

INQUIRY INTO STATE RECORDS ACT 1998 AND THE POLICY PAPER ON ITS REVIEW

Organisation: Link-Up (NSW) Aboriginal Corporation

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LINK UP (NSW) ABORIGINAL CORPORATION (LINK-UP)

SUBMISSION TO NSW LEGISLATIVE COUNCIL

**INQUIRY INTO THE STATE RECORDS ACT 1998 AND THE POLICY
PAPER ON ITS REVIEW**

The Hon Shayne Mallard MLC
Chair, Legislative Council
Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: committee.socialissues@parliament.nsw.gov.au

10 August 2020

Dear Chair

Submission for the Inquiry into the State Records Act 1998 and the Policy Paper on its review

Link-Up (NSW) Aboriginal Corporation (**Link-Up NSW**) appreciates the opportunity to make a submission to the Inquiry into the State Records Act 1998 and the Policy Paper on its review (**the Inquiry**).

Link-Up NSW endorse the submission of Jumbunna Institute for Indigenous Education & Research, in particular that the records held by the New South Wales State Archives and Records Authority (**State Archives**) represent the evidence of the colonisation and forced dispossession of Aboriginal people in New South Wales, and as such State Archives have a responsibility to work in partnership with Aboriginal people to care for and manage these items appropriately.¹

History of Link-Up NSW

Link-Up NSW was established in 1980 by Coral Oomera Edwards, an Aboriginal woman who had been forcibly removed from her family and placed in Cootamundra Girls' Home, and historian Peter Read, who were both trying to trace the recent history of Aboriginal people in New South Wales. Many volunteers, including Jean McKenzie Carter and Aboriginal Elders, assisted the development of the organisation.

In 1983, Link-Up NSW received funding from the federal government and became formally incorporated in 1984 under the *Aboriginal Councils and Associations Act 1976* (Cth) (now the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)). Since 1990, Link-Up NSW has run a foster care agency to match Aboriginal carers with Aboriginal children and in 1997 established the Link-Up Program as a result of the *Bringing Them Home* report which set out to assist members of the Stolen Generations to trace their families.

After the establishment of Link-Up NSW,² other Link-Up groups and similar bodies began operating beyond New South Wales, including:

- (a) Link-Up Queensland (established in 1984);³
- (b) Link-Up Northern Territory – Northern Territory Stolen Generations Aboriginal Corporation (NTSGAC) (established in 1985);⁴

¹ Jumbunna Institute for Indigenous Education and Research, UTS, Submission for the Inquiry into State Records Act 1998 and the Policy Paper on its Review (Submission No 67), 24 July 2020.

² Link-Up (NSW) Aboriginal Corporation, accessible at: <https://www.linkupnsw.org.au/>.

³ Link-Up (Qld), accessible at: <https://www.link-upqld.org.au/>.

⁴ Northern Territory Stolen Generations Aboriginal Corporation, accessible at: <http://www.ntsgac.org.au/>.

- (c) Link-Up Victoria (established in 1990);⁵
- (d) Link-Up Western Australia – Yorgum Aboriginal Corporation (established in 1992/1993);⁶
- (e) Link-Up South Australia – Nunkuwarrin Yunti (established in 1994/1995);⁷ and
- (f) Link-Up Western Australia – Kimberley Stolen Generations Aboriginal Service (established in 2001).⁸

There is a National Leadership Group which consists of all the Link-Up organisations across Australia. It meets quarterly to share information and discuss relevant issues.

Our Work at Link-Up NSW

Link-Up NSW assists Aboriginal people directly affected by past government policies separating Aboriginal people from their families and culture through forced removal. Link-Up NSW supports Aboriginal people including members of the Stolen Generations to trace their families and where possible reunite them by helping obtain records, identify family members and by providing counselling services. Link-Up NSW runs four programs, including the Reunification Program, Family Link, Community Builders and Redress Counselling.

