginal and Torres Strait Islander children who were forcibly removed, by either compulsion, duress or undue influence and also those Aboriginal and Torres Strait Islander children removed under child welfare legislation as being at risk and who were not placed with immediate or extended family. This scheme should also have generous eligibility criteria including acceptance and acknowledgement of lesser standards of care in institutional care up until the early 1980's.

**Recommendation 2:** That in the case of death or impending death of the applicant, the claims process should be expedited. Should the person die between the date of the commencement of this Inquiry and the closing date on which they could lodge a claim for reparations under any scheme, the children of the claimant should be able to claim on behalf of the deceased.

**Recommendations 3:** That in addition to compensation, non-compensatory support and an acknowledgement of adversity suffered is made available to the members of the stolen generation, their children and subsequent generations.

**Recommendation 4:** That there be common access guidelines established to minimise the documentation claimants are required to source as part of the reparation.

**Recommendation 5:** In relation to documents, which are required, these guidelines should reinforce accessibility and remove the limitation of individuals seeking records for the purposes of this reparation.

**Recommendation 6:** That these common access guidelines be designed to incorporate;

- a) The right for every claimant, upon proof of their identity, to view information relating to him or herself and receive copies of that information where no fee will be imposed
- b) The right for every claimants to receive all personal identifying information about him or herself including information which is necessary to establish the identity of their family members
- c) The right for a claimant to seek a review of any decision that denies him or herself the right to access documents in relation to these circumstances
- d) The right to appeal a review relating to the denial of access to these documents free of charge
- e) The establishment of a maximum processing speed so that the urgency of these matters are communicated through these common guidelines whilst still acknowledging that clients may take some time to recover their documents

- f) The right to seek advice in regards to indigenous support and assistance services available to help those affected to make a claim
- g) The right to consultation with the local Indigenous family tracing and reunion services to review information contained in the documents so that claimants are able to be guided about the nature of the information in a way which will prevent the risk of further distress
- h) The right for every person who is the subject of a record to determine to whom and to what extent that information is divulged to a third person.

**Recommendation 7:** That the New South Wales government urgently fund record agencies to retrieve documents preserving care leavers records relating to indigenous individuals, families and communities and the removal of children from these families so that they can be easily accessed.

**Recommendation 8:** That this funding in the retrieval of documentation also be managed so that the privacy of individuals and indigenous communities are maintained.

**Recommendation 9:** That there be a prohibition on the destruction of documents relating to Aboriginal and Torres Strait Islander peoples and their families or communities where these relate to the removal and the responsibilities of the care and protection of indigenous children, and are held by government or non-government organisations responsible for the removal and placement of those individuals into out-of-home care.

**Recommendation 10:** That claimants should not have to establish any common law liability but rather merely that they fit the eligibility criteria.

**Recommendation 11:** That the opportunity to claim be promoted across Australia and not merely across NSW.

**Recommendation 12:** That there be a generous period for claimants to prepare their application, working whilst mindful that reparation in this circumstance is also a matter of urgency.

**Recommendation 13:** That there be an active outreach from the government to aged care facilities, correctional services and health providers which would inform potential claimants of the scheme and how they can access further information or documents to pursue a claim in their situation.

**Recommendation 14:** That the reparative scheme ensures adequate funding of appropriate Indigenous agencies to record, preserve and administer access to the testimonies of Indigenous people affected by the forcible removal policies who wish to provide their histories in audio, audio-visual or written form.

**Recommendation 15:** That counselling services be funded and staffed by skilled counsellors and support workers who have had extensive experience working with Aboriginal and Torres Strait Islander people who should be made available to claimants experiencing distress in reliving the traumatic experiences that they may need to detail as part of their application. These services should be made both in city but also in regional areas where there are often limitations to accessing such services.

**Recommendation 16:** That consideration is given to establishing categories of compensation, which outline clear criteria. This should not be in the nature of a schedule of maims but rather a number of categories which may need to take into account issues such as time spent in institutional care as a child, whether the claimant has been able to maintain gainful employment as an adult, whether they were the victim of assault, whether they have developed a related disability, and so on.

While there is merit in asking for a tribunal to assess each application in its individual circumstances against ordinary common law damages, this is likely to require a much higher level of documentation, longer periods of consideration and the potential for making the claimant relive the trauma for a much greater time.

**Recommendation 17:** That compensation is free and clear from impacting on a claimant's government entitlements or benefits, including welfare payments and eligibility for public housing.

**Recommendation 18:** That compensation is free and clear of any restitution claimed against or owed by the claimant such as under the *Victims Rights and Support Act 2013*.

**Recommendation 19:** That if a claimant is in a position where they are unable to access compensation directly, for example if the claimant is in prison, that the money is held securely and dealt with for the benefit of and as directed by the claimant.

## 5. Conclusion

RLC is of the view that there is urgent need for reparations for the stolen generations to occur and that the *Bringing them Home Report* is yet to be addressed. RLC believes that it is therefore crucial for the Parliamentary Inquiry to take into account this report and submissions to the inquiry in a timely manner so that the purpose of the inquiry does not become a redundant process for those directly affected by the stolen generation. RLC also advocates that the subsequent generations of the stolen generations and the affects that the actions of government has had on their lives is crucial and that reparation such as non-compensatory support should be considered.