The Reunification Program services members of the Stolen Generations. The program involves Link-Up NSW providing family history research and tracing to locate family members for the purpose of reunion and helps arrange family reunions, return to country, and community graveside reunion. In addition, as part of this program, Link-Up NSW provides social and emotional support, healing camps, referrals to other agencies if appropriate, and community events and outreach.

The Family Link program assists children and young people who are at risk of entering or have already entered the Out of Home Care system, by finding family to provide potential guardian and kinship placements and family contact. Link-Up NSW also helps with developing cultural care plans in accordance with the Aboriginal Placement Principles.

Link-Up NSW employs a Community Builder Case Worker to build links within schools and communities to promote culture, strong communities and self-determination. They provide information referrals and assisted referrals to members of disadvantaged communities to participate in community life and activities. Link-Up NSW also employs a Redress Counsellor who provides advocacy and support for Aboriginal people wishing to apply for the National Redress Scheme. The National Redress Scheme was set up to provide reparation compensation to people who have been sexually abused as children within an institutional context.

Barriers faced by Aboriginal people in accessing State held records

Link-Up NSW regularly interacts with Aboriginal Affairs NSW, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), and State Archives. Link Up NSW's experience in attempting to access documents and records varies significantly amongst these entities.

Link Up NSW submits that the inefficiencies relating to the processes for obtaining records pertaining to Aboriginal people in New South Wales means that Indigenous people are less well served than non-Indigenous people attempting to locate records pertaining to non-Indigenous people. Link-Up NSW also submits that there is a clear need for a much more streamlined and responsive approach to obtain records relating to Aboriginal people in New South Wales. Staff managing these records must include

⁵ Link-Up Victoria, accessible at: <http://linkupvictoria.org.au/>.

⁶ Yorgum Healing Services, accessible at: <https://yorgum.org.au/>.

⁷ Nunkuwarrin Yunti of South Australia Inc, accessible at: <http://nunku.org.au/our-services/social-emotional/link-up/>.

⁸ Kimberley Stolen Generation Aboriginal Corporation, accessible at: <https://www.kimberleystolengeneration.com.au/>.

those who are trauma informed and experienced Aboriginal researchers who can specialise in collating and coordinating the records of, and respond to inquiries from, Aboriginal people and communities. Such a need requires the provision of additional and focussed resourcing. As discussed in the following section, Link-Up NSW is well placed to meet this need.

While the process in relation to accessing records from State Archives is relatively efficient, in order to obtain records that relate to the Aborigines Welfare Board (**AWB**), Link-Up NSW is required to apply through Aboriginal Affairs NSW. As there is only one researcher to collate information at Aboriginal Affairs NSW, clients experience delays of up to 6 months. This is not acceptable, particularly in circumstances where the research relates to matters which often result in the client having to revisit distressing and traumatic events in their lives, they or the family members they are seeking are ageing, and other better resourced entities demonstrate that records can be accessed with far more timeliness. Given it was State entities' actions which caused much of the clients' trauma, Link Up NSW submits that greater priority should be given to minimise the time and effort its clients have to endure to access documents and records which will help them resolve questions relating to their family, country and identity.

In order to minimise this delay and given the duplication of records between Aboriginal Affairs NSW and State Archives, researchers at Link-Up NSW have had to obtain their own personal reading cards so they can go to State Archives and access to the records straight away. However, while more effective, Link-Up NSW also faces barriers in accessing records from State Archives, for example, researchers have been turned away because they have not provided a letter of permission from Aboriginal Affairs NSW to access records less than 100 years old or have been advised to contact Aboriginal Affairs NSW to sight documents instead.

In relation to obtaining patient records for Asylums – Mental Health and Destitute & Homeless, Link-Up NSW is required to have the name of the Asylum and the name of the patient. State Archives directs applicants to the NSW Department of Health to obtain permission to access records from 1910 onward. This causes unnecessary and significant delays, usually between 2 weeks to a month, to be granted permission from the NSW Department of Health to approach State Archives. Asylum records prior to 1910 can be obtained through State Archives directly. However, general hospital records are not kept with State Archives which means Applicants are required to go directly to the hospital in question and engage with the processes it has in place.

There are some instances where Link Up NSW has managed to minimise delays by streamlining processes with certain entities, but this is ad hoc and not implemented across all government offices. Link Up NSW have an effective and efficient system in place with Births, Deaths and Marriages, recorded in a Memorandum of Understanding. The process to obtain records from Births, Deaths and Marriages, involves Link-Up NSW using a dedicated email address for requests which are responded to within a day. A streamlined process such as this is effective and allows Link-Up NSW to provide research to its clients in a timely manner.

Recommendations

A history of forced removal, oppression and dispersion of Aboriginal people, nations and communities was accompanied by the removal, dispersion and/or destruction of records and archives relating to Aboriginal people, nations and communities. Access to properly catalogued, cohesive and protected documents and archives are vital to Aboriginal people constructing their personal, national and communal histories. Link-Up NSW's experience has been that non-Indigenous history and records are far more centralised, categorised and more readily available through State Archives than Aboriginal records.

Link-Up NSW played a key role in drawing attention to the national and state policies that led to the forced removal and separation of Aboriginal children from their families. Link-Up NSW's work was recognised in the 1997 Human Rights and Equal Opportunities Commission *Bringing them home* report published following the National Inquiry into the Separation of Aboriginal and Torres Strait Islander

Children from Their Families,⁹ and in the Australian Parliament's National Apology to the Stolen Generations in 2008.¹⁰ Link-Up NSW was recognised as an essential agency assisting in providing the answers that many survivors of the Stolen Generations are seeking in order to rebuild their lives. In highlighting the importance of our work, Link-Up NSW's submission into the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families states:

The journey home is a journey to find out where we came from, so that we can find out who we are and where we are going. Going home is essential to healing the wounds of separation. At the core, going home means finding out who you are as an Aboriginal person, finding your identity as an Aboriginal person, finding out where you belong. It may or may not include physically going home and meeting relatives, but at a minimum it should include having sufficient information about where you come from in order to make that decision.¹¹

Relevantly, in our submission into the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families in 1997, Link-Up NSW called for:

- the establishment of an Aboriginal Archive where all of the departmental records pertaining to Aboriginal people are consolidated under an Aboriginal-controlled administration with uniform and culturally appropriate access procedures; and
- an Aboriginal Archive committee comprising appropriate departments and Aboriginal organisations to be formed to formulate a plan for establishing the Aboriginal Archive.¹²

To date, the recommendations made have not been implemented, however Link-Up NSW continues to press for their implementation in relation to this inquiry and further proposes that Link-Up NSW be responsible for managing and maintaining the Aboriginal Archive. The need for such an approach has only increased since Link-Up NSW's last submission.

In addition to these recommendations, online access to records is also crucial to achieving adequate and timely access once records are coordinated. Such access is often unavailable in New South Wales but Link Up NSW understands that other state Link-Up organisations have more direct access to a far broader range of material. For example, the Queensland State Library provides greater accessibility to records it holds as information and records can be accessed directly from their website. These records include Tindale's materials which are extremely useful to Link Up NSW in the work it does. For an example of centralised records relevant to Aboriginal people and accessible online, see 'State Library of Queensland: Tindale Genealogical Collection'.

A further recommendation is that information and training as to how to readily access State held data collection, meta data and relevant records relevant to Aboriginal people and communities ought to be shared with peak Aboriginal organisations that are involved in research and community capacity building, such as through training.

While Link Up NSW provides assistance to many Aboriginal people seeking records and information held by the State, there are also many Aboriginal people attempting to navigate the system themselves. The current lack of coordination, requirements to apply to more than one department for approval to access a record and the delays no doubt unacceptably exacerbate the trauma for people

⁹ Human Rights and Equal Opportunity Commission, 'National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families: Bringing them home', (1997) accessible at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

¹⁰ National Apology to the Stolen Generations Transcript, accessible at: <https://aiatsis.gov.au/gallery/video/national-apology-stolen-generations>.

¹¹ Human Rights and Equal Opportunity Commission, 'National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families: Bringing them home', (1997) accessible at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

¹² Human Rights and Equal Opportunity Commission, 'National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families: Bringing them home', (1997) accessible at: https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

seeking information about their past and their families. This also highlights the need for such departments to be culturally informed and provide a trauma-informed service for Aboriginal people seeking records.

It is submitted that the State government has the power to implement the recommendations Link-Up NSW makes. The *State Records Act 1998* (NSW) (**the Act**) provides a mechanism by which State Archives can delegate their functions. For example, section 67(1) of the Act gives State Archives the power to delegate their functions to an authorised person.¹³ An 'authorised person' includes a person prescribed by the *State Records Regulation 2015* (NSW) (**the Regulation**).¹⁴ A 'person' under the Act is taken to include a body, whether or not that body is incorporated.¹⁵

Section 8 of the Act states that a person (or body) who is not a public office but who has State records under the person's control as a result of the transfer to the person of the functions or undertaking of the public office previously responsible for the records is for the purposes of the Act taken to be a public office in respect of those records.¹⁶

Further, section 36 of the Act states that when State Archives enters into an agreement, understanding or other arrangement with any person (including a public office) under which the person is to have possession or custody of a state archive, the agreement, understanding or other arrangement is to include provision that will ensure arrangements are in place for enabling public access to the record to be provided in accordance with the Act, facilitating return of the record if it is required for use for official purposes in the public office responsible for the record, and ensuring the safe keeping and property preservation of the record.¹⁷

Given the extent of our experience in dealing with and managing records relating to Aboriginal people, Link-Up NSW is the most appropriate Aboriginal-controlled organisation in New South Wales to manage all state records and documents pertaining to Aboriginal people in New South Wales. This would reduce the burden and delays as a result of having to obtain records through Aboriginal Affairs NSW and State Archives and ensure people seeking records receive culturally sensitive and trauma informed support and service.

As the Regulation does not currently prescribe Link-Up NSW as an authorised person in which State Archives can delegate its functions, Link-Up NSW recommends that the Regulations be amended to provide for such a mechanism.¹⁸ As outlined above, Link-Up NSW would then be taken to be a public office under the Act and would be subject to the same requirements and responsibilities as any other public office under the Act responsible for protecting and managing records.

In relation to establishing an Aboriginal Archive committee, section 9 of schedule 2 to the Act gives the Board of State Archives the power to establish committees to assist it in connection with the exercise of any of its functions.¹⁹ Link-Up NSW recommends that an Aboriginal Archive committee be established as a means for State Archives, Link-Up NSW and other appropriate departments and Aboriginal organisations to deliberate and provide guidance to Link-Up NSW in relation to its role in managing all state records and documents pertaining to Aboriginal people in New South Wales. Such a committee is pertinent in adhering to principles of Aboriginal consultation, decision making and self-determination.

¹³ *State Records Act 1998* (NSW) s 67(1).

¹⁴ *State Records Act 1998* (NSW) s 67(3)(b).

¹⁵ *State Records Act 1998* (NSW) s 3.

¹⁶ *State Records Act 1998* (NSW) s 8.

¹⁷ *State Records Act 1998* (NSW) s 36.

¹⁸ *State Records Regulation 2015* (NSW).

¹⁹ *State Records Act 1998* (NSW) sch 2, s 9.

Link-Up NSW recommends that the Inquiry consult further with Aboriginal organisations which deal and work with state records relating to Aboriginal people in New South Wales. Link-Up NSW invites any further consultation in relation to establishing and implementing an Aboriginal Archive and related committee to improve the processes by which Aboriginal people are given access to documents that are vital and may be the only way of finding their identity.

Link-Up NSW would be more than happy to discuss, or expand upon, any aspect of this submission with the Committee.

Janelle Clarke
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Link-Up (NSW) Aboriginal Corporation

